

## Initiating the Implementation of Merging Crimes in Corruption Self-help Housing Stimulant Assistance

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Article	Abstract
<p><b>Keywords:</b> Corruption; Merging Crimes; Self-help Housing Stimulant Assistance</p> <p><b>Article History</b> Received: May 13, 2023; Reviewed: May 26, 2023; Accepted: May 31, 2023; Published: Jun 01, 2023;</p>	<p>Corruption in practice is not only a self-imposed crime but opens up space for other crimes both before and after the occurrence of corruption crimes. There are other criminal acts such as in the case of Self-Help Housing Stimulant Assistance in Pohuwato Gorontalo. However, in the process of law enforcement, only articles in the Corruption Law are used. Therefore, the focus of the problem in this paper is to examine the obstacles in investigating corruption in the Self-Help Housing Stimulant Assistance and how to apply the merger of criminal acts in corruption is implemented. The type of research used is normative research supported by empirical data. The results of this study indicate that the obstacles that affect the investigation of corruption in Self-Help Housing Stimulant Assistance consist of the minimum allocated budget, limited human resources, and facilities and infrastructure that are not following the cases handled. Meanwhile, the application of Article 263 of the Criminal Code in this case, should have been carried out by the method of merging criminal acts, namely <i>concursum realis</i>, because the perpetrators carried out the initial act of forging signatures regulated in Article 263 of the Criminal Code and then resulted in the birth of corruption crimes charged with Article 2 of the Corruption Law.</p>



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### Introduction

The crime of corruption itself is essentially an extraordinary crime. Therefore, in handling, it also uses extraordinary methods (Muhtar, 2019). Corruption and emergencies influence each other, creating a kind of 'vicious cycle' of mismanagement and deeper crises. The large amount of fiscal resources needed to deal with emergencies, the urgent need for aid disbursements or economic stimulus packages

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and the risk of undue influence over policy responses make perfect opportunities for corruption (Suyatmiko, 2021).

Corruption is a product of the attitude of a group of people who use money as a standard of truth and as absolute power. As a result, wealthy corruptors and corrupt state officials who are excessively cashed can enter the ruling and highly respected elite. Corruption is not only carried out at the central level but even almost to all levels and to the regions, not only from public institutions even to private institutions have all begun to be touched by corruption (Ramadhan, Rafiqi, 2022).

Almost every region in Indonesia is always related to what is called corruption, including in Pohuwato Regency, Gorontalo Province. This also happens when someone has excessive authority and there is no clear control over the authority possessed, so corrupt actions are easily carried out.

One of the corruption crimes that occurred in Pohuwato Regency was related to the Self-Help Housing Stimulant Assistance (in Indonesian language/regulation, abbreviated as BSPS). This BSPS program is a central government program that is given the implementation of its work to the regions with the hope of being right on target, especially for people who are less fortunate in material terms so they need to get housing assistance for people whose homes are very inadequate (Handayani, Safrida, 2022).

Through an audit conducted in the context of Calculating State Financial Losses on the Implementation of the BSPS Program, Paguat District, Pohuwato Regency in 2016, irregularities were found in the implementation of the BSPS program which caused state financial losses of Rp. 559,821,490.18 and the method used is the calculation of state financial losses by comparing the amount of payment for goods based on the unit price of Budget plan with the value of goods according to the actual store price. The difference in value is a state/regional financial loss.

Actions involving suspects with the initials WY who are shop owners one of the implementation of the BSPS program are basically corruption crimes that can be charged under Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning the eradication of Corruption Criminal Acts as amended by Law no. 31 of 1999 concerning the eradication of Corruption Criminal Acts (Corruption Law).

Referring to the Tipikor Law, the actions taken by the perpetrators are regulated in Article 2 paragraph (1) of the Corruption Law. Article 2 is often used to ensnare

perpetrators of corruption crimes. Therefore, the article has become a general article in the investigation and handling of corruption crimes in Indonesia. However, if we trace the background of the case, there was an initial action from the perpetrators who committed the act of forging signatures which can be categorized as a separate criminal act which then encouraged the birth of corruption.

The crime of forging signatures can be referred to as the criminal act of forging letters/documents regulated in the Criminal Code. Chapter XII which deals with the Forgery of Letters refers to the act of forgery of signatures. The provisions in the Criminal Code state that whoever makes a forged letter or forges a letter that can give rise to a right, engagement or debt release, or which is intended as evidence of something with the intention to use or instruct others to use the letter as if the contents were true and not forged, is threatened if such use can cause harm, because of the forgery of the letter, with a maximum prison sentence of six years". It is further explained that every person is threatened with the same crime, whoever knowingly uses a forged or forged letter as if it were true, if the use of the letter may cause harm".

