

The Application of System Based Models Victim Offender Mediation Towards Recovery of State Financial Losses Due to Corruption in Indonesia

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Abstract

In some cases, corruption has the potential to develop into money laundering, which will complicate the performance of law enforcement officers to track suspicious financial transactions and save assets suspected of belonging to the state. In response to this problem, the replacement money payment system is carried out by law enforcement officers. However, based on the results of the investigation, the implementation of replacement money payments for the recovery of state financial losses is considered ineffective and inefficient at the application and execution stages. Therefore, a legal breakthrough is needed in the form of the use of penal mediation as an effort to maximize state financial recovery. The purpose of this study is to identify the problems of recovering state financial losses due to corruption in Indonesia and the application of the victim offender mediation system based models to recovering state financial losses due to corruption in Indonesia. The results of this study indicate that the alternative nature contained in the construction of Article 18 of Law. No. 31 of 1999 has the potential to result in efforts to recover state financial losses being less than optimal and effective, this is due to the tendency of perpetrators to avoid responsibility for paying replacement money. The application of SBM VOM to recovering state financial losses can be done by accommodating the concept of PB in positive law in Indonesia. This research is a normative legal research using 3 approaches, namely the statutory approach (Statute Approach), the conceptual approach (Conceptual Approach) and the comparative approach (Comparative Approach).

I. Introduction

Criminal In Indonesia, the discourse to shift the paradigm of the purpose of punishment has been going on for a very long time since 1970, which was first led by Sudarto as the head of the drafting team for the Criminal Code (hereinafter abbreviated as KUHP) (Flora, 2022). The peak of this sustainability occurred after the enactment of Law Number 1 of 2023 concerning the Criminal Code (hereinafter abbreviated as UU. No. 1 of 2023). The paradigm shift in the purpose of punishment is reflected in the philosophical elements constructed in the considerations of point a of UU. No. 1 of 2023 which emphasizes the substance of national criminal law formulated based on Pancasila (Disantara, 2021b), the Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD. RI. of 1945) and general legal principles recognized by the people of nations in order to replace the concepts that have been inherited from the Dutch East Indies colonial government so far.

Making the values contained in Pancasila as a benchmark for formulation, in line with the theory of integrative punishment initiated by Muladi (Muladi, 1995). According to him, the purpose of punishment must be able to overcome the losses of victims caused by a crime. The purpose of punishment is stated in the provisions of Article 51 point c of Law. No. 1 of 2023, that the purpose of punishment is to resolve conflicts, restore balance and bring a sense of security and peace in society. Different from several other theories of the purpose of punishment such as the absolute theory, relative theory and combined theory which still accommodate clauses which are essentially aimed at the attitude of the criminal justice sub-system towards the perpetrator, starting from the investigation process to the coaching process in the Correctional Institution (Lapas) which as a whole is full of retribution, suffering and punishment (Lippman, 2022). Despite Muladi's opinion on the benefits obtained by the victim through the relative theory paradigm, it is immediately a benefit obtained due to the imposition of a criminal sentence and the legal consequences imposed on the perpetrator through a court decision with permanent legal force, not a benefit obtained due to the recovery of losses of the victim of the crime.

Corruption (hereinafter abbreviated as Tipikor) is an extraordinary crime (Disantara et al., 2022). The victims of Tipikor are the state, individuals and the wider community, while the target of the crime is state finances. The concretization of state finances can be reviewed from the existence of the State Revenue and Expenditure Budget (hereinafter abbreviated as APBN) which is discussed jointly by the President and the House of Representatives. The APBN is then allocated for national development interests in various sectors. For example, it can refer to the example of the 2023 APBN policy which is described as follows:

1. Supporting the improvement of the quality of Indonesian Human Resources (HR) through development in the fields of education, health and social protection;
2. Acceleration of the development of basic infrastructure and support for economic transformation (Information and Communication Technology, energy and food connectivity), including the development of the National Capital City (IKN) in order to accelerate the establishment of new economic growth centers;
3. Increase the effectiveness of bureaucratic reform to be more efficient and have integrity;
4. Increase the effectiveness of Social Protection programs, including continuing to reform subsidies and social assistance to make them more effective and targeted;
5. Strengthening the implementation of better spending through results-oriented spending;
6. Increase synergy and harmonization of central and regional spending, especially to strengthen access and quality of public services;
7. Strengthen spending flexibility to anticipate uncertainty.

