

# Juridical Review of the Application of the Principles of Restorative Justice to Criminal Acts of Corruption in the Framework of Returning State Losses

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**Abstract.** The crook demonstration of defilement is one piece of an exceptional lawbreaker act, as well as having specific determinations that are not the same as broad lawbreaker acts, in particular by deviation from formal criminal regulation or procedural regulation. There are still many cases of corruption in this country that seem to dominate crime in Indonesia. This research is descriptive-analytical and 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. The assessment results show that (1) The usage of the possibility of steady value in criminal exhibits of pollution to build up the purpose in returning state hardships by guilty parties of criminal showings of degradation ought to be apparent in the Round Letter of the Representative Head legitimate official for Novel Infringement Number: Letter from the Head of Police No. B113/F/Fd.1/05/2010, dated May 18, 2010, and Pol. B/3022/XII/2009/sdeops concerning the possibility of Elective Discussion Objective (ADR) (2) Speculatively and juridically, the possibility of accommodating value in criminal exhibits of corruption can be applied in Indonesian guideline.

**Keywords:** Restorative Justice, Corruption, Return

## 1 Introduction

Defilement cases right now happening in Indonesia are very troublesome and have flourished in each degree of society. Defilement rehearses are turning out to be more orderly, modern, and boundless from one year to another, both as far as amount and how much state monetary misfortunes as far as quality, which is turning out to be more calculated, refined, and filling in scope in all pieces of society. The expansion in uncontrolled defilement will cause hopelessness in the public economy as well as in the existence of the country and state all in all. The wild development of criminal demonstrations of debasement in Indonesia has obscured the lines between who, why, and how. Debasement is not generally restricted to officeholders and exceptional interests however has turned into an issue in both people in general and business areas.[1]

Everybody knows about how quickly human interests have grown financially in fresher civilizations, such countless individuals are searching for ways of meeting their huge requirements around here. At last, the objective is by all accounts to improve oneself by exploiting existing power. In many countries today, including Indonesia, corruption is a significant problem. This is a fairly contemporary method of self-gain.

The wrongdoing of debasement is an infringement of the social and financial privileges of the local area, so criminal demonstrations of defilement can at this point not be named standard violations however have become exceptional wrongdoings, so in endeavors its destruction can never again be done "in a customary way", yet "requires phenomenal implementation".[2]

Corruption is one sign that there isn't enough accountability in the public bureaucracy and policy crisis. In Indonesia, the recurrence of occurrences, how much state monetary misfortunes, and the seriousness of debasement infringement are expanding. Like a sickness, debasement in Indonesia has created through three phases: distinguished, endemic, and foundational. At the elitist stage, defilement is as yet a far and wide friendly infection that assaults government officials and elites. At this point, all facets of society are impacted by widespread corruption. When corruption reaches a critical point and spreads throughout the system, everyone contracts the same disease. Maybe defilement in this nation has become methodical.[3]

The quantity of cases and respondents in debasement cases expanded all through 2020, as per information from Indonesia Defilement Watch (ICW). During the 2020 pandemic, there was an increment of around 200 cases heard at the Debasement Wrongdoing Court, High Court, and High Court. As per ICW specialist Kurnia Ramadhan, the quantity of cases attempted in 2020 was 1,218 cases, an increment from 2019 which was just 1,019 cases. The number of cases with defendants also increased, reaching 1,298 in 2019.[4]

Regulation Number 31 of 1999 as updated by Regulation Number 20 of 2001 concerning the Destruction of Defilement Wrongdoings explains the importance of the nation's economy. Joint endeavors in light of the rule of connection or joint endeavors that work freely and by focal and territorial government strategies as well as the arrangements of related regulations and guidelines to guarantee flourishing and prosperity are a quality of the country's economy.

For this situation, with respect to the annihilation of defilement, the earnestness of the Indonesian government should be visible to the issuance of different guidelines or arrangements that are straightforwardly connected with defeating criminal demonstrations of debasement.

