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Research Article

A COMPARATIVE STUDY ON NON-JUDICIAL SETTLEMENT ON CORRUPTION AND CORRUPTION ASSET RECOVERY: A LESSON LEARNED FOR INDONESIA

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Abstract

This article is written to seek and understand the effective means that Indonesia can apply to fulfill its obligation to recover the asset deprived of a corruption criminal act under the United Nations Convention Against Corruption. The obligation therein is set in Article 51 of the convention in conjunction with Article 37 of the convention. In seeking such effective means, this article is written by applying the normative method of research. This research is also complemented by applying the comparative approach by understanding the regulations applicable in France, Netherlands, Canada, and Malaysia which provides authorities for their attorney general to settle their corruption crime issue outside the court. By conducting comparative studies on France and Holland, it can be understood that both countries are applying measures permittingtheir prosecutors to adopt an agreement with the offender, which obliges the offender to pay a sum of money to recover the deprived state assets due to his offense. Meanwhile, by applying the same method to Canada and Malaysia, one may construe that both countries provide a precise legal weight to their prosecutor to determine whether such offense shall be settled through the court or not. This article ended with a reflection expressing that Indonesia shall apply a similar mechanism applicable in those countries to settle a corrupt criminal act causing a small amount of economic or financial losses to the country.

Keywords: Corruption, UNCAC, Non-Judicial Settlement, Asset Recovery.

INTRODUCTION

As part of an economic crime, Corruption can be considered a serious issue that threatens the values of democracy, sustainable development, and the rule of law applicable in a state. This previous sentence is taken from paragraph 9 of the United Nations Convention Against Corruption Preamble (hereinafter mentioned as UNCAC. In line with this treaty adoption background, Mr. Gueterres, the United Nations Secretary-General *inter alia* expressed that corruption is not only qualified as a criminal offense but is also considered an immoral action and an absolute treason to the public trust (Nations, 2020). In showing its seriousness in responding to this issue, Babu (2006) explained that the UN has established a set of regulations within the UNCAC which harmonize policies and domestic legislation of state parties related to corruption prevention, detection, punishment, and eradication. Article 30 paragraph 1 of the convention ordered each state party to establish a specific commission that provides a sanction to its offender. Paragraph 5 of this article furthermore ordered this convention member state to take into account the gravity of the offense, to determine the weight of the sanction applicable to its offender. This article *inter alia* ordered each UN member state to provide a specific commission to eradicate corruption and to provide a proportional sanction to its offender. As one of the UN members (Nations, 2013), Indonesia has its anti-corruption committee known as Komisi Pemberantasan Korupsi (hereinafter mentioned as KPK), regulated under Law Number 30 the Year 2002 and Law Number 19 the Year 2019 (Keuangan *et al.,* 2023). However, Indonesia has not established measures that proportionately sanctioned its offender.

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This can be seen by the stipulations outlined in Indonesia Anti-Corruption Act, Law Number 31Year 1999, and its amendments, Law Number 20 the Year 2001 which generally provide prison sentences from three to twenty years and a penalty of fifty million rupiahs to one million rupiahs (Hartanto *et.al*, 2020). Indonesia's New Criminal Code also regulates a similar formulation to its corrupt criminal offender. This can be seen by knowing all the regulations set from Article 603 to Article 606 in conjunction with Article 79 paragraph (1) of the code (Keuangan (b), 2023).These articles generally provide prison sentences from two to twenty years to the offender, and a penalty from ten million rupiahs to two billion rupiahs (Keuangan (b), 2023). Knowing the fact that a country's economic and financial loss are two among several elements of corruption, this introduction may address such a statement. This regulation may of course provide an effective remedy to an offender causing a large amount of economic and financial loss, but it is, however, ineffective to the offender which causes a small amount of economic and financial loss to the country. This urgency can be furthermore proven by the commentaries provided by the Indonesian press and the Indonesian Prosecutor Union herein. In her interview with Professor Burhanuddin, the Indonesian Supreme Prosecutor, Rahmawaty (2022) explained that there are corruption cases only cause an economic loss to the country in the amount of two million rupiahs. In addressing this issue, Burhanuddin expressed that the current anti-corruption law shall still be applied to these offenders, even though such due process is indeed unproportionable (Rahmawaty, 2022). Meanwhile, the Indonesian Prosecutor Union (2022) stated similar situations by expressing the fact that there are corruption cases in the municipality of Pontianak and other regions that only cause an economic loss to the country in the amount of two to five million rupiahs. Furthermore, Article 4 of Indonesia Anti-Corruption Law stated that the asset recovery action conducted by the law enforcers does not abolish the punishment to the

