Wiretapping As An Instrument For Law Enforcement Of The Crime Of Bribery Through Deponeering For The Sake Of Receiving State Finances

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Abstract

This study aims to apply administrative sanctions by making the culprits of bribery who are caught red-handed, pay maximum fines based on the results of wiretapping without serving imprisonment. Based on the observation that prosecutions and court decisions against defendants for bribery offences still focus on imprisonment without optimizing the payment of the maximum fine, from among many sources of state revenue, one originates from the Non-Tax State Revenue (PNBP) sector. This normative type of research possessing a conceptual and statutory approach shows that first, the discretion to stop prosecuting bribery offenses for reasons of state revenue to reduce state expenditures to finance the life of the defendant/convict while in the State Detention Center/Penitentiary and can overcome overcapacity; secondly, increase Non-Tax State Revenue and third, the examination of cases is not protracted by prioritizing the principle of contante justitie (quick, simple and low-cost trial).
Keywords: Bribery, Tapping, Deponeering, Law Enforcement

Introduction

Elimination of illegal acts of Corruption has inclined to become a global issue, not only at the national but also regional level. The act of Corruption can undermine the state's finances and lead the citizens to suffer economic losses.[1] Corruption indicators in Indonesia are aggravating. Transparency International (TI) confirms the declining score of Indonesia's Corruption Perception Index (GPA) issued in 2020. Only 37 points, three points less than that in 2019, have been attained by this country. A scale of 0-100 is used by Transparency International for the measurement of GPA. A highly corrupt country is recognized by the score of zero.

Contrarily, a country that is spotless in Corruption can be indicated by the score of 100. In Indonesia, the issue of Corruption is yet stressing as implied by the current score. Of the 180 countries in the world in Transparency International's assessment, Indonesia's GPA is ranked 102nd in 2020, on the same level as the Gambia, which has the same score. This is an irony, considering that the Gambia has only been around four years after the 22 years of the leadership of the corrupt Yahya Jammeh regime. Indonesia has undergone 22 years of reform since the fall of the Suharto regime in 1998. One of the results of the reform was the establishment of the Law Number 20 of 2001 related to the Amendments to Law Number 31 of 1999 related to the Elimination of the Crimes of corruption (after this with reference to the TPK Law).[2]

In the preamble to the TPK Law, it is stated that the widespread corruption crimes that have occurred up to the point are detrimental to the finances of state and largely constitute an infringement on the social as well as economic rights of the entire community, therefore the illegal actions concerning Corruption have to be categorized as the crimes that must be prevented and eradicated wonderfully. An amendment was made to the Law Number 31 of 1999 regarding the Elimination of Corruption that guarantees the legal certainty, eschews the divergent legal judgments, protects the economic and social rights of community, and eliminates the Corruption fairly. However, the fact is with the enactment of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, corruption cases in Indonesia have not decreased but are increasing. Likewise, the judicial process is still lacking in guaranteeing justice and legal certainty.[3]

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[1] Shubhan Noor Hidayat, Lego Karjoko, and Sapto Hermawan, 'Discourse On Legal Expression In Arrangements Of Corruption Eradication In Indonesia', *Journal of Indonesian Legal Studies*, 5.2 (2020), 391–418 <https://doi.org/10.15294/jils.v5i2.40670>.

[2] Rimawan Pradiptyo, 'Does Corruption Pay in Indonesia? If so, Who Are Benefited the Most?', *SSRN Electronic Journal*, 41384, 2012 <https://doi.org/10.2139/ssrn.2107537>.

[3] Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', *International Journal of Law, Crime and Justice*, 51 (2017), 72–83 <https://doi.org/10.1016/j.ijlcj.2017.07.001>.

In Indonesia, the society's legal culture is to be blamed for the weakness of law enforcement, the weakness of law enforcement officials (legal structure), and the most basic of all is the still weak community legal awareness.[4] Putting it simply, according to the Higher Education Anti-Corruption Education Book published by the Ministry of Education and Culture of the Republic of Indonesia, the causes held responsible for the corruption can be divided into 2 (two) factors, namely the internal factors and the external factors. The moral aspects, such as a lack of faith, shame, and honesty, behavioral or attitudinal aspects like consuming lifestyles, and social aspects namely the family that possibly motivate the corrupt behavior are all examples of internal factors. At the same time, external factors include the economic conditions such as low salary or income, political situations like political uncertainty, political concerns, acquiring and sustaining the power, governance, and the organizational factors, such as the lack of qualities of transparency and accountability, the legal aspects, observed in the legislation's weak embodiment. Invitations along with the powerless enforcement of law and social aspects like the society or environment does not support anti-corruption behavior.[5]

