



## The Effectiveness Of Using Restorative Justice Against Minor Corruption Crime In Achieve The Ultimum Remedium

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### Abstract

Corruption is a habit that has been going on continuously among the people of Indonesia. Not only does it harm state finances, but it also injures the social and economic rights of the community, so corruption is classified as a great crime and requires extraordinary measures. So in the context of rescue and reform that requires a state that is free from corrupt behavior, it can be realized through developing progressive and just laws. In response to the resolution of the settlement of criminal acts, the Indonesian Attorney General's Office has issued regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice which is the settlement of criminal cases by prioritizing recovery from a crime that leads to progressive criminal law. Then how is the effectiveness of restorative justice against minor corruption crimes in realizing the ultimum remedium as criminal law, which is used as a last resort in law enforcement? As such this study aims to determine the effectiveness of the use of restorative justice against minor corruption in realizing the ultimum remedium. The type of research in this study uses library research, with the nature of descriptive research, and uses a normative juridical approach. The results of this study conclude that the effectiveness of the use of restorative justice against minor corruption crimes focuses on strengthening regulations in procedural terms while still referring to state financial losses and the presence or absence of



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*means rea (evil intent) in realizing the prevention of minor corruption crimes to be resolved by an out-of-court process as an ultimum remedium step or a last resort in terms of law enforcement. Restorative justice is a legal effort to offer a comprehensive and effective solution for minor corruption cases.*

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## A. Introduction

The notion of corruption has been contained in Law Number 3 of 1971 concerning the Eradication of Corruption Crimes. Most of the corruption in the law comes from the Criminal Code (KUHP), which was born before the independence of Indonesia. However, until now, the public's understanding of corruption is still very lacking; it can even be said that it is still primitive. This has the impact of becoming a habit that develops in the community, political elites, state officials, and, not infrequently, law enforcers. As a social phenomenon, if corruption in a society is rampant and becomes a daily habit, the result will make the community chaotic; no social system applies appropriately. Everyone in society will only be selfish (self-interest), even egoism.

So that the tendency of perpetrators of criminal acts of corruption to manifest corrupt practices such as bribery, bribery, and collusion, has spread in various sectors. Such as the political sector, the corporate sector, and official corruption. However, the nature of the regulation is minimal, such as not reaching various backgrounds of perpetrators of corruption, resulting in regulations regarding eradicating corruption in the private sector that are not well known in the social Indonesia's social, political, or legal literature, the legal-formal perspective only recognizes corruption crimes committed in the public sector, namely all acts or types of corruption regulated in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, where the center of attention is only public officials, government employees, government employees.<sup>1</sup>

However, we should know that along with the times, regulations to eradicate corruption still look weak as the movement of these corrupt practices is still massive. As a result, it also results in the weakness of law enforcement agencies that oversee corruption cases in Indonesia. Evidence of the weak regulation on corruption eradication can be seen from the article regarding criminal and fines for corruptors whose punishments are light, as stated in the Criminal Code and the Corruption Law so that it is not uncommon for corruptors who commit minor corruption to enter returned free due to receiving light sanctions. This is also inseparable from negotiations and agreements between political elites affiliated with corrupt business people.

Weak corruption regulations give birth to a dualist understanding of reasoning and sanctions for corruptors. Especially regarding the error of law enforcement officials in formulating state finances due to corruption because state financial losses may occur due to administrative or civil errors. For this reason, the weakness of the regulation needs to be corrected<sup>2</sup>, including the conception of punishment and sanctions for minor or minor corruption crimes that other solutions, such as criminal law in the form of restorative justice, can overcome.