In the investigation process carried out by investigators, the act of forging signatures is not used as an additional crime in the case. corruption case in Pohuwato district. Investigators only imposed Article 2 of the Corruption Law. The act of forging signatures should be a criminal offense that can be connected with corruption in the case or this case can be done a combination of criminal acts. The reluctance of the investigators to combine the two articles is interesting to be examined in legal research, not only limited to the investigation process carried out in the case, but also related to the application of article 263 Criminal Code as an act of forgery of letters in every criminal act of corruption committed. Thus, the purpose of this study was to find out the obstacles in the investigation of BSPS corruption crimes in Pohuwato Regency, Gorontalo Province. Then explain proper law enforcement with the concept of merging Criminal Acts in BSPS Corruption. This paper is expected to contribute to the development of law, especially the law enforcement of criminal acts of corruption.

## Method

Referring to the formulation of problems and problems that have been described in the previous section, this research is carried out by categorized as as juridical-sociological or 'socio-legal'. Socio-legal is a legal science research approach that uses the help of social sciences.. This research combines normative research with empirical

studies. By observing and analyzing legal issues in the field and assessed normatively based on applicable legal regulations (Sonata, 2014).

In legal research, there are many approaches that can be used both separately and individually or collectively according to the issues or problems discussed. According to Peter Mahmud Marzuki, the approach used in legal research consists of: legal, case, historical, comparative, and conceptual approaches. The approach used in this research is first the statutory approach, which in this case is using the Criminal Code and Corruption Law as sources of law. Then added the case approach, which in this study was used to analyze the BSPS corruption case that occurred in the Pohuwato Regency, Gorontalo Province.

## Discussion

### 1. Corruption and Self-Help Housing Stimulant Assistance (BSPS): Cases in Pohuwato Regency, Gorontalo Province

Corruption can be categorized as a phenomenon in state life that has spread in various sectors, both the public sector and the private sector. Corruption in the Big Dictionary Indonesian defined as: bad, damaged, likes to use goods (money) entrusted to him, can be bribed (through his power for personal gain). As for the meaning of the terminology, corruption is misappropriation or embezzlement (state or company money) for personal or other people's interests.

Meanwhile, referring to the Black Law Dictionary as one of the international references, corruption is defined as an act done with an intention to obtain some benefit contrary to official duties and other truths. An act of something official or a person's belief which unlawfully and mistakenly uses some benefit for himself or others contrary to other duties and truths (Bryan, 2004)

The phrase corruption itself comes from Latin, namely the word corrupter which was then accepted by many languages in Europe, such as: in English it became the word corruption or corrupt, France became the word corruption while in Dutch it became the word *corruptive* (*korruptie*), so that if we ventured then from this Dutch the word came down to Indonesian became the word "korupsi". (Hamzah, 2007).

Corruption according to its nature in two forms, namely as follows: first, Covert Motivated corruption, namely corruption at first glance seems politically motivated, but secretly actually motivated to get money only. Second, dual-motivated corruption,

where someone commits corruption outwardly seems only motivated to get money, but actually has another motive, namely political interest (Ramadhan, Rafiqi, 2021).

Based on Corruption Law, corruption can be grouped into seven types, namely: state losses, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement, and gratuities (Akbar, 2017). Furthermore, corruption crimes and corruption-related crimes can be grouped into: It is against the law to enrich themselves and can harm the finances of the State, abuse authority for self-interest and can harm state finances, bribe civil servants, reward civil servants for their position, civil servants accept bribes, civil servants receive gifts related to their position, bribe judges, bribe advocates, judges and advocates accept bribes, civil servants embezzle money or allow embezzlement, civil servants falsify books for administrative examination, civil servants destroy evidence, civil servants let others tamper with evidence, civil servants help others tamper with evidence, civil servants blackmail, civil servants blackmail other employees, contractors cheat, project supervisors allow fraudulent acts, Indonesian Army/Indonesian Police associates cheat, Indonesian Army/Indonesian Police partner supervisors allow fraudulent acts, Indonesian Army/Indonesian Police consignees allow fraudulent acts, civil servants seize state land to harm others, civil servants participate in the procurement they manage, civil servants receive gratuities and do not report to the Indonesian Commission for the Elimination of Corruption (KPK), obstructing the examination process, suspects who do not provide information about their wealth, banks that do not provide information about suspect accounts, witnesses or experts who do not give information or give false information, people who hold confidential positions do not give information or give false statements, witnesses who reveal the identity of the whistleblower (Ramadhan, 2021).

