# A Rational Basis Analysis of Terminating Prosecution in Corruption Cases Involving Minimal State Financial Losses

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**Abstract:**

The average expenditure incurred by law enforcement agencies in handling corruption cases is approximately IDR 200,000,000. Consequently, pursuing corruption cases involving state financial losses below this threshold proves inefficient. This study aims to analyze and evaluate the urgency of discontinuing the prosecution of corruption offenses that involve relatively minor financial losses to the state. Furthermore, it proposes a framework for reconstructing the legal basis for terminating such prosecutions. This research adopts a doctrinal legal approach, incorporating case-based and conceptual methodologies. The findings reveal that the rationale for ceasing the prosecution of corruption cases involving minimal state losses is grounded in considerations of inefficiency and the absence of explicit legal provisions. The continuation of such prosecutions starkly contrasts the principles of the Economic Analysis of Law approach. In this context, the Attorney General's Office should regulate the prosecution of minor corruption cases using the dominus litis principle. It would involve establishing legal provisions that authorize public prosecutors to exercise discretion in discontinuing prosecutions where the financial harm to the state is minimal, thereby promoting legal clarity and administrative efficiency.

**Keywords:** rational basis; corruption; state financial; minimum losses.

## Introduction

It must be acknowledged that corruption remains a highly sensitive and complex issue. Corruption practices constitute one of the most formidable threats to the nation and continue to attract widespread public and scholarly attention. It underscores the significance of every legal measure implemented to combat corruption. It is, therefore, not an overstatement to categorize corruption as an extraordinary crime, given its systemic and widespread nature and the severe consequences it poses to national development and economic stability. As such, addressing corruption necessitates the application of extraordinary legal measures (Evrensel 2010; Tahir et al. 2020).

This phenomenon is understandable when one considers the extensive negative impacts associated with corruption, which permeate various sectors of society. Corruption undermines societal stability and security, impedes socio-economic and

political development, and erodes democratic values and moral integrity (Fakhrizy 2021; Saraswati and Rustamaji 2023). Over time, corrupt behavior risks becoming normalized, threatening the foundations of a just and prosperous society. In this regard, Romli Atmasasmita in (Rumadan and Wattimena 2019; Yustia and Arifin 2023)aptly noted that "corruption in Indonesia has become a virus that has eaten away at the entire government since the 1960s until now, and eradication efforts remain inconsistent."

According to Indonesia Corruption Watch, the estimated potential state financial losses from corruption throughout 2023 reached IDR 28,412,786,978,089 (approximately IDR 28.4 trillion). Additionally, the estimated value of bribery and gratuities was IDR 422,276,648,294 (IDR 422 billion), extortion amounted to IDR 10,156,703,000 (IDR 10 billion), and assets allegedly laundered were valued at IDR 256,761,818,137 (IDR 256 billion). In terms of enforcement, the Attorney General's Office of the Republic of Indonesia handled 551 cases involving 1,163 suspects, the Indonesian National Police investigated 192 cases with 385 suspects, and the Corruption Eradication Commission managed 48 cases involving 147 suspects. Despite these efforts, the overall trend of corruption in Indonesia has not shown a significant decline, as evidenced by ICW data on corruption trends during the 2019–2023 period.

Nevertheless, the discourse surrounding corruption in law enforcement in Indonesia often appears detached from practical realities. It must be acknowledged that widespread corrupt practices, particularly at the regional level, result in highly variable financial losses to the state—ranging from significant to relatively minor amounts. This disparity is evident in several judicial decisions involving corruption cases where the misappropriated state funds were minimal, yet the legal proceedings were conducted through conventional mechanisms. For instance, in Corruption Case Decision No. 2031 K/Pid.Sus/2011, the state financial loss amounted to merely IDR 5,795,000, yet the case was pursued through the standard criminal justice process, similarly, in Corruption Case Decision No. 1497 K/Pid.Sus/2016, the financial loss incurred was relatively modest—IDR 50,000,000—yet the prosecution followed conventional legal procedures. These cases demonstrate that corruption does not invariably entail substantial financial losses. However, the Corruption Eradication Law does not provide a clear legal framework for distinguishing the treatment of minor corruption cases from those involving significant losses. This gap in the legal structure necessitates exploring alternative enforcement strategies that preserve the objectives of criminalization while ensuring restitution of state losses more proportionately (Kristanto 2022).