The problem of avoiding and eliminating the Corruption is the center of international attention. Therefore, various international and regional conventions have been formed to tackle corrupt practices, including the United Nations Convention Against Corruption (UNCAC) established in 2003, that discusses strategies for preventing, handling, and eradicating Corruption globally.[6] Indonesia is one of the countries that confirmed the United Nations Convention Against Corruption (UNCAC) by enacting Law Number 7 of 2006 regarding the Ratification of the United Nations Convention Against Corruption, 2003, so this law is an ius constituendum regarding Corruption as synchronized in the Act. The Law about the Anticipation and Elimination of Illegal Acts of Corruption is expected to relate to the agreement.[7]

On the basis of the TPK Law, there are 30 (thirty) types of Corruption, including bribery. Bribery offenses in Indonesia can be uncovered. One of them is by using the instrument of forced wiretapping because it is considered very effective in uncovering systemic crimes that are carried out securely and neatly. Tapping or interception is like a sharp two-sided knife. According to Raz, a sharp knife has good and bad properties, namely, a sharp knife can be used to slice vegetables, but the knife can be used to slice humans.[8] The institutions authorized by law to wiretap are the Executor's Office, the Police, and the Corruption Elimination Commission (KPK). Law Implementation Officials who have more achievements in uncovering corruption cases of bribery using wiretapping instruments are the Corruption Eradication Commission (KPK). However, law enforcement in case of illegal action of bribery using wiretapping instruments, which in its implementation prioritizes the primum remidium principle approach, has not shown maximum results in preventing bribery corruption. Thus, law enforcement against Corruption does not only prioritize eradication, but it is essential to take preventive measures so that acts called Corruption do not happen again. In addition, in terms of eradicating Corruption, which is no less essential is the return of state economic losses and the income of state money through the payment of maximum fines so that the state obtains income from the Non-Tax State Revenue (PNBP) sector.[9]

Based on Article 5 and Article 13 of the TPK Law, it has regulated criminal sanctions in the form of alternative cumulative, namely criminal penalties applied to perpetrators of bribery offenses are not only imprisonment and fines. However, they can be alternatively punished through fines only. The clauses from Article 5 of the TPK Law are as follows:

Sentenced to a minimal imprisonment of 1 (one) year and a maximal of 5 (five) years and or a minimum penalty of Rs. 50,000,000.00 (fifty million rupees) and a maximum of Rs. 250,000,000.00 (two hundred and five tens of millions of rupees) every person who: a. Giving or promising to provide something to any civil employee or state executive with the intention that the civil employee or state executive would or would not do anything in his rank, that is against his duty; or b. Providing something to any civil employee or state executive for being concerned to the activity against his duty for doing or not doing in his rank.

Same penalties as in paragraph (1) shall be applied to Civil employees or state executive who receive gifts or promises as described in paragraph (1) letter a or b.

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[4] Vladan JoksImoVIc and others, *Preventing Corruption through Administrative Measures*, ed. by Enrico Carloni and Diletta Paoletti (Perugia: Morlacchi Editore, 2020).

[5] Muhammad Sahlan, 'Unsur Menyalahgunakan Kewenangan Dalam Tindak Pidana Korupsi Sebagai Kompetensi Absolut Peradilan Administrasi', *Jurnal Hukum IUS QUIA IUSTUM*, 23.2 (2016), 271–93 <https://doi.org/10.20885/iustum.vol23.iss2.art6>.

[6] Alina Mungiu-Pippidi, *The Good, the Bad and the Ugly: Controlling Corruption in the European Union* (Berlin, 2013).

[7] Mungiu-Pippidi.

[8] Budi Suhariyanto, 'Persinggungan Kewenangan Mengadili Penyalahgunaan Diskresi Antara Pengadilan TUN Dan Pengadilan Tipikor', *Jurnal Hukum Dan Peradilan*, 7.2 (2018), 213–36.

[9] Firna Novi Anggoro, 'Pengujian Unsur Penyalahgunaan Terhadap Keputusan Dan/Atau Tindakan Pejabat Pemerintah Oleh PTUN', *Fiat Justisia Journal of Law*, 10.4 (2016), 629–52.

While the clauses from Article 13 of the TPK Law states: "Anyone who gives gifts or promises to civil servants by considering the power or authority attached to his position or position, or by the giver of gifts or promises deemed attached to the position or position, shall be punished with a criminal fine. Imprisonment for a maximum of 3 (three) years and/or a fine of a maximum of 150,000,000.00 (one hundred and fifty million rupiahs)". That the demands and criminal decisions of fines against bribery defendants have never been applied in the Indonesia's criminal justice authority even though the criminal provisions for fines have been clearly stated and are able to possess the constructive influence upon the criminal justice authority for Corruption, including first, saving the budget for handling cases, second, reduce the burden on the state to finance the lives of defendants/convicts while in the State Detention Center (RUTAN)/Penitentiary (LAPAS), third, investigators, public prosecutors and judges are more focused on corruption cases where state financial losses are pretty significant and the evidence and application of the law is very difficult, fourth, being able to overcome the overcapacity of the RUTAN/LAPAS so that the quality of inmates' development in other criminal cases can be further improved and fifth, by prioritizing the principle of contante justitie, the examination of cases is expedited. (the principle of modest, rapid and low-priced justice).[10]