As explained by the author in the background section, one type of corruption crime committed by law enforcement is the BPS case in Pohuwato Regency Gorontalo Province. The BPS program is a stimulant housing assistance provided by the government to low-income people whose homes are not habitable. With the self-help housing stimulant assistance fund, they are expected to be self-sufficient in building their houses to be more livable so that small communities, in particular, feel protected by the state (Amelia, Guswandi, 2019).

BPS is Government assistance for low-income people to encourage and increase self-reliance in improving the quality of houses and building new houses along with

infrastructure, facilities, and public utilities. The BSPS form is carried out in the form of money and goods. Money is handed over to individual beneficiaries to repair houses by: buying building materials and paying work wages (Farida, 2020).

The provision of BSPS is a mandate from Law Number 1 of 2011 concerning Housing and Settlement. This law in the consideration section explains that the government needs to play a more important role in providing and providing housing and settlement facilities and assistance for the community through the implementation of area-based housing and settlement areas and community self-help so that it is a functional unit in the form of physical spatial planning, economic and socio-cultural life that is able to ensure environmental sustainability in line with the spirit of democracy, regional autonomy, and openness in the order of life in society, nation and state (Herlina, et.al., 2021).

This BSPS program is programmed for underprivileged communities on a constitutional basis where it is explained that the poor and abandoned children are cared for by the state (Sekarvilia, Karsinah, 2020). This program aims to reduce some of the burden of target household expenses in repairing houses that are no longer habitable to become habitable so that people no longer need to think about finding sustenance to repair their homes so that the sustenance obtained by the community to repair their homes can be directed to other interests such as meeting the needs of household staples and others (Rismanita, et.al., 2020).

However, in practice, programs that aim to provide welfare for the community as a state responsibility mandated in this constitution are distorted by the budget, where the parties appointed as providers of materials in BSPS forge signatures from BSPS recipient communities. This action is intended to disburse funds to building material providers for the BSPS is happening soon.

Following the examination conducted by the investigator of witnesses, there were various acts of irregularities. The BSPS program is carried out with accountability through documents containing: Survey of stores/building material providers dated July 26, 2016, Minutes of agreement on the selection of stores/providers of building materials dated July 25, 2016, and building material purchase contracts dated July 27, 2016, between brothers as Heads of aid recipient groups and shop owners. All matters contained in the document have never been carried out by the survey process, agreements, purchase contracts, or signed these documents, and the signatures contained in these documents are not the signatures of witnesses.



In its development, an audit was carried out in the context of calculating state financial losses for the program, based on the Letter of the Chief of Pohuwato Resort Police Number: R/333/IX/2018/Res-Phwt dated September 3, 2018, regarding the Application for Assistance in Calculating State Financial Losses in the implementation of the BSPS program in Paguat District, Pohuwato Regency fiscal year 2016. Then, after exposure was carried out to find out the elements of unlawful acts and indications of state financial losses as well as the occurrence of criminal acts of corruption.

## **2. Obstacles Affecting Corruption Crime Investigation in Self-Help Housing Stimulant Assistance (BSPS)**

The act of abuse committed by the perpetrator in the BSPS case in Pohuwato Regency is categorized as an act of corruption because in the investigation process, it is found that there has been irregularity by the perpetrator and the act can be held criminally responsible. The handling phase of the BSPS case carried out by the Pohuwato Regional Police began with the preparation of the investigation and ended with the submission of the case file. Especially for corruption crimes, the investigation process is carried out by the Police Investigator, so the procedure for handling cases is the same as the procedure for handling crimes in general, namely the file of the results of the investigation is submitted to the Public Prosecutor at the Prosecutor's Office following his legal area. If the Prosecutor's Office believes that the case file meets the material and formal requirements, the case file will be transferred to the corruption court (Ruly Lamusu, 2021).

However, the investigative steps that can be carried out by the police in the BSPS case in Pohuwato Regency, which begins with preparation activities for investigation, investigation, and submission of case files when they are complete in practice also encounter various obstacles. The police, in terms of exercising the authority to investigate a criminal matter, including corruption based on the mandate in Articles 4 to 9 of the Criminal Procedure Code regarding what is interpreted as an investigator is a member of the police who has a position and has duties which include investigating a criminal act in general (Siahaan, Marlina, 2019).