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<sup>1</sup> Admin, "Korupsi Sektor Swasta", antikorupsi.org, 2016, <https://antikorupsi.org/id/article/korupsi-di-sektor-swasta>, diakses pada 16 Juli 2022

<sup>2</sup> Hukum Online, "Dua Ahli Hukum ini Bongkar Kelemahan Pasal 2 dan 3 UU Tipikor", hukumonline.com, 2016, <https://www.hukumonline.com/berita/a/dua-ahli-hukum-ini-bongkar-kelemahan-pasal-2-dan-3-uu-tipikor-lt57330adb02c1b>, diakses pada 16 Juli 2022

So far, the construction of punishment in Indonesia is known as retributive justice or emphasizing justice in retaliation. Of course, this punishment is no longer appropriate or looks stiff in overcoming all problems of criminal acts. So restorative justice is evidence of the development of criminal law, so it is called modern punishment because the nature of restorative justice is to emphasize justice in compensation. While conceptually restorative justice or restorative justice is justice that processes where all parties involved in a particular crime together solve the problem of how to deal with the consequences in the future, criminal acts, according to the eyes of Restorative justice<sup>3</sup>, this is also momentum for criminal law which has been providing harsh sanctions and has a subsidiary function, meaning that if other legal functions are not appropriate, it can use restorative justice as a last resort or ultimum remedium against minor corruption crimes.

Based on the description of the background above, the formulation of the problem studied in this study is how the effectiveness of the use of restorative justice against minor corruption crimes in realizing the ultimum remedium.

Judging from its descriptive nature, this writing is a novelty in a study. So the type of research in this study uses library research because it looks for legal materials by looking for theories, concepts, and legal bases that correlate with restorative justice against minor corruption crimes in realizing the ultimum remedium.

The research method uses a normative juridical approach, namely legal research conducted by researching and examining library materials or secondary data<sup>4</sup>, such as materials from books, journals, and mass media. While the primary data used is the National Law.

## **B. Discussion**

### **1. Restorative Justice against Minor Crimes (Mild)**

#### **a. Restorative Justice Concept**

Restorative Justice is an approach to solving problems involving victims, perpetrators, and elements of society to create justice. The concept of restorative justice is similar to communitarian justice, positive justice, relational justice, reparative justice, and community justice.<sup>5</sup>

This means that the notion of restorative justice is a theory of justice that emphasizes the recovery of losses caused by criminal acts. The solution is best by cooperating with the parties to decide how to resolve the problem.

In short, restorative justice is a popular alternative in various parts of the world for handling unlawful acts (against the law in a formal sense) because it offers a comprehensive and effective solution. According to John O. Haley, restorative justice exists to answer the failure of the purpose of punishment with retribution/judgment.<sup>5</sup>

#### **b. Principles and Goals of Restorative Justice**

The main principle of Restorative Justice is the participation of victims and perpetrators, the participation of citizens as facilitators in resolving cases so that there is a guarantee that the child or perpetrator will no longer disturb the harmony created in society. The concept of

<sup>3</sup> Mohamad Ismed Malik Ohoiwer, Abdul Manan, "Penerapan Restorative Justice Sebagai Implementasi Dari Ultimum Remedium Dalam Upaya Pengembalian Kerugian Keuangan Negara," *Jurnal Sosial Dan Budaya Syar-I* 8, no. 1 (2021): 1–20, <https://doi.org/10.15408/sjsbs.v8i6.23229>.

<sup>4</sup> Bagir Manan, 1999, *Politik Hukum Pengenaan Paja Bumi Dan Bangunan Indonesia*, Jakarta: Universitas Indonesia.

<sup>5</sup> Yogi Yasa Wedha, Edy Nurcahyo, "Criminal Law Reform Toward Deprivation Of Property Resulting From Corruption Criminal Acts A Criminological Perspective" *Jurnal Prizen Social Science Journal* no 5 (2021):98-99, doi:<https://doi.org/10.32936/pssj.v5i1.207>

restorative justice emphasizes the existence of proportionality and justice and balance for perpetrators and victims of criminal acts.<sup>6</sup>

Meanwhile, in its application, the principle of restorative justice or justice depends on how a country adopts the legal system. If the legal system does not want it, then the application of Restorative Justice cannot be forced. So it can be concluded that the principle of Restorative Justice is a choice in designing a country's legal system<sup>7</sup>. The forms of settlement through restorative justice are as follows: 1) Mediation; 2) Victim-Perpetrator Mediation; 3) Repair; 4) Family group meeting; 5) Victim-Perpetrator Group; and 6) Victim Alertness<sup>8</sup>.