One alternative could involve the discretionary termination of prosecution in cases involving minor financial losses, particularly when restitution proves unfeasible due to legal constraints. Nevertheless, this approach must be reconciled with Article 4 of the Corruption Eradication Law, which explicitly states that restitution of state financial or economic losses does not nullify the criminal liability of perpetrators as outlined in Articles 2 and 3. As such, legal reform is necessary to create a framework that balances efficiency, justice, and the overarching aim of deterring corrupt behavior, regardless of the monetary value involved (Peters 2018).

Based on the provisions of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, in conjunction with Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999, there is no explicit mention of a minimum or maximum threshold regarding the amount of state financial losses. Consequently, when linked to Article 1 point 22 of Law Number 1 of 2004 concerning State Treasury, even relatively small state financial losses can be interpreted as fulfilling the "state financial loss" element stipulated in Articles 2(1) and 3 of the Anti-Corruption Law. A review of previous studies reveals several relevant perspectives. (Faharuddin and Jefferson Hakim 2023) discusses the application of restorative justice in resolving corruption cases involving minor state financial losses. His study suggests that, under certain conditions, the return of misappropriated funds may serve as a more effective resolution mechanism. This research differs from the present study primarily in its conceptualization and application of restorative justice. Another study by (Octaviyanti and Yanto 2024), the research is conducted as normative legal research and offers a novel perspective by analyzing the implementation of restorative justice in corruption cases to achieve a swift, simple, and cost-effective judicial process. Meanwhile, (Abdul Wahid 2023) explores the shift from retributive to restorative justice in addressing corruption cases involving relatively small financial losses to the state. His findings indicate that restorative justice approaches—particularly those emphasizing the return of misappropriated assets—are more appropriate and advantageous in such contexts.

Enforcing corruption laws in cases involving state financial losses does not distinguish between large-scale and small-scale losses. The absence of a defined nominal threshold allows all cases to proceed through the same legal process regardless of the economic impact. As a result, corruption cases involving minimal state losses are still prosecuted and tried in the Corruption Court, without any alternative mechanisms for resolution that are faster, simpler, and more cost-effective. It is particularly problematic given that Corruption Courts are typically located in provincial capitals, and the judicial process for corruption cases often requires significant financial resources. Accordingly, the costs associated with the legal proceedings in such cases are often disproportionate to the actual amount of state financial loss incurred. This reality contradicts the principles of swift, simple, and low-cost law enforcement. Therefore, in this paper, the author seeks to explore and elaborate on the rational basis for terminating the prosecution of corruption offenses involving minimal state financial losses.

## Method

This research employs normative legal methods, utilizing a conceptual approach, a legislative (statutory) approach, and a case-based approach. The legislative approach involves an analysis of the Corruption Eradication Law to demonstrate that the current legal framework does not provide a classification or differentiation of corruption offenses based on the magnitude of state financial losses incurred. The case approach is applied by examining several judicial decisions from Corruption Courts in which prosecutions were pursued despite the relatively small amount of financial loss to the state. Meanwhile, the conceptual approach is used to

contrast the prevailing paradigm of prosecuting corruption cases involving minor financial losses with the theoretical framework offered by the Economic Analysis of Law. This comparison aims to highlight the inefficiencies and limitations of the current legal practice and to advocate for a more rational and cost-effective enforcement strategy.

