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Restorative Justice Approach to The Settlement of Banking Crime Cases

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ABSTRACT

Banking crimes can now occur in a variety of new forms, which not only harm people or the wider community, but can also cause losses to the state and even the global economy. Settlement of corporate crimes, particularly banking crimes, still leads to legal accountability through diverse statutory instruments, and the imposition of sanctions tends to be oriented toward the perpetrator's criminal responsibility rather than representing the victim's interests. The purpose of this study is to examine non-litigation dispute resolution in the context of corporate banking crimes, as well as whether the concept of restorative justice can be used as an alternative to sanctions in the resolution of corporate banking crimes. The normative legal research method is used, with analytical, comparative, and statutory approaches. The study's findings indicate that the disputing parties can use the out-of-court settlement mechanism to reach an agreement. The use of this mechanism must be established through an injunction settlement institution, as it is known in the legal systems of the United States and the United Kingdom. The court may order a delay in examining the case at the request of one of the litigants if the applicant can demonstrate that there is no clear legal means. The concept of restorative justice opens the door to alternative solutions to corporate banking crimes, such as the deferred prosecution agreement policy.

Keywords: *Restorative Justice; Corporation; Banking Crime; Economic Crime;*

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INTRODUCTION

Banking is a legal institution established to support the implementation of increasing equity in national development, economic growth, and national stability with the goal of raising the average person's standard of living. (Budiyono, 2011; Setiyanto, 2012) National and/or private financial institutions such as banks, the People's Credit Agency (BPR), or legal entities permitted by law to provide loans play an important role in providing loans in credit arrangements in Indonesia. (Ningsih, 2020) (Braga et al., 2019) (Danquah et al., 2022) It should be noted that in carrying out its business activities, every financial institution must follow the 5 C

(character, capacity, capital, collateral, and condition) as stipulated in Article 2 of Law Number 7 of 1992, as amended by Law Number 10 of 1998 concerning Banking (hereinafter referred to as the Banking Law) (Prawitra Thalib et al., 2020).

Banking crimes in general can occur in a variety of new forms as science and technology advance. (Triputra, 2011) (de la Feria, 2020) For example, the occurrence of credit abuse, bad credit, the bank's leadership or management fleeing customer money, establishing a type of banking business without a permit, forging letters of credit, or counterfeiting current accounts or savings accounts. Corporations frequently commit crimes in the economic field, such as banking crimes, corruption, or money laundering, which not only harm people or the wider community, but can also cause losses to the state and even the global economy. (Christian, 2017) (KOUDIJS et al., 2021)

Some examples of corporate banking crime cases include PT. BMA, which collects funds from the public in an unclear form and engages in illegal banking activities that violate Article 46 of the Banking Act under the guise of being a Multi Level Marketing business (hereinafter abbreviated as MLM). Another example is the management of Bank Global Tbk's actions to sell the mutual funds issued by PT. Prudence Asset Management, which turned out to be fictitious to the detriment of customers, and the transfer of PT. Signature Capital Indonesia to PT. Accent Investment Indonesia carried out without the customer's knowledge as collateral for debt (Zulkarnain Sitompul, 2002).

The evolution of banks as perpetrators of crimes demonstrates that there have been significant changes in the banking sector's perpetrators of economic crimes and their victims. Banks were initially considered to be targets or targets of criminals, but banks as corporations can also commit crimes. Victims should be protected, given the magnitude of their losses as a result of crimes committed by banks as corporations. Individual customers, corporate customers, the general public, and even the state are among the intended victims (Hudi, 2021).

Regulation of the Supreme Court of the Republic of Indonesia No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (hereinafter referred to as PerMA No. 13 of 2016) and Regulation of the Attorney General of the Republic of Indonesia No. PER.028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with the Subject of Corporate Law is a special regulation in the criminal justice system, intended to fill a void in criminal procedure (Kristina, 2018).

The restorative concept according to Wright has the main goal of restoration and compensation (Hutauruk, 2013). Perpetrators of crimes, victims and the whole community are involved in solving crimes directly and focusing on the recovery suffered by victims (victim-centred). (O'Malley & Smith, 2020) Restorative justice is a victim-centered response to crime, that allows victims, their families, and members of society to deal with the damage and losses caused by the crime. (Oktarina, 2015).

