

Alternative Resolution of Corruption Criminal Cases with Small State Losses through The Application of Restorative Justice Principles

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Abstract. Corruption is one part of special crimes, besides having specific specifications that are different from general crimes, namely the existence of formal criminal law or procedural law deviations. Corruption cases in this country still occur frequently, seemingly dominating the crimes present in Indonesia. This research is descriptive-analytical in nature, presenting phenomena or realities about the mechanism of returning finances and/or state assets resulting from corruption crimes. The research results explain that strong, consistent, and non-discriminatory law enforcement is a key element in ensuring the principles of justice and legal certainty. It also has the potential to benefit society through prevention, which can deter individuals from engaging in corruption. Additionally, it contributes to building public trust in law enforcement efforts and law enforcement agencies. Therefore, public support for law enforcement institutions is strengthening. The development of anti-corruption legislation concepts is expected to assist in the recovery of state losses due to corruption. Furthermore, this punishment concept also offers several benefits in achieving the goals of punishing offenders. With a clear obligation to pay compensation without compromise, perpetrators will work under state supervision to generate funds used to cover losses resulting from their actions.

Keywords: Restorative Justice, Corruption, Restitution

1 Introduction

The corruption cases occurring in Indonesia today are quite serious and have taken root in every layer of society. Corruption practices are becoming more systematic, sophisticated, and widespread from one year to another, both concerning amount and the monetary misfortunes to the state, as well as with regards to quality, which are becoming more methodical, sophisticated, and increasingly pervasive across all segments of society. The heightening, unrestrained defilement will cause experiencing in the public economy as well as in the general existence of the country. The widespread development of defilement in Indonesia has obscured the lines between who, why, and how. Debasement is not generally bound to holders of office and exceptional interests however has turned into an issue both in general society and business areas.[1]

Everyone is aware of how rapidly human interests have developed economically in newer civilizations, so many people are looking for ways to meet their enormous needs in this area. Ultimately, the goal seems to be to enrich oneself by taking advantage of existing authority. In

many countries today, including Indonesia, corruption is a significant problem which is a fairly contemporary method of self-gain.

The wrongdoing of debasement is an infringement of the social and monetary freedoms of the local area, with the goal that criminal demonstrations of defilement can at this point not be named normal violations however have become uncommon wrongdoings (extraordinary crimes), so that in efforts its eradication can no longer be carried out "in the usual way", but "requires extraordinary methods" (extraordinary enforcement).[2]

One symptom of the lack of accountability in the public bureaucracy and policy crisis is corruption. In Indonesia, the frequency of incidents, the amount of state financial losses, and the severity of corruption violations are increasing. Like a disease, corruption in Indonesia has developed through three stages: aristocratic, endemic, and systemic. At the elitist stage, corruption is still a widespread social disease that attacks politicians and elites. At this point, widespread corruption impacts all aspects of society. Everyone catches the same disease when corruption reaches a critical point and spreads throughout the system. Perhaps corruption in this country has become systematic.[3]

The number of cases and defendants in corruption cases increased throughout 2020, according to data from Indonesia Corruption Watch (ICW). During the 2020 pandemic, there was an increase of around 200 cases heard at the Corruption Crime Court, High Court, and Supreme Court. According to ICW researcher Kurnia Ramadhana, the number of cases tried in 2020 was 1.218 cases, an increase from 2019 which was only 1.019 cases. The number of defendants also increased, from 1.125 cases in 2019 to 1.298 cases in 2020.

Criminal law is a body of statutory regulations that regulate criminal cases. The legal structure that regulates activities that can be subject to criminal consequences is known as substantive criminal law or material criminal law, as explained by Mustafa Abdullah and Ruben Ahmad. What is meant by "criminal law" are regulations that contain conditions that must be fulfilled for the state to be able to apply criminal sanctions. The relevant criminal provisions or positive criminal rules—often called *Ius Poenale*—are considered criminal regulations in this context.

