

## **Regulation of Deviations Local Government Grant Funds To The Private Sector Through Restorative Justice**

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### **Abstract**

*The concept of a grant in public law is a gift by transferring rights to something in the form of money, goods and services from the government or another party to the regional government or vice versa whose purpose has been specifically determined and carried out through an agreement. Grants in the public law concept include grants to regional governments and grants from regional governments. Regional government grants are given to other regional governments, BUMN, BUMD, institutions or organizations or community groups. The implementation of the grant must be stated in the NPHD (Regional Grant Award Document). In its implementation, grants from the Regional Government to the private sector often contain irregularities. Deviations can occur in the process of submitting proposals, disbursement of funds by SKPD and use of funds by grant recipients. For these forms of irregularities, the resolution can be through a lawsuit to the District Court, a report to the Police, a report to the Corruption Eradication Committee and administrative settlement. Law enforcement regarding irregularities in regional grant funds to the private sector has so far been processed through the Corruption Court on the basis of alleged criminal acts of corruption, because the Corruption Eradication Commission believes that regional government money given to the private sector is State money so that irregularities in grant funds constitute a loss to the State. International conventions provide space to use a restorative justice approach in corruption cases. Restorative justice is a fair resolution that involves the perpetrator, victim, family and other parties involved in a criminal act and jointly seeks a resolution to the criminal act and its implications by emphasizing restoration to its original state. This research aims to: 1) analyze law enforcement regarding irregularities in regional government grant funds to the private sector using a restorative justice approach; 2) analyzing the resolution model through restorative justice in the diversion of regional grant funds to the private sector. The method used is a normative juridical approach, namely researching library materials or secondary data in the form of statutory regulations, court decisions, textbooks, legal journals, scientific essays and legal dictionaries that are directly related to the theme of this research. The research results: 1) Legal enforcement against irregularities in regional government grant funds to the private sector through a restorative justice approach is very possible, especially if the irregularities are committed by the recipient of the grant, considering that the position of grants in Islamic law and civil law is defined as the gift of an object voluntarily and without compensation*

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*from one person to another. still alive to be owned, and cannot be withdrawn, while grants in the regional finance sector are the provision of money/goods or services from the regional government to the government or other regional governments, regional companies, communities and community organizations; 2) The settlement model through restorative justice in the diversion of regional grant funds to the private sector is carried out through: (i) a statement of agreement for settlement through restorative justice from the parties, (ii) return of grant funds, (iii) carried out in the presence of community leaders and religious leaders.*

Keywords: Grants, Regional Finance, Restorative Justice

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## **I. INTRODUCTION**

In Article 1 of the 1945 Constitution of the Republic of Indonesia, it is stated that the State of Indonesia is a unitary state in the form of a Republic. Furthermore, Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "The Unitary State of the Republic of Indonesia is divided into provinces and provinces are divided into districts and cities, each province, district and city has a regional government regulated by law. -Invite". Prof. Jimly Asshiddiqie said that a Unitary State is a country where state power is divided between the central government and regional governments. Original power is at the central level, while regional power obtains power from the center through the transfer of some expressly determined powers.<sup>1</sup>

Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia regulates that regional governments are autonomous regions which can carry out government affairs as widely as possible and have the right to regulate government authority except for government affairs which are determined by law to be central government affairs. Since the enactment of the Law of the Republic of Indonesia concerning Regional Government, namely Law of the Republic of Indonesia Number 22 of 1999 concerning Regional Government, it has subsequently been changed to Law Number 23 of 2014 concerning Regional Government as last amended by Law Number 9 of 2015 concerning the Second Amendment Based on Law Number 23 of 2014 concerning Regional Government, as well as Law of the Republic of Indonesia Number 25 of 1999

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<sup>1</sup> Jimly Asshiddiqie, *Principles of Post-Reformation Indonesian Constitutional Law*, (Jakarta : PT. Bhuana Ilmu Populer, 2007), p. 282

concerning Regional Financial Balancing, the development of regional autonomy is starting to progress well and is increasing.