In practice, before going further to conduct an investigation, it is necessary to determine first based on the evidence/information obtained from the results of the investigation that the event that occurred and is suspected to be a criminal act is an actual criminal act so that subsequent actions are not taken outside the applicable provisions (Dalimunthe, Puluhalawa, 2021). Thus, the investigation of BSPS corruption

crimes in 2016 in Pohuwato Regency should be able to include or at least consider that acts of corruption caused the state to suffer financial losses while also affecting community victims who should have received BSPS assistance. In addition, in this condition the role of law enforcement (police) as an element responsible for conducting investigations risks the integrity and professionalism of its institutions in the eyes of the wider community in solving various problems in the community.

Various law enforcement efforts carried out ranging from investigations, investigations, to the transfer of files at the prosecution stage carried out with various types of activities are basically intended to solve BSPS corruption crimes in 2016 so that they can be completed and get an *inrach*t verdict from the court so that the perpetrators can receive criminal sanctions for the actions committed as well as a warning to other parties not to commit similar acts of corruption.

In practice, various actions against law enforcement in corruption cases carried out by Pohuwato Police Investigators also encountered several obstacles in their implementation. The existence of these obstacles in particular affects the investigation which is the most important action in law enforcement of a corruption case to make light as well as further strengthen the criminal act of corruption that occurs. The various obstacles faced are as follows:

#### **Lack of Budget**

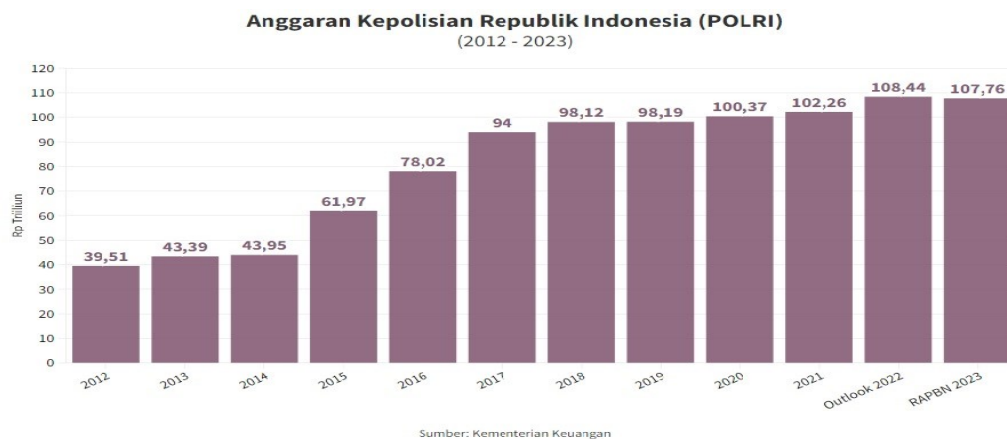
Indonesia Police is one of the state institutions that has a role to maintain public order, enforce applicable laws, as well as provide protection, protection, and provide maximum services for the community with the aim of creating internal security, in practice carrying out these various functions accompanied by challenges to obstacles that hinder its performance, both internal and external challenges of the Indonesia Police institution itself (Nugraha, 2018). One of the challenges that must be passed by the Indonesia Police in carrying out its duties and functions as a law enforcement agency is the unbalanced budget allocation in handling cases with the large number of cases that occur in each jurisdiction, both on a central, provincial, and Polri scale in the regency/city area.

Budget allocation becomes a plan in the financial sector proportionally that describes the distribution of human resources, materials, and various other certain resources. Various types of budgeting mechanisms carried out by the government are developed to provide services to control expenditures, managing plans, what is the



main choice for the use of funds as well as a form of accountability to the wider community.

In its implementation, one of the most obvious things in budgeting for the Indonesia Police is the independence of the Indonesia Police in the budget allocation every year. In the phase since 2015 until 2023, the Indonesia Police has always obtained a budget share above six trillion dollars. The budget allocation will be used for employee expenditures, goods, and capital (CNN Indonesia, 2020). The budget allocation of the Indonesia Police can be seen from the data below:



From the data above, it is clear that the budget for the Indonesia Police has increased every year. The number above is certainly very large. However, if analyzed in more detail, the budget is distributed and divided for various things and levels, where the level referred to is up to the level of the Indonesia Police at the Sector level in each sub-district. Such conditions are also stated by investigators at the Pohuwato Police Station, where the budget for handling a case is a challenge or even an obstacle in the implementation of police law enforcement duties. The budget problem is increasingly complex for solving cases that require special financing, such as corruption.