## Result and Discussion

### Evaluating the Inefficiency of Legal Proceedings in Corruption Cases Involving Minimal State Financial Losses

The discourse surrounding corruption as a form of organized crime has been the subject of ongoing debate, particularly concerning the definition and conceptualization of the crime itself. These debates emerge from both juridical and non-juridical perspectives, including empirical realities. From a juridical standpoint, the controversy regarding corruption as organized crime stems mainly from the lack of explicit legal provisions at national and international levels that definitively categorize corruption within the framework of organized crime (Arismaya and Utami 2019; Wicaksana et al. 2022).

This legal ambiguity has been critically addressed by Zoutendijk, who argues that the absence of a unified legal definition for organized crime has led to reliance on non-legal, often political, interpretations. As a result, definitions vary across countries, with each adopting distinct perspectives and responses to organized crime based on their respective political and legal frameworks. In the Indonesian context, perceptions of corruption have shifted over time (Nur Azizy, Parmono, and Muhibbin 2023). Previously regarded as a conventional national crime, corruption is now increasingly viewed as both an extraordinary crime and a form of organized crime. This shift is primarily due to corruption's profound threat to societal stability and the substantial financial losses it incurs. However, this raises a critical question: Does every act of corruption necessarily result in significant economic harm to the state? Through legal analysis and factual evidence, the author has demonstrated that a considerable number of corruption cases in Indonesia involve relatively minor financial losses to the state. This challenges the assumption that all acts of corruption warrant classification as extraordinary or organized crimes solely based on the harm they cause.

An examination of the Law on the Eradication of Corruption Crimes reveals that the law does not specify a minimum threshold for state financial losses resulting from acts of corruption. It indicates that the legislative intent or legal policy underlying the formation of the Anti-Corruption Law reflects a zero-tolerance stance toward corrupt practices. Consequently, regardless of whether the financial loss to the state is substantial or minor, the provisions of the Anti-Corruption Law apply without exception. Law enforcement related to corruption crimes causing state financial losses, as stipulated in Articles 2 and 3 of the Anti-Corruption Law, makes no distinction between acts resulting in large or small losses. The handling of such cases follows the procedures outlined in the Criminal Procedure Code and Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Furthermore, Article 4 of Law No. 31 of 1999 states that the return of state financial losses or losses to the

national economy shall not eliminate the perpetrator's criminal liability. Based on this provision, even if the financial losses caused by corruption (as referred to in Articles 2 and 3) are minimal and have been repaid, prosecution must still proceed following the applicable criminal procedural law (Mantri, Hartiwingsih, and Rustamaji 2025).

Current law enforcement practices in handling corruption cases in Indonesia have been criticized for inefficiency, particularly due to the high cost of case management. This inefficiency stems from the absence of legal differentiation between corruption cases that result in substantial state financial losses and those that cause minimal losses. Under existing legal frameworks, all corruption offenses are prosecuted through the same formal judicial process, regardless of the scale of financial damage involved. All cases are tried in the Corruption Court, which is centralized at the provincial level. There is no legal mechanism for alternative or out-of-court resolution for corruption cases involving relatively small losses to the state.

For instance, on April 5, 2023, the West Pasaman District Attorney's Office received the transfer of suspects and evidence in a corruption case involving a relatively minor state financial loss amounting to IDR 110,394,000. Notably, the suspect had already fully reimbursed this loss during the investigation phase. Despite the full recovery of state losses, the case was still required to proceed to the Corruption Court at the Padang District Court, West Sumatra. This raises serious concerns regarding the proportionality and cost-effectiveness of the legal process. In some instances, the financial resources expended by the state to prosecute such cases surpass the actual losses incurred and subsequently recovered. However, applying Article 4 of Law No. 31 of 1999 on the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001, creates a normative barrier to dismissing such cases. This article explicitly states that the return of state financial losses does not negate the criminal liability of the offender.

Consequently, even in cases where the financial loss is minor and has been fully repaid, prosecution must proceed as mandated by Articles 2 and 3 of the Anti-Corruption Law and the provisions of the Indonesian Criminal Procedure Code. This legal rigidity invites further reflection on the need for a more proportionate and differentiated approach to corruption case management, especially in cases involving minor infractions. It can be concluded that the current framework for prosecuting corruption cases in Indonesia is inefficient. This inefficiency arises from several factors: the suboptimal role of public prosecutors as case controllers, the absence of a minimum threshold for state financial losses that would warrant legal action, and the lack of provisions in the Anti-Corruption Law for alternative or out-of-court settlements in cases involving minor financial losses to the state (Butt 2023).