The design and allocation of the State Budget as above, in the realm of criminal law politics is a manifestation of the state's role in ensuring social protection and welfare efforts. Likewise with the norms contained in Article 28I of the 1945 Constitution of the Republic of Indonesia that the protection, advancement, enforcement and fulfillment of human rights are the responsibility of the state, especially the government (Disantara, 2021a). Consideration of points a and b of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter abbreviated as Law. No. 31 of 1999), reads:

1. that criminal acts of corruption are very detrimental to state finances or the state economy and hinder national development, so they must be eradicated in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution;
2. that the consequences of criminal acts of corruption that have occurred so far, apart from being detrimental to state finances or the state economy, have also hampered the growth and continuity of national development which demands high efficiency.

Thus, the obstacles to national development as referred to in the considerations of points a and b of Law No. 31 of 1999 are a series of disruptions to the APBN funds allocated for the implementation of government programs as in the example of the 2023 APBN state spending policy above (Kamilah, 2021). The logical consequence of the obstacles to APBN funds due to corruption is that government programs are not on target, both in terms of

time, quality or recipient subjects, for example in the case of the construction of *tsunami shelters* in Pandeglang Regency which requires the government to re-spend construction costs.

In some cases, Corruption has the potential to develop into Money Laundering (hereinafter abbreviated as TPPU), as long as the perpetrator's actions meet the elements as regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. This will complicate the performance of law enforcement officers to track Suspicious Financial Transactions (hereinafter abbreviated as TKM) and save assets suspected of belonging to the state. This complexity is caused by the existence of *placement*, *layering* and *integration* modes, some or all of which are carried out by the perpetrator with the aim of hiding or disguising the origin of assets obtained from the original crime, one of which is Corruption (Hiariej, 2019).

Payment of replacement money is one form of additional punishment outside the provisions contained in Article 10 point b of Law Number 1 of 1946 concerning Criminal Law Regulations. Its application is commonly used in the context of recovering state financial losses. Based on the provisions of Article 18 paragraph (1) of Law. No. 31 of 1999, the amount paid is equal or equal to the amount of state financial losses that are misused. Based on the results of the investigation, the implementation of payment of replacement money for the recovery of state financial losses is considered not to show effectiveness and efficiency at the application and execution stages. *Indonesia Corruption Watch* (ICW) released data on the percentage gap between state losses and replacement money (2018-2022), the results of the recapitulation between state losses and replacement money, if compared, found a significant gap in the recovery of state financial losses. The following is a comparison table.

Table 1.1
Trend of Gap Between State Losses and Replacement Money

Year Monitoring	Number of Defendants	State Losses	Replacement Money	Percentage Comparison KN x UP
2018	1.162	Rp 9,290,790,689,756.73	Rp. 838,547,394,511.34	9.03%
2019	1.125	Rp 12,002,548,977,762	Rp. 748,163,509,055	6.23%
2020	1.298	Rp 56,739,425,557,246	Rp. 19,696,446,686,630	34.71%

2021	1,404	Rp 62.931.124.623.511	Rp. 1,441,329,479,066	2.29%
2022	2.249	Rp. 48,786,368,945,194.70	Rp. 3,821,667,556,202	7.83%

Source: Indonesia Corruption Watch (ICW)

Referring to the concept of Jeremy Bentham's utilitarian theory, the implementation of the replacement money policy actually curbs pleasure *and* supports pain (Pratiwi, Endang, Theo Negoro, 2022). Therefore, a legal breakthrough is needed to overcome this problem, one of which is using penal mediation. Based on the description above, this study identifies two problems, namely the problematic of recovering state financial losses due to criminal acts of corruption in Indonesia and the application of *system-based models of victim offender mediation* to the recovery of state financial losses due to criminal acts of corruption in Indonesia . This research is a normative legal research. This research uses 3 approaches, namely the statutory approach (*Statute Approach*), the conceptual approach (*Conceptual Approach*) and the comparative approach (*Comparative Approach*) .