The purpose of restorative justice in the context of criminal law is to empower victims, perpetrators, families, and communities to improve the consequences of a criminal act that has been committed, using awareness and conviction as a basis for improving community life (the concept of looking at justice is not from one side, but looks at from various parties, both for the benefit of victims, perpetrators, and the community).<sup>9</sup>

Meanwhile, the corruption that causes state losses has been regulated in Law No. 20 of 2001 regarding the regulation of state financial returns. Based on this legal basis, it is possible to identify minor corruption cases considered detrimental to state finances so that they can be resolved through out-of-court settlement by calculating the comparison of the value of operational funds for handling cases with the value of state financial losses.<sup>10</sup>

### c. Legal Basis Scope of Restorative Justice Implementation

#### 1. Minor Crime (Tipping):<sup>11</sup>

- a. Article 310 of the Criminal Code (KUHP);
- b. Article 205 of the Criminal Procedure Code (KUHP);
- c. Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of Limits for Minor Crimes and the Number of Fines in the Criminal Code (KUHP);
- d. Memorandum of Understanding with the Chief Justice of the Supreme Court of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Head of the Indonesian National Police Number 131/KMA/SKB/X/2012, Number M.HH-07.HM.03.02 of 2012, Number KEP - 06/E/EJP/10/2013, Number B/39/X/2012 dated 17 October 2012 concerning the Implementation of Adjustment on the Limitation of Minor Crimes and the Amount of Fines, Rapid Examination and the Implementation of

<sup>6</sup> Ida Made Oka Wijaya, "Restorative Justice Dalam Tinjauan Hukum Pogresif: Eksistensi dan Implikasi" *Indonesia Berdaya: Journal Of Community Engagement* No 3 (2022): 709, doi: <https://doi.org/10.47679/ib.2022297>

<sup>7</sup> Hanafi Arief and Ningrum Ambarsari, "Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia," *Al-Adl: Jurnal Hukum* 10, no. 2 (2018): 173, <https://doi.org/10.31602/al-adl.v10i2.1362>.

<sup>8</sup> M Taufik Makaro, 2013, *Pengkajian Hukum Tentang Penerapan Restorative Justice dalam Tindak Pidana yang Dilakukan Oleh Anak-Anak*, Jakarta: BPHN Kementerian Hukum dan HAM.

<sup>9</sup> PN kuala kurun, "Penerapan Restorative justice dalam penanganan perkara", [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwig7vHopN\\_6AhVBUHwKHdamCfiQFnoECBcQAQ&url=https%3A%2F%2Fpn-kualakurun.go.id%2Fimages%2FPENERAPAN\\_RESTORATIVE\\_JUSTICE\\_DALAM\\_PENANGANAN\\_PER\\_KARA\\_PIDANA\\_PADA\\_PENGADILAN\\_TINGKAT\\_PERTAMA.pdf&usg=AOvVaw27nRFSxxm18j7yJXdY5-n](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwig7vHopN_6AhVBUHwKHdamCfiQFnoECBcQAQ&url=https%3A%2F%2Fpn-kualakurun.go.id%2Fimages%2FPENERAPAN_RESTORATIVE_JUSTICE_DALAM_PENANGANAN_PER_KARA_PIDANA_PADA_PENGADILAN_TINGKAT_PERTAMA.pdf&usg=AOvVaw27nRFSxxm18j7yJXdY5-n) pada tanggal 16 Juli 2022

<sup>10</sup> Humas Kemenko Polhukam, "Pelatihan Bersama Penerapan Restorative Justice dalam Pemberantasan Korupsi Dihubungkan dengan Asset Recovery", polkam.go.id, 2016, <https://polkam.go.id/pelatihan-bersama-penerapan-restorative-justice-dalam-pemberantasan-korupsi-dihubungkan-dengan-asset-recovery/>, diakses pada Tanggal 14 Oktober 2022.