Restorative justice is concerned with efforts to heal victims' wounds, help offenders live according to the law, and repair the damage that has arisen in relationships between individuals and in society. Essentially, the concept of restorative justice emphasizes the healing aspect.[4] Jeremy Bentham created the theory of utilitarianism which is one of the most famous theories in the field of law. Bentham's perspective, as presented in the context of this theory, argues that assessments of the quality or badness of a law must be based on the impact or results of its implementation. The Law Enforcement Hypothesis is one idea that answers this problem. Bentham continued, that new legal standards can be considered positive if they have a positive impact on society. On the other hand, a legal regulation can be viewed negatively if the regulation causes injustice and suffering in its implementation, or if inappropriate law enforcement practices cause such negative impacts.

The foundation of restorative justice is the idea that those who suffer the criminal activity should be compensated and that those who commit these crimes should undergo social work treatment and possibly other agreements. The principles of just law, as used in the context of restorative justice, do not simply refer to compliance with legal rules; rather, they also include consideration of things like compensation, equal rights, and balance in all aspects of life.

Requests and examinations in instances of associated criminal demonstrations with debasement should be possible by different policing, like the police, the examiner's office, and the Defilement Annihilation Commission. The police have the position to finish requests and examinations in criminal cases, as made sense of in Article 4 and Article 6 of the Criminal Technique Code. The Examiner's Office additionally has the power to do examinations, by Article 30 of Regulation Number 16 of 2004 concerning the Investigator's Office of the Republic of Indonesia.[5]

Article 6 letter C of Regulation Number 30 of 2002 concerning the Debasement Destruction Commission manages the power of the Defilement Annihilation Commission (KPK), an exceptional body devoted to killing lawbreaker demonstrations of defilement. Cases including policing, state authorities, cases that draw in open consideration, or cases that make misfortunes state funds of somewhere around one billion bucks might require examination or request by the Debasement Annihilation Commission (KPK), by Article 11 of the Law. What's more, the Debasement Destruction Commission has the position to assume command over police examinations as well as the examiner's insightful and legal obligations. The epic showdown can happen in the event that there is a component of debasement in the treatment of the case if the lawbreaker demonstration of defilement is not investigated, if the case is handled for a long term, if the prosecutor tries to protect the perpetrator, or when the prosecution is intervened by the executive, legislative or judicial institutions.[6]

2 Method

The methodology utilized in this exploration is regularizing juridical. This research is a descriptive-analytical study that presents phenomena or symptoms as well as actual conditions regarding the mechanism for returning financial and/or state assets resulting from criminal acts of corruption.[7] In data collection, the researcher examined legislation and literature studies. The research data that has been gathered will be presented in the form of descriptions, consisting of narratives from the statements, information, and declarations provided by the respondents. The laws utilized in this study include:

- a. The Criminal Code.
- b. Unofficial law rather than Regulation (PERPU) Number 24 of 1960 (Regulation No. 24 Prp. Year 1960) concerning the Examination, Arraignment, and Assessment of Defilement Violations.
- c. Regulation Number 3 of 1971 concerning the Annihilation of Debasement Wrongdoings.
- d. Regulation Number 28 of 1999 concerning the Execution of a Perfect and Liberated from Debasement, Intrigue, and Nepotism State Organization.
- e. Regulation Number 31 of 1999 concerning the Annihilation of Debasement Wrongdoings.
- f. Regulation Number 20 of 2001 concerning Alterations to Regulation Number 31 of 1999 concerning the Destruction of Debasement Wrongdoings.
- g. Regulation Number 30 of 2002 concerning the Debasement Destruction Commission.
- h. Regulation Number 46 of 2009 concerning the Debasement Wrongdoings Court.
- i. Regulation Number 4 of 2009 concerning Revisions to Regulation Number 30 of 2002 concerning the Defilement Destruction Commission.

- j. Regulation Number 19 of 2019 concerning the Second Correction to Regulation Number 30 of 2002 concerning the Debasement Destruction Commission.