According to the author, it is necessary to carry out a legal breakthrough that the public prosecutor can apply to the defendant of a bribery offense who pays a maximum fine unaccompanied by the litigation process in the court namely, the public prosecutor can use his authority to stop the prosecution with deponeering discretion in order to raise money for the state based on the utilization of opportunity principle strategy because the fine has been paid in full. Isn't the Non-Assessment State Income (PNBP) one from among the state income sources that will be used for the interest of public, namely the Indonesian society/state's interest, so that the payment of maximum fine becomes an entry point for public prosecutors to stop prosecuting bribery offense cases where the application of imprisonment for the defendant is the last resort through the ultimum remedium principle approach? Therefore, Reforming the criminal justice system is essential in the fight against corruption, specifically the bribery offense, which has shifted from imprisonment to a fine.[11]

Being aware of this situation, the writer deems it essential for raising the legal problems; firstly, if the model of law enforcement for bribery corruption using wiretapping instruments can be resolved through a deponeering approach in the interest of state revenue and secondly, how can the law enforcement model for bribery corruption increase State Revenue? Non-Tax (PNBP) provides a deterrent effect to the perpetrators of bribery offenses.

Research Methods

Legal normative research is the focus of this study. This study demonstrates that the statutory as well as conceptual approaches are the "appropriate" approaches for legal research.[12] In this study, researchers used data collection techniques in the form of document studies. The method of deductive logic analysis is utilized in this study; in accordance with Peter Mahmud Marzuki, citing the perspective of Philipus M. Hadjon, who explains deduction technique referring to it as syllogism educated by Aristotle, the utilization of deduction technique begins with the accommodation of the focal reason (general proclamation) then, at that point, set forward the minor reason (exceptional properties) of the two premises and afterward reach an inference.

Discussion

Settlement Of Bribery Offenses Through A Deponering Approach For The Interest Of State Revenue.

The Indonesian nation is established as a legal state on the basis of Pancasila and the Constitution of 1945, which means that the law in the country is placed in a very strategic position. So it is hoped that the Indonesian people will increase their awareness of the law by consistently enforcing it. Law enforcement can be interpreted as applying the law in several aspects of national and state life to create order, justice, certainty, and the benefit

[10] Gerhard Anders, Fidelis E. Kanyongolo, and Brigitte Seim, 'Corruption and the Impact of Law Enforcement: Insights from a Mixed-Methods Study in Malawi', *Journal of Modern African Studies*, 58.3 (2020), 315–36 <https://doi.org/10.1017/S0022278X2000021X>.

[11] Helmi and others, 'The Competency of Administrative Court in Adjudicating State Financial Losses Report Dispute in Indonesia', *Sriwijaya Law Review*, 4.1 (2020), 41 <https://doi.org/10.28946/slrev.vol4.iss2.298.pp41-51>.

[12] Muhammad Aziz Zaelani, I Gusti Ketut Ayu Rachmi Handayani, and Isharyanto Isharyanto, 'Asas Umum Pemerintahan Yang Baik Berlandaskan Pancasila Sebagai Dasar Penggunaan Diskresi', *Jurnal Hukum Ius Quia Iustum*, 26.3 (2019), 458–80 <https://doi.org/10.20885/iustum.vol26.iss3.art2>.

of the law. In particular, the Criminal Justice System's series of preventative, repressive, and educational activities can be defined as law enforcement.[13]

The enforcement of criminal law must follow due process, as stated by M. Yahya Harahap, that "constitutional requirements" and "obeying the law" must be adhered to by all criminal law enforcement and application efforts. Fair treatment can not "permit infringement" of one piece of the law on the affection of authorizing one more piece of the law. Law enforcement officers must "guide", identify, "respect," protect (to protect) and guarantee the "Incorporation Doctrine" (Incorporation) in order to ensure that the right to fair treatement of law is enforced and implemented. Doctrine) contains various rights that have been spread in various national laws.[14]

Law enforcement officials enforce and realize legal certainty so that their actions are not contradictory to the law and must be formally regulated. That is, it includes both formal criminal law, also known as law of criminal procedure, and the provisions of material criminal law. If law enforcement officers carry out their duties not following law of criminal procedure or lack an obvious and complete concept of procedural law, the evidence obtained is legally invalid. In accordance with the Criminal (illegal) Procedure Code and the TPK Law's provisions regarding illegal acts of corruption, it has been explained how the process of arrest, detention, search, and seizure of an illegal case starts when the various phases of investigation including investigation, prosecution, and court examination are reached where it is a guideline for investigators, public prosecutors and judges to examine and try suspects or defendants. However, the mechanism for wiretapping has not been regulated in the statutory provisions, so in its implementation, it can potentially violate human rights.[15]