<sup>11</sup> Apong Herlina dkk, 2004, *Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum*, Jatarta: PT.Raja Grafindo Persada.

- Restorative Justice;
- e. Letter of the Director General of the General Judiciary Agency Number 301/DJU/HK01/3/2015 concerning Settlement of Minor Crimes;
  - f. Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 dated 22 December 2020 concerning Guidelines for the Implementation of Restorative Justice in the General Courts; In principle, it can be applied to the imposition of Articles 364, 373, 379, 384, 407 and Article 482 of the Criminal Code with a loss value of not more than Rp. 2,500,000.00 (two million five hundred thousand rupiahs) is not a repeat crime.

#### d. Restorative Justice against Minor Crime (Mild)

It can be seen that the criminal justice process, known as restorative justice, is undoubtedly different from retributive justice. Retributive justice is a criminal justice process that emphasizes justice in retaliation. And restitutive justice (emphasizing fairness in compensation).<sup>12</sup> Restorative justice offers a more comprehensive solution for victims and perpetrators, ranging from awareness of their actions, expressions of apology, restoration of victims, and providing compensation if needed.<sup>13</sup> The emergence of the idea of restorative justice is a strong critique of the application of the justice system in criminal justice, which is considered effective in resolving social conflicts. When viewed from the development of criminal law and the nature of modern punishment.<sup>14</sup> There are differences between restorative justice and retributive justice, namely:

**Table. 1. Difference**

<b>DIFFERENCES BETWEEN RESTORATIVE JUSTICE AND RETRIBUTIVE</b>	
<b>RETRIBUTIVE</b>	<b>RESTORATIVE</b>
Achieving justice by giving retribution for the suffering/pain, it causes	Forgiveness is the basis for improving human relations
The perpetrator was sentenced to a commensurate or more severe punishment	The perpetrator regrets the act and provides compensation if needed

While juridically retributive justice prioritizes corporate punishment for perpetrators of criminal acts of corruption rather than focusing on recovering the consequences of these crimes, it can be seen in Indonesia's corruption eradication norms which state that returning state financial losses does not eliminate a person's criminal act of corruption. Law no.31/1999, which

<sup>12</sup> Irvan Maulana, Mario Agusta, "Konsep dan Implementasi Restorative Justice di Indonesia" *Datin Lawjurnal*, 2 No.2 (2021):52-53, doi: <http://dx.doi.org/10.36355/dlj.v1i1>

<sup>13</sup> Henny Saida Flora, "Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Di Indonesia" *Jurnal Law Pro Justitia*, No.2, (2017):53

<sup>14</sup> Ridwan Mansyur, "Keadilan Restorative sebagai Tujuan Pelaksanaan Diversi pada Sistem Peradilan Pidana Anak", [pn-bantul.go.id, https://www.pn-bantul.go.id/index.php?option=com\\_content&view=article&id=62:keadilan-restoratif-sebagai-tujuan-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak&catid=23&Itemid=336](https://www.pn-bantul.go.id/index.php?option=com_content&view=article&id=62:keadilan-restoratif-sebagai-tujuan-pelaksanaan-diversi-pada-sistem-peradilan-pidana-anak&catid=23&Itemid=336) diakses pada tanggal 17 Juli 2022

was amended by Law no. 20/2001 concerning the Eradication of Criminal Acts of Corruption, confirms that the return of state financial losses or the state's economy does not eliminate the punishment of the perpetrators of criminal acts as referred to in Article 2 and Article 3 of the law. This shows that Indonesia's corruption law still views the mistakes or sins of the perpetrators of crime can only be redeemed by undergoing suffering.