3 Result and Discussion

3.1 Enforcement of Criminal Law Against Perpetrators of Corruption Crimes with Small Values in Indonesia Through the Criminal Justice System in Indonesia

It is not difficult to prosecute perpetrators of criminal acts of corruption in Indonesia using the restorative justice model. Several studies have shown that this idea not only addresses the impact of illegal activities but also embodies the values that Indonesian culture upholds in resolving legal disputes in the country's justice system. Therefore, it makes sense to investigate and apply the concept of restorative justice in Indonesian positive law.

Handling crime through the criminal law system and corporal punishment against perpetrators is an approach that has existed since ancient times and is considered a classic method even along with the development of human civilization. Within a philosophical framework, the criminal and punitive approach is often referred to as the "classical philosophy of crime control." However, recently, this approach has become the subject of debate, especially when looking at its historical context. The history of criminal convictions or sanctions often reflects treatment that is considered cruel and over the line when viewed from today's perspective.

Hogan and Smith The essentially indeterminate justification of criminal law, based on the idea that people have free will to act, gave rise to the application of punishment in the legal system. The premise of criminal behavior is free will. Therefore, the indeterminism view holds that criminal punishment is necessary as a response to human freedom of choice. The application of criminal punishments such as the revocation of independence has been proven to have more detrimental impacts than good impacts as human civilization and time progress. These adverse impacts include things such as dehumanization, loss of dignity, and stigmatization of those found guilty. In addition, the use of public funds and resources for corporal punishment of offenders rather than for rehabilitation and recovery after offenses is another detrimental impact. Repairing the damage or bad consequences resulting from a crime is often more important in criminal proceedings than limiting the defendant's freedom.[8]

The main objective of this law, namely to eradicate corruption in Indonesia through the protection of state assets and wealth, appears to have transcended the philosophy and theories of punishment, heavily influenced by retributive justice, in the context of corruption crimes. Securing state funds is one of the key factors in the success of this law. Recently, it has been found that several corruption defendants who have caused significant losses to the state have received various privileges during their sentences. Their inclusion in the criminal justice system has undermined law enforcement morality, leading to the emergence of new crimes. Even during their imprisonment, corrupt actors bribe prison officials with their money to obtain luxurious accommodations.

Furthermore, it is often companies that commit crimes involving corruption, not individuals. The ideas of retributive justice and indeterminism in punishing corporate corruption perpetrators seem unacceptable in this situation. There are several challenges in efforts to

safeguard public funds tainted by corporate corruption. The use of a retributive justice approach renders the punishment of corporations in corruption cases irrelevant in terms of substance, structure, and legal culture.

This strategy focuses on the restoration of social and economic justice while providing punishments and sanctions commensurate with the severity of the legal violations. Corruption cases causing significant losses to the state must be processed through a standardized legal process, including investigation, prosecution, and trial. Therefore, to ensure more effective resource utilization and alignment with principles of justice, this research seeks to provide a framework that can help determine the appropriate resolution of corruption cases based on the level of losses incurred. Additionally, the concept of accessible, speedy, and affordable justice is embraced by restorative justice strategies in law enforcement against corruption crimes with minimal state losses. This is because restorative justice, unlike retributive justice, offers a simpler, faster, and more economical way to address criminal offenses.

By the principle of *ultimum remedium*, law enforcers can use restorative justice methods to eradicate criminal acts of debasement that make insignificant misfortunes the state. The legitimate rule known as "ultimum remedium" shows that the use of criminal regulation is the final hotel in settling lawful issues. The use of criminal regulation is limited to situations where other measures are deemed ineffective. In other words, using criminal law is a last resort. Long-term initiatives to prevent corruption include various strategies and legal frameworks that form the reason for carrying out policing. To conquer the issue, a unique association, for example, the Defilement Destruction Commission (KPK) has been framed.