offender. From this article, one may understand that it can be construed that in certain circumstances, corruption eradication practice in Indonesia is conducted in an unproportionate manner. Ali's opinion explained by Mulyadi (2020) states that the corruption eradication practice in Indonesia has not applied the asset recovery system. As one of the systems that shall be taken into account besides the reversal burden of the proof system and the human rights approach, asset recovery can be considered an extraordinary measure to overcome this extraordinary crime (Mulyadi, 2020). Asset recovery is generally regulated under Article 51 UNCAC. This article stated that "*The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard*." From paragraph one of Article 52 UNCAC, it can be expressed that each state party shall provide necessary measures to recover its asset deprived of the offense. Knowing that the Indonesia positive law (*ius constitutum*) does not provide a such measure, it can be understood that this issue shall be solved not only to comply with the UNCAC. This issue shall also be solved to recover the economic and financial loss caused by corruption.

This article expresses that non-judicial settlement can be qualified as one of the effective means to operate the asset recovery method. Non-judicial settlement is etymologicallysynonymous with "alternative dispute resolution". Ware explained this term as the nomination of all legally permitted processes of dispute resolution other than litigation (Library, 2023). By applying this method, the expenses of law enforcers in processing the offender can be conducted more effectively. In justifying this premise, this article provides explanations on how non-judicial settlement can be applied to recover the loss of assets caused by corruption. Therefore, this article provides explanations regarding the applicable law regarding asset recovery in Canada, Netherlands, and France. The first section of this paper provides explanations regarding the corruption asset recovery conducted by Canada. Meanwhile, the second section of this paper provides an explanation regarding how a such method is applied by the Netherlands. Furthermore, the third section of this paper provides the application of the asset recovery method in France. Last but not least, the fourth and final part of this article provides the ideal model or the aspired law (*lege ferenda*) that Indonesia may apply based on this comparative study.

RESEARCH METHODS

This article is applying the normative juridical method. Amiruddin and Asikin (2018) explained that this method is conducted through the application of the law in the books to a concrete empirical legal issue (s). This method is applied by gathering primary legal sources such as regulations and international treaties and secondary legal sources in a form of doctrines and commentaries on those primary legal sources, in a form of books, articles, and press releases (Amiruddin and Asikin, 2018). The article herein also applied the comparative approach in line with the normative juridical method explained in this paragraph. Soeroso (2018) quoted Guteridge's view stating that comparative law is a research method to seek the similarities and differences in several national jurisprudences. Eberle (2009) explained a similar view by stating that comparative law is a method that provides a better understanding of how law application can be better in a state. Since the existence of comparative law remains debatable on whether it shall be considered as pieces of knowledge or scientific methods, this article decided to apply Cruz's (1999) opinion stating that the comparative law is a method. This approach is applied by explaining the similarities and differences between asset recovery practices in Canada, Netherlands, and France. By understanding those differences and similarities, this article then provides an understanding of how the asset recovery method can be applied under a non-judicial settlement by Indonesia. From the application of this approach, this article therefore can provide a contribution to the development of criminal law doctrines in Indonesia.