Moreover, the prevailing legal culture reinforces the assumption that discontinuing the prosecution of a corruption case is inherently forbidden. Public perception also plays a significant role in shaping prosecutorial behavior. There is a widespread belief that if a corruption case is not brought to trial, it must involve some form of misconduct or collusion by law enforcement authorities. As a result, public prosecutors are effectively trapped within a rigid legal structure, unable to exercise discretion even when circumstances warrant a more pragmatic approach. In this context, public prosecutors—as controllers of criminal cases—should be empowered

to adopt a restorative justice approach, particularly in cases involving minor state losses. It would prioritize restitution and the restoration of the status quo over punitive measures. Such a shift would align with the principles of progressive law, which emphasize legal innovation, contextual sensitivity, and the achievement of substantive justice (Siregar and Sitorus 2022).

Law enforcement efforts in corruption cases involving small state losses should prioritize the recovery of state funds over the criminalization of offenders. Pursuing full prosecution in such cases, where the costs of legal proceedings may exceed the financial damage caused, ultimately undermines the goals of justice and efficiency. Hence, insisting on complete judicial proceedings for every corruption case—regardless of scale—may inadvertently produce outcomes that are contrary to the very interests of the state and the public (Decarolis et al. 2020).

From the law and economics perspective, the current approach to prosecuting all corruption cases—regardless of the magnitude of state losses—is highly inefficient. In response to this inefficiency, various institutions have introduced discretionary legal instruments that support the application of restorative justice in cases involving minor state financial losses due to corruption. For instance, the Indonesian Prosecutor's Office issued a Circular Letter by the Deputy Attorney General for Special Crimes (Number: B-1113/F/Fd.1/05/2010) concerning Priorities and Achievements in the Handling of Corruption Cases. This circular prioritizes prosecuting high-profile or "big fish" cases while encouraging efforts to recover state losses through a restorative justice approach in smaller-scale financial harm cases.

Similarly, the Supreme Court has adopted a more nuanced stance by issuing Supreme Court Regulation No. 1 of 2020 on Guidelines for Sentencing under Articles 2 and 3 of the Anti-Corruption Law (hereinafter referred to as PERMA No. 1/2020). Article 6 of this regulation introduces a categorization system for state financial losses in corruption cases, dividing them into four tiers: Most Severe: Losses exceeding IDR 100,000,000,000 (one hundred billion rupiah); Severe: Losses between IDR 25,000,000,000 and IDR 100,000,000,000; Moderate: Losses between IDR 1,000,000,000 and IDR 25,000,000,000; Minor: Losses between IDR 200,000,000 and IDR 1,000,000,000.

This framework provides a legal basis for differentiated treatment of corruption cases, allowing for more proportionate sentencing and facilitating the application of restorative justice principles—particularly in cases where the economic cost of prosecution may outweigh the benefits of penal sanctions. In the adjudication of criminal cases under Article 3 of the Corruption Eradication Law, state financial or economic losses are classified into five categories: Most Severe: Losses exceeding IDR 100,000,000,000 (one hundred billion rupiah); Severe: Losses ranging from IDR 25,000,000,000 to IDR 100,000,000,000; Moderate: Losses ranging from IDR 1,000,000,000 to IDR 25,000,000,000; Light: Losses ranging from IDR 200,000,000 to IDR 1,000,000,000; Lightest: Losses amounting to IDR 200,000,000 or less.