Considering that there is a threshold value in the value of the currency, which is to say that corruption has reached 1 billion. In contrast, corruption under 50 million is considered minor or minor. So as a reflection, it can be seen that the use of the restorative justice law certainly brings fresh air for punishment in Indonesia, especially for minor corruption crimes, which in-depth, there; there is also a dualism of understanding and asynchronous in the application of punishments and sanctions to perpetrators of corruption or commonly referred to as corruptors.<sup>15</sup>

## 1. Minor Corruption Crimes

### a. Definition of Corruption

Eradication of criminal acts of corruption is a form of responsiveness to the mandate of reform which requires the implementation of a government that is free from corruption, collusion, and nepotism or, in general, is eradicating corruption that has circulated throughout society and state institutions in Indonesia. Therefore, corruption can no longer be classified as an ordinary crime but is already an "extraordinary crime" because it is systemic, endemic, and has a broad impact (systematic and widespread) that not only harms state finances but also violates social and economic rights. The economy of the broader community so that its action requires the government to form extraordinary comprehensive measures, so many regulations, institutions, and commissions to overcome them.<sup>16</sup>

On that basis, its eradication can no longer be carried out in the usual way and through the existing law enforcement agencies, but it must be done in extraordinary ways. This means that conventional law enforcement methods have been proven to have failed and are sterile, so it is necessary to have a unique independent agency to eradicate corruption. So to know in detail the conception of corruption, the word corruption comes from the Latin word corruption or corrupts, starting now referred to as corruption. The word comes from the word corrupter, an older Latin word.<sup>17</sup> It was from Latin that it descended into many European languages such as English, namely corruption, corrupt; France, namely corruption; from the Netherlands, namely corruption (corruption), it is reasonable to suspect that the term corruption comes from the Dutch language which is then included in Indonesian, in the form of "corruption."<sup>18</sup>

Meanwhile, in the Big Indonesian Dictionary, corruption is the misappropriation or embezzlement of state or company money for personal or other interests. In addition, the definition of corruption according to Indonesian law is that corruption can be categorized into seven types, namely: state financial losses, bribery, extortion, embezzlement in office, fraud, conflicts of interest in the procurement of goods and services, and gratuities (Law Number 31

<sup>15</sup> Helena Hestaria, Made Sugi Hartono, Muhamad Jodi Setianto, Tinjauan Yuridis Penerapan Prinsip Restorative Justice Terhadap Tindak Pidana Korupsi Dalam Rangka Penyelamatan Keuangan Negara, *Jurnal Komunitas Yustisia* 5, no.3 (2022): 116

<sup>16</sup> Ifrani, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa," *Al-Adl : Jurnal Hukum* 9, no. 3 (2017): 319–36, <https://media.neliti.com/media/publications/225072-tindak-pidana-korupsi-sebagai-kejahatan-d20073e1.pdf>.

<sup>17</sup> Naftali Gakur, Hufon, "Parameter Penyalahgunaan Kewenangan Yang Merugikan Keuangan Negara Dalam Tindak Pidana Korupsi", *Bureaucracy Journal: Indonesia Journal Of Law And Social-Political Governance*, 2 No.3 (2022), Doi: <https://doi.org/10.53363/bureau.v2i3.84>

<sup>18</sup> Andi Hamzah, 2012, *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*, Jakarta: Raja Grafindo Persada.

of 1999 Juncto). Law Number 20 of 2001, according to the 30 articles in it).<sup>19</sup>

#### **b. Corruption Target**

1. APBN/APBD,
2. State Budget Development Projects,
3. Budget for the Procurement of Goods and Services,
4. Development Budget,
5. Depletion of Natural Resources.
6. Embezzlement of Labor Insurance Funds,
7. Direct Appointment of Development Projects,
8. Embezzlement of Social Assistance Funds (Bansos),
9. Misuse of School Operational Assistance (BOS) funds,
10. Funding for Infrastructure Projects,
11. Natural Disaster Fund,
12. Draining the Assets of BUMN/BUMD,
13. PERDA manipulation,
14. Banking,
15. Tax Evasion Mode.<sup>20</sup>

#### **c. Corruption Crime**

Minor corruption, commonly referred to as minor crimes, is a criminal act with a loss value of less than Rp. 50,000,000.00 (Fifty Million).<sup>14</sup> Because when referring to the corruption regulation, namely Law Number 19 of 2019 concerning the Corruption Eradication Commission, the value of corruption involving state losses is at least Rp. 1,000,000,000.00 (one billion rupiah). Then if in the case of a corruption crime that does not meet the provisions on the value of corruption, the KPK is obliged to submit an investigation, investigation, and prosecution to the police or the prosecutor's office.<sup>21</sup>

Based on a juridical basis, if there is a corruption case under 1 billion, then the process will be handled by the police or the prosecutor's office, and if the corruption is worth 50 million and below, then it is classified as a minor corruption crime or corruption with small state financial losses.