Handling of corruption crimes is allocated annually amounting to two hundred million rupiah in solving corruption cases. This is certainly not directly proportional to the number of cases reported by the public or even found by investigators. Meanwhile, Pohuwato Regional Police each year is targeted to solve at least one corruption case until the case file determined is complete by the Public Prosecutor or P-21 with the predetermined budget allocation.

As explained by the author above, the investigation process carried out in corruption cases carried out through various means that have different characteristics from other criminal acts also requires appropriate financial support. However, if you

look at the budget allocation allocated to handling corruption crimes, it becomes a necessity that the implementation of the duties of the Indonesia Police as law enforcers who carry out repressive actions will not run optimally and effectively because the investigation process is hampered by various things, including financial problems.

The lack of budget as a financial problem certainly does not only affect the performance of the Indonesia Police institutionally. The problem of the lack of budget will certainly also affect efforts to enforce the law on corruption, including corruption in the BSPS case. Thus it is necessary to reconsider budget allocations within the Indonesian Police institution.

Planning in budgeting for the Indonesia Police must be reviewed again, especially in the allocation of handling cases in the regions. Through planning following the needs of cases that occur, the purpose of the Indonesia Police as a law enforcement agency that not only provides security but also as an institution that conducts education so that every legal problem can be resolved effectively will be realized on an ongoing basis, where the ultimate goal of this is not only to have an impact on the Indonesia Police as an institutional institution, but also to have an impact on community services.

#### **Limited Human Resources**

The enforcement carried out by the Indonesia Police against the BSPS corruption case in Pohuwato district is basically carried out by the best human resources from the Indonesia Police who serve at the Pohuwato Police Station. Every member of the police, both investigators and investigators, is an HR that must be improved in quality and quantity. Even though it has entered the era of 4.0 and the rapid development of technology and followed by the birth of various types of new crimes, if it is not followed by an increase in human resources, the Indonesia Police will be left behind with such conditions so that legal cases that occur cannot be resolved optimally (Heri, 2019).

One of the institutions that carry out various efforts to improve the quality of resources is the Indonesia Police a state institution that organizes government functions in the field of security and order. In presenting the professionalism of each Polri resource, three solutions were internally established, namely carrying out reforms in managing resources more professionally, improving the quality of training for each member, improving the welfare of each member of the Indonesia Police.

This human resources problem is a necessity in a state institution. Logemann as quoted by Jimly Asshidiqie outlines the problems in state institutions, namely: (1) the establishment of state institutions and those who run them; (2) the filling of officials shall take into account whether through the selected stage or only appointed or there are other models; (3) what duties and authorities are given to be carried out and achieved; (4) the importance of harmonization of power in every institution or institution of the state (Asshiddiqie, 2006).

Improvements to human resources problems experienced by the Indonesia Police also occurred from the perspective of handling criminal acts of corruption. In the direction of handling corruption problems, harmonization of laws and regulations governing each law enforcer is important to be carried out, especially related to First, the functions and authorities of the investigation phase or at the investigation stage. Second, the function and prosecution of corruption issues. In particular, for the first function, if the amount of resources investigating corruption cases is adequate, it will be maximum in carrying out its duties, because one institution alone will not optimally carry out corruption investigations/investigations considering the vast area of cases as Article 31 paragraph (2) of the Corruption Law (Tampubolon, 2014).

In carrying out the task of investigation, based on the results of the explanation of the Pohuwato Police Chief AKBP Joko Sulistyono \ that the selected investigator and the investigation warrant for a corruption case are investigators who have carried out education outside the service, namely having completed Bachelor degree education and have completed vocational education so that it will be more effective in solving each case.

The issue of human resources for the Indonesia Police, especially for the implementation of the duties and functions of the Indonesia Police in the regions, is important to pay attention to, moreover, the human resources of the Indonesia Police in the regions basically also perform the same duties and the same as the Human Resources of the Indonesia Police at the central level. The same problem was also experienced by the Pohuwato Police Criminal Investigation Unit in taking action against corruption crimes, including the crackdown on BSPS corruption.

Based on interviews with Bripka Jamer R.Seba S.H as investigator conducted by the author regarding the BSPS case with the investigators who handled it, it was explained that human resources problems are one of the obstacles that can internally interfere with the handling of corruption crimes that occur. It was further explained

that this human resources problem includes two important things, namely the lack of personnel and increasing the capacity for personnel to act on a corruption case.

It was further explained that specifically the handling of alleged corruption cases handled, namely corruption acts in BSPS in 2016 in Paguat District by the Pohuwato Regional Police was only handled by 2 (two) investigators. This is because the Pohuwato Regional Police has a shortage of investigators, especially those who understand the pattern of handling corruption crimes.