Both the Circular of the Deputy Attorney General for Special Crimes (No. B-1113/F/Fd.1/05/2010) on Priorities and Achievements in Handling Corruption Cases and Supreme Court Regulation (PERMA) No. 1 of 2020 adopt a classification approach to corruption offenses under Articles 2 and 3 of the Anti-Corruption Law,

based on the scale of state financial losses. However, PERMA No. 1 of 2020 is more assertive and detailed in articulating these categories, particularly by explicitly identifying small-scale financial losses as those amounting to a maximum of IDR 200,000,000.

This categorization reflects a rational policy stance, particularly when considering the disproportion between the minor financial harm caused in some corruption cases and the significant fiscal burden incurred by the state in prosecuting such cases to a final legal resolution. According to data and reports published by Indonesia Corruption Watch (ICW), the budget allocated for law enforcement activities by various institutions is substantial. In 2022, the total budget ceiling for investigation and inquiry activities reached IDR 449,006,937,000 (approximately 449 billion rupiah). The following table provides a detailed breakdown of these expenditures:

**Table 1.** Prosecuting Corruption Cases at the Investigation/Inquiry Level

| Indicator | Prosecutor's Office | | Police | | Corruption Eradication Commission | |
|---|---|---|---|---|---|---|
| | Cost | Target | Cost | Target | Cost | Target |
| Central Government | IDR 198 Million/Case | 40 Cases | IDR 220 Million/Case | 25 Cases | IDR 138 Million/Case | 120 Cases |
| Province | IDR 129. Million/Case | 2 Cases | IDR 116 Million – Rp 1.3 Billion/Case | 2-47 Cases | - | - |
| City/ Regency | IDR 129.8 Million/Case | 2 Cases | IDR 4.1 Million – Rp 640 Million/Case | 1-75 Cases | - | - |

Source: Indonesia Corruption Watch 2023, Report on the Results of Monitoring Trends in Corruption Cases in 2022

These figures underscore the need for a more cost-effective and proportional approach to corruption case handling, especially for offenses involving small-scale state losses. Considering the financial realities of corruption case management at the investigation and prosecution stages, it is evident that the cost incurred by each institution varies. However, on average, the budget for handling a single corruption case is estimated to be no less than IDR 200,000,000 (two hundred million rupiah). Therefore, in cases where the state financial loss is less than this amount, the continued reliance on a litigation-based approach becomes economically inefficient and arguably disproportionate.

In light of this, a paradigm shift in eradicating and prosecuting corruption is necessary—one that incorporates considerations of the scale of state financial losses and places greater emphasis on restorative objectives, particularly the recovery of misappropriated state funds. This proposed shift does not intend to justify corrupt behavior in any form. Instead, it seeks to encourage the development of a more cost-effective and pragmatic procedural framework for handling minor corruption cases.

It is essential to clarify that this argument does not advocate removing or revising Article 4 of the Anti-Corruption Law, which states that the return of state losses does not eliminate criminal liability. Instead, the author calls for adopting a procedural policy reform within law enforcement's technical and operational realm. Such a reform would allow for greater prosecutorial discretion and the application of progressive legal principles to ensure that anti-corruption efforts remain effective, efficient, and fair—particularly in cases where the cost of enforcement exceeds the harm caused (Mantri, Hartiwingsih, and Rustamaji 2025).

**Legal Void in the Discontinuation of Prosecution for Minor State Financial Losses in Corruption Cases**

In the broader sense, law enforcement encompasses all aspects of the life of the nation and state. In a more specific, micro sense, law enforcement refers to the procedural steps involved in investigation, inquiry, prosecution (pretrial examination), and implementing court decisions that have gained permanent legal force. When an event reasonably raises suspicion of a criminal act, immediate actions must be taken to resolve the matter, including investigation, inquiry, prosecution, and trial. After thoroughly reviewing and evaluating the investigation results, the prosecutor submits charges to the District Court.

According to Article 1, number 1, of Law Number 11 of 2021, which amends Law Number 16 of 2004 concerning the Prosecutor's Office, it is stated that "The Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government institution whose functions relate to judicial authority, exercising state power in the field of prosecution and other legal powers." The general explanation of Law Number 11 of 2021 further asserts that the Prosecutor's Office can determine whether a case should be brought before the court. This authority plays a crucial role in balancing the application of legal rules *(rechmatigheid)* with interpretations grounded in the goals or principles of utility *(doelmatigheid)* within the criminal justice process .