The term wiretapping is familiar to the Indonesian people, the mention of the term is often used, especially in Indonesia, in various reports on the disclosure of corruption cases, specifically the management of cases of corruption handled by the KPK, including the corruption case of bribery of the BPK Auditor by Mulyana W. Kusumah (Former). Members of the KPU), bribery of the former Commissioner of the Judicial Commission on behalf of Irawadi Joenoes, the corruption case of bribery of prosecutor Urip Tri Gunawan after dealing with Arthalina Suryani in the case of the recipient of BLBI funds, namely Samsul Nursalim and many other bribery cases that can be uncovered through wiretapping.[16]

Viewed etymologically or the origin of the words that form it, "wiretapping" comes from the word "wire" or "tapping," which, according to the Big Indonesian Dictionary, means "to take water or take sap from trees by trimming Mayang or by cutting roots or cutting bark. " That the legality of wiretapping/interception does not only regulate the granting of authority to law enforcement agencies but also regulates the procedural law or procedures for its implementation following Andi Hamzah's opinion, which asserts that:[17]

"The principle of legality of criminal law (formal) is different from the principle of legality of material criminal law. The principle of legality in material criminal law is regulated in Article 1 Paragraph (1) of the Criminal Code, which translates: "There is no act (feit) that can be punished based on pre-existing criminal provisions". The term criminal legislation is a translation of "Wettelijk straf bepaling..." So people can be punished based on the law and with lower regulations such as Regional Regulations. Meanwhile, the criminal procedure must comply with Article 1 of the law, "Strafvordering heft alleen plaats op de wijze bij de wet voorzien" (Criminal proceedings are carried out only according to the procedures determined by law). Thus, material criminal procedural law can be local, while criminal procedural law is national".

Wiretapping arrangements must be regulated through a law strengthened by the three resolutions of the Constitutional Court, such as the Constitutional Court's decision Number 006/PUU-I/2003, the Constitutional Court's decision Number 012-016-019/PUU-IV/2006, and the Constitutional Court's decision Number 5 /PUU-VIII/2010 which in its legal considerations provides an affirmation of assurance of the privacy right and its relation to the need for interception of communications by law enforcement officials. After the decision of the Constitutional Court mentioned above, there are many cases of Corruption that have been tried at the Corruption Court using evidence in the form of wiretapping, even though the evidence that examiners obtained and the public prosecutor used in the trial is invalid due to the method or process by which it was obtained. It has not been managed in laws and regulations which of course, violate the rights of privacy of the suspect/litigant, but

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[13] Wicipto Setiadi, 'KORUPSI DI INDONESIA (Penyebab, Bahaya, Hambatan Dan Upaya Pemberantasan, Serta Regulasi) Wicipto', *Jurnal Legislasi Indonesia*, 15.3 (2018), 249–62 <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/234>.

[14] Fathudin, 'Tindak Pidana Korupsi (Dugaan Penyalahgunaan Wewenang) Pejabat Publik (Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan)', *Jurnal Cita Hukum*, 3.1 (2015) <https://doi.org/10.15408/jch.v2i1.1844>.

[15] Gabriel Kuris, 'Watchdogs or Guard Dogs: Do Anti-Corruption Agencies Need Strong Teeth?', *Policy and Society*, 34.2 (2015), 125–35 <https://doi.org/10.1016/j.polsoc.2015.04.003>.

[16] Inisiator Muda, 'Dilema Upaya Hukum Terhadap Penyadapan', *Jurnal Hukum & Pembangunan*, 47.3 (2017), 289–311 <https://doi.org/10.21143/jhp.vol47.no3.1578>.

[17] Agus Suntoro, 'Penyadapan Dan Eksistensi Dewan Pengawas Komisi Tindak Pidana Korupsi', *Jurnal Legislasi Indonesia*, 17.1 (2020), 25 <https://doi.org/10.54629/jli.v17i1.627>.

the panel of judges still accepts the evidence by ignoring the conclusions provided by the Constitutional Court.[18] This happens due to the act that the standard of evidence in Indonesia does not regulate the validity of the examination of the acquisition and use of evidence, which is regulated in the Indonesian legal system only to classify evidence.[19]

Implementing criminal procedural law must align with the objectives of procedural law for criminals. In accordance with van Bemmelen, purpose of procedural law for Criminals is in line with legal functions, namely seeking and finding the truth, giving decisions by judges, and implementing decisions.[20] While the purpose of criminal procedural law, according to Eddy O.S. Hiariej as follows: [21]

1. A material truth is the essential and absolute truth of an illegal case when the provisions of the procedure law for criminals are applied correctly and honestly.
2. Determine legal subjects based on valid evidence so that they can be charged with committing a crime.
3. Outline an examination and court decision to determine whether a criminal act has been proven to have been committed by the person accused.