RESULTS & DISCUSSION

A. The Problems of Recovering State Financial Losses Due to Corruption in Indonesia

1. Construction P origin 18 Law No. 31 of 1999

Observing the construction of Article 18 of Law No. 31 of 1999, there are 3 interrelated provisions, namely the obligation to pay compensation, confiscation of property and the imposition of a prison sentence, all of which are alternative in nature (Wiranti & Arifin, 2020). Referring to the principle of the material content of the statutory regulations written in Article 6 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, especially the principle of legal certainty, the provisions as referred to do not conflict with the principle of the material content.

However, in practice, the alternative nature of the formulation of Article 18 of Law No. 31 of 1999 has the potential to result in the recovery of state financial losses not being optimal and effective. Supreme Court Cassation Decision Number 107 PK/PID.SUS/2015 in the Corruption case of the construction of the *South East Asia Games* (SEA Games) Athlete Village, Angelina Sondakh was sentenced to additional penalties in the form of payment of compensation of IDR 2.5 billion and USD 1,200,000, if calculated at IDR 19.5 billion. If Angelina Sondakh does not pay 1 month after the verdict is read, her personal property will be confiscated by the Prosecutor and auctioned. If the nominal value of the property

is not enough to pay the compensation, then she will be punished with imprisonment for 1 year .

At the time of the execution of the verdict, Angelina Sondakh only paid a replacement fee of IDR 8.8 trillion, the remaining IDR 4.5 billion. The remainder was replaced with a prison sentence of 4 months and 5 days. Such practices allow the state to suffer losses, because corruption perpetrators seem to avoid their responsibilities by using imprisonment as a last alternative if they do not pay the replacement fee or the nominal value of the auctioned assets is not sufficient for the amount of state financial losses (Simarmata, 2021). In fact, when corruption perpetrators use imprisonment as a last alternative, at the same time the state is again harmed to finance the survival of the convicts in the Correctional Institution (Lapas).

The alternative policy of auctioning movable and immovable property of the perpetrators also shows the problematic nature of recovering state financial losses. There are 3 conditions in auctioning the perpetrator's property, namely sold, the price has dropped or it is difficult to sell because the price is too high. Based on the provisions of Article 16 paragraph (1) and paragraph (2) of Government Regulation Number 105 of 2021 concerning Auction of Confiscated Goods by the Corruption Eradication Commission (hereinafter abbreviated as PP. No. 105 of 2021), that confiscated goods that are not sold can be re-auctioned, the seller can lower the limit value.

The existence of the phrase "*can reduce the limit value*" results in the recovery of state financial losses being less than optimal. This policy considers the substance of Article 4 paragraph (1) letters a and c of PP. No. 105 of 2021 which classifies confiscated objects as easily damaged and confiscated objects that require excessive storage costs, so that it has the potential to force the appraiser to reduce the limit value if the confiscated objects are not sold because the price of the confiscated goods is too high.

2. *Placement , Layering and Integration*

Placement , layering and integration are a series of *modus operandi* commonly used in TPPU to hide and disguise the source of criminal proceeds as if obtained in a manner that is not against the law (Akbar, 2016). Based on the Annual Report of the Financial Transaction Reports and Analysis Center (hereinafter abbreviated as PPATK) in 2022, PPATK has submitted 67 Analysis Results (hereinafter abbreviated as HA) throughout May-August related to Corruption with a total of IDR 4.4 trillion, including Corruption in the budget management sector as much as 19 HA, Corruption in the procurement of goods and services sector as much as

15 HA, Corruption related to abuse of authority as much as 6 HA, Corruption related to bribery as much as 4 HA and gratification as much as 4 HA .

In terms of institutional structure, Indonesia already has an independent institution established to prevent and eradicate TPPU, namely PPATK. PPATK's performance system is coordination, this can be seen in the substance of Article 44 paragraph 1 of Law. No. 8 of 2010 that PPATK can request, receive, forward, recommend information and/or reports to certain agencies or parties, either the Reporting Party or Law Enforcement Officers concerning the need for examination. Even on an international scale, based on Article 89 of Law (S. Vitvitskiy et al., 2021). No. 8 of 2010, such coordination is possible formally or based on mutual assistance or the principle of reciprocity. This is of course adjusted to the HA carried out by PPATK regarding the findings of TKM outside the jurisdiction of Indonesia. The problem of recovering state financial losses lies in the phenomenon of breaking down the number of transactions carried out by Corruption perpetrators. This phenomenon is closely related to *placement* and *layering* . Although there is a mechanism for temporarily stopping all or part of the transaction (*anti-tipping off*) which is contrary to the suspect's profile, if the perpetrator succeeds in breaking down the transaction perfectly, then it cannot be reached by PPATK