As a prosecuting institution, the Prosecutor's Office, as outlined in Article 139 of the Criminal Procedure Code, is expected not merely to submit the results of investigations to the court but to exercise discretion with wisdom. The prosecutor must consider justice and legal benefit factors without disregarding legal certainty. It requires the public prosecutor to evaluate the circumstances and context of the crime. In such cases, a mindset based on a sense of justice that resonates within society is essential .

This provision reflects the principle of dominus litis, which grants the Public Prosecutor control over the case. As articulated by Hari Sasongko, the principle of dominus litis emphasizes that no other body has the exclusive right to prosecute except for the Public Prosecutor, who holds an absolute and monopolistic role in criminal prosecution. The Public Prosecutor is the only institution empowered to initiate and manage criminal cases. Judges cannot demand that criminal cases be brought before them, as their role is passive, awaiting charges from the Public Prosecutor.

The provisions concerning the authority of the Public Prosecutor, as outlined

in the Criminal Procedure Code, reflect both the Principle of Legality *(legaliteitsbeginsel)* and the Principle of Opportunity *(opportuniteitsbeginsel)*. The Principle of Legality mandates that the Public Prosecutor prosecute individuals who violate criminal laws, ensuring that no one is above the law. This principle embodies the concept of equality before the law. In contrast, the Principle of Opportunity grants the Public Prosecutor the discretion to refrain from prosecuting individuals, even if they have violated criminal laws, by considering cases where prosecution would not serve the public interest or where there is no significant societal benefit in pursuing the case (Indriati, Rizkiah, and Mazhar 2025).

Referring to the provisions regarding the authority of the Public Prosecutor as outlined in the Criminal Procedure Code, there is no legal justification for the termination of prosecution in corruption cases based solely on the small state financial losses incurred. From a legislative standpoint, this creates a legal vacuum regarding the author's proposed idea. Although the concept may be rational, it is not yet explicitly provided for in the current legal framework, despite its potential applicability in the future enforcement of corruption crimes .

The legal instrument for terminating prosecution in corruption cases that result in small state financial losses is not encompassed within Article 140 paragraph (2) of the Criminal Procedure Code, as this provision limits grounds for termination to situations such as insufficient evidence, the absence of a criminal act, or cases that are closed by law. However, corruption cases involving small state financial losses typically meet the criteria of having sufficient evidence, being considered criminal acts, and are not included among cases that can be closed by law (Mustofa Botutihe 2024).

In practice, however, the Prosecutor's Office has adopted a policy for resolving corruption cases involving small state financial losses or cases in which the state financial losses have been reimbursed, prioritizing the recovery and restoration of state funds. This policy falls outside the scope of the Corruption Eradication Law and the Criminal Procedure Code. The Prosecutor's Office's approach to enforcing laws related to corruption crimes is reflected in various letters issued by the Deputy Attorney General for Special Crimes, as outlined below:

a. Letter Number B-1113/F/Fd.1/05/2010, dated May 18, 2010, regarding Priorities and Achievements in Handling Corruption Cases, addressed to the Heads of the High Prosecutor's Offices across Indonesia. This letter essentially contains the following key points:
    1) The handling of corruption cases is prioritized by focusing on uncovering significant cases, often referred to as "big fish" (large-scale cases, either in terms of the perpetrators or the value of state financial losses), and those that are ongoing (corruption crimes that continue or are carried out in a sustained manner).
    2) In order to prioritize law enforcement that aligns with the community's sense of justice, especially for individuals who have voluntarily returned state financial losses (restorative justice), it is necessary to consider not pursuing cases with relatively small state financial losses, except in instances where the corruption is ongoing.