According to the author, the law enforcement of bribery offenses using wiretapping instruments can be applied in Indonesia in the justice system for criminals with the stipulation that in order for law enforcement personnel to carry out acts of forced wiretapping, the mechanism has to be managed in a manner that is equivalent to the law and cannot be regulated in accordance with the law. Law can be measured, directed, and legally accountable. Therefore, if it is not following the wiretapping mechanism, the action can be tested in a pretrial trial so that the judges can decide whether the wiretapping and the evidence obtained from the results are declared invalid or legally flawed.

Furthermore, the author thinks that when examined in terms of material criminal rule of Corruption, and bribery, as mentioned in the clauses of Article 5 conjointly with the Article 13 of Law Number 31 of 1999 as altered to Law Number 20 of 2001 regarding Elimination of Illegal Corruption Acts, provides legal norms. The public prosecutor is aware that the defendant should be fined as an alternative punishment. However, in author's opinion, on the basis of the principle of opportunity, the public prosecutor is given an authority to avoid the prosecution of the defendant on the grounds of state income source (Non-Assessed State Income) if the defendant pays a maximum fine through the state treasury by attaching proof of depositing a penalty of Rs. 250,000,000- (two hundred and fifty million rupees) whether the public prosecutor charges the defendant with elements of Article 5 of the TPK Law and the penalty of Rs.150,000,000 (one hundred and fifty million rupiahs) whether the public prosecutor charges the defendant with elements of Article 13 TPK Law. So that the state obtains profits and income from the Non-Tax State Revenue (PNBP) sector, which will later be used to finance all public needs and interests, namely the interests of the Indonesian state/society.[22]

Based on history, if it is taken back, the resolution of the cases of court exteriorly (non-litigation) was performed long before Indonesia's independence, precisely during the Dutch colonial period called the Afdoening Buiten Process (resolution of the cases of court exteriorly). One form of out-of-court conclusion of the cases of criminals that applies in the justice system for criminals in Indonesia today is Afkope, that is a type of out-of-court resolution of illegal cases for which the main criminal threat is only a fine and not for violations that are threatened with alternative punishments. The clauses of Article 82 of the Criminal Code have been elaborated as below:[23]

> *(1) The authority to sue for violations that are punishable by fines only becomes null and void if maximal penalties as well as prices incurred are voluntarily paid in case the execution has begun, at the power of the official appointed for this by general rules, and within the time stipulated by him.*
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> *(2) If confiscation is determined in addition to a fine, the goods subject to confiscation must also be handed over, or the price must be paid according to the official estimate in paragraph 1.*

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[18] Whitfield Diffie and Susan Landau, *Privacy on the Line The Politics of Wiretapping and Encryption* (Cambridge, Massachusetts: Massachusetts Institute of Technology Press, 2007).

[19] Y M Saragih and M A Sahlepi, 'Kewenangan Penyadapan Dalam Pemberantasan Tindak Pidana Korupsi', *Hukum Pidana Dan Pembangunan Hukum*, 1.2 (2019) <https://doi.org/10.25105/hpph.v1i2.5467>.

[20] Arwen Mullikin, 'T He E Thical D Ilemma of the USA, *International Journal*, 2.4 (2010), 32–39.

[21] Ahmad Yunus and Moh. Ali Hofi, 'Formulasi Kewenangan Penyadapan Komisi Pemberantasan Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Di Indonesia', *HUKMY : Jurnal Hukum*, 1.1 (2021), 35–54 <https://doi.org/10.35316/hukmy.2021.v1i1.35-54>.

[22] Marten Bunga and others, 'Pemberantasan Tindak Pidana Korupsi', *Law Reform*, 15.1 (2020), 1–30 <https://doi.org/10.1016/j.encep.2012.03.001>.

[23] Randy Pradityo, 'Restorative Justice Dalam Restorative Justice in Juvenile Justice System', *Jurnal Hukum Dan Peradilan*, 5.3 (2016), 319–30 <https://doi.org/10.25216/jhp.5.3.2016.319-330>.

(3) In cases where the crime is aggravated due to repetition, the weighting shall remain in effect even if the authority to prosecute the offenses committed earlier has been abolished based on paragraphs 1 and 2 of this article.

(4) The clauses in this article are not implied to minors who were not yet sixteen years old at the time of committing the Act.