In 1994, the American Bar Association (ABA) supported the existence of mediation between victims and perpetrators, as well as dialogue in court, and developed voluntary guidelines for its use. In 1995, NOVA (the National Organization for Victim Assistance) was founded, and the treatise "Restorative Community Justice: a Call to Action" was published. These results were then expanded across the United States, Europe, Australia, Africa, Korea, and Russia, including the United Nations, the Council of Europe, and the European Union, through dialogue and initiatives (Pradityo, 2016).

Inconsistency in law enforcement against banking crimes in terms of preventing and eradicating them using the Corruption Crime Act instrument, because what is referred to is the term banking crime, which is based on the term white-collar crime popularized by E. H. Suterland (Timasheff et al., 1955). White-collar crime refers to crimes committed by businessmen/executives and officials that harm the public interest. As a result, almost all perpetrators of illegal acts in the banking sector are businessmen/executives and officials. (Carlos et al., 2019) This is a form of legal uncertainty in the legal approach used.

The formulation of criminal sanctions and the corporate punishment system are regulated in various laws and regulations, so the resolution of corporate crimes and the imposition of sanctions are not consistently determined. Setting deterrent sanctions, fines, or compensation, for example, and protecting the interests of victims who are underrepresented and frequently ignored (Oktarina, 2015). Settlement of corporate crimes, particularly banking crimes, still leads to legal accountability through various statutory instruments, and the imposition of sanctions tends to be oriented toward the perpetrator's criminal responsibility rather than representing the victim's interests. As a result of this research's analysis, it is possible to conclude that there is novelty in banking crime settlement research that employs alternative restorative justice solutions that benefit victims who have suffered losses.

Another point to consider is that imposing criminal responsibility on organs that only carry out orders or as the personification of corporations governed by the Banking Law is insufficient to fulfill the value of justice, which emphasizes partiality to victims of banking fraud, and does not create a deterrent effect for criminals (Hijriani et al., 2022). This study considers how to resolve non-litigation disputes involving corporate banking crimes, as well as whether the concept of restorative justice can be used as an alternative to sanctions in resolving corporate banking crimes with a bias toward victims.

In summary, the researcher describes the background above as shown below:

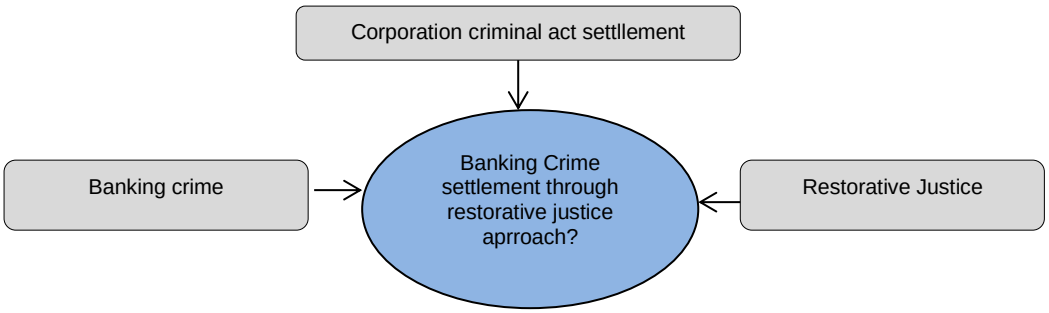

Figure 1. Conceptual Framework

The figure above shows whether the settlement of banking crimes can be carried out through a restorative justice approach, can be used as an alternative solution for resolving banking corporate crime that is oriented towards victims who are harmed. This will be explained in the analysis of the next sub discussion.

METHOD

A. Type of Research

The type of research used is normative legal research, using several approach including (Irwansyah, 2020):

1) An analytical approach is taken to examine the meaning of a legal term and seen in legal practice.
2) A comparative approach is used to compare the applicable legal regulations in Indonesia with similar regulations in other countries, particularly those governing corporate, banking and restorative crimes.
3) Legal approach (statute approach) This approach is carried out by examining the provisions of laws and regulations consisting of regulations related to banking, restorative justice, and regulations related to the research theme.

B. Legal Materials and Analysis

1) Primary legal materials are legal materials that are authoritative, binding and are the main basis for use in the framework of this research, in the form of books, laws and regulations related to the research object.
2) Secondary legal materials in the form of publications on laws, legal materials that provide explanations on primary legal materials, such as scientific journal articles, reports, circulars and results of previous research.