B. Application of System Based Models Victim Offender Mediation Towards Recovery of State Financial Losses Due to Corruption in Indonesia

System Based Models (hereinafter abbreviated as SBM) is one of the derivative models of *Victim Offender Mediation* (hereinafter abbreviated as VOM) which is used to resolve criminal cases, while VOM is one of the penal mediation models that criticizes the efficiency of the retaliatory pattern that has been displayed in the criminal justice system, others such as *traditional village or tribal moots* , *informal mediation models* , *reparation negotiation programs models* , *community panels or courts models* , *family and community group conferences models* and *circles* (Bourcier, 2019). Each model has a unique mechanism that is adjusted to the needs of resolving criminal cases.

The mechanism used in penal mediation is a mechanism that is rooted or adapted from the concept of *Alternative Dispute Resolution* (ADR), the resolution relies on the discretion of the criminal justice subsystem using a deliberation and consensus approach to find a *win-win solution* (Ningrat & Kurniawan, 2023). In its implementation, SBM is used in the criminal justice system process, namely at the prosecution stage, the aim is to restore the losses incurred while determining the time to fulfill the obligations (Palmer & Roberts, 2020).

Penal mediation is not the substance of the criminal trial process, but rather merely a complement that influences criminal decisions (Christianto, 2020). Thus, it is clear that

penal mediation cannot intervene in the criminal law enforcement process such as the Decision of the North-East Jakarta District Court No. 46/PID/78/UT/WANITA. The decision once released the Defendant from all legal charges even though it had been proven legally and convincingly, the basis for its consideration was the peace between the perpetrator and the victim of the crime. Thus, the decision was not used as a reference (jurisprudence) by other Judges in examining, trying and deciding criminal cases. This is because Judge Bisma Siregar deviated from the concept or purpose of restorative justice, namely simply restoring the rights of victims who were injured by the perpetrator, without ignoring criminal law enforcement.

In the development of criminal law politics, one of the concretizations in the application of SBM VOM is to accommodate the concept of *Plea Bargaining* (hereinafter abbreviated as PB) in recovering state financial losses due to Corruption. Black's Law Dictionary defines PB separately, namely *a pleading and bargain*. PB gives authority to the Public Prosecutor to bargain with the perpetrator of the crime through legal counsel before the case file is submitted to the local District Court (hereinafter abbreviated as PN). The objects offered in the negotiation include the articles charged, legal facts and the punishment given.

The reasons why someone lies include maintaining self-esteem and avoiding responsibility that puts them in a disadvantageous position. The results of this psychological research in the criminal procedure law are known as the principle of *non-self incrimination* or the right not to state information that can harm them. The rights of the Suspect in article 14 (g) of the *International Covenant on Civil and Political Rights* (ICCPR) are stated as " *Not to be compelled to testify against himself or to confess guilt* " (Hamilton, 2020). The purpose of implementing PB is essentially to revoke one of the fundamental rights of the Suspect while still being based on an agreement or agreement between the Suspect through his legal counsel and the Public Prosecutor. Thus, a mutual symbiosis is established between the Suspect and the Public Prosecutor in the field of law enforcement and recovery of state financial losses.

The application of the PB concept has advantages when compared to the application of the restorative justice concept. Based on the provisions of Article 1 number 1 of the Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, this concept emphasizes restoration to the original state and not retaliation. The concept of restorative justice is essentially a criticism of the mechanism of Law Number 8 of 1981 concerning Criminal Procedure Law which accommodates the rights of perpetrators of criminal acts compared to the rights of victims (Kurniawan & Lulo, 2023). Meanwhile, the purpose of implementing PB is not merely restoration to the original state, but to shorten the criminal trial process. The following is a comparison of the state of cases in 2022-2023 at the Supreme Court and the judicial bodies below it.