Therefore, Afkope is carried out using the perpetrator paying the maximum fine voluntarily. With the redemption of the prosecution through the payment of a fine, the prosecution must be stopped. However, the Afkope mechanism cannot be applied to criminal acts. As we know, eradicating Corruption is not merely to provide a deterrent effect for perpetrators. However, more than that is how the spirit and efforts of law enforcement officers can recover (restoration) state financial losses, and the state immediately gains income from the PNBP sector due to payment of fines in bribery corruption cases.[24]

According to the author, the benefits are more significant for the state if you immediately receive payment of a sum of money from the PNBP sector rather than the defendant undergoing imprisonment, namely first, reducing the burden on the state to finance the handling of cases, second, eliminating state costs to support the defendant/convict while in the State Detention Center. (RUTAN)/Penitentiary (LAPAS), third, able to overcome overcapacity in RUTAN/LAPAS, and fourth, the awareness of concept of quick, easy, and low-priced justice.[25]

Furthermore, the author argues that the juridical entry point for the public prosecutor to carry out deponeering actions against defendants who have paid a maximum fine for bribery offenses in Article 5 and Article 13 of the TPK Law is that the payment of a criminal fine will, of course, be used for the purposes and interests of the state/society. In the author's opinion, the phrase "public interest" can be interpreted as intended for the prosperity as well as betterment of the state/citizens of Indonesia. This is a line in the explanation of Law Number 16 of 2004, of Article 35 Paragraph (1) letter b as has been changed into Law Number 11 of 2021 regarding Indonesian Attorney Office of Generals stating that:

What is meant by "public interest" in the interest of the nation and state and/or the interest of the wider community? The Attorney General must pay attention to the suggestions and opinions of state power agencies related to the matter.

While the Act of deponering is a form of implementation of opportunity beginsel on the opportunity principle possessed by the Attorney General of the Republic of Indonesia granted by law.[26] This is stated in the provisions of Article 35 Paragraph (1) letter b of the Law on the Prosecutor of the Indonesian Republic, which explains: "The Attorney General of the Republic of Indonesia has the duty and authority in order to overrule the cases in the public interest which can be delegated to the Public Prosecutor". On the basis of explanation of Article 35 Paragraph (1) letter b of Law Number 16 of 2004 altered into Law Number 11 of 2021 regarding Indonesian Office of Prosecutor, putting the case aside is the application of the opportunity principle that can only be performed by the Attorney General of the Republic of Indonesia after considering the propositions and opinion of the relevant power bodies of state.

According to J.M. Van Bemmelen, as quoted by Dudung Indra Ariska, there are 3 (three) reasons not to prosecute through the media of deponeering law as the implementation of the principle of opportunity, namely:[27]

1. For country's sake (*staats belang*)
   The nation's interest does not demand the execution in case the possibility exists that various views of case will receive unequal stress. So that the rising suspicion among the people in these conditions causes significant losses to country, for instance, if an execution occurs, it will come to an unintended end (open disclosure) of secrets of state.
2. In the interest of society (*maatschapelijk belang*)
   There is no prosecution for criminal acts because they are not socially accountable. Included in this category do not demand based on propositions that have changed or are in process of changing in the society. For instance, point of views may alter about whether it is appropriate to be punished for some moral offenses or not.
3. For personal interest (*particular belang*)

[24] Daniel Márquez, 'Mexican Administrative Law Against Corruption: Scope and Future,' *Mexican Law Review*, 8.1 (2015), 75–100 <https://doi.org/10.1016/j.mexlaw.2015.12.004>.

[25] Aksel Sundström, 'Covenants with Broken Swords: Corruption and Law Enforcement in Governance of the Commons', *Global Environmental Change*, 31 (2015), 253–62 <https://doi.org/10.1016/j.gloenvcha.2015.02.002>.

[26] O. C. (Otto Cornelis) Kaligis, *Deponeering : Teori Dan Praktik* (Bandung: Alumni, 2011).

[27] Muhamad Sayuti Hassan and Juan Anthonio Kambuno, 'Penal Mediation : Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju', 6.1 (2022), 69–92 <https://doi.org/10.15294/lesrev.v6i1.54896>.

> This category includes the situations in which the public does not have sufficient interest in either punishment or execution because the perpetrator of the crime has paid the loss and when personal interests require that no prosecution be carried out. In case of the investigator, his interests are greatly influenced in comparison to the possible outcome of an illegal procedure that will not apply to the public interest. So, the losses suffered by the defendant are insufficient to balance the benefits received from the prosecution.

Therefore, in author's view, the application of bribery offense law enforcement model (violating Article 5 and Article 13 of the TPK Law) using wiretapping instruments can be resolved through a deponeering approach after the defendant pays the maximum fine because it is concerned with the state's income source, which is a breakthrough and legal discovery in the justice system for criminals regarding Corruption in Indonesia. With reference to Sudikno Mertokusumo, the discovery of law is "usually defined as the process of forming law by judges or legal officers who are given the task of implementing the law or applying legal regulations to a concrete event".[28] The new law has to be established in the absence of clear and non-existent rules and to ensure that conclusions are provided with results formulated by a decision known as the judge's decision that is an implementation of law.[29]

Based on the opinion of Sudikno Mertokusumo above, the author's opinion that legal discovery is not only carried out by judges but can also be carried out by prosecutors who possess the potential to bring about the executions or apply the legal rules to the concrete event by the clauses presented in Article 8 Paragraph (4) Law Number 16 of 2004 that has been altered to Law Number 11 of 2021 regarding the Attorney Office of General of Indonesian Republic that stipulates:

> "*In carrying out their duties and authorities, the Prosecutor always acts based on the law by heeding religious norms, decency, morality, and is obliged to explore and uphold human values that live in society, and always maintain the honor and dignity of his profession.*".