The primary material was analyzed using the theme analysis model of the research title (theme analysis). The analysis of primary and secondary legal materials is prescriptively

presented and is based on a comprehensive, holistic, and in-depth approach in accordance with qualitative research methods.

ANALYSIS AND DISCUSSION

A. A. Settlement of Non-Litigation Disputes Against Corporate Banking Crimes

1. The "Out of Court Settlement" Model

The restorative paradigm is viewed as a concept of resistance to retributive justice that emphasizes the model of dialogue and negotiation in the process of resolving criminal acts, leading to an out-of-court settlement model by prioritizing peace, dialogue between disputing parties to resolve legal issues that arise. faced, by emphasizing the balance of society's, perpetrators', and victims' interests in criminal acts.

Out-of-court settlement agreements are not adhered to in the Criminal Code because the paradigm in criminal law is retributive, namely punishing perpetrators and resulting in suffering that is not equal to that experienced by victims. Although peace efforts between the parties are attempted at the beginning of the trial in civil cases, out of court settlement can also be found in Chapter VIII Book I of the Criminal Code, Article 82, which is known as the afkoop institution[1], thus causing the right of prosecution to be null and void by being compensated for the payment of the maximum fine voluntarily.

The basis of the protection of victims of crime refers to several theories, viz (Kusuma, 2015):

1) Utility Theory. This theory focuses on the benefit for the greatest number. The concept of providing protection to victims of crime can be applied as long as it provides greater benefits than not applying the concept, not only for victims of crime, but also for the criminal law enforcement system as a whole.
2) The theory of responsibility. In essence, the legal subject (person or group) is responsible for all legal actions he/she commits so that if someone commits a crime which causes another person to suffer losses (in a broad sense), that person must be responsible for the losses incurred, unless there is a reason. who freed him.
3) 3) Compensation theory. As an embodiment of responsibility for their mistakes towards other people, the perpetrators of criminal acts are burdened with the obligation to provide compensation to victims or their heirs.

The principle of dispute resolution with the concept of a restorative approach departs from the principle of a just settlement as an initial stage. This principle is an effort to provide protection for customers and resolve customer complaints principle of a just settlement as an initial stage. This principle is an effort to provide protection for customers and resolve customer

[1] Institutions limited to certain criminal acts, for example on tax and customs violations. This violation can be compensated by paying a fine, provided that the permission of the official who has the right to prosecute, for example a tax or customs inspector.

complaints. Therefore, banks are required to respond to customer complaints, especially those related to financial transactions that are detrimental to them. In an effort to avoid resolving customer complaints, it is necessary to have clear and generally applicable time standards at each bank. For this reason, alternative dispute resolution is needed as an effort to continue customer complaints in the form of restorative alternative dispute resolution. One way is through banking mediation, namely bringing together customers and banks to find a solution to the main issues in order to reach an agreement without recommendations or decisions from Bank Indonesia (hereinafter abbreviated as BI).

Settlement of a case outside of court, also known as "non-litigation" or "out of court settlement," is not a new concept in the Indonesian legal system or legal practice, as it has long been used in civil cases. The disputing parties can reach an out-of-court settlement to achieve peace or settlement. In other words, court decisions are final, so national and international contract dispute settlement actions can use arbitration law or alternative dispute resolution (ADR), which is also an embodiment of out-of-court settlement and is recognized in Indonesia's legal system (Saija, 2017).

The non-litigation dispute resolution paradigm has actually been implicitly regulated in statutory regulations, namely the Banking Law, which states in Chapter VIII Administrative Sanctions Article 52 that Bank Indonesia is authorized to impose administrative sanctions on banks that do not fulfill their obligations, and the Capital Markets Law Number 8 of 1985. The Capital Market Supervisory Agency (hereinafter abbreviated as Bapepam)[2] is authorized to determine administrative sanctions for financial service providers or other parties involved in market manipulation, human trafficking, and fraud in Chapter XIV Administrative Sanctions.

Because it was resolved by Bank Indonesia examiners or OJK investigators rather than a court decision, the formulation of the two laws above is a non-litigation dispute settlement or out of court settlement. The decisions of Bank Indonesia Examiners and OJK Investigators in this case call for declaratory and condemnatory administrative sanctions. Even in some cases, such as banking fraud, the decisions of public officials are constitutive, implying a change in the suspect's legal status in order for him to cooperate (Artadi, 2007).