Table 1.2
The State of the Cases of the Supreme Court and Subordinate Judicial Bodies in 2022

Justice	Remainder of 2021	Enter 2022	Total Load	Break up 2022	Unplugging	Remainder of 2022	% Completion
Supreme Court	175	28.109	28,284	28,024	0	260	99.08%
Appellate Court	2,467	25,737	28.204	25.254	42	2,908	89.69%
First Level Court	61,310	3,498,355	3,559,665	3,444,803	55.151	59,711	98.32%
Tax Court	12,178	14,937	27.115	15,530	5	11,580	57.29%
Amount	76,130	3,567,138	3,643,268	3,513,611	55,198	74,459	97.96%

Source: Supreme Court Annual Report 2022

Table 1.3
The State of the Cases of the Supreme Court and Subordinate Judicial Bodies in 2023

Justice	Remainder of 2022	Enter 2023	Total Load	Break up 2023	Unplugging	Remainder of 2023	% Completion
Supreme Court	260	27,252	27,512	27,365	0	147	99.47%
Appellate Court	2,948	27,572	30,520	27,609	20	2,891	90.53%
First Level Court	59,711	2,786,073	2,845,784	2,724,345	57,507	63,932	97.75%
Tax Court	11,580	15,098	26,678	16,223	0	10,455	60.81%

Amount	74,49 9	2,855,99 5	2,930,49 4	2,795, 542	57,527	77,42 5	97.36%
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Source: Supreme Court Annual Report 2023

As previously explained, PB is applied before the criminal case file is registered with the local District Court. This means that the object of observation of the data in tables 1.2 and 1.3 will focus on the remaining cases from the previous year, the number of cases received and the remaining cases in the following year in the first-level court only. In table 1.2, there are 61,310 remaining cases in 2021 that have not been decided, while the number of cases received in 2022 is 3,498,355 which are then added to the remaining cases in the previous year. The number of cases received in 2022 leaves 59,711 cases that have not been decided.

The remaining cases that have not been decided in 2022 are added back to the number of cases received in 2023, which is 2,786,073. The accumulation of the remaining cases in 2022 with the number of cases received throughout 2023, leaves 63,932 cases. This means that the first-level courts in Indonesia each year leave more than 50,000 cases to be processed in the following year. One of the reasons is inseparable from the substance of the Circular Letter of the Supreme Court Number 2 of 2014 concerning the Settlement of Cases in the First-Instance and Appellate Courts in 4 (Four) Judicial Environments, providing an opportunity to exceed the deadline for settling cases that have special characteristics and circumstances in the first-level courts within a maximum of 5 months and the appellate courts within 3 months.

This phenomenon is very demanding for the Judge's personnel in examining, trying and deciding cases so that the increasing number of cases each year does not affect the quality of the decision, both in terms of understanding the position of the case or concerning theoretical analysis of law. Judges must be wise in limiting the duration of work. Based on the results of the study, working with a long working duration will not make the work completed effectively and efficiently, it actually results in decreased physical fitness, fatigue and health problems. The large number of cases that enter the first level court cannot be questioned, but must be addressed through criminal law policy, one of which is the implementation of PB to overcome the accumulation of cases (backlog) in the court.

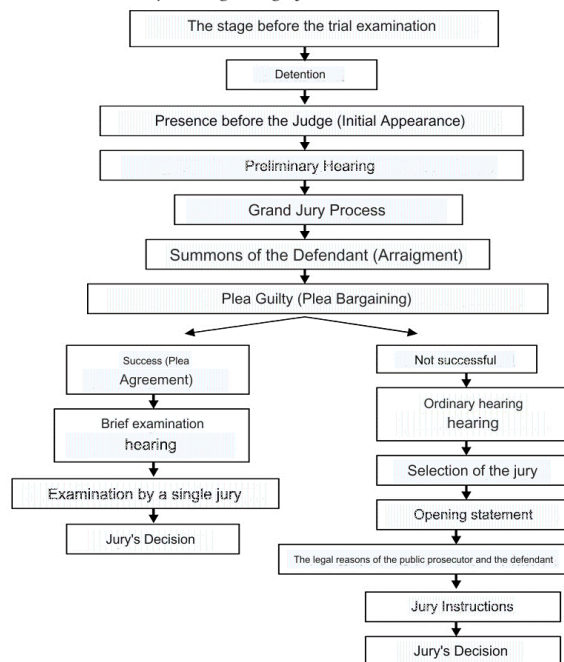
The implementation of PB in the United States (hereinafter abbreviated as US) with its implementation in Indonesia is different in terminology and concept. The following are the limitations of the PB concept in the US:

1. The main motive for negotiations is to speed up the criminal proceedings;

2. The Defendant's willingness to admit his guilt and the Public Prosecutor's willingness to demand a low sentence or one that is advantageous to the Defendant;
3. The parties involved in PB are only the Public Prosecutor and the Suspect or his Legal Counsel;
4. Judges should not be involved.