3) The handling of corruption cases should not only aim to create a deterrent effect but also prioritize efforts to safeguard state finances.

b. Letter Number B-260/F/Fd.1/02/2018, concerning the improvement of performance and quality in handling cases, addressed to the Heads of High Prosecutors' Offices throughout Indonesia, emphasizes the following main points in point 3, regarding support for the implementation of corruption prevention and eradication actions:
   1) The handling of corruption cases is prioritized by focusing on uncovering "big fish" or large-scale cases, with an emphasis on ensuring the return of state financial losses.
   2) At the investigation stage, if state financial losses have been returned, this may be considered a factor in determining whether to continue the legal process, taking into account the benefits of proceeding with the case and ensuring the smooth progress of national development.
   3) In handling corruption cases, the objective is not solely to create a deterrent effect but also to prioritize the full recovery of state financial losses. If necessary, this may include the application of Money Laundering Crimes (TPPU) to ensure comprehensive financial restitution.

c. Letter Number B-765/F/Fd.1/04/2018, dated April 20, 2018, regarding Technical Instructions for Handling Corruption Cases at the Investigation Stage, addressed to the Heads of High Prosecutors' Offices throughout Indonesia, contains the following key points:
   1) Investigations should be conducted more optimally, focusing not only on identifying unlawful acts constituting corruption but also on efforts to determine the extent of state financial losses.
   2) To ascertain the amount of state financial losses, this may involve either self-calculation or collaboration with relevant institutions such as APIP (Government Internal Supervisory Apparatus), BPK (Supreme Audit Agency), BPKP (Financial and Development Supervisory Agency), or Public Accountants.
   3) In order to safeguard state financial assets, data on the assets of the parties involved in the corruption case should be collected promptly.
   4) If the parties involved are proactive and have fully returned the state financial losses, this may be considered in the decision to continue the legal process, with due regard to the stability of the local regional government and the smooth functioning of national development.
   5) The full return of state financial losses during the investigation stage serves as a benchmark for evaluating the performance of the law enforcement process.
   6) To ensure that the investigation is carried out professionally and proportionally, steps must be taken to prevent any deviations, including reprehensible actions or corruption-related conduct during the investigation.

However, the entire regulation regarding the termination of prosecution

discussed above is an internal regulation of the institution (under legislation), the validity of which can still be questioned. Moreover, it contradicts Article 4 of the Corruption Crime Law. In the author's view, to achieve legal certainty, justice, and benefits, it is time for public prosecutors to be granted the discretion to exercise their authority, as stipulated in Article 34A of Law Number 11 of 2021 concerning the Prosecutor's Office. This article states that for the interests of law enforcement, the Prosecutor and/or Public Prosecutor in carrying out their duties and authorities can act according to their assessment, by paying attention to the provisions of laws and regulations and the code of ethics. That article emphasizes prosecutorial discretion in the prosecution process. With this discretion, cases can be handled expeditiously, and legal certainty, justice, and benefits can be achieved.

Indonesia currently applies the principle of opportunity in a negative sense, meaning that the implementation of this principle is limited. Prosecutorial discretion is the authority to set aside a case based solely on public interest *(seponering)*. However, no provision allows for a case's dismissal for other specific reasons. Additionally, the authority to dismiss a case is solely vested in the Attorney General (Article 32, paragraph 1, point C of Law Number 11 of 2021 concerning the Indonesian Attorney General's Office). The Criminal Procedure Code, in turn, grants the public prosecutor the authority to stop prosecution through an SKPP (Article 140, paragraph 2 of the Criminal Procedure Code).

In line with this perspective, the author contends that the termination of prosecution, as regulated by Article 140, paragraph (2) of the Criminal Procedure Code, has thus far been carried out by the public prosecutor based on technical grounds. This approach, however, does not address cases that are legally complete, both formally and materially. Instead, the prosecutor may deem the case unworthy of trial due to the small value of the state financial loss or because the state financial loss has been returned. As a result, the prosecution process, as conducted by the public prosecutor, may become counterproductive, with the costs of prosecution exceeding the value of the state financial loss incurred by the suspect or defendant. Furthermore, in conducting prosecutions, the public prosecutor is often constrained by a positivistic mindset, which tends to overlook non-legal factors such as costs and benefits (Faried, Mahmud, and Suparwi 2022).