One of the functions of regional autonomy or decentralization according to BC Smith, as quoted by Prof. Zainal Arifin Hoesein, is in the context of strengthening national integration, as long as this is done appropriately and correctly. With autonomy, a mechanism will be created where regions can realize a number of their political functions towards the national government, power relations will become fairer, so that regions will have trust and be integrated into the national government. Apart from that, autonomy will also support the realization of democracy in government and ultimately regional development will be accelerated.<sup>2</sup>

It cannot be denied that the implementation of increasingly extensive regional autonomy has been able to increase the role of regional government in community welfare. There are so many regional potentials which then begin to be explored and increase regional treasury revenues. On the other hand, regional autonomy that is not managed well will give rise to problems, where regional authority in managing finances is too large which often encourages regional governments to maximize rather than optimizing.<sup>3</sup>

In realizing increased regional economic development, regional governments, through grant funds, empower communities (based on community groups, namely bodies, institutions, community organizations that are legal entities) to participate in developing the regional economy. The implementation of grants is intended to achieve state goals in realizing justice and welfare of the people. Grants are the most appropriate form to be applied in the development of programs managed by the private sector using costs from APBD.<sup>4</sup> By developing activities financed from regional government grants to the community, regional economic development, growth and development will be advanced and people's welfare will be better.

Grants are something that is no longer foreign to government. For a government, grant funds are one of the sources of the State Revenue and Expenditure Budget which are

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<sup>2</sup> Zainal Arifin Hoesein-Rahman Yasin, *Direct Regional Head Election Strengthening Concepts and Applications*, (Jakarta : LP2AB, 2015), p. 95

<sup>3</sup> Yusran Lapanda, *Settlement of State/Regional Compensation Through Treasury Claims and Compensation Claims*, (Jakarta : PT. Wahana Semesta Indonesia, 2015), p.1

<sup>4</sup> Quoted from the article "*Reconstruction of Grant Funding Arrangements*", State Finance Magazine Oct-Dec 2015 Edition, Jakarta, p.57

used to finance programs in the region. A grant is a gift in the form of money, goods or services, from one party to another party free of charge. These parties can be regional government, central government, regional companies, communities and community organizations.

The granting of grants by Regional Governments is regulated in Article 298 paragraph (4) and paragraph (5) of Law Number 23 of 2014 concerning Regional Government which has undergone the latest amendment with Law Number 9 of 2015. Grant expenditure is budgeted in the APBD in accordance with the Regional financial capacity after prioritizing the fulfillment of expenditure for Mandatory Government Affairs and Optional Government Affairs, unless otherwise specified in the provisions of the laws and regulations. Thus, grants in the Regional financial concept are gifts that are not mandatory and are not carried out continuously. The management of grant funds in regional finance must be managed in an orderly manner, comply with statutory regulations, be efficient, effective, open and accountable.

Grants to the community are given to groups of people who have certain activities in the fields of economy, education, health, religion, arts, customs and non-professional sports. Grants to social organizations are given to social organizations formed based on statutory regulations.<sup>5</sup> The purpose of regional government grants (grants) to the private sector is to increase community participation in the implementation of regional development, improve services to the community and improve the implementation of government functions in the region. The nature of grant assistance is prioritized for programs/activities which are generally difficult to implement effectively by regional government SKPDs and whose budgeting must take into account regional financial capacity so that it does not interfere with the implementation of mandatory affairs and basic services to the community.

In Article 42 of Minister of Home Affairs Regulation Number 13 of 2006 Jo. Article 3 of Minister of Home Affairs Regulation Number 32 of 2011, grants from the Regional Government to other parties can be in the form of money and goods. Grants are in the form of money, the recipient of the grant must be able to account for the use of the

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<sup>5</sup> Article 6 paragraph (4) and paragraph (5) Minister of Home Affairs Regulation Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from the APBD

grant money by including complete and valid proof of expenditure in accordance with statutory regulations. Providing grants in the form of money, problems that often arise include the distribution of grant funds not being on target, activities financed from grant funds turning out to be fictitious, grant recipients not making accountability reports and accountability not being accompanied by evidence.

So far, the deposit of grant funds from the APBD has all been resolved through corruption trials without looking at the subject and object. All parties involved in diverting grant funds from the APBD, whether from the Regional Government, private sector or public officials, were all charged with committing criminal acts of corruption on the basis that the grant money came from the State/Regional Government (Regional Government). This has really caused unrest among the private sector (society). People are becoming wary of accepting grant funds from the Government/Regional Government because they are worried that they will be involved in criminal acts of corruption, and what is even more worrying is that many people are starting to refuse grant funds from the Government/Regional Government because they do not want to be involved in cases of criminal acts of corruption. If left unchecked, this situation will seriously disrupt the economic development of the Regional Government, and therefore will also disrupt the implementation of the State's goal, namely the welfare of the people through grant funds from the Government/Regional Government.