Ruchoyah in his writing processes the PB mechanism in the US by summarizing several PB application processes and placing them in certain sections while still being based on the Federal Rules of Criminal Procedure Rule 11, the implementation of PB in the US can be described in the form of a table below:

Table 1.4
PB Mechanism in the United States



Source: Ruchoyah

In Indonesia, the phrase used is Special Route (hereinafter abbreviated as JK). Based on the provisions of Article 199 of the Draft Criminal Procedure Code (RKUHAP), the concept of JK is described as follows:

1. When the public prosecutor reads the indictment, the defendant admits to all the actions charged and pleads guilty to committing a crime for which the criminal

- penalty charged is no more than 7 (seven) years, the public prosecutor can refer the case to a brief examination hearing.
2. The defendant's confession was stated in a report signed by the defendant and the public prosecutor.
 3. Judges are required to:
 - a. notify the defendant of the rights he has relinquished by providing an acknowledgement as referred to in paragraph (2);
 - b. inform the defendant of the length of the sentence to be imposed; and
 - c. ask whether the recognition as referred to in paragraph (2) was given voluntarily.
 4. The judge may reject the confession as referred to in paragraph (2) if the judge doubts the truth of the defendant's confession.
 5. Except for Article 198 paragraph (5), the sentence imposed on the accused as referred to in paragraph (1) may not exceed 2/3 of the maximum sentence for the crime charged.

Based on the comparison of the 2 regulations related to PB and JK, several similarities and differences can be found between the 2 regulations. *First*, PB and JK have the same goal of reducing the time of criminal proceedings. *Second*, between the PB and JK regulations, the Judge still has involvement with the Defendant's request. There is a phrase in the US regulation *"Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement)"*, and *"Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea"*. Thus, the argument that states the absence of the Judge's involvement in PB in the US should be set aside.

Based on the results of the investigation, there are 2 fundamental differences related to the substance of the PB and JK regulations. *First*, the construction of Article 199 of the Criminal Procedure Code does not provide a basis for consideration other than the Judge's doubts about the Defendant's confession, in contrast to the PB which gives the Judge the authority to consider the views of the parties and the public interest in the context of effective judicial administration. However, the Judge can basically consider as regulated by the PB, referring to the order of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, that Judges and Constitutional Judges are required to explore, follow and understand the legal values and sense of justice that live in society. Thus, Judges at the first instance court should not be bound by the limitations of authority in Article 199 of the Criminal Procedure Code. *Second*, the JK in the RKUHAP paradigm limits criminal acts that can take a special route, namely the threat of criminal acts of no

more than 7 years. While the PB in its regulations in the US and even Canada, England and Wales does not provide a limitation on criminal threats like the RKUHAP. Referring to ICW's findings, the average prison sentence for corruption perpetrators throughout 2022 is around 3 years and 4 months. Thus, corruption qualifies as a crime that can take a special route.

4. Conclusion

- a. The alternative nature contained in the construction of Article 18 of Law No. 31 of 1999, has the potential to result in efforts to recover state financial losses being less than optimal and effective, this is due to the tendency of perpetrators to avoid responsibility for paying compensation , for example the Cassation Decision Number 107PK/PID.SUS/2015 in the Angelina Sondakh case. Likewise with the alternative auction of confiscated goods, the high price and maintenance costs of several assets force the appraiser to lower the price in the next auction period, if it is not lowered then the confiscated goods will not sell.
- b. Corruption accompanied by TPPU also complicates law enforcement officers in recovering state financial losses, this is due to the use of several modes of operation such as placement , layering and integration . Thus, law enforcement officers need quite a long time to coordinate with related institutions or agencies such as PPATK to track the flow of funds or TKM carried out by the perpetrators. The application of SBM VOM to the recovery of state financial losses can be done by accommodating the concept of PB in positive law in Indonesia. However, there is 1 fundamental difference between the application of PB and JK, namely in the construction of Article 199 of the RKUHAP, it does not give the Judge the freedom to leave the consideration of doubt in the recognition

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