RESULT AND DISCUSSION

The Asset Recovery Method Application on Corruption based on a Non-Judicial Settlement Practice in Canada

The Government of Canada explained that corruption as a criminal act within its jurisdiction is regulated in the Corruption of Foreign Public Official Act, Criminal Code, and the Anti-Corruption Act for the Government of Québec (OSLER, 2023).The Foreign Public Official Act generally provides prohibition bribery of Canadian foreign public officials to provide an advantage in business (OSLER, 2023). Meanwhile, the Criminal Code prohibits domestic bribery in a form of bribery of various officials, fraud on the government, and breach of trust by a public officer (OSLER, 2023). Lastly, The Anti-Corruption Act is a law providing authorities to Unité permanent anticorruption (UPAC) to eradicate corruption in Québec (OSLER, 2023). Since this article seeks to provide solutions to domestic corruption in Indonesia, the article herein only provides explanations regarding how corruption is prohibited under Canadian Criminal Code. Mackay Douglas and Burkett (2023) explained that Canada's anti-bribery laws (as it is mentioned above) are generally applied to public officials *per se* or they are not applicable to private sector transactions. This commentary is justifiable by knowing the corruption criminal act qualification mentioned in Article 119 to Article 124 Canada Criminal Code (Canada (a), 2023). Those qualifications are regulated and named under these nominees: 1.) Article 119 regulates the prohibition on Bribery of Judicial Officers; 2.) Article 120 provides regulations on the Bribery of Officers; 3.) Article 121 regulates the prohibition of Fraud in the Government; 4.) Article 122 regulates prohibitions on Breach of Trust by Public Officers; 5.) Article 123 regulates prohibitions on Municipal Corruption; and Article 124 regulates Prohibitions on Selling or Purchasing Offices (Canada (a), 2023). Canada can be considered a state which delegates a central authority to its attorney in eradicating corruption that occurs within its jurisdiction. This statement is supported by Article 119 paragraph (2) Canadian Criminal Code stating that the proceedings on bribery of judicial officers can only be operated based on the written consent given by the Attorney General of Canada. The formulation of this stipulation is in line with the Opportunity Principle. Recognized under Indonesia Procedural Criminal Law literature, Annisa and Saini (2022) express that the authority to conduct prosecution can only be delegated to the attorney general. In exercising this authority, the Attorney General of Canada also has a derivative authority to conduct a non-judicial process known as plea bargaining. This non-judicial process is not regulated under a specific statute, yet it is qualified as a discretion and a doctrine recognized by the Government of Canada (Canada (b), 2023). Plea bargaining

can be explained as the exchange of rights offered by a law enforcer *in casu* attorney general with the confession of the offender (Nelson, 2020). This mechanism can also be understood as a binding and concrete agreement between the law enforcer and the offender adopted based on discussions and negotiations (Canada (b), 2023).

Nelson (2020) explains that plea bargaining application on corruption is implicitly regulated under Article 32 paragraph (2) UNCAC. This article states that each member state shall provide the possibility of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offense. Since this stipulation also ordered its member state to provide such measures according to its domestic law, this article furthermore explains the classification of plea bargaining in Canada.

The Government of Canada (2023) quoted Verdun-Jones and Hatch's non-definitive classifications regarding the types of plea bargaining applicable in Canada. Those classifications are explained under the following list herein:

1) "*Charge Bargaining: 1. Reduction of the charge to a lesser included offense; 2. Withdrawal or stay of other charges or the promise not to proceed with other possible charges; or 3. Promise not to charge friends or family of the defendant; or 4. Promise to withdraw a charge in return for the defendant's undertaking to enter into a peace bond;*
2) *Sentence Bargaining: 1. Promise to proceed summarily rather than by way of an indictment; 2. Promise to make a specific sentence recommendation; 3. Promise not to oppose the defense counsel's sentence recommendation; 4. Promise to submit a joint sentencing submission; 5. Promise not to appeal against the sentence imposed at trial; 6. Promise not to apply for a more severe penalty; 7. Promise not to apply to the trial court for a finding that the accused is a dangerous offender or a long-term offender; 8. Promise to make a representation as to the place of imprisonment, type of treatment, etc; or 9. Promise to arrange a sentencing hearing before a particular judge.*
3) *Fact Bargaining: 1. Promise not to volunteer information detrimental to the accused during the sentencing hearing; 2. Promise not to mention a circumstance of the offense that may be interpreted by the judge as an aggravating factor*." (Canada, 2023)