Restorative justice is a mechanism for resolving legal problems through deliberation to reach consensus between victims, perpetrators and the community affected by a crime to repair or restore conditions to normal as a result of a violation.<sup>6</sup> Deliberative or peaceful settlement, which in Islam is called *Ishlah*, has also been ordered in the Koran and Hadith. The Qur'an emphasizes the importance of holding *Ishlah* between conflicting parties, especially if the conflict is between fellow Muslims. In the Al-Qur'an, there are 180 verses that talk about al-*Ishlah* in 55 Surahs.<sup>7</sup>

In Surah QS Al-Maidah (5: 39), Allah SWT says: "But whoever repents after committing a crime and improves himself, then indeed Allah accepts his repentance.

<sup>6</sup> Ade Junjuran Syaid, *Restorative Justice as an Effort to Optimize Fair Returns of State Losses in Crimes of Money Laundering and Crimes Originating from Corruption*, (Depok, rajawali Pers, 2022), p. 65

<sup>7</sup> Muhammad Fuad 'Abd Al-Baqi, *Al-Mu'jam Al-Mufahras Li Alfazh Al-Qur'an* (AlQahirah: Dar al-Hadis, 2007), p. 504-507.

Indeed, Allah is Most Forgiving, Most Merciful.” Furthermore, in Surah QS al-Hujurat (49: 9), Allah SWT says: "And if two believers fight, then make peace between them." In the Hadith narrated by Imam Abu Daud, Rasulullah shallallahu 'alaihi wasallam said: "Would you like me to tell you something that is more important than fasting, prayer and alms?" the companions said, "Of course, O Messenger of Allah." He said: "Reconciling people who are in dispute. And the damage to people who are in dispute is shaving (shaving the good deeds that have been done." (H.R. Abu Daud).

Grant funds from the APBD given to the community aim to support the achievement of Regional Government program targets and activities and must be beneficial to the community. If the purpose of the grant has not been or has not been achieved due to deviations/violations, can the resolution of these deviations/violations be resolved through peace?

This research is to examine whether deviations from grant funds from the APBD can be resolved through Restorative justice.

## **II. LITERATURE REVIEW**

The aim of this research is to: 1) analyze law enforcement regarding irregularities in Regional Government grant funds to the private sector using a restorative justice approach and 2) analyze resolution models through restorative justice in irregularities in regional grant funds to the private sector. The theoretical basis used in this research is:

### **1. Local Government Grants**

Regional Government Grants are the provision of money or goods or services from regional governments whose use has been determined in specifications, are non-obligatory and non-binding, non-continuous and aim to support the implementation of regional government affairs. Regional Government Grants are given to other regional governments, BUMN, BUMD, institutions or organizations or community groups.

### **2. Diversion of Regional Government grant funds to the private sector**

Deviations of grant funds from the APBD are violations committed by either grant givers or grant recipients or other parties involved in providing or disbursing grant funds, namely violations of the budget process in the APBD, violations during disbursement and violations in the use of grant funds. The irregularities that will be



investigated are violations of regional government grant funds given to private parties.

### 3. Restorative Justice

Restorative Justice or Restorative Justice as regulated in the Republic of Indonesia National Police Regulation Number 8 of 2021 is the resolution of criminal acts by involving the perpetrator, victims, the perpetrator's family, the victim's family, community leaders, religious leaders, traditional leaders or stakeholders to work together to find a solution. justice through peace by emphasizing restoration to its original state. Before being regulated in the Republic of Indonesia State Police Regulation Number 8 of 2021, regarding Restorative Justice it had been regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, according to this law, Restorative Justice was the resolution of criminal cases involving the perpetrator, victims, families of perpetrators/victims, and other related parties to jointly seek a just solution by emphasizing restoration to the original situation, and not retaliation. The general explanation of the Prosecutor's Law clearly states that the success of the Prosecutor's task in carrying out prosecutions is not only measured by the number of cases submitted to court, including the resolution of cases outside of court through penal mediation as an implementation of restorative justice that balances fair legal certainty and expediency.

## III. METHODOLOGY

In this research, the author used a normative juridical approach. In this approach, research aims to identify the nature, values, teachings and legal meaning of data, facts or documents on the problem being studied. Normative legal research is a procedure and method of scientific research to find the truth based on the logic of legal science from a normative perspective.