This was also clarified by the statement of Attorney General ST Burhanuddin, who said that corruption cases with state financial losses, as well as those related to state financial losses with relatively small nominal losses such as corruption under 50 million, can be resolved with restorative justice while still paying attention to the quality, type and severity something light.<sup>22</sup>

#### **d. Use of Restorative Justice against Minor Corruption Crimes**

The use of restorative justice against minor or minor corruption crimes aims to recover state financial losses. Then it is possible to apply to the perpetrators of a criminal act of corruption whose actions are not related to state finances, as well as those related to state financial losses but with a slight light nominal loss, bearing in mind that the crime of corruption is a financial

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<sup>19</sup> Pusat Edukasi Antikorupsi, "Modul Materi Tindak Pidana Korupsi", [aclc.kpk.go.id](https://aclc.kpk.go.id), 2019, <https://aclc.kpk.go.id/materi-pembelajaran/pendidikan/buku/modul-materi-tindak-pidana-korupsi> diakses pada 17 Juli 2022.

<sup>20</sup> Anwary, 2012, *Perang Melawan Korupsi di Indonesia*, Bogor: Institut Pengkajian Masalah-Masalah Politik dan Sosial Ekonomi.

<sup>21</sup> Undang-Undang Nomor 19 Tahun 2019 tentang Pemberantasan Tindak Pidana Korupsi Pasal 11

<sup>22</sup> Yulida Medistiara, "Jaksa Agung Ingin Korupsi di Bawah Rp 50 Juta tak Dipidana, ini Alasannya", [news.detik.com](https://news.detik.com/berita/d-5973554/jaksa-agung-ingin-korupsi-di-bawah-rp-50-juta-tak-dipidana-ini-alasannya), 2022, <https://news.detik.com/berita/d-5973554/jaksa-agung-ingin-korupsi-di-bawah-rp-50-juta-tak-dipidana-ini-alasannya>, diakses pada 17 Juli 2022.

crime. So the countermeasures will be more appropriate if the approach also uses financial instruments. Such as by using the follow the money and follow the assets approach by tracking assets to recover state financial losses<sup>23</sup>. In addition, it can file a civil lawsuit for perpetrators who have died or been released but have been stating losses. Because according to Attorney General ST Burhanuddin, this is certainly in line with economic theory that explains the efficient law enforcement process and must consider the rationality of calculating the cost of handling corruption cases, starting from investigations to implementing decisions on the loss of state finances due to acts of corruption, from investigations to implementation of inkrah decisions.<sup>24</sup>

Thus, the state does not experience an increase in the number of state financial losses due to acts of corruption committed by the perpetrators and will increase with the costs of handling cases carried out by law enforcement officers. Of course, the economic theory of off-law analysis is in line with the concept of restorative justice in realizing a simple, fast, and low-cost justice system that can save the budget by carefully calculating the budget, so law enforcement officers can focus more on significant corruption cases that require low operational costs a little. Because the state bears the cost of up to hundreds of millions of rupiah to resolve a corruption case, this is certainly not comparable between operational costs and the results of corruption crimes committed by the perpetrators.<sup>25</sup>