Regarding the first problem, when referring to the institutional structure of the Pohuwato Police Station, it shows that there are problems in the structure and membership of the Pohuwato Police Criminal Investigation Unit which handles every criminal act, including corruption. Various legal actions that occur or are reported by the community are not directly proportional to the number of human resources owned.

The same thing also happens in the process of cracking down on corruption problems, where there are indications of corruption crimes found by the police or directly complained by the public are not equivalent to the quantity of investigators and other members who have the competence and expertise to carry out the corruption crackdown. Thus, the problem of lack of human resources affects the resolution of corruption criminal cases that occur in Pohuwato's jurisdiction, both in the form of a settlement period and in the form of effective implementation of duties and performance of each member.

The lack of investigators also becomes more complex when investigators who investigate BSPS corruption cases are not only given the burden of responsibility in BSPS cases alone but also charged with investigating other cases following the orders of the leadership so that it has an impact on handling cases.

Furthermore, the second problem is related to increasing the capacity of police human resources in carrying out corruption crimes. This problem is a continuation of the lack of human resources, where not all human resources in the Pohuwato Police Criminal Investigation Unit have maximum competence in understanding and analyzing every corruption case that occurs, because in principle, corruption cases are actions that have various characteristics that are different from conventional criminal actions, so that when capacity building is not carried out for each member of the Indonesia Police, it will have an impact on not maximizing the enforcement carried out. The problem of human resources that do not all have the same competence in following up corruption crimes that occur is recognized directly by investigators at the

Pohuwato Police Criminal Investigation Unit as one of the things that hinder the prosecution of corruption crimes.

#### **Facilities and Infrastructure are not Following the Case Handled**

In forming the professionalism of handling cases carried out by police officers, the facilities and infrastructure that support the implementation of the duties of the police must also be fulfilled so that each member of the police focuses on handling the events that occur and does not think about other elements that can interfere with the course of the task being carried out.

Referring to the Regulation of the Chief of the Indonesia Police of the Republic of Indonesia Number 6 of 2019 concerning Criminal Investigation, each investigation is based on a Police Report; and Investigation Warrants. The Notice of Commencement of Investigation itself outlines various things, ranging from the basis of the investigation, information on the composition of the investigator's membership, and the cases that are currently being investigated.

This investigation process is the key to the application of articles and law enforcement carried out by the police as described by the author in the previous section is important in assessing whether or not a criminal act occurs. So important is the investigation process carried out, the Investigator must not carelessly take legal action.

In this case, each investigator is obliged to prepare an investigation plan that is submitted to his superiors at the same level. The investigation plan contains at least a few things: the number and identity of investigators; the target of the investigation; investigation mechanism; the specificity of the matter; the length of time required; facilities and infrastructure needed during the activation process; investigative budget needs; and other administrative matters that support the investigation (Hamid, 2022).

Referring to these provisions, it can be seen that one of the things that supports the performance of the police is adequate facilities and infrastructure as stated by Soerjono Soekanto. According to Soerjono Soekanto, without certain facilities or facilities, law enforcement can't run smoothly. So it can be concluded, namely facilities or facilities have a very important role in law enforcement. Absence of facilities (Soekanto, 2013).

Related to these facilities and infrastructure, it was also stated by the Pohuwato Police Criminal Investigation Unit to be an obstacle in solving corruption cases more quickly or in accordance with predetermined provisions. It was conveyed by a member

of the Pohuwato Police Criminal Investigation Unit who handled the BSPS case in 2016 that the investigation and investigation steps that require investigators to trace the actions that occurred to request an investigative audit and state losses from Financial and Development Supervisory Agency must be taken from Pohuwato Regency to Gorontalo City Center. In addition, the issue of facilities and infrastructure also includes things that are supported in the process of finding evidence that supports BSPS corruption cases.

In the absence of adequate supporting facilities or facilities, law enforcement actions take place optimally which includes various things, ranging from effective organization, adequate equipment needed, appropriate finances, to other technical matters that support the law enforcement process. If such things are not met, then law enforcement is difficult to realize its goals.

There are obstacles in solving a legal problem not only due to the number of cases that must be resolved but also related to the resolution time given by certain limits. if this is only addressed by increasing the composition of Law Enforcers then it will not have an impact on solving every legal problem in the long run (Riyanto, 2018).