Jaw (2022) explained that plea bargaining is necessary to make sure that law enforcers can conduct due process efficiently and effectively *in concreto* without undue delay and provide certainties to both the victim and the offender. For the prosecutor, this mechanism may avoid labor-intensive, time-consuming, and expensive trials which carry no assurance of success (Jaw, 2022). Through this mechanism, Prosecutor may also give a specific punishment to the offenders (Jaw, 2022). Since plea bargaining is not formally regulated under national legislation, it is important to note that this mechanism currently remains an unwritten practice. This caused the Canadian Sentencing Commission and the Law Reform Commission of Canada to recommend that this practice shall be conducted in a more transparent and recognized judicial regulation (Canada (d), 2023). Despite the such debacle, this mechanism is fully applicable in practice.This statement is based on the *Burlingham* Case in 1995 due to the recognition given by the Supreme Court of Canada which recognize plea bargaining as "*an integral element of the Canadian criminal justice process*." (Canada (d), 2022).

In line with this plea-bargaining method, Canada also regulates both civil and criminal liabilities to its offender (Pirie *et al.,* 2023). Pirie (2023) explained that despite there being no specific regulations regarding civil liability on corruption offenses, the offender can be sued based on breach of contract or tort. Meanwhile, the Canada Criminal Code stated that the criminal liability for corruption consists of the obligation to pay fines according to the law enforcer assessments and/or prison sentence from up to five years and up to 14 years (Pirie *et.al.*,2023). The prison sentence of up to five years applies to public officials and secret commissions, meanwhile, the judicial officers are liable for a prison sentence of up to 14 years (Pirie *et al.*, 2023). From these explanations, it can be wrapped that Canada established its anti-corruption regime for its public officials *per se*. Furthermore, since its plea-bargaining mechanism applies to every criminal offense regulated in Canada Criminal Law, this mechanism is applicable *mutatis mutandis* to a corrupt criminal actor. This mechanism can be understood as Canada's act of compliance to apply Article 37 paragraph 2 UNCAC. Finally, despite it does not provide a specific rule regarding asset recovery, Canada opens an opportunity for its citizens injured due to corruption to file a civil lawsuit against the offender. Such a lawsuit can be filed on the basis of a breach of contract basis or a tort basis.

The Asset Recovery Method Application on Corruption based on a Non-Judicial Settlement Practice in the Netherlands

Similar to Canada, the Netherlands also applied a transactional agreement mechanism that can be adopted by its law enforcer vis-à-vis the offender. This mechanism is known as Non-Conviction Based Confiscation (hereinafter mentioned as the NCBC)(Netherlands, 2021). This mechanism was introduced in 2021 by Minister Grapperhaus of Justice and Security and it was submitted for consultation on the Draft Bill on the Criminal Justice Approach to Subversive Crime II (*conceptwetsvoorstel strafrechtelijke aanpak ondermijning II*in Dutch). Furthermore, the transaction is conducted through the confiscation of money and property acquired from the criminal activity without obtaining convicting the offender *prima facie* (Netherlands, 2021). Furthermore, the Government of the Netherlands (2021) explained the confiscation process authority is delegated to the general prosecutor. In exercising its tasks and authorities, the general prosecutor will demonstrate how this property originates from a criminal activity based on a civil law proceeding (Netherlands, 2021). After the demonstration is conducted, the public prosecutor may confiscate those properties and adopt a transaction agreement with the offender (Netherlands, 2021). From the explanations herein, it can be understood that the offender is obliged to allow the public prosecutor to confiscate his or her asset, to make sure that he or she may acquire the right not to be prosecuted and convicted. Similar to this aspired law, the Netherlands also has its asset recovery mechanism on corruption under both the material law and formal law explained herein. Dekker's (2023) explained that corruption or bribery of civil servants and judges is prohibited under Articles 177, 178, 363, and 364 Dutch Criminal Code. Article 177 states that anyone who offers a public official a gift, service, or promise with the intention to induce him or to conduct an

active or passive action in exercising his or her authority (Dekkers *et al.,* 2023). Meanwhile, Article 178 prohibits the bribery of judges and obtaining a conviction in a criminal case (Dekkers *et al.,* 2023). Article 363 furthermore prohibits civil servants from accepting or requesting a gift, promise, or service if he or she knows or reasonably suspects that such action is done with the intention to undertake or refrain from an act in exercising his office authority (Dekkers *et al.,* 2023). Finally, Article 364 provides a similar formulation to Article 363, but it is addressed to judges (Dekkers *et al.,* 2023).