Therefore, the public prosecutor must achieve a breakthrough in terminating the prosecution of corruption cases involving small financial losses. As the key figure in controlling criminal cases, the public prosecutor should prioritize restorative justice in cases involving small state financial losses. This approach could accelerate the recovery of state financial losses, providing immediate benefits to the state. Moreover, public prosecutors should adopt a progressive mindset, unbound by rigid legal norms, allowing for creative solutions that lead to a more beneficial form of justice.

The settlement of corruption crimes resulting in small state financial losses should be approached using the economic analysis of law. In this context, the public prosecutor, when considering the termination of prosecution, must account for efficiency. Continuing the prosecution of such cases may incur disproportionate costs relative to the financial loss involved. This can be related to the principle of parsimony, which is often applied in criminal law. The principle of

parsimony emphasizes the need for caution in the distribution of punishment, ensuring that penalties are not excessive (Wulandari, Madjid, and Puspitawati 2024). Novel Moris applies this principle in limiting the imposition of retributive punishment, suggesting that considerations of justice are crucial in determining whether punishment is unjust *(unduly harsh or too lenient)*.

Prosecutorial discretion is a well-established concept in criminal justice systems globally. This discretion arises from the principle of opportunity in criminal procedure law, allowing prosecutors to determine whether or not a case should proceed to trial. Unfortunately, in the Indonesian context, the scope of prosecutorial discretion, as regulated by the Criminal Procedure Code, is limited. For instance, prosecution termination is only permissible based on the lack of evidence or the absence of a criminal act. Moreover, *depooning* (or discontinuing cases) is an authority granted exclusively to the Attorney General, based on public interest considerations. In contrast, prosecutorial discretion has been more broadly developed in many countries, where it extends to various considerations, including resolving cases outside the courtroom *(afdoening buiten proces)*. This allows for greater flexibility in addressing cases in ways that align more closely with the public interest, efficiency, and justice.

Including public prosecutor discretion in criminal procedure law, as one of the authorities granted to the public prosecutor, would allow for the cessation of prosecution in corruption cases involving small state financial losses. This approach is expected to streamline the resolution of such cases, reduce the costs associated with case handling, and accelerate the recovery of state financial losses. Such a solution is particularly relevant given that not all corruption cases result in significant financial losses. Treating all corruption cases uniformly, without distinguishing the scale of the financial loss, contradicts the economic analysis of law and can lead to injustice.

## Conclusion

Based on the findings of this research and subsequent discussion, it is evident that the rational basis for halting the prosecution of corruption crimes involving small state financial losses lies in the beneficial dominus litis (the authority to discontinue a case) vested in the Prosecutor's Office. It can be outlined in two key points: First, the inefficiency of prosecuting corruption cases with minimal state financial losses and the prosecution and enforcement of such cases starkly contradict the principles of economic analysis of law, as Richard Posner articulated. Central to Posner's argument, the notion of efficiency and prosecuting corruption cases involving small financial losses directly opposes this principle. Specifically, in a typical corruption case, the average cost of investigation and enforcement by law enforcement agencies is approximately IDR 200,000,000. Pursuing cases with state financial losses below this threshold is inherently inefficient, contrary to the efficiency standard emphasized in Posner's Economic Analysis of Law. Second is the legal vacuum surrounding the termination of prosecution in small state financial loss cases. The existing legal framework does not adequately address the termination of prosecution in such cases. Article 140 paragraph (2) of the Criminal Procedure Code, which governs the cessation of legal proceedings, has been narrowly interpreted and applied. It permits

prosecutors to discontinue prosecutions based on technical reasons. Still, it does not extend to cases where the formal and material elements of the crime have been met. Yet, the prosecutor determines that the case is not worthy of trial due to the insignificance of the financial loss or the fact that the losses have been reimbursed.

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