The legal implication of the out-of-court settlement paradigm is that the parties can still submit a lawsuit to the State Administrative Court (hereinafter abbreviated as PTUN) due to the fact that the decision of the OJK official is administrative in nature, or in other words, a civil lawsuit is still being carried out, with the reason that the OJK official's decision is not final and binding because it only has legal force for both parties and is still temporary. If the peace is not adhered to, then the lawsuit process must be used through the courts. Meanwhile, the decision

[2] At the end of 2011, as an effort to reform the financial sector, the Government and the House of Representatives (DPR) agreed to establish the Financial Services Authority (OJK). Then, on November 22, 2012, Law Number 21 concerning the Financial Services Authority was passed. This so-called independent institution began functioning on December 31, 2012, replacing the functions, duties and regulatory authorities that had been carried out by the Ministry of Finance through the Capital Market and Financial Institution Supervisory Agency (Bapepam-LK).

of the parties to carry out reconciliation in court is final and binding, so that the parties are prohibited from making appeals and cassations as regulated in Article 130, paragraph (3) HIR. In the peace deed made at trial, the court has the power of a judge's decision, which has permanent legal force, known as kracht van gewijsde. If one of the parties does not comply with what has been mutually agreed upon, then an execution can be requested from the Head of the District Court due to the deed of reconciliation that has been made.

2. Injuction Institution

The paradigm of non-litigation settlement as an alternative is carried out on the basis of consideration of the complexity of the problem in an effort to increase public confidence in the world of financial and banking services. In this case, a non-litigation settlement paradigm needs to be built using an injunction settlement institution. This institution is a settlement institution that is known in the legal system in the United States and England which uses the common law system, where the court at the request of one of the litigants can order a delay in examining the case, if the applicant can prove that there is no clear and adequate legal means. in the settlement or examination of the case, so that losses will occur later when the application is granted. In other words, greater losses can be prevented if the settlement process through administrative, civil, or criminal sanctions continues in accordance with applicable laws. Where a court decision ordering the termination of the ongoing settlement process and by financial or banking officials as investigators for Civil Servant Officials (PPNS) can prevent losses for the parties involved in the case.

Inclusion of a non-litigation settlement process involving injunctions and the role of the court, long before or during the settlement process mandated by law. Meanwhile, the goal of criminal case settlement in practice has shifted from deterring perpetrators and preventing others from committing similar crimes to deterring perpetrators and preventing others from committing similar crimes.

The process of the judge's actions prior to the filing of a lawsuit was previously unknown in the civil procedural law system. However, there is a provisional stipulation institution (which was adopted from the injunction institution) in several provisions of the new law, particularly in the field of intellectual property rights, namely a judge's order requiring certain parties to carry out an act (mandatory or positive injunction) or not to commit an act (inhibitory or negative injection).

Conversely, there is also a paradigm of resolving criminal cases with alternatives that use restorative and rehabilitative perspectives. In other words, a restorative approach aims to restore an imbalanced situation to achieve harmony in the life of a particular community. Meanwhile, the restorative-rehabilitative approach has taken the spirit of settlement according to customary law, namely being able to restore imbalances in the cosmos or those that have been

modernized. When connected with the paradigm of resolving financial and banking cases that contain criminal elements from a macro-economic policy perspective, it seems that this has become a decision that is difficult to avoid, even though it is difficult for the wider community to accept because it is seen as not in line with people's feelings of justice as opposed to restorative justice.

When comparing the development of law enforcement in developed countries, the government's position in preventing financial and banking crimes has actually strengthened. Whereas developing countries, including Indonesia, continue to have flaws in their political, economic, financial, and banking environments, it is difficult to implement criminal law consistently and in accordance with the principle of legal certainty.

B. Restorative Justice as an Alternative for Corporate Banking Crime Settlement

Restorative justice is one example of the evolution of criminal law. This development is due to the fact that the retributive system that has been implemented thus far has not fully satisfied the people's sense of justice. The orientation of retributive justice is the orientation of justice aimed solely at violators and solely for breaking the law. As a result, the concept of retributive justice does not include a provision for victim protection.