The approach used in this research consists of 3 (three) approaches, namely the statutory approach, the conceptual approach and the case approach through primary legal materials and secondary legal materials. To obtain actual data and information, a literature study was carried out by studying various statutory regulations, court decisions, literature, journals, and other supporting materials such as papers and results

of seminars or discussions regarding deviations in grant funds from the APBD and Restorative Justice.

In this research, the deductive analysis method is used, namely an analytical method by analyzing the laws and regulations related to the problem (problem formulation) contained in this research and then correlating it with several principles and theories which become the basis or analysis tool in writing research. This is a step to find conclusions, solutions and ideal conceptions about the things being discussed. The analysis used in this research is qualitative and comparative analysis which produces analytical descriptive data.

#### **IV. RESULT AND DISCUSSION**

##### **1. Management of Grant Funds in the APBD**

Management of grants in the APBD is regulated in Minister of Home Affairs Regulation Number: 13 of 2006 concerning Guidelines for Regional Financial Management, namely:

Article 37:

"The indirect expenditure group as intended in Article 36 paragraph (1) letter a is divided according to the type of expenditure consisting of:

- a. employee expenditure;
- b. interest;
- c. subsidy;
- d. grant;
- e. social assistance;
- f. shopping for basil;
- g. financial assistance; and
- h. unexpected shopping."

Article 42:

- (1) *"Grant spending as referred to in Article 37 letter d is used to budget for the provision of grants in the form of money, goods and/or services to the government or other regional governments, and community groups/individuals whose purposes have been specifically determined."*



The guidelines for granting grants are regulated by Minister of Home Affairs Regulation Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from the APBD.

Currently, with the enactment of Government Regulation Number 12 of 2019 concerning Regional Financial Management, grants in the APBD are included in the budget item "regional expenditure" which is classified as "operational expenditure". (Article 27 paragraph (1) Jo. Article 28 paragraph (2) Jo. Article 55 paragraphs (1) and (2) Jo. Origin 56 paragraph (1) letter e.

#### Article 55

(1) Regional Expenditure Classification consists of:

- a. operating expenditure;
- b. capital expenditure;
- c. unexpected shopping; And
- d. transfer spending.

(2) Operational expenditure as referred to in paragraph (1) letter a is budget expenditure for daily Regional Government activities that provide short-term benefits.

#### Article 56

(1) Operational expenditure as intended in Article 55 paragraph (1) letter a is detailed into types:

- a. employee expenditure;
- b. shopping for goods and services;
- c. flower shopping;
- d. subsidy spending;
- e. grant spending; and
- f. social assistance spending.

Grant expenditure is given to the Central Government, other Regional Governments, state-owned enterprises, BUMD, and/or bodies and institutions, as well as social organizations that are Indonesian legal entities, whose purpose has been specifically determined, is not mandatory and is not binding, and is not specifically continuously every fiscal year, unless otherwise determined in accordance with statutory provisions. The purpose of providing grants is aimed at supporting the achievement of regional government program targets and activities in accordance with regional interests in supporting the implementation of

government, development and community functions by paying attention to the principles of justice, propriety, rationality and benefits to society.

In Permendagri Number 13 of 2018 concerning the Third Amendment to Permendagri Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from the APBD, it is stated that the provision of grants is intended to support the achievement of regional government program and activity targets by paying attention to the principles of justice, propriety, rationality and and benefits to society. Grants must meet the following criteria: a. its specific designation has been determined; b. is not mandatory, not binding, c. not continuously every fiscal year, d. providing value benefits to local governments in supporting the implementation of government, development and community functions; and e. meet grant recipient requirements. Grants from the APBD can be in the form of: money, goods and services.

Each grant award is stated in the Regional Grant Agreement Document (NPHD) which is jointly signed by the regional head and the grant recipient. NPHD at least contains provisions regarding:

- a. grant givers and recipients;
- b. the purpose of the grant;
- c. the amount/details of the use of the grant to be received;
- d. rights and obligations;
- e. procedures for distribution/delivery of grants; and
- f. grant reporting procedures.

The regional head can appoint officials who are authorized to sign the NPHD. By making a civil agreement/agreement between the Regional Government and the private sector in the form of a Regional Grant Agreement Document (NPHD), the grant funds that have been received by the Grant Recipient must be used and utilized for activities as mutually agreed upon in the Regional Grant Agreement Document.

In Article 1 point 17 of the Minister of Home Affairs Regulation Number: 32 of 2011, it is stated that the Regional Grant Agreement Document, hereinafter abbreviated as NPHD, is a grant agreement document sourced from the Regional Revenue and Expenditure Budget between the Regional Government and the grant recipient.