The truth in endeavors to kill debasement in Indonesia is that in 2022, Indonesia's Defilement Discernment List (IPK) is positioned 96th out of 108 nations, experiencing an increase of one rank compared to 2021. However, the CPI is still quite low, namely ranked 38th in Indonesia scale 0-100. The punishment process in enforcing corruption laws has proven to be effective, but the recovery of state losses has not been effective and efficient. As a result, more prisoners are in prison, bribes and gratuities have increased, the quality of health services in prison has decreased drastically, and the costs of incarceration have increased significantly. Furthermore, there is a mismatch between the objectives of punishment and the recovery of state assets.[7][9]

From the perspective of restorative justice, criminal acts are considered as a violation of humans and relationships between humans. Restorative justice can be implemented through various means, such as mediation between victims and perpetrators, family consultations, and services in the community that aim to restore both victims and perpetrators.[10] The use of the standards of supportive equity is extremely subject to the general set of laws embraced by a country. On the off chance that the general set of laws doesn't support the execution of helpful equity, then, at that point, embracing it can't be constrained.[11] Hence, it tends to be reasoned that the standards of helpful equity are one choice in planning a country's general set of laws. Even if a country does not follow it, it is still possible to apply the principles of restorative justice to provide justice, legal certainty, and greater legal benefits.

3.2 The concept of Restorative Justice Applied in Resolving Cases of Small-Scale Corruption.

Even when the amount of money at stake is relatively small, corruption offenses show that the impact is very serious. This small amount of corruption, which occurs in routine transactions such as giving a small bribe, is often referred to as "everyday corruption." Although seemingly insignificant, these unethical activities combined can erode integrity and trust in the public sector, private sector, and society at large.

The most vulnerable segments of society are sometimes directly affected by petty corruption. For example, if government employees who handle the distribution of social assistance accept small bribes, the money may not reach the people who need it. It can lead to high levels of social injustice and poverty.

Rules for dealing with criminal demonstrations of defilement that cause state monetary misfortunes of not exactly IDR 50 million have been given by the Principal legal officer's Office to its staff, accompanied by a plan to recover these losses. Burhanuddin claims this strategy aims to streamline, speed up, and reduce the costs of legal procedures. Burhanuddin, for example, stated that administrative settlements could be used to resolve criminal cases involving village finances worth less than IDR 50 million. He explained that in situations like this, settlement can be done by recovering losses through administrative procedures. The Inspectorate will assist parties who commit criminal acts of corruption so that they do not commit similar criminal acts in the future. However, Burhanuddin emphasized that this technique is only limited to situations where the country suffers moderate losses and is not used often.

It is important to consider that state restitution constitutes a significant part of the punishment for corrupt officials when using restorative justice strategies. If the convict cannot compensate for his losses, the court can still choose to impose a subsidiary sentence or a substitute prison sentence as a substitute for compensation. From the perspective of restorative justice, the state should provide empowerment to corrupt individuals by using their abilities through forced labor, even after the perpetrator has lost all his property at auction. This is because corrupt individuals usually have strong skills. The state can confiscate the results of forced labor if the perpetrator is unable to provide compensation to the state for the losses incurred.

It is hoped that by incorporating this thinking into the law on eradicating corruption, state losses caused by corruption will be repaired or restored. Apart from that, there are many advantages to achieving the goal of punishing offenders with a punishment concept like this. The offender will be under the supervision of the state while working to earn money to make up for the losses resulting from their actions, and they must return the compensation money. The essential goal of killing debasement in Indonesia can't be isolated from the worldview of retributive equity which is the lawful reason for annihilating crook demonstrations of defilement. The soul of safeguarding public abundance must grounded on the standards of helpful equity, which emphasizes rehabilitation from acts of corruption rather than imprisoning corrupt individuals.

The idea of supportive equity in condemning culprits of defilement can be carried out by reinforcing standards that change the arrival of state misfortunes from extra discipline into the primary punishment. Additionally, to anticipate perpetrators who are unable to pay these losses, the concept of forced labor can be applied as an alternative to imprisonment for corruption offenders.

Revising corruption laws is crucial to promptly enable the implementation of the restorative justice paradigm into new legal norms. Furthermore, comprehensive reforms in criminal law are also necessary, as Indonesian criminal law fundamentally follows a retributive justice paradigm, which is currently considered overly harsh and exceeding limits.