The fact that there are still several cases of corruption in the country, which appear to dominate crime in Indonesia, is widely known. As per Indonesia Debasement Watch (ICW), 1,298 defilement respondents and 1,218 debasement cases all through 2020 brought about state misfortunes surpassing IDR 56.7 trillion. The pay cash got back to the State for misfortunes in defilement cases in 2020 was just IDR 8.9 trillion of the absolute State misfortunes.

These State misfortunes are returned through extra crook sentences managed in Regulation Number 31 of 1999 concerning the Destruction of Debasement Violations, explicitly in Article 18 Passage (1), in particular in regards to the arrival of State funds, which peruses as follows:

Aside from extra punishments as planned in the Crook Code, extra punishments are:

- a. Confiscation of obvious or slippery portable property or steady property used for or obtained from criminal shows of corruption, including associations guaranteed by convicts where criminal exhibitions of debasement were done, as well as product that displace these items
- b. Payment of replacement cash whatever amount as could be anticipated identical to the assets got from criminal shows of contamination;

- c. Closure of all or part of the association for a most outrageous season of 1 (one) year;
- d. Revocation of all or part of explicit opportunities or removal of all or part of explicit benefits that the Public authority has or can provide for convicts.

Policing recuperation of criminal resources are different sides of the coin that can't be isolated in annihilating lawbreaker acts, particularly defilement. White-collar crime perpetrators need to manage and protect the proceeds of crime because it is based on calculations or calculations.[5] This crime is called that because it was committed by intellectuals who were well-off and highly educated. In other words, this crime was committed by someone who was very honorable and had a high social status in his work.

Recuperating the resources of degenerate culprits isn't an objective or need in Indonesia's enemy of defilement regulations, which put more noteworthy accentuation on discipline for the people who commit degenerate way of behaving. To kill this issue of defilement, the arrival of state resources should be completed cautiously, by every single relevant regulation and guidelines, and should be done by unbiased policing with the goal that it can give an obstacle impact to ruin people and not favor one side. Yet again captured. funds from the state to cover losses that still need to be paid for.[6]

As it expects to safeguard law and order in a general public where nobody is exempt from the rules that everyone else follows, recuperation of taken state misfortunes, otherwise called recuperation of taken resources, is basic to the development of emerging nations. Hence, one of the goals of discipline for this situation, both as a bunch of techniques and as a work to uphold the law through different explicit legitimate instruments, is the recuperation of property.

As of now, Indonesia's enemy of defilement regulations don't predictably address the principal objective of destroying debasement, specifically safeguarding state resources by giving pay to the people who lose cash because of debasement. As far as rebuffing corruptors, Indonesia's enemy of debasement regulation keeps on following the retributive equity model. Accordingly, the discipline of corruptors is not generally spurred by something besides revenge.[7] It is as per Article 4 of Guideline no. 31 of 1999 as reexamined by Guideline no. 20 of 2001 which communicates that remuneration of mishaps to state reserves or the state economy doesn't kill the discipline of guilty parties of criminal goes probably true to form in Article 2 and Article 3. For this present circumstance, it will in general be seen that the guidelines of retributive value center around the genuine discipline of the guilty parties of pollution rather than focusing in on recovery for the consequences of the bad behavior.

## **2 Methodology**

The philosophy used in this assessment is normalizing juridical. This investigation is connecting with logical, specifically assessment that demonstrates peculiarities or side effects as well as genuine circumstances in regards to the component for returning monetary or potentially state resources coming about because of criminal demonstrations of corruption.[8] moreover, this exploration likewise tries to uncover the impediments and issues of a specialized lawful nature that happen to state lawyers in their obligations to recuperate state funds and additionally resources. This exploration utilizes information sources as auxiliary information. In gathering information, analysts explored legal guidelines and writing studies. The examination information that has been gathered will be introduced as a depiction, as a portrayal of the data, data, and explanations given by the respondents.