The concept of fairness in the restorative concept is based on a "consensus" of agreement that provides alternative options in problem solving, whereas proportionality relates to the scope of similarity in the suffering sanctions that must be imposed on violators. Proportionality is considered to have been fulfilled in criminal justice in general if it has fulfilled a sense of retributive justice (a reciprocal balance between punish and reward), whereas in a restorative approach it can impose disproportionate sanctions on offenders who commit the same offense (Hutauruk, 2013). In the criminal justice system, restorative justice does not use the principle of who wins and who loses. Restorative justice, on the other hand, seeks to find a middle ground of communication between all parties involved in crime in order to reach a collective resolution of dealing with criminal acts. Restorative justice is thought to provide better guarantees of justice for all parties, including society, in practice (Pradityo, 2016).

Settlement of criminal acts through a restorative approach to a conflict, damage or loss arising from a crime is seen as a conflict that occurs in the relationship between community members which must be resolved and restored by all parties together. All law enforcement institutions in Indonesia, including the Supreme Court, the Attorney General's Office, the Police of the Republic of Indonesia, and the Ministry of Law and Human Rights of the Republic of Indonesia, have adopted the principle of restorative justice as a way to resolve a criminal case, limited only to the implementation of the adjustments to the limits of action. Light Crimes and Total Fines, Speedy Examination Procedures, and the Implementation of Restorative Justice, as contained in the Memorandum of Understanding (Kristanto, 2020) .

Guidelines for terminating prosecutions based on restorative justice are contained in RI Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice (hereinafter referred to as Prosecutor's Office No. 15/2020). Based on Attorney No. 15/2020, restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators and victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. This prosecutor's office contains the prosecutor's authority to stop prosecutions based on restorative justice as a breakthrough in solving criminal acts. Termination of prosecution based on restorative justice is part of the public prosecutor's authority to close cases in the public interest, more specifically on the grounds that there has been a settlement of cases outside the court (the abiding by the law process) (Handoko, 2020).

However, the provisions stipulated in this Prosecutor's Office must pay attention to the existence of basic conditions that must be met, including:

a) The suspect is the first time to commit a crime;
b) Criminal acts are only punishable by fines or threatened with imprisonment of not more than 5 (five) years;
c) The crime was committed with the value of the evidence or the value of the losses incurred as a result of the crime of not more than IDR 2,500,000;
d) There has been restoration to its original state by the suspect by returning goods obtained from the crime to the victim; compensation for the loss of the victim; reimbursing costs incurred as a result of a criminal act; repair the damage caused by the crime;
e) There has been a peace agreement between the victim and the suspect; and
f) The community responds positively

Aside from the permissible conditions and principles for the implementation of restorative justice, exceptions to the implementation of restorative justice are also regulated, specifically in Article 5 paragraph (8), which regulates the termination of restorative justice-based prosecution except in cases of grave misconduct:

a) criminal acts against state security, the dignity of the President and Vice President, friendly countries, heads of friendly countries and their representatives, public order and decency;
b) criminal offense punishable by a minimum penalty;
c) narcotic crime;
d) environmental crimes; and
e) criminal acts committed by corporations.

There are basic requirements and exceptions regulated by the Prosecutor's Office No. 15/2020, and technically it is not possible to handle cases that are oriented towards the value of

restorative justice for crimes committed by corporations. A restorative sanction approach, on the other hand, is an alternative choice of sanctions that can be applied to corporations in order to prioritize victims as the injured party in the settlement of corporate crimes.

Dispute resolution through non-litigation channels has gained a place in the banking world (Wulandari, 2013), with the establishment of the Bank Indonesia Banking Mediation Institution, whose mission is to carry out non-litigation settlements through the use of mediation as a method of dispute resolution. Banking mediation is one of the mechanisms for resolving customer and bank disputes in the context of customer protection, as established by Bank Indonesia Regulation Number: 10/1/PB1/2008 concerning amendments to Bank Indonesia Regulation Number: 8/5/PB1/2006 concerning Banking Mediation. Customer protection is pursued by ensuring customer rights when dealing with banks and encouraging equal relationships between banks as business actors and customers as consumers who use banking services (Tamara, 2008).