## 2. Mechanism for Providing Grants Sourced from APBD

The mechanism for granting grants is based on Permendagri Number 32 of 2011 as amended several times, most recently in Permendagri Number 99 of 2019 concerning the Fifth Amendment to Minister of Home Affairs Regulation Number 32 of 2011 concerning Guidelines for Providing Grants and Social Assistance Sourced from the Regional Revenue and Expenditure Budget. stages as follows:

a. Budgeting

At this stage, the government, other regional governments, regional companies, communities and/or community organizations can submit written grant proposals to regional heads. Next, the Regional Head will appoint a Regional Work Unit (SKPD) to evaluate the proposal.

The Head of SKPD will submit the evaluation results in the form of recommendations to the Regional Head through the Regional Government Budget Team (TAPD). TAPD will consider recommendations in accordance with regional priorities and financial capabilities. The SKPD Head's recommendations and TAPD considerations are the basis for including grant budget allocations in the KUA and PPAS drafts. The inclusion of budget allocations includes grant budgets in the form of money, goods and/or services. Grants in the form of money are included in the Regional Financial Management Officer's Work Plan (RKA PPKD). Grants in the form of goods or services are included in the RKA-SKPD. RKA PPKD and RKA-SKPD are the basic basis for grant budgeting in the APBD in accordance with statutory regulations. Grants in the form of money are budgeted in indirect expenditure groups, types of grant expenditure, objects and details of expenditure objects relating to PPKD. In the details of the expenditure object, the name of the recipient and the amount of the grant are included.

b. Implementation and Administration of Grants

The implementation and administration of grants in the form of money is based on the PPKD Budget Implementation Document (DPA-PPKD). Implementation of grant budgets in the form of goods or services based on DPA-SKPD. Each grant award is outlined in the Regional Grant Agreement Text (NPHD). The NPHD must be jointly signed by the regional head and the grant recipient. The regional head can appoint officials who are authorized to sign the NPHD.

The Regional Head determines the list of grant recipients along with the amount of money or types of goods or services to be granted by decision of the regional head based on the Regional Regulation on the APBD and the Regional Head Regulation on the elaboration of the APBD. The list of grant recipients is the basis for the distribution/delivery of grants from the regional government. Distribution/delivery of grants from regional governments to grant recipients is carried out after signing the NPHD. Disbursement of grants in the form of money is carried out using a direct payment (LS) mechanism.

c. Reporting and Accountability

At the reporting and accountability stage, recipients of grants in the form of money are required to submit a report on the use of the grant to the Regional Head via PPKD with a copy of the relevant SKPD. Grants in the form of money are recorded as the realization of the type of grant expenditure at PPKD in the budget year.

The regional government's responsibility for providing grants includes:

- 1) Proposal from prospective grant recipients to the regional head
- 2) Decision of the regional head regarding determining the list of grant recipients
- 3) NPHD
- 4) Integrity Pact from the grant recipient stating that the grant received will be used in accordance with the NPHD
- 5) Proof of money transfer for the grant in the form of money.

Grant recipients are formally and materially responsible for the use of the grants they receive. Grant recipient responsibilities include:

- 1) Report on use of grants
- 2) Statement of responsibility stating that the grant received has been used in accordance with NPHD
- 3) Complete and valid proof of expenditure in accordance with statutory regulations for recipients of grants in the form of money.

Accountability is submitted to the Regional Head no later than the 10th of January of the following fiscal year, unless otherwise determined in accordance with statutory regulations. The liability is stored and used by the grant recipient

as an inspection object. The realization of grants is included in the regional government's financial report in the relevant budget year.

d. Monitoring and Evaluation

In this stage, for grant awards that have been implemented, the authority to carry out monitoring and evaluation is the relevant SKPD. The results of monitoring and evaluation are submitted to the regional head with a copy to the SKPD which has supervisory duties and functions. In the event that the monitoring and evaluation results show that the use of grants is not in accordance with the approved proposal, the recipient of the grant concerned will be subject to sanctions in accordance with statutory regulations.