### 3 Result and Discussion

#### 3.1 Regulation of Corruption Crimes in Indonesia

The reality of human behavior in social relations, known as corruption, is considered deviant and dangerous to society and the state. The phrase "corruptors shout corruptors" refers to the fact that society, including the corruptors themselves, condemns this behavior in all its forms. Public condemnation of corruption is seen as a criminal act in the legal formulation, by the meaning of the law. Corruption is even considered in Indonesian criminal law politics as a type of criminal act that needs to be handled specifically and subject to very heavy penalties.[8]

Despite the fact that in the Lawbreaker Code there is no express utilization of debasement phrasing in the plan of the offense, there are a few arrangements that can be caught and grasped generally as a detailing of criminal showings of pollution. The game plans for criminal shows of debasement in the Hoodlum Code are managed independently in a few articles in three parts, in particular:[9]

Until this point, there are something like 7 (seven) extraordinary regulations that are still normatively legitimate and can be utilized to forestall and kill criminal demonstrations of debasement [9]

As per Alfitria, as a general rule, the development of demonstrations of defilement is driven by two inspirations. To start with, is natural inspiration, specifically the desire to acquire fulfillment coming about because of demonstrations of debasement. In this instance, the perpetrator believes that when he is successful, it gives him satisfaction and comfort. In the following stage, debasement turns into a typical way of life, propensity, and custom/culture. Second, extraneous inspiration, to be specific the consolation of debasement from outside the culprit which is definitely not an innate piece of the culprit himself. This second motivation, for instance, may be sparked by financial concerns, a desire to attain a particular position, or an obsession with taking shortcuts to raise one's standard of living or advance one's career.

In some detail, corruption is caused by three things: [16]

- a. First, greedy corruption. This defilement ends up peopling who don't require it, don't have financial desperation, perhaps they are even rich. Their elevated place, huge compensation, rich house, and expanding prominence however relentless influence make them be engaged with degenerate practices.
- b. Second, defilement by need (need) debasement is done due to desperation in satisfying essential necessities.
- c. Third, debasement by some coincidence (opportunity). This defilement is done in light of the fact that there are extraordinary chances to commit debasement, potential chances to get rich rapidly through easy routes, and valuable chances to rapidly get advanced immediately, generally, this is upheld by frail hierarchical frameworks, low open responsibility, careless public oversight, and remiss policing is exacerbated by legitimate authorizations that are not an obstacle.

Corruption's method of operation is becoming increasingly sophisticated and disguised in a way that conceals its existence. The following are some typical methods of corruption that can be found in Indonesia:[17]

- a. Giving bribes or kickbacks (bribery).

An illegal act that is committed by people inside or outside of a company to gain personal or collective benefits at the expense of third parties is known as fraud. The “fraud has occurred” category is generally used to describe the level of fraud in the planning, organizing, executing, and monitoring of operations. Increasing the budget for handing over activities and using state property for personal interests is an action that has a big impact on the intensity of fraud. The areas of action recognized in the class "regular demonstrations of misrepresentation", to be specific the areas of authorizing, acquirement of labor and products, the appointment of territorial head staff, support of public offices, receipt of local pay, oversight, and responsibility of provincial heads.

b. Forgery (Fraud).

Counterfeiting is an act of imitation to obtain the maximum possible profit.

c. Blackmail (Extortion).

Extortion is when someone is forced to pay or provide a certain amount of money, product, or other form in exchange for the actions of a public official or not. Physical threats or violence may accompany this behavior.

d. Abuse of Position or Authority (Abuse of Discretion).

Maltreatment of position or authority is the demonstration of utilizing the power one needs to do activities that blessing or show partiality towards gatherings or people while being oppressive towards different gatherings or people.

d. Nepotism (Nepotism).

On the off chance that Jhon M. Echols characterizes nepotism as a thing that focuses on family members, particularly in giving positions, then the Purwadarminta word reference characterizes nepotism as the act of giving positions exclusively to dear companions or relatives. The word nepos in Latin, and that implies grandson, is the beginning of the word nepotism. Nepotism is the behavior of prioritizing close friends, family, and political party members over others without taking into account the necessary conditions. Thus, on the off chance that the family meets the necessities, it doesn't comprise nepotism in that sense.