The presence of banking mediation institutions is becoming increasingly important and urgent because every customer problem has the potential to cause a dispute and damage the bank's reputation, so it must be properly and professionally mediated. The resolution of disputes between customers and banks through banking mediation institutions can help to maintain public trust while reducing negative publicity that can harm the bank's reputation. According to the Indonesian Consumers Foundation (abbreviated YLKI), there are three major reasons for the need for a banking mediation institution:

1) The banking potential is getting bigger, and the possibility of conflict is also getting bigger;
2) The position between the bank and the consumer is unequal so that there is a possibility of pressure from the bank on the customer;
3) There is no place to make complaints.

Disputes that can be submitted for mediation by Bank Indonesia are those that are not currently in process, have never been decided by an arbitration institution or court, or where there has been no agreement facilitated by another mediation institution. Bank Indonesia, through the Directorate of Banking Investigation and Mediation (hereinafter abbreviated as DIMP), always recommends that it be resolved through legal channels, but if in the agreement forum there is another opinion from the police and prosecutors to stop the case and not process it through legal channels, Bank Indonesia will accept that. This opinion is, of course, in accordance with the conditions agreed upon during the meeting between Bank Indonesia, the Police, and the Attorney General's Office (Wulandari, 2013).

Basically, the settlement of banking crimes is possible without going through court channels as long as the bank's internal party has resolved the case, both between the bank and the perpetrator and with the customer, so that it does not become a finding by Bank Indonesia.

Settlement of disputes through banking mediation does not negate the crime in that case. Therefore, criminal disputes are still being prosecuted in the District Court. Banking mediation is carried out for any dispute that has a maximum financial claim value of Rp. 500,000,000 (five hundred million rupiah). The customer cannot file a financial claim resulting from an immaterial loss. Likewise with the provisions in Article 41 POJK No. 1/POJK.07/2013, which stipulate that the value of financial claims is the same as what is regulated in OJK regulations, requiring a maximum loss of Rp. 500,000,000 for a customer. This amount can be in the form of cumulative financial losses that have occurred to customers, potential losses due to delays or the inability to carry out customer financial transactions with other parties, or costs incurred by customers to obtain dispute resolution.

According to Article 26 paragraph (4) of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption, 2003), the state is obligated to ensure that the corporations responsible face effective, proportionate, and prohibitive criminal or non-criminal sanctions, including financial sanctions. If non-criminal sanctions are deemed more effective and proportionately by law enforcers and judges, the use of criminal law can be considered and set aside.

Profits obtained by corporations and losses suffered by society as a result of corporate crimes are so large that they cannot be balanced if corporations are only subject to criminal sanctions. As a result, an alternative dispute resolution mechanism such as deferred prosecution is required. Furthermore, in order to effectively implement the system for dealing with corporate banking crimes, alternative methods and strategies that enrich the existing criminal system can be expanded by imposing sanctions that include elements of restitution, compensation, and/or mediation.

Several countries have implemented a Deffered Prosecution Agreement (abbreviated as DPA) policy to reduce bankruptcy or corporate bankruptcy as a result of criminal prosecution. The handling of criminal acts of corruption committed by corporations in England is based on Schedule 17 of the Crime and Courts Act 2013 (hereinafter referred to as Schedule 17 of C&C Act 2013), which uses the Deffered Prosecution Agreement policy in dealing with crimes committed by corporations.

Deferred Prosecution Agreement, also known as deferred prosecution, is an out-of-court alternative form of dispute resolution. Suspended prosecution is essentially an informal agreement between the lawyer/defendant and the public prosecutor to establish conditions that the perpetrator must meet. A DPA is a court-supervised agreement between the British public prosecutor and the corporation being sued.

The Deferred Prosecution Agreement was implemented in England and Wales in 2014 and is still being negotiated. The DPA, however, was not without controversy. Concerns have been raised about reduced prosecution of perpetrators, the requirement for self-reporting (and

reduced penalties even if no self-reporting occurs), and the rarity of prosecution of corporations that are not part of the DPA regime. Despite these reservations, the DPA has received strong backing from the legislature, law enforcement, and the judiciary (Hawley et al., 2020). The only criticism of DPA stated that because corporations as defendants had to pay fines and submit to structural reforms without being found guilty at trial, DPA in this case was deemed to have violated the presumption of innocence (Shiner & Ho, 2018).