Procedures for budgeting, implementation and administration, accountability and reporting as well as monitoring and evaluation of grants are further regulated by Regional Head Regulations. The Regional Government can budget grants if it has established a Regional Head Regulation. In 2020, Minister of Home Affairs Regulation Number 99 of 2019 was replaced by Minister of Home Affairs Regulation Number 77 of 2020 concerning Technical Guidelines for Regional Financial Management. Grants as Regional Financial Expenditures have been regulated in the Attachment to Minister of Home Affairs Number 77 of 2020. In this Attachment, regional government grants are recorded as grant expenditure which is part of operational expenditure as regulated in Article 56 of Government Regulation Number 12 of 2019. Provisions regarding parties grant recipients, the criteria, objectives and conditions for grant recipients are basically the same as the provisions stated in Permendagri Number 13 of 2018.

3. Resolving irregularities in grant funds from regional governments to the private sector

Legal resolution can be achieved through extrajudicial channels or referred to as non-litigation resolution, namely dispute resolution that is carried out using methods outside the court which are commonly called Alternative Dispute Resolution (ADR) or Alternative Dispute Resolution by means of consultation, negotiation, mediation, conciliation, or expert assessment and settlement through the courts, namely through criminal, civil and administrative cases.

Settlement of cases of grant funds from the Regional Government to the private sector through the Corruption Court is considered by several legal experts to be inappropriate, considering that grants as regulated in state/regional financial law, civil law and Islamic law are "gifts". The status of money (grants) from the Regional Government that has been received by private parties becomes private money, therefore legal settlement can be carried out through a civil lawsuit process or administrative settlement. Even if there is a criminal act in the use of grant funds by a private party, general criminal charges can be filed.

The provision of grants from the Regional Government to the private sector is based on the Regional Grant Agreement Document (NPHD), namely the text of the grant agreement sourced from the Regional Revenue and Expenditure Budget between the Regional Government and the grant recipient. In the legal principles of agreements, if one party does not carry out the obligations as agreed, then that party is declared to have broken their promise. Agreements and broken promises (default) are in the realm of civil law, therefore, if the grant recipient has violated the agreement (NPHD), then an annulment or demand for the return of the grant money can be requested. However, if the violation is related to a criminal act such as embezzlement or fraud or falsification of documents, then the resolution is through the general criminal domain. Settlement can be carried out through the corruption room if the party committing the violation is a Regional Government official or public official.

From cases of deviation from Regional Government grant funds to the private sector, the models/forms of deviation can be classified as follows:

- a. Deviations committed by regional heads or regional officials
- b. Deviations committed by members of the DPR or DPRD
- c. Deviations committed by private parties as grant recipients

Of the three forms of deviation, the solutions that are possible according to Indonesian law are:

- 1) If irregularities are committed by the Regional Head or regional apparatus, then the resolution will be through the Corruption Court, because the Regional Head or regional apparatus is the government administrator.
- 2) If irregularities are committed by members of the DPR or DPRD, then the resolution will be through the Corruption Court, because members of the DPR or DPRD are public officials.



- 3) If irregularities are committed by private parties as grant recipients, then the resolution is through: a) Civil lawsuit; b) Reports of general criminal acts, if it is proven that there are allegations of document forgery, fraud and embezzlement.

The appropriate settlement model links legal settlement through aspects of criminal law, civil law or administrative settlement, namely as follows:

- 1) Criminal settlement can be proposed through two legal remedies, namely:
  - a. Claims based on criminal acts of corruption for local government or private parties who, since submitting the proposal, have had malicious intentions (mens rea) – fictitious activities;
  - b. Claims based on general criminal acts for grant recipients, grant funds are used not in accordance with NPHD. For example: there is falsification of documents/letters.
- 2) Settlement through civil law can be sought by canceling the grant, suing for the return of the grant money or remaining grant money through the District Court.
- 3) Administrative settlement is carried out by completing evidence of accountability for the use of grant funds.
4. Resolving irregularities in grant funds from regional governments to the private sector through Restorative Justice

Resolving legal problems through Restorative Justice was initially given to children who were in conflict with the law in the criminal justice process. The Juvenile Criminal Justice System must prioritize a Restorative Justice approach by seeking diversion. Diversion is the transfer of resolution of children's cases from the criminal justice process to a process outside of criminal justice.

In its development, Restorative Justice is applied to criminal cases in accordance with the Republic of Indonesia State Police Regulation Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. The philosophical basis of this regulation is to realize the resolution of criminal acts by prioritizing restorative justice which emphasizes restoration to the original state and a balance of protection and interests of victims and perpetrators of criminal acts that is not oriented towards punishment.