### **3.2 Concept of Applying Restorative Justice Principles in Corruption Eradication Laws**

The problem of criminal acts of corruption is an extraordinary crime or is often considered an extraordinary crime. In dealing with corruption cases, the state has a budget allocated for prosecuting criminal demonstrations of debasement (examinations/examinations) by Policing, namely IDR 382.8 billion. However, the efforts made to eradicate corruption by the government are currently still not being carried out seriously. This can be seen through reports on the trend in prosecuting corruption cases which continues to increase with total state losses due to corrupt practices throughout 2020 reaching IDR 56.7 trillion. Based on losses that tend to fluctuate, Indonesia is starting to apply the idea of helpful equity as an answer for conquer state misfortunes. The idea of helpful equity was ratified through UNCAC contained in Law No. 7 of 2006.

Restorative justice is a type of criminal responsibility that focuses on repairing and restoring the world to the way it was before the crime was committed. This philosophy

needs to be taught to law enforcement officials, especially regarding criminal acts of corruption. According to Welgrave, the philosophy of restorative justice refers to any action that is focused on upholding justice by providing compensation to victims of criminal acts for the losses they have experienced (Purwaning M. Yanuar, 2007: 90). The process of tracing, freezing, confiscating, and finally returning corrupted state assets about returning assets in criminal acts of corruption is in line with the idea of restorative justice which emphasizes compensation for losses caused by criminal acts of corruption. criminal act.

In 2016 the Sacred Court gave Choice Number 25/PUUXIV/2016, the items in the choice changing the proper offense in Article 2 segment (1) and Article 3 of Guideline Number 20 of 2001 concerning the Obliteration of Debasement Infringement into a material offense. C.S.T. Kansil states that material offenses will be offenses whose detailing centers around results that are denied and deserving of regulation, while formal offenses are offenses whose formulation focuses on actions that are prohibited and punishable by law (C.S.T. Kansil, 2007: 40 ). With the change from formal offenses to material offenses, this implies that the component of mischief to state funds is not generally perceived as a gauge (expected misfortune), however should likewise be genuinely perceived that it has happened or is genuine (real misfortune) in criminal demonstrations of debasement (Agus Sahbani, 2017). Along these lines, it very well may be seen that somebody can be said to have perpetrated a crook demonstration of debasement and can be dependent upon criminal assents assuming the individual's activities make genuine misfortunes the state's funds or the state's economy.

The idea of supportive equity in the law on killing defilement has been carried out in Indonesia, which should be visible through the Letter from the Head of Police and the Round Letter from the Appointee Principal legal officer, the explanation of which is as follows:

- a) Letter from the Chief of Police No. Pol. B / 3022 / parties involved;
- b) Circular Letter of the Representative Principal legal officer for Unique Wrongdoings Number: B113/F/Fd.1/05/2010 dated 18 May 2010, one of the places in its items is a guidance to all High Examiners' Workplaces which contains an allure that in instances of associated criminal demonstrations with defilement, the public The people who know that they have reimbursed the State's misfortunes should be viewed as not to be followed up in light of the standard of helpful equity. To consummate the idea of supportive equity in criminal demonstrations of defilement, the Delegate Principal legal officer's Round Letter was again completed by the Indonesian Examiner's Office with the issuance of SE Jampidsus Number: B765/F/Fd.1/04/2018 on April 20, 2018, concerning Specialized Directions for Taking care of Stage Debasement Wrongdoing Cases Examination, which is an examination, isn't simply restricted to tracking down occurrences of criminal demonstrations of defilement as acts illegal yet in addition endeavors should be made to figure out how much state monetary misfortunes.