In applying that set of material laws, the Public Prosecutor of the Netherlands is the only state organ having the right to prosecute bribery and corruption criminal acts (Dekkers *et al.,* 2023). Besides being authorized to delegate the corruption case to the court, the prosecutor has the authority to conduct an out-of-court settlement (Dekkers *et al.,* 2023). This settlement is conducted through the adoption of an agreement along with the issuing of a statement of facts (Dekkers *et al.,* 2023). In adopting this agreement, the offender is obliged to pay a sum of money, meanwhile, the prosecutor is obliged not to delegate that case to court and to disclose this case, in order to protect the reputation of the legal entity conducting this bribery (Dekkers *et al.,* 2023).

In line with the explanations provided by Dekkers, the South African Law Commission (2023) explained that Article 74 Dutch Criminal Code allows its prosecutor to dismiss the prosecution process under the conditions that the offender complies with some condition. This non-judicial settlement process is also known as the *transactie* (Commission, 2023). Four conditions can be attached to a *transactie*, and those conditions are explained herein: 1.) Payment of a sum of money; 2.) Payment of an amount equivalent to the value of items that can be forfeited; 3.) Consent to confiscation; or 4.) Compensation and restitution (Commission, 2023). In line with the opportunity principle explained in this article, *transactie* can be triggered by the prosecutor based on the public interest (Commission, 2023). In commenting on this type of regulation under the term of *dominus litis*,Burhanuddin (2022) expresses that the attorney general has a central authority in the law enforcement procedure based on comparative studies regarding the role of the prosecutor. The *transactie* shall not only be conducted based on a public interest basis but it shall also be conducted based on the conditions herein.

Those conditions are explained herein: 1.) This mechanism can only be applied to criminal offenses carrying a sentence of fewer than six years in a prison sentence; 2.) The suspect shall consent to conduct the transaction; 3.) Parties shall comply with the Dutch ministry of justice guidelines; 4.) This mechanism is complemented by the four attached conditions explained above (Commission, 2023). Since the bribery of judges mentioned in Articles 178 and 364 Dutch Criminal Codes consist of a prison sentence of nine to twelve years, *transactie* is not applicable to settle the violations on these articles (Dekkers *et al.,* 2023). This mechanism however is applicable to the violations of Articles 177 and 363 since these articles carry prison sentences below six years (Dekkers *et al.,* 2023). The section of this paper can be wrapped up by stating that the Netherlands has both a positive law (*ius constitutum*) and an aspired law (*ius constituendum*) regarding non-judicial settlement on corruption. Furthermore, it also applies the asset recovery method by allowing its attorney general to adopt an agreement with the offender. Therefore, the Netherlands can be considered as the UN Member State applying stipulations under Articles 37 paragraph 2, Article 51, and Article 52 of the UNCAC. The next section of this article provides discussions regarding how asset recovery is applied outside the court in France.

The Asset Recovery Method Application on Corruption based on a Non-Judicial Settlement Practice in France