Handling criminal acts based on Restorative Justice must meet material requirements, namely:

- a. does not cause unrest and/or rejection from the community

- b. does not impact social conflict
- c. does not have the potential to divide the nation;
- d. not radical and separatist;
- e. not a repeat perpetrator of a criminal act based on a court decision; And
- f. not criminal acts of terrorism, criminal acts against state security, criminal acts of corruption and criminal acts against people's lives.

The formal requirements are:

- a. peace from both parties, except for Drug Crimes;
- b. Fulfillment of the rights of victims and the responsibilities of perpetrators, except for drug crimes.

Fulfilling the rights of victims and the responsibilities of perpetrators in the form of:

- a. return thing;
- b. compensate for losses;
- c. replace costs incurred as a result of criminal acts; And
- d. Compensate for damage caused as a result of criminal acts.

The implementation of Restorative Justice has also been regulated in Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution based on Restorative Justice. Termination of prosecution based on restorative justice is carried out on the basis of: a. justice; b. public interest; c. proportionality; d. punishment as a last resort; and e. fast, simple, and low cost. Settlement of cases outside of court using a restorative justice approach stops prosecution. Termination of prosecution based on restorative justice is carried out by the Public Prosecutor responsibly and submitted in stages to the Head of the High Prosecutor's Office.

In the Republic of Indonesia State Police Regulation Number 8 of 2021, restorative justice is not carried out for criminal acts of corruption. This is quite reasonable because the crime of corruption is an extra ordinary crime so it is not possible to resolve it using a restorative justice approach. However, for violations of grant funds from the APBD by private sector grant recipients, resolution through a restorative justice mechanism is very appropriate, bearing in mind that grant funds are funds that have been specifically designated for use, are not obligatory and non-binding, and are not continuously intended to support the implementation of regional government affairs. This means that the object of the case is grant funds,

not funds for carrying out work (projects), since the grant funds were issued from the APBD, the grant recipient must return the grant funds where there has been a violation. If the grant funds are not from the APBD or APBN, then the grant funds do not need to be returned, because grants according to private law are voluntary and free gifts, the use of the grant funds is left entirely to the grantee. Grants in the APBD have been determined for their intended use, so when deviations occur, the grant recipient must return them. The return of grant funds from violating subjects will of course be very beneficial for the Regional Government because the grant funds can be used for other purposes.

Restorative justice is an approach to law enforcement that aims to resolve criminal cases in a different way from the conventional criminal justice system. This approach has been adopted by several law enforcement agencies, including the Police, Prosecutor's Office and the Supreme Court (MA) through various policies. The concept of restorative justice directs attention to recovery and reconciliation as a better solution than punishment that only focuses on punishing the perpetrator. This approach prioritizes dialogue and mediation involving various parties involved in a criminal act, including the perpetrator, victim, family of the perpetrator/victim, and the community affected by it. The main goal of restorative justice is to reach a fair and balanced agreement for all parties involved in a criminal case. In this process, prioritizing restoration to its original state and rebuilding good relationship patterns in society.

The criminal justice system which has been supported by the doctrine and theory of the deterrent effect is no longer effective for use in the problem solving process. This situation encourages problem handling through informal mechanisms (misdemeanor) by involving third parties as facilitators to carry out victimoffender reconciliation and or Alternative Dispute Resolution is more beneficial for the various parties concerned. Even though corruption cases that were resolved using repressive prevention mechanisms (imposition of sanctions in the form of punishment) did not reduce the corruption perception index in Indonesia, instead they showed an increase.<sup>8</sup>

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<sup>8</sup> Herman dkk, *Restorative Justice Terhadap Tindak Pidana Korupsi Pengelolaan Dana Desa*, Jurnal Halu Oleo Legal Research, Volume 4 Issue 2, August 2022.

The criminal justice system, as a basis for resolving criminal cases, is only able to produce legal certainty (legal justice) and has not provided justice. The criminal justice system has not provided substantial justice.

If the deviation of grant funds from the APBD to private parties is resolved using a restorative justice approach, this is actually in line with the current modern criminal paradigm. The modern criminal paradigm emphasizes the aspect of recovery and not retribution. In Indonesia, we are currently adopting the modern criminal paradigm, this can be seen in the provisions of the Draft Criminal Code which contains the threat of criminal sanctions adjusted to the consequences caused by the criminal act.<sup>9</sup>

One of the Attorney General's regulations that provides space for restorative justice is the issuance of the Attorney General's Decree Number B-765/F/Fd.1/04/2018 concerning technical instructions for handling corruption cases at the investigation stage with the nature of an immediate letter addressed to all Heads High Prosecutors' Offices throughout Indonesia, in the fourth dictum of the letter, reads "if the parties involved in a criminal act of corruption are proactive and have returned all state financial losses, then the legal process can be considered for continuation by taking into account the interests of the stability of the local regional government and the smooth running of national development."<sup>10</sup>

Thus, by referring to the basis of applying restorative justice in the handling of criminal cases and the conditions that have been regulated, and the values contained in the Al Quran, deviations in grant funds from the APBD to private parties meet the criteria and requirements to be resolved through restorative justice.