Circular issued by the Deputy Attorney General's Office for Special Crimes Number: B113/F/Fd.1/05/2010 regarding priorities and achievements in handling corruption cases on 18 May 2010. The circular contains orders to Heads of Prosecutors throughout Indonesia to prioritize Corruption cases which are big fish (large scale, seen from the perpetrator's value of losses), and Corruption cases which are carried out continuously (still going on). This Circular emphasizes that for people who have committed criminal

acts of corruption with small losses (under IDR 100,000,000) and have returned the losses, the idea of helpful equity can be utilized. There is a requirement for a criminal debasement case with a misfortune worth of Rp. 100,000,000 and under was settled beyond court utilizing a supportive equity approach, based on the consideration that handling corruption cases requires a significant amount of time, money, and energy, along with the trial examination process which must be carried out in the Provincial Capital (IA Court). The considerations used to apply the concept of restorative justice in criminal acts of corruption consist of:

- a) With the exclusion of the prosecution of corruption cases with a loss value of Rp. 100,000,000 and below, then law enforcement officials (especially prosecutors) can concentrate more on handling large corruption cases.
- b) The costs incurred in handling corruption cases are not commensurate with the value of state losses.
- c) The fundamental principles of UNCAC 2003 prioritize returning state financial losses (asset recovery), not retaliation against perpetrators.

One of the components that the Indonesian Examiner's Office considers in deciding if to make a move in carrying out the idea of supportive equity is how much state monetary misfortunes. The little state misfortunes are obviously unbalanced to how much cash the state spends on the law enforcement framework; This energizes the utilization of a helpful equity framework which expects to give equity to the two culprits and casualties. Taking into account the enormous misfortunes brought about, this is by the bearing of the Appointee Principal legal officer of the Republic of Indonesia with respect to dealing with and deciding needs of defilement cases.

The meaning of supportive equity in the discipline of criminal demonstrations of debasement doesn't dispose of wrongdoing yet rather focuses on the arrangement of authorizations that emphasis on wrongdoing as an answer for resolve criminal demonstrations of defilement as rebuilding. Settlement of defilement cases through supportive equity stays by Standard Working Systems (SOP) where the treatment of criminal demonstrations beginning from the period and others alludes to the Republic of Indonesia Head legal officer's Guideline Number: PERJA-039/A/JA/10/2010 (Muhammad Gempa Awaljon Putra, 2018: 176), this treatment incorporates (Habib Ali, 7:2020):

- a) Data collection and information materials are collected as part of the investigation process.
- b) In this cycle, it should likewise be resolved that how much state monetary misfortunes is resolved exclusively by great computations, in a joint effort with the Interior Administrative Device (APIP)/BPK/BPKP/Public Bookkeeper.
- c) If the parties involved have returned state finances, this must be shown through proof of deposit to the State/regional/village/person treasury, taking into account the previously determined limits.
- d) Exposure exercises are done to decide the demeanor and the job of the initiative, for this situation specifically the Principal legal officer of the Republic of Indonesia/Top of the Great Examiner's Office/Top of the Locale Investigator's Office/Top of the Part of the Region Investigator's Office is required on the grounds that it isn't controlled by regulation however just a type of circumspection.

The supportive equity framework doesn't make a difference to all types of defilement in light of the fact that the main things that can be settled are debasement cases that are excluded from the criminal class and the limits specified in Law of the Republic of Indonesia Number 31 of 2001 of 1999 concerning the Destruction of Debasement Violations. Criminal Demonstration, to be specific Law of the Republic of Indonesia Number 20 of 2001 concerning Corrections to Law of the Republic of Indonesia Number 31 of 2001 of 1999 concerning the Structure and Worth of Misfortunes in Defilement Cases.

Returning all the returns of a lawbreaker demonstration of debasement got by the culprit can kill the component of mens rea or insidious expectations inside the culprit so that expecting the guilty party returns every one of the profits of an evildoer exhibit of debasement at the assessment level, the expert can communicate that the case can't be raised to the assessment stage, while At the assessment level, inspectors can give an Assessment End Solicitation (SP3). One justification for giving SP3 considering Article 109 of the Criminal Framework Code is that it's everything except a culprit act. The appearance of all profits from criminal demonstrations of debasement as well as the abundance created by the culprit has the outcome of losing the unlawful person of the culprit of defilement, one might say that the case is certainly not a lawbreaker demonstration of debasement.