Based on this, the thing that needs to be taken into account is not only the costs that will be allocated if there are obstacles in solving cases, but also importance to be calculated carefully the costs that must exist when the obstacles do not occur again so that they are used more effectively. Including competence in certain fields related to the use of technology is one of the major challenges to the need for facilities and infrastructure in the type of crime that uses the internet. Therefore, the ability to master the actual technological facilities is an obligation that cannot be denied facilities and infrastructure for this purpose.

With regard to the condition of law enforcement and application by the Pohuwato Regional Police against the BSPS corruption case in 2016, the facilities and infrastructure actually also play an important role in addition to the HR issue itself. The availability of supporting facilities and infrastructure with a minimal amount, so efforts to harmonize the role of law and cases that occur are also difficult to fully fulfill. With these limited conditions, the actual facilities and infrastructure that support law enforcement against the prosecution of corruption crimes must be facilitated with maximum availability in accordance with the needs needed as well as in accordance with the number of cases handled.



### 3. Initiating the Implementation of Article 263 of the Criminal Code in the Case of Corruption Crime Self-Help Housing Stimulant Assistance

Looking at the 2016 BSPS corruption case in Pohuwato regency which began with the actions of the perpetrators who forged signatures in BSPS documents, it shows that in that case there was more than one type of criminal act. In Article 63 (1) of the Criminal Code, it is explained that if there is a legal act regulated in two laws and regulations criminal, then criminal regulations containing more severe sanctions provisions must be applied. Furthermore, the Criminal Code also stipulates that if there is a criminal act also regulated in general and special regulations, then special regulations must be applied. This means, in the event of a criminal act of corruption, the legal provisions that must be enforced must refer to the Law on Corruption as a legal product, especially those regulating corruption.

Thus, criminal law in Indonesia adheres to the principle of *lex specialis derogate legi generalis*. In practice, the choice to resolve a legal problem using a historical interpretation model, or can also be by using the volitional approach of the framer of the legal product. The application of principles such as *lex specialis* is not entirely a solution and can complicate the application of legal norms to a legal problem (Irfani, 2020). Therefore, in certain circumstances, a legal issue such as the BSPS corruption crime that occurred in Paguat District, Pohuwato Regency can still refer to other provisions such as the Criminal Code.

In essence, the Corruption Law also provides provisions that the application of other criminal law products can still be used when the other criminal law products in question also regulate cases related to corruption. However, what about the legal logic in Article 63 of the Criminal Code which provides provisions that every special criminal act, such as corruption must use special rules as well This confuses the basic model adopted. In other words, the application of the *lex specialist* principle in corruption cases in certain circumstances may contradict other regulations (Albian, 2020).

This clash of principles of *lex specialists* should be able to consider matters that would make it possible to carry out the investigation properly without having to debate what should be according to law. The point is, if under certain circumstances, such as in the case of BSPS corruption in 2016 in Pohuwato Regency, where it is known that the crime is also accompanied by other crimes, then it is appropriate for the

investigators to make new efforts by including the initial action by the perpetrator as a criminal act.

In general, investigators in corruption cases tend to use Article 2 of the Corruption Law to be used to ensnare perpetrators. However, as explained earlier that the perpetrator committed a preliminary act of forging signatures, the investigator should also be able to refer to articles in the Criminal Code that regulate shaming related to shaming acts that can result in the punishment of the perpetrator.

Referring to the Criminal Code, there are criminal provisions for perpetrators who commit signature forgery with the following formulation:

- (1) Whoever makes a forged letter or forges a letter which gives rise to a right, bond, or discharge of debt, or which is intended to be evidence of a thing with intent to use or induce another person to use the letter as if its contents were true and not forged, shall be punished if such use is likely to give rise to harm, by forgery of the letter, with imprisonment for not more than six years
- (2) Shall be punished with the same offense, any person knowingly using a forged or forged letter, if the use of the letter would cause harm.

The content of the regulation as above, must also be fulfilled first the elements of the criminal act. If you look at the contents of the article, the elements of criminal acts as referred to are divided into 2 (two), namely objective elements, and subjective elements, which consist as follows: 1) Objective element: reating fake letters and falsifying them; 2) The object is a letter: it can give birth to rights of the type of engagement, Cause debt relief, can be used become evidence resulting in losses; 3) Subjective element : intends to use as original evidence Making Others Believe.

The meaning of the letter in Article 263 of the Criminal Code is a letter that is typed by machine, printed, or handwritten. In addition, in the provisions of Article 184 Paragraph (1) of the Criminal Procedure Code, it has been stipulated that documents such as letters can be used as evidence. Thus, the documents used by the perpetrators in the BSPS criminal case in Paguat District, Pohuwato Regency in 2016 have fulfilled the criminal elements.