In Islam, forgiving the perpetrator is not a crime by the victim and the perpetrator apologizing to the victim is a noble act. In Surah Ash-Shura verse 40, Allah SWT says: "And the reward for an evil is an appropriate evil, but whoever forgives and does good (to people who do evil) then the reward will be from Allah. Indeed, He does not like the wrongdoers." The Qur'an justifies victims of crime to take revenge against the perpetrator, however, forgiving and making peace is more noble than taking revenge. Thus, resolution through restorative justice, apart from reflecting justice, is also in line with the concept of Islamic law. Forgiving and not imposing

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<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

sanctions on non-criminal perpetrators based on the willingness and sincerity of the perpetrator, occupies a higher level in the sight of Allah SWT.

Islam places peace/islak as an alternative in resolving criminal cases, as long as the case has not reached the hands of a judge. Before the world introduced the term restorative justice, the Al-Qur'an first regulated peace/islak as a model for resolving criminal cases. In principle, the judiciary in resolving cases must be based on the principles of speed, simplicity and low costs. This principle can be realized by resolving criminal cases peacefully at the investigation level.<sup>11</sup>

In resolving criminal cases using restorative justice, the role of the police is very necessary in facilitating the resolution of the case. The perpetrator and victim must hold discussions to reach a consensus. The involvement of family members of the victim and perpetrator, the role of witnesses from both the victim's side and the role of community leaders must also be involved in the resolution through restorative justice. Peace between perpetrators of irregularities in APBD grant funds and the Regional Government must be implemented in the presence of community and religious leaders. Apologizing to the community is also very important because grant funds from the APBD to the private sector are usually earmarked for the advancement of regional development. And the most important thing in this resolution through restorative justice is the return or replacement of grant funds to the Regional Government. Grant funds that have been returned or replaced will be used again for other activities needed by the community.

The resolution model through restorative justice in the diversion of regional grant funds to the private sector is in the form of:

- a. There is an apology from the perpetrator of the deviation from APBD grant funds to the Regional Government, community leaders and the local community;
- b. Agreement from the Regional Government and perpetrators of irregularities in APBD grant funds to resolve peacefully;
- c. Return of State/Regional financial losses (Regional Government);

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<sup>11</sup> Waluyadi, *Islak According to Islamic Law Its Relevance to Criminal Law Enforcement at the Investigation Level*, Yustisia Vol. 3 No.2 Mei - Agustus 2014

- d. Peace between perpetrators of irregularities in APBD grant funds and the Regional Government must be implemented in the presence of community and religious leaders.

## V. CONCLUSION

### Conclusions

Legal enforcement against irregularities in Regional Government grant funds to the private sector through a restorative justice approach must be implemented immediately. Resolution through restorative justice as an implementation of the values of Indonesian society and Islamic values. Grants as regulated in Islamic law, private law and public law are basically voluntary gifts without request from the recipient of the gift. Therefore, the good intentions of this voluntary gift should not be made the object of a protracted dispute in the judicial process. Thus, the diversion of Regional Government grant funds to the private sector through a restorative justice approach is appropriate and must begin to be enforced.

The resolution model through restorative justice in the diversion of regional grant funds to the private sector is in the form of:

- a. There is an apology from the perpetrator of the deviation from APBD grant funds to the Regional Government, community leaders and the local community;
- b. Agreement from the Regional Government and perpetrators of irregularities in APBD grant funds to resolve peacefully;
- c. Return of State/Regional financial losses (Regional Government);
- d. Peace between perpetrators of irregularities in APBD grant funds and the Regional Government must be implemented in the presence of community and religious leaders.

### Suggestions

The mechanism for resolving irregularities in APBD grant funds to the public (private sector) through restorative justice must be implemented in an orderly and open manner. For this reason, outreach or technical guidance must be carried out to regional officials regarding restorative justice mechanisms.

Resolution through restorative justice must be carried out in front of the community and religious leaders. The results of the agreement on restorative justice must be announced.



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