Of course, the use of restorative justice for minor corruption crimes requires strict conditions considering that any corruption impacts state losses; it's just that this use is more emphasized and provides a new solution for minor corruption cases. Because the restorative justice approach has great potential to be applied to the criminal justice system as a choice in overcoming corruption in Indonesia. Regarding using a restorative justice approach to resolve non-corruption cases with small state financial losses, the informal mediation approach, considered the most suitable for handling corruption cases with small state financial losses, is the informal mediation approach.<sup>26</sup> That corruption is vile behavior, but not all types of corruption should end up behind bars. Because if the crime of corruption only harms the state in a small amount (tiny corruption), there is no need to prosecute it in court. However, strict conditions are needed in applying restorative justice to minor corruption cases. In addition to paying attention to the minimal amount of state losses, the application of restorative justice must pay attention to the presence of men's rea (evil intentions) or not. The Prosecutor's Office needs to see why the perpetrators were trapped or committed a criminal act of corruption. This means that the use of restorative justice can be considered progressive to be carried out with strict conditions, at least two main elements, namely a minimal amount of state financial losses and no element of malicious intent for corruption (men's rea). For example, the perpetrator is a victim of the system, and there is no malicious intent to commit corruption.<sup>27</sup>

Of course, efforts to eradicate corruption become patronization in realizing a clean and free country from corruption, collusion, and nepotism. This is because the impact is enormous for the country, especially on the economy. For this incident, using restorative justice is a preventive measure for penalties and sanctions according to the nature of corruption to intensify the

<sup>23</sup> Riskyanti Juniver Siburioan, Denny Wijaya, "Korupsi dan Birokrasi: Non-Conviction Based Asset Forfeiture Sebagai Upaya Penanggulangan Yang Lebih Berdayaguna" *Jurnal Penegakan Hukum Dan Keadilan* No. 1, (2022):13, Doi: 10.18196/jphk.v3i1.12233

<sup>24</sup> Ibid, Yulida Medistiara

<sup>25</sup> Ibid.

<sup>26</sup> Salsabila, Slamet Tri Wahyudi, "Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan Restorative Justice," *Jurnal Masalah-Masalah Hukum* 51 No 1 (2022):66, [10.14710/mmh.51.1.2022.61-70](https://doi.org/10.14710/mmh.51.1.2022.61-70)

<sup>27</sup> Hukum Online, "Perlu Syarat Ketat Penerapan Restorative Justice untuk Korupsi Minor", [hukumonline.com](http://hukumonline.com),



eradication of corrupt practices by reforming legislation products, especially in the political and economic fields, as a result of corrupt practices, collusion, and Nepotism.

## **2. Ultimum Remedium in Corruption Law Enforcement**

### **a. Definition of Ultimum Remedium**

Ultimum remedium is one of the principles contained in Indonesian criminal law. Ultimum remedium is one of the principles of Indonesian criminal law, which states that criminal law should be used as a last resort in law enforcement. The nature of criminal sanctions as the ultimum weapon or ultimum remedium, when compared to civil or administrative sanctions, has harsh sanctions. As a sanction criminal sanctions must be placed in the last position, not at the front, because of the harsh nature of criminal sanctions, and they have different implications for each person.<sup>28</sup>

### **b. Ultimum Remedium on Enforcement of Minor Corruption Crimes**

As a law that does not have its norms, the norms have been regulated by other fields of law, such as civil law and so on. Van de Bunt argues that criminal law as an ultimum remedium has three meanings, namely:<sup>29</sup>

- a. Applying criminal law only to people who ethically violate the law is very heavy.
- b. Criminal law is the ultimum remedium because criminal law sanctions are heavier and more rigid than other legal fields and often have side effects. It should be applied if other legal sanctions cannot solve the problem of violating the law (last remedy).
- c. Criminal law is the ultimum remedium because administrative officials are the first to know about the violation. So they are prioritized to take steps and actions over criminal law enforcement.

Meanwhile, Bemmelen agrees with Enschede, who argues that the criminal and the criminal process are only exceptions to cover the losses that have occurred. The postulate of remedium must be viewed not merely as a means to remedy the violation of the law committed or as a substitute for losses but as a means of calming the riots that arise in society because if the violation of the law is left unchecked, arbitrary actions will occur. Therefore, criminal law must be used as a last resort (ultimum remedium), and its use must be limited.