Unlike the previous two states, France applies for a non-judicial settlement on corruption legally binding based on the ratification given by the court. This mechanism is known as the judicial agreement regulated under the French Anti-Corruption Law. Before explaining this procedural law in detail, this section provides stipulations under the French Criminal Code which prohibit the practice of corruption. Those stipulations are Article 445-1 to 456-2 French Criminal Code. Article 445-1 of the code prohibits public officials who provide offers, promises, gifts, presents, or advantage of any kind to others by performing or refraining from performing its authority (Légifrance (a), 2023). This article also prohibits individuals to accept such offers or providing gifts, presents, or advantages of any kind to the public official (Légifrance (a), 2023). Article 451-1-1 French Criminal Code furthermore prohibits the gratification conducted by individuals in a sporting event or a horse race actor to alter the normal and fair running of the event due to the alteration conducted by the actor (Légifrance (a), 2023). Meanwhile, Article 445-2 French Criminal Code prohibits the gratification of professionals and contractors (Légifrance (a), 2023). Finally, Article 445-2-1 of this code prohibits gratification conducted by a sporting event actor or a horse racer to conduct the alteration mentioned in Article 451-1-1 of the code (Légifrance (a), 2023). As it is formulated in Canada and Netherlands, the prohibitions set in French Criminal Code are a formal delict. This delict is formulated under an order that does not prohibit the effect of an action, but it prohibits the action itself (Kanter and Sianturi, 2018). Criminal law textbooks often classified this delict as the antonym of a material delict that prohibits the effect of a criminal act (Purwoleksono, 2019). Since corruption under Indonesian Anti-Corruption Law consists of a phrase stating that it's an offense causing a country economic and financial loss, corruption can be considered as a material delict under Indonesian law.

In enforcing those material laws, the prosecutor has authority based on Article 41-1-2-I French Anti-Corruption Act. This article stated that public prosecutors may adopt a judicial agreement for the purpose of public interest with the offender (Légifrance (b), 2023). The agreement mentioned in this article can only be adopted if the offender pays a fine based on the public interest to the Public Treasury in the proportion to the benefits derived from the breaches noted, within the limit of 30% of the average annual turnover calculated on the last three annual turnovers known on the date of the finding of these breaches (Légifrance (b), 2023). The article herein also obliges the offender to be controlled by the French Anti-Corruption Agency for a maximum period of three years (Légifrance (b), 2023). Different from Canada and Netherlands, this non-judicial settlement is applying a victim-offender method in a case where a victim of this offense is manifest (Légifrance (a), 2023). This method can be seen in the formulation of Article 41-1-2-II French Anti-Corruption Act. This stipulation regulates how the President of a Court examines the agreement proposal proposed by the public prosecutor (Légifrance (b),

2023). The examination process is *inter alia* conducted to re-adjust the amount of asset that shall be recovered by the offender, to verify whether the offender consented to conduct such payment, to provide non-convicting validation, and to ensure the right of the victim to re-acquire his or her asset. Since the article above constitutes the mechanism for a situation where the President of the Court accepts the proposal, 41-1-2-III French Anti-Corruption Act furthermore constitutes regulations on the contrary situation (Légifrance (b), 2023). This stipulation explains that if the President of the Court does not validate the proposal, the public prosecutor may initiate a public action unless there is a new element (Légifrance (b), 2023). Therefore, the public prosecutor cannot report before the court of instruction or judgment of declarations made or the documents submitted by the legal person during the procedure provided for this article (Légifrance (b), 2023). Furthermore, such refusal may still allow the public prosecutor to oblige the offender to pay a sum of money to the public treasury, although it won't entitle restitutions of any costs borne by the legal entity and occasioned by the recourse by the French Anti-Corruption Agency to experts or qualified persons or authorities to assist it in carrying out the legal, financial, tax and accounting analyzes necessary for its control mission (Légifrance (b), 2023). The French Public Prosecutor Authority mentioned above is in line with Article 41-2 Criminal Procedure Code.

This article provides authority to the public prosecutor to suspend the prosecution of an adult person who admits having committed any offense with a main penalty of prison sentence not exceeding five years (Legifrance (c), 2023). Such suspension is followed by obligations fourteen alternative obligations including the payment of a mediatory fine to the Public Treasury under the amount not exceeding € 3,750 or half of the maximum fine for the offense in accordance with the gravity of the facts and the income and expenses of the offender, under a period less than a year (Legifrance (c), 2023).

What can Indonesia Learn from the Regulations Applied by Canada, Netherlands, and France?