Efforts to address criminal acts are an integral part of the endeavor to protect society. The government has taken various actions, including repressive measures, to combat corruption. However, some members of society still believe that repressive actions alone are sufficient to address corruption, as they believe these actions can deter corrupt practices. However, the current social, economic, and political conditions have created an environment conducive to widespread, systematic, and structured corruption in various sectors of life, including state institutions, governance, state-owned or regional enterprises, the banking and financial sector, as well as various other aspects of community life.

As human life and civilization develops, it turns out that the application of prison sentences has more negative impacts than positive impacts. These negative impacts include dehumanization, detainee abuse, and social stigma. Apart from that, the implementation of prison sentences also uses up resources and state budgets that could be used to focus on efforts to recover from the consequences of crimes, rather than just focusing on physical punishment against criminals. In many criminal cases, it is important to prioritize repairing and redressing the negative consequences from the crime rather than simply depriving the criminal of the individual's freedom.

With regards to criminal demonstrations of debasement, apparently the way of thinking and hypothesis of discipline which is vigorously impacted by the retributive equity approach is at this point not pertinent to the primary goal of the law of destroying defilement in Indonesia. The ongoing center is safeguarding the nation's resources and riches. In a few cases, corruption convicts who have caused large losses to the state's finances have succeeded in taking advantage of the conviction process for their gain. Their presence in the criminal system tends to damage the morale of law enforcers, which can trigger new criminal acts in the end. Corruption convicts often even use the proceeds of their corruption to bribe officers at correctional institutions to obtain luxury facilities while serving their sentence.

Apart from that, in criminal acts of corruption, the perpetrators are often not individuals, but corporations. In this context, the paradigm of indeterminism and retributive justice in punishing corporations involved in corruption is very irrelevant. In reality, several obstacles arise in efforts to protect state finances that have been harmed by corporations. Corporate punishment in corruption cases, both in terms of substance, structure and legal culture, is no longer by the approach to the concept of retributive justice.

There needs to be extraordinary concern in regulating criminal acts of corruption when executing the idea of helpful equity in the Indonesian law enforcement framework. The accompanying components are generally engaged with the execution of supportive equity in defilement cases:

- 1) Considering the Level of Corruption: Crimes related to corruption often result in significant losses for the government and society. Therefore, it is necessary to carefully consider whether the restorative justice strategy is appropriate for these corruption cases. Corruption crimes that cause significant losses or high levels of crime may not always be the right choice for a restorative approach.

- 2) Considering the Involvement of Relevant Parties: Restorative Justice requires the active involvement of victims, perpetrators, and related communities. The potential involvement of individual corruptors in the restoration process needs to be taken into account in corruption situations. The implementation of Restorative Justice may not be practicable or effective if perpetrators refuse to participate, admit their wrongdoing, and strive to rectify the damages caused.
- 3) Recovery of Losses: Recovering lost wages is an essential component of implementing restorative justice in corruption cases. Recovery of stolen property or losses suffered by the government or related parties should be the responsibility of the corrupt perpetrators. In a restorative approach, the process of healing losses can be facilitated through agreements and negotiations.
- 4) Transparency and Accountability: Although restorative justice heavily emphasizes healing and rehabilitation, criminal corruption cases must still adhere to principles of transparency and accountability. To ensure justice is upheld and impunity is avoided, public oversight and proper legal procedures remain crucial.

The application of Restorative Justice in corruption trials in Indonesia is a process that continues to develop and requires more focus. Restorative strategies, which prioritize reconciliation and rehabilitation, can provide a successful alternative to traditional methods of dealing with corruption cases, but only if given proper thought and oversight. Its rule does not fully implement the principles of restorative justice. There is a one-month time limit for making replacement money payments in cases that have been decided, as per Regulation No. 31/1999 related to Regulation No. 20 of 2001 concerning Destruction of Debasement Wrongdoings. The court's choice is conclusive and restricting, in this way in the event that the respondent doesn't pay the substitution assets inside the specified period, the public prosecutor can confiscate his assets and sell them at auction to pay this amount. The length of the prison sentence cannot exceed the basic sentence if the perpetrator does not have sufficient assets to cover the cost of the fine.