In general, criminal law has limitations/weaknesses as a means of crime prevention because:

1. The causes of crime are complex and beyond the scope of criminal law.
2. Criminal law is only a tiny part (subsystem) of the means of social control that is impossible to overcome the problem of crime as a very complex humanitarian and social problem (as a socio-psychological, sociopolitical, socio-economic, socio-cultural, and so on) problem.
3. The use of criminal law in tackling crime is only symptomatic treatment. Therefore, criminal law is only a "symptomatic treatment" and not a "causative treatment."
4. Kurien is a symptom (treatment/treatment of symptoms). Therefore, criminal law is only "symptomatic treatment" and not "causative treatment."
5. Criminal law sanctions are a "remedium" containing contradictory/paradoxical properties and elements and adverse side effects.
6. The punishment system is fragmentary and individual/personal, not

<sup>28</sup> Ahmad Sofian, "Ultimum Remedium dalam Tindak Pidana Ketenagakerjaan", business-law.binus.ac.id, 2020, <https://business-law.binus.ac.id/2020/12/23/ultimum-remedium-dalam-tindak-pidana-ketenagakerjaan/> diakses pada tanggal 17 Juli 2022.

<sup>29</sup> Mas Putra Zenno, "Penerapan Prinsip Ultimum Remedium Dalam Tindak Pidana Korupsi," *Jurnal Yudisial* 10, no. 3 (2017): 257, <https://doi.org/10.29123/jy.v10i3.266>.

structural/functional.

7. Limitations on the types of criminal sanctions and the system for formulating criminal sanctions that are rigid and imperative.
8. The operation/functioning of criminal law requires more various supporting facilities and demands higher costs.

Ultimum remedium is the last remedy or means to determine whether a person can be convicted of an act committed intentionally or by negligence. This is based on the fact that the frequent application of criminal law has caused "great damage" to people's lives, especially those that are very detrimental to the order of life and the financial and banking climate. So, this ultimum remedium is needed first to consider the use of other sanctions before harsh and sharp criminal sanctions are imposed; if other legal functions are lacking, criminal law can be used.<sup>30</sup>

For this reason, it can be interpreted that this ultimum remedium is the last step in determining punishment for minor corruption acts, considering that it is the nature of the final punishment. For this reason, the use of restorative justice for minor corruption crimes in realizing the ultimum remedium is by still considering the existence of men's rea (evil intentions) and also paying attention to the number of state losses that are minor or minor. This means that the effectiveness of using restorative justice against minor (minor) corruption is a progressive step. It aims to restore state finances and the effectiveness of the number of state financial losses due to acts of corruption that have been carried out because they are not processed in court by providing strict, transparent conditions. And without interference from any institution. This step is a preventive measure as one of the efforts to prevent and eradicate corruption to create a clean country free from corruption, collusion, and nepotism, considering its significant impact on the economy and national development towards the ultimum remedium. The novelty of this research is the concept of Restorative Justice which is used for minor corruption crimes to restore restorative justice and retributive justice.

### C. Conclusion

Restorative justice is a legal effort to offer a comprehensive and effective solution for minor corruption cases. Restorative justice is an approach to solving problems involving victims, perpetrators, and elements of society to create justice. Therefore, restorative justice is a theory that emphasizes the recovery of losses caused by criminal acts. Meanwhile, corruption can no longer be classified as an ordinary crime but is already an "extraordinary crime" because it is systemic and endemic with a vast impact that not only harms state finances but also violates the social and economic rights of the wider community. However, in addition to corruption that causes state financial losses exceeding 1 billion, there is corruption that only causes state financial losses below 50 million, so this crime is said to be a type of minor corruption. The effectiveness of the use of restorative justice against minor corruption crimes focuses on strengthening the regulations in procedural terms while still referring to state financial losses and the presence or absence of means rea (evil intent) in realizing the prevention of minor corruption crimes so that an out-of-court process can resolve them. as an ultimum remedium or last resort in terms of law enforcement.

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<sup>30</sup> Zenno.

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