Therefore, considering the legal conditions that are developing in Indonesia at this time, there is a need for legal discovery in the form of the issuance of regulation by the Attorney General of Indonesian Republic, that explains the definition and purpose of the phrase "public interest" and regulations governing deponeering authority for prosecutors in Indonesia. Areas where, according to the prosecutor/public prosecutor that prosecution is not opportune or not beneficial for the sake of the community, country, and nation, especially cases that put forward the ultimum remedium principle as to obtain the propositions of quick, easy and low-priced justice as well as the principles of legal benefit, legal justice and legal certainty for people seeking justice. So that the process of handling the case does not drag on and immediately obtains legal certainty (legal certainty).

Increasing Non-Assessed State Revenue (PNBP) Through Law Enforcement Of Corruption Crime Of Bribery Provides A Deterrent Effect To Perpetrators Of Bribery Offenses.

Law plays a significant and strategic role in state and national life. If the instrument of implementation is outfitted with commands in the law enforcement field, the law in the form of a system has a positive and just role in the community. The law implementation can usually take place, but it can also occur due to a violation of the law. Law is inseparable from life of any human, therefore to mention regarding law, we fail to separate it from a living being's life.[30]

Law grows, lives, and develops in society. Law is a means of creating an order for society. Law grows and develops when the citizens themselves realize the meaning of legal life in their lives. At the same time, the main aim of law itself is the creation of peace in society.[31]

Law enforcement of bribery corruption in Indonesia has not yet brought a deterrent effect, and almost every year, the KPK conducts arrest operations against civil servants and state administrators. Etymologically, the deterrent effect consists of two syllables. According to the Big Indonesian Dictionary, effect means (1) effect; influence, (2) the impression that arises on the minds of the audience, listeners, readers, and so on (after hearing or seeing something). While deterrence means not wanting to, not daring to do more, and giving up.[32]

Thus, another method is needed to enforce the bribery offense law for providing a discouraging impact and increase PNBP for state from the payment sector for maximum fines. As mentioned in the clauses of Article

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[28] Siti Malikhatun Badriyah, 'Penemuan Hukum (Rechtsvinding) Dan Penciptaan Hukum (Rechtsschepping) Oleh Hakim Untuk Mewujudkan Keadilan', *Masalah-Masalah Hukum*, 40.3 (2011), 384-392–392 <https://doi.org/10.14710/mmh.40.3.2011.384-392>.

[29] Abdul Manan, 'Penemuan Hukum Oleh Hakim Dalam Praktek Hukum Acara Di Peradilan Agama', *Jurnal Hukum Dan Peradilan*, 2.2 (2013), 189 <https://doi.org/10.25216/jhp.2.2.2013.189-202>.

[30] Bunga and others.

[31] G H Addink and J B J M Ten Berge, 'Study on Innovation of Legal Means for Eliminating Corruption in the Public Service in the Netherlands', *Electronic Journal of Comparative Law*, 11.1 (2007), 1–34.

[32] Günther G. Schulze and Nikita Zakharov, 'Corruption in Russia', *Handbook on the Geographies of Corruption*, 59.February (2018), 195–212 <https://doi.org/10.4337/9781786434753.00018>.

1 point 1 of Law Number 20 of 1997 regarding Non-Tax Revenue of State, "Non-Tax State Revenues are all central government revenues that do not come from tax revenues". Meanwhile, the types of Non-Tax Revenue of State can possibly be observed in the provisions of Article 2 Paragraph (1) of Law Number 20 of 1997 regarding Non-Tax State Revenue which reads that the Non-Tax State Revenue Group includes:

a. Revenue sourced from the adjustment of funds of Government.
b. Revenue obtained from the utilization of the resources of nature.
c. Revenue obtained from the results of the management of isolated assets of State.
d. Revenue acquired from service activities performed by the Government.
e. Acceptance on the basis of decisions of court and those stemming from the demanding of administrative penalties.
f. Acceptance of grants is the government's right.
g. Further receipts have been managed in an isolated law.