As per Didik Endro Purwoleksono, assuming that all the returns of a crook demonstration of debasement are returned by the suspect or respondent, it tends to be utilized as a component that takes out the legitimacy of criminal regulation, particularly criminal demonstrations of defilement, thereby avoiding the need for prosecution. punishment. (2016): 188 (Didik Endro Purwoleksono). There are the following 3 (three) factors or circumstances that cause a criminal act of corruption to no longer violate the law:

- a) the suspect or defendant does not benefit;
- b) the country is not harmed;
- c) the community is served.

The system for returning state misfortunes under managerial regulation should be visible in Article 59 of Guideline Number 1 of 2004 concerning the State Vault which controls that: ( 1) Legal arrangements should be made as soon as possible to resolve any state or local misfortune caused by someone's carelessness or illegal activity. appropriate greeting 2) The financial officer, non-financier government employee, or other authority whose activities abuse the law or disregard the commitments forced on them straightforwardly hurts state funds, is obliged to make up for the misfortune. ( 3) When they learn that a state loss has occurred as a result of the actions of any party, every head of a state ministry, institution, or regional apparatus work unit can immediately file a claim for compensation.

The component for returning state monetary misfortunes coming about because of somebody's unlawful activities as directed in the Debasement Destruction Regulation and the State Depository Regulation has tremendous contrasts. Assuming under the Defilement Destruction Regulation, state misfortunes are just potential in the event that the sum can be determined, then approved authorities can currently be rebuffed in light of the fact that the crook demonstration of debasement in Article 2 is formed officially so that a person can be convicted simply by fulfilling the elements of a corruption offense.



This is not quite the same as the most common way of returning state misfortunes managed in the State Depository Regulation which utilizes regulatory legitimate means by forcing charges on the financier, non-financial officer government employees, or different authorities who have committed acts hindering to state funds to remunerate state misfortunes through a proclamation of capacity and/or an affirmation that state misfortunes are his obligation and the letter has lawful power to complete guarantee seizure in the event that the individual concerned doesn't repay the state for misfortunes.

#### 4 Conclusion

The PTPK Regulation actually applies the idea of retributive equity about the seizure of resources coming about because of criminal demonstrations of defilement, while the type of criminal responsibility for seizure of resources of culprits of criminal demonstrations of debasement is just an extra lawbreaker act that is option and corresponding and doesn't uphold endeavors to recuperate state misfortunes. The presence of challenges in beating state misfortunes because of criminal demonstrations of defilement has led to answers for resolve them, one of which is by applying the idea of helpful equity in settling specific instances of criminal demonstrations of debasement by focusing on the worth of the misfortunes and the type of the crook demonstration of defilement.

Juridically, the idea of helpful equity in criminal demonstrations of defilement can be applied in Indonesian regulation. The adjustment of idea from retributive equity to helpful equity doesn't frustrate the utilization of this idea as long as it doesn't challenge existing guidelines. The use of the idea of supportive equity in criminal demonstrations of debasement to reinforce the point of returning state misfortunes by culprits of criminal demonstrations of defilement should be visible in the Roundabout Letter of the Delegate Head legal officer for Exceptional Violations Number: B113/F/Fd.1/05/2010 dated 18 May 2010 and Letter from the Head of Police No. Pol. B/3022/XII/2009/sdeops with respect to the idea of Elective Question Goal (ADR). Supportive equity in criminal demonstrations of defilement puts more accentuation on fixing the misfortunes caused. The idea of helpful equity in the discipline of culprits of criminal demonstrations of debasement can be applied through reinforcing the principles for returning state misfortunes from extra violations to fundamental wrongdoings. Through this idea, there is a change from following the suspect to following the cash and chasing after the resources which will in a roundabout way ruin the culprits of criminal demonstrations of debasement and the state will benefit.

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