In the legal system practiced in Indonesia, there is a concept of combining criminal acts or concurrent criminal acts, or in other terms known as *concursum*. The combination of criminal acts which is also commonly referred to as concurrent criminal acts is the occurrence of two or more crimes by one person where the first crime has not been convicted, or between the initial crime and subsequent crimes has not been limited by a judge's decision (Terisno, Yuliana, 2019). The provision regarding merger

is basically a provision on how to settle cases and impose penalties in the event that there is more than one criminal offense where all crimes have not been examined and decided by the court.

Based on the description of the merger of these crimes and the BSPS corruption crime, the action by the perpetrator is classified as a *concursum realis*. *Concursum realis* occurs when a person commits several acts in which each act stands alone as a criminal offense (not necessarily of a type and not necessarily related). Provided that between the acts committed in *concursum realis* and the continuing acts, there must be no judge's decision or verdict. The argument that the perpetrator committed the initial act of forging signatures which in turn gave birth to corruption crimes that can be charged with Article 2 of the Corruption Law.

The act of forgery of signatures as a form of document forgery regulated in Article 263 of the Criminal Code and the criminal act of corruption regulated in Article 2 paragraph (1) of the Criminal Code is an act that stands alone as a criminal act regulated differently in two different regulations. However, both actions are related to one another, where the act of falsifying documents results in the fulfillment of corruption crimes regulated in the Corruption Law.

The two crimes are not qualified as idealistic *concursum* because in principle the crime that can be qualified as idealistic *concursum* because the same act has given rise to the occurrence of other crimes (Wahid, Rafiqi, 2022). The elements that give rise to the occurrence of other criminal acts are indeed fulfilled, but the elements of the same action when viewed from the two elements of the criminal act, there is no type of the same crime referred to in the type of idealistic *concursum*. Thus, the classification of the two crimes as *concursum realis* is appropriate based on the theoretical framework explained by the author in the previous section. The different elements of the two types of criminal acts and the existence of continuing acts are fulfilled through both types of criminal acts.

The Corruption Law does not regulate *concursum*, so corruption crimes committed are considered *concursum*, then the perpetrator may be charged with other articles that have been regulated in Article 263 of the Criminal Code (Fahmi, Akli, 2022). In addition, when a criminal act of corruption is not regulated by special rules such as the Corruption Law, then the action can refer to general rules such as the Criminal Code.

Based on the description above, the perpetrators of the BSPS corruption crime in 2016 in Paguat District, Pohuwato Regency can also be charged with merger articles, namely Article 2 of the Criminal Law and Article 263 of the Criminal Code. The application of Article 263 of the Criminal Code by investigators must also be based on evidence that has been carried out by taking into account the elements of the criminal act, in an effort to provide certainty and justice in the investigation as a form of creating a concept of law enforcement in accordance with existing procedures.

In such construction, the application of Article 263 of the Criminal Code in the 2016 BSPS corruption case in Pohuwato Regency is based on reasons, namely first, referring to the initial action by the perpetrator by committing forgery to arrive at the core action, namely "harming state finances" as an element of corruption, it can already be considered as an act of forgery of signatures has been constructed in Article 263 of the Criminal Code. Therefore, the crime can stand alone.

Second, the core actions carried out by perpetrators by fulfilling the element of "harming state finances", must be understood as acts that can be subject to crime as stipulated in Article 2 of the Corruption Law. However, in our legal system, investigators can entangle perpetrators with *concursum*. Therefore, in conclusion, the application of Article 263 in the BSPS corruption case in 2016 in Paguat District, Pohuwato Regency can be applied with the merger concept.

## Conclusion

Constraints affecting the investigation of corruption crimes in the BSPS program in 2016 consist of the lack of budget allocated for corruption cases not compared to the number of reports or findings of corruption cases, human resources are limited in number both in terms of the number of investigators who are also given the task of investigating other cases and the lack of competence of investigators who understand the qualifications of corruption crimes, as well as inadequate facilities and infrastructure with BSPS corruption cases that require facilities and infrastructure that should make it easier for investigators to solve BSPS corruption cases in 2016. The application of Article 263 of the Criminal Code in the 2016 BSPS corruption case in Pohuwato Regency should be carried out by the method of combining criminal acts, namely *concursum realis* because the perpetrators carried out the initial act of forging signatures regulated in Article 263 of the Criminal Code and then resulted in the birth of corruption crimes charged with Article 2 of the Corruption Law.

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