As indicated by this norm, recuperation of state misfortunes is as yet seen as an extra infringement, not a significant infringement. Aside from that, state misfortunes can be covered by sending the culprit to jail past the essential sentence. Making compensation of state misfortunes a capital wrongdoing should be viewed as with regards to supportive equity systems. Basically, the adjudicator actually has the choice to force an auxiliary sentence or a substitute jail sentence in the event that the culprit can't redress the state for losses, provided that the compensation for losses is still considered an additional sentence. Restorative justice advocates believe that the state should empower corrupt individuals through forced labor based on their skills if they are unable to pay the losses after their entire possessions are auctioned off because dishonest people tend to be highly skilled individuals. If the state experiences losses due to forced labor and the prisoner is unable to pay, the state can take the profits.

It is expected that the development of this concept in anti-corruption law can restore state losses caused by corruption. Apart from that, this concept of punishment also has many benefits in achieving the goal of punishing criminals. With a clear obligation to return compensation without compromise, a convict will work under the supervision of the state to generate money to cover the losses caused by his actions.

According to Liebmann, the fundamental elements of restorative justice are as follows:

- 1) Emphasize the importance of helping victims get back on their feet.

- 2) Explain that the perpetrator must face the consequences of his actions.
- 3) Encourage open communication as a means for victims and perpetrators to gain mutual understanding.
- 4) Take necessary steps to repair and address losses caused by unlawful actions.
- 5) Make sure criminals know what to do so they don't commit similar crimes in the future.
- 6) Involve the surrounding environment in helping victims and perpetrators to heal together.

The criteria for terminating cases based on the principle of Restorative Justice as regulated in Police Regulation Number 8 of 2021 include substantive and procedural requirements. The substantive standards encompass provisions that :

- 1) must not cause public disturbance or rejection.
- 2) must not lead to social conflicts.
- 3) must not contribute to creating division within society.
- 4) oppose radicalism and separatism.
- 5) do not involve recidivists as determined by court decisions.
- 6) involve acts not considered terrorism, yet still constitute unlawful acts against national security, corruption, and acts threatening public life.

While the formal requirements stipulated in Article 6 paragraph (1) of Police Regulation Number 8 of 2021 include:

- 1) There is reconciliation between both parties, except for drug crimes.
- 2) Fulfillment of the privileges of casualties and obligations of culprits, with the exception of medication wrongdoings.

In the context of criminal acts handled by the police and meeting the formal and material requirements by Police Guideline Number 8 of 2021, the harmony being referred to should be reported in a nonaggression treaty letter endorsed by completely related parties. In addition, the conditions for fulfilling victims' rights, such as compensation for losses, return of goods, or compensation for damage caused by criminal acts, must also be fulfilled by the provisions in Article 6 Paragraph (3) of Police Regulation Number 8 of 2021.

In practical terms, after imparting information to the involved parties regarding the advantages of adjudicating a criminal matter through a restorative lens, they proceed to select the specific Restorative Justice framework to be employed by law enforcement authorities in addressing the case. The Restorative Justice model that is often used in the process of discontinuing cases at the Police and Prosecutors level is similar to mediation between victims and perpetrators as well as family and community conferences.

4 Conclusion

The Corruption Eradication Law (UU PTPK) still adheres to the concept of retributive justice concerning the confiscation of wealth resulting from corrupt practices, while the form of criminal accountability for the confiscation of wealth from corruption perpetrators serves merely as an alternative and complementary additional penalty, lacking support for state loss recovery efforts. The difficulty in addressing state misfortunes because of defilement has

provoked answers for resolve them, one of which includes applying the idea of supportive equity in specific debasement cases, considering the extent of the misfortunes and the idea of the bad demonstrations.

According to a juridical viewpoint, the idea of supportive equity in defilement cases can be applied inside Indonesian regulation. Supportive equity in the condemning of debasement culprits can be executed through the support of guidelines in regards to the arrival of state misfortunes, changing from extra punishments to essential punishments. Through this idea, a shift happens from "following the suspect" to "following the cash and following the resource," in a roundabout way lessening the abundance of debasement culprits and helping the state.

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