Criminal acts that can be applied to DPA are only certain crimes, namely conspiracy to commit fraud, tax evasion, theft, falsification of accounting, bribery and other economic crimes contained in the provisions of *Theft Act 1968, Customs and Excise Management Act 1979, Forgery and Counterfeiting Act 1981, Section 450 of The Companies Act 1985, Section 72 of the Value Added Tax Act 1994, Financial Services and Markets Act 2000, Proceeds of Crime Act 2002, Companies Act 2006, Fraud Act 2006, Bribery Act 2010, Regulations 45 of the Money Laundering Regulations 2007*. The application of DPA is only for corporations, not individuals (Iqbal, 2020).

In order to implement the DPA policy in Indonesia, legislators must systematically change the laws and regulations that support corporations being punished, as contained in English laws and regulations. Taking into account the following factors (Mutiara, 2019):

a) Consider the Indonesian justice system in terms of its constitutional structure and legal traditions. The impact of regulatory and compliance burdens on corporations, where corporations require additional costs;
b) Crimes that can use the DPA mechanism include serious crimes (but not limited), so it is necessary to establish a special law that regulates this;
c) It only applies to corporations so there is an opportunity to have a deterrent effect and possibly sue employees (company organs). However, if it is limited to corporations, then there is a possibility that individuals have committed crimes but do not report them for fear of being punished.
d) The role of the courts will be very important for the DPA. Judicial involvement will increase trust.
e) There is a balance between the interests of building public trust and also the interests of pursuing fraudulent corporations.
f) Increasing public trust, Indonesia's DPA scheme can require agreements in the public interest and to be fair, reasonable and proportionate.
g) Clear guidelines on how the DPA will be negotiated and an effective oversight mechanism.

In addition to the foregoing, the sense of justice in society must be considered. Because the DPA mechanism is still likely to face challenges in its implementation in society. The public will find it difficult to accept DPA policies in certain criminal contexts, particularly those involving

crimes against state finances or corruption. For a developing country like Indonesia, the criminal act of corruption is an extraordinary crime that necessitates a serious basic punishment, including revocation of political rights in the name of justice and protection of human rights, rather than simply returning state assets. (Ramadani & Mamonto W.W., 2019). The restorative approach may contradict the aims of efforts to eradicate corruption, because then efforts to form independent institutions in the field of anti-corruption such as the Corruption Eradication Commission (KPK) will be questioned (Ramadani & Mamonto, 2018).

Banking crimes that are found are usually resolved through litigation. The police and prosecutors have the right to determine whether the crime should still be brought to litigation or can it be resolved internally with a number of provisions, for example: the material loss is not in a large amount and has been returned by the perpetrator; the perpetrator has received sanctions from Bank Indonesia, for example, termination of employment, or has been crossed out in the Indonesian banking register; the perpetrator is not a recidivist; and there is no legal claim from the customer. Based on these considerations, the public prosecutor will postpone the prosecution process against him. The new prosecution will be officially abolished if the perpetrator fulfills all the conditions that have been agreed upon. However, if the perpetrator fails or cannot fulfill the requirements, the public prosecutor can proceed with a formal prosecution.

However, when a corporation becomes a suspect in a crime, a model such as DPA can be used. The public prosecutor may offer corporations not to be prosecuted in court a postponement of prosecution in exchange for the corporation admitting its actions and agreeing to voluntarily pay a fine and a certain amount of compensation to the public or the state. To be clear, if the corporation fails to fulfill the agreement reached with the public prosecutor, it will be prosecuted as a defendant in court. With a model like this, corporate crimes can be settled and state financial losses recovered more quickly (Sinaga, 2021).

CONCLUSION

Settlement of a case outside the court, better known as "non-litigation" or "out of court settlement," is not something new in the legal system or legal practice in Indonesia because it has long been implemented in civil cases. An out-of-court settlement can be carried out by the disputing parties to make peace. Non-litigation dispute resolution against corporate banking crimes needs to be built using an injunction settlement institution, where the court, at the request of one of the litigants, can order a delay in examining the case if the applicant can prove that there are no clear and adequate legal means in the settlement or examination of the case so that losses will occur later when the application is granted. The concept of restorative justice can be applied as an alternative settlement for corporate banking crimes by establishing the Bank Indonesia Banking Mediation Institution, which is tasked with carrying out non-litigation

settlements using mediation. The Deferred Prosecution Agreement policy can be an alternative dispute resolution that can be done outside the court, in the form of a deferred prosecution policy.

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