Therefore, in terms of law enforcement for bribery offenses, it is essential to employ a systems approach in order to comprehend it because the law, in essence, is a system. As a result, it is necessary to implement some systemic changes. Putting it in simple words, the system can be thought of as an organized structure, the united components that are dependent on each other. Regulation as a framework, Lawrence M. Friedman proposes the presence of parts contained in the law. In Friedman's opinion, the general set of laws comprises of three parts: the interconnected legal culture, as well as the legal structure and substance.[33]

The legal structure is a complete law enforcement institution and its instrument, which includes the police as well as their police officers, the executor's office and its executors, the attorney's office along with its lawyers, and the courts including the judges. The legal substance is the entire legal principle, lawful conventions, and lawful rules, including written as well as unwritten form. Legalized culture is the habits, point of views, thinking patterns, and acting of law executioners and people.[34]

The legal substance is a significant component that governs if the law can be implied. The substance also signifies the products generated by the people under legalized system, including their conclusions or new laws. The substance involves prevailing law, besides the regulations obtained in rules. The legal structure is known as an organized framework responsible for determining if the imposition of law is possible with legalized culture, concerning the attitudes of humans with regards to the law and the legalized complex, moral values, perceptions, and assumptions. Legitimate culture is firmly connected with public lawful mindfulness. An excellent legal culture that can alter people's perspectives on the law will be created with a elevated level of public lawful awareness. There is a connection between legal culture, structure, and substance. Therefore, the activities of the implementing bureaucracy are appropriate, and the operation of the law is not simply a function of the legislation.

Keeping in view the writer's opinion, the legal institution that can enforce the law on bribery and corruption using wiretapping instruments without criminal prosecution is the Attorney General of Indonesian Republic because it has deponeering authority on the basis of the principle of opportunity. The deponeering authority possessed by the Attorney General of the Republic of Indonesia has to be altered in the legal structure by giving absolute authority for deponeering legal action to prosecutors in regions who are handling bribery offense cases if, according to the prosecutors' assessment that the litigation prosecution of bribery offense cases that have paid a maximum fine is not harmonious with the principles of the functionality of rule, legal equity and legalized reliability for the community and also misaligned with the application of the principles of quick, easy and low-priced justice and the advantages attained from execution lack the balance with the dissipation undergone by the litigant.

Whereas along with the alterations in the legalized framework discussed earlier in order to increase Non-Tax State Revenue (PNBP) from the payment sector for penalties and at the same time provide a deterrent effect for defendants for bribery offenses, the substance of the punishment for those who engage in bribery or corruption must be changed according to the Article 5, Article 6, Article 11, Article 12 and Article 13 of the TPK Law, namely that the defendant pays a fine of 4 (four) times the maximum amount of the maximum fine for the crime of bribery, the public executor can waive the case's execution by issuing a Decision Letter on Conclusion of Execution for the sake of Interest of State Income. Non-Tax (SKP2 DKPNBP) so that the enforcement of the bribery penalty is the last resort because it prioritizes the ultimum remedium principle approach rather than the primium remedium principle, which of course, brings PNBP benefits to the state and, at the same time provides a deterrent effect to the defendant because it is so large. The nominal value of the criminal fine will be paid into the state treasury.

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[33] Diya Ul Akmal, 'Penataan Peraturan Perundang-Undangan Sebagai Upaya Penguatan Sistem Hukum Di Indonesia', *Jurnal Legislasi Indonesia*, 18.3 (2021), 296 <https://doi.org/10.54629/jli.v18i3.761>.

[34] Slamet Tri Wahyudi, 'Problematika Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia', *Jurnal Hukum Dan Peradilan*, 1.2 (2012), 207 <https://doi.org/10.25216/jhp.1.2.2012.207-234>.

If the substance and legal framework are renovated, the next step is to instill legal awareness in the community through anti-corruption education so as not to bribe civil employees or state executive and vice versa, it is hoped that the civil employees or the state executive will change their mindset and behavior to stay away from Corruption by refusing bribes provided to them in shape of goods, money, rebates, and so on which may tarnish the name of the person, family or institution where the person concerned receives salary and benefits.

Conclusion

The handling of bribery corruption cases using wiretapping instruments can be resolved through a deponeering approach on the condition that the defendant pays the maximum fine as stated in Article 5 and Article 13 of the TPK Law because it is concerned with the profits of state income. The settlement of bribery corruption cases through the deponeering approach provides positive benefits, namely first, reducing the burden on the state to finance the handling of cases, second, eliminating state costs to support the defendant/convict while in the State Detention Center (RUTAN)/Penitentiary (LAPAS), third, able to overcome overcapacity in RUTAN/LAPAS and fourthly, the awareness regarding the proposition of quick, easy and low-priced justice (contante justitie principle). The settlement of bribery corruption cases through the deponeering approach can increase PNBP for the state and, at the same time, provide a deterrent effect for defendants by updating the legal substance of punishment for perpetrators of bribery corruption with the model that the defendant pays a fine of 4 (four) times. The maximum amount of fines (as in Article 5 and Article 13 of the TPK Law), the public executor can waive the prosecution of the case by issuing a Decision Letter on Termination of Prosecution for the Interest of Non-Tax State Income (SKP2 DKPNBP) to have an impact on PNBP benefits for state and at the same time supply a hindering impact on the litigant due to the nominal value of the criminal fine will be paid into the state treasury.

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