Both Indonesia National Criminal Code and the Translated *Wetboek van Strafrecht* (hereinafter mentioned *WvS*) recognize a non-judicial process conducted by the attorney general. Such regulation is mentioned in Article 132 paragraph (1) Criminal Code which applies such mechanism only to an offender of a criminal act carrying a prison sentence under one year and a criminal act carrying a fine sentence of ten million rupiahs or fifty million rupiahs. Furthermore, Article 82 paragraph (1) WvS only provides authority to the attorney general to settle an offense outside the court carrying a fine sentence *per se*. Since corruption is not qualified as an offense referred to in both articles, Indonesia needs to adopt a method similar to what Canada, Netherlands, and France apply to its corruption offender. This article recommends that Indonesia shall apply a similar non-judicialmechanism with the mechanisms explained in this article as its commitment to apply Articles 37 paragraph (2), 51, and 52 UNCAC. This mechanism might be contrary to the doctrine stating that a corrupt criminal act is an offense that shall be eradicated by applying a prison sentence or the *primum remedium* doctrine (Mulyadi, 2020). However, the application of asset deprivation shall still be prioritized in certain cases, since the most essential means of eradicating corruption is to ensure how the economic loss and the financial loss are recovered (Mahmud, 2020). From these fragmented doctrines, this article expresses that Indonesia shall apply the non-judicial agreement mechanism and asset recovery method*per se* only to corruption causing an economic loss and financial loss below one hundred million rupiahs. The opinion addressed above is based on Mahmud's opinion (2020) according to the progressive law doctrine, stating that a prison sentence application shall be minimalized meanwhile both a penalty sanction and substituting money shall be maximized. In line with this doctrine, Alfitra (2018) stated that the existence of an opportunity principle is to balance the sharp nature of the legality principle which obliges the attorney general to prosecute an offense through the criminal court settlement.Furthermore, the amount mentioned in this section is also based on the financial report provided by Jambi Attorney General herein.Knowing that the expense of the attorney general for helping the investigator on a case is one hundred and fifty-nine and six hundred thousand million rupiahs for Jambi Province Attorney, and one hundred and one hundred and four million and six hundred thousand rupiah for Jambi District Attorney, it can be explained that such amount shall not be expended to an offense causing the loss below one hundred million rupiahs. To actualize this aspired law (*ius constituendum*) Indonesia shall reformulate Article 4 Indonesian Corruption Eradication Law which prohibits the non-conviction practice due to the conduct of asset recovery. Furthermore, Indonesia shall also adopt this non-judicial method and asset recovery agreement in the Indonesiabill regarding the new Indonesia Criminal Procedural Code (Nelson, 2020).

Figure 1. Jambi Attorney General Financial Report regarding The Delegated State Budget on Corruption Prosecution

Region	Investigation	Pre-Prosecution	Prosecution	Examination
Jambi Province Attorney	Rp.259.600.000,- for Two Cases	Rp. 27.000.000, for Two Cases	-	Rp. 22.500.000, for One Examination
Jambi District Attorney	Rp.209.600.000,- for Two Cases	Rp. 4.900.000, for One Case	Rp. 83.480.000, for Two Cases	Rp. 56.000.000, for Two Cases

Conclusion

From the comparative studies herein, it can be stated that both Canada and France are applying for a pure non-judicial settlement in responding to a corruption crime occurring within their jurisdiction. Unlike both countries, France is applying a hybrid approach by entitling its court to provide validation on the adopted agreement to settle corruption outside the court. This article does not provide which method shall be viewed as the better method, since this article only stresses the notion that Indonesia shall transpose the legal idea of settling corruption crime under the amount of one hundred million rupiahs outside the court. Such stressing is needed since the positive law (*ius constitutum*) in Indonesia does not provide such a mechanism regardless of the necessity of such a non-judicial mechanism. Therefore, this article suggested that Indonesia shall update its Anti-Corruption Law so that corruption causing an economic and financial loss below one hundred million rupiahs can be responded to through this non-judicial process. Besides

updating this material law, Indonesia shall also adhere to this non-judicial settlement or this asset recovery agreement in its criminal procedure code bill. By conducting these updates, Indonesia may actualize the aspired law discussed in this article, to fulfill its commitment mentioned in the UNCAC.

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