



Application Of Restorative Justice In The Settlement Of Corruption Crimes

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Abstract

Corruption is a problem that is detrimental to state finances. The magnitude of the handling of corruption cases and the handling of the investigation process to execution will not be comparable if the corruption has a slight state loss. Unlike the punishing justice method with the current developments, it makes legal decisions on state losses with the restorative justice method against minor corruption crimes. Using the juridical-normative method, the authors look for available data on the mechanism and its implementation and the implementation of restorative justice by the High Court in the Lampung Province Regions. This research's problem discussed criminalizing corruption from the perspective of restorative justice and how an advocate can apply the concept of restorative justice to corruption in Lampung area. The results show that Restorative justice is an alternative for resolving corruption cases because it provides a comprehensive and effective solution for retributive justice needs to fulfill the goal, namely the non-optimal return of state financial losses. The concept of state restorative justice as a public representative is realized only to punish the perpetrators (retributive justice).



A. Introduction

The term restorative justice is a foreign term that has only been known in Indonesia since the 1960s era with Restorative Justice. In some developed countries, restorative justice is not just a discourse of criminal law academics and criminology. In North America, Australia, and several European countries, restorative justice has been applied in the conventional criminal justice stage, starting from the investigation stage, prosecution adjudication, and execution stage.¹ It should bring the offender to understand that their behavior is unacceptable and has some real consequences for the victim and community.² Restorative justice is a settlement process outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community, and parties interested in a crime that occurred to reach an agreement.³

The law regulates what must be done, what is allowed to be conducted, and what is prohibited. Destination law is not only for those who act against the law but legal actions which make it possible for state equipment to Act according to the law which there is. System work law forms enforcement law.⁴ As an embodiment of law idealism, the public looks for justice and naturally hopes to get a fair decision for perpetrator crime. In enforcement, Criminal law in Indonesia is implemented in a system called the Criminal Justice System. Marjon stated that "*with Criminal Justice System is a system control crime which consists of institutions police, attorney, court, and correctional convict.*".⁵

Progress in people's lives and changing conditions Social media has a negative impact, especially concerning increased crime. One of the crimes that can be said to be phenomenal enough is problem corruption.⁶ Norms eradication act criminal corruption must formulate with the base which strong in implementation exemplary from side juridical, philosophical and sociological.

The norms of eradicating corruption in Indonesia are still implementing *retribution justice* to punish the perpetrators.⁷ In the context of corruption, the philosophy and theory of punishment, which is heavily influenced by the flow of retributive justice, is no longer relevant to the main objective of the law to eradicate corruption in Indonesia, namely to focus on protecting state assets or assets. Legal interests to be protected are state finances⁸ By that, sentencing perpetrator corruption excluded from destination anything other than retaliatory

¹Budiman, Maman. "Implementasi Prinsip Restorative Justice dalam Penghentian Penuntutan Perkara Korupsi Oleh Kejaksaan Republik Indonesia." *Syntax Literate; Jurnal Ilmiah Indonesia* 7.No.3 (2022): 1049 doi: <http://dx.doi.org/10.36418/syntax-literate.v7i3.6405>

² Maulana, Irvan, and Mario Agusta. "Konsep dan Implementasi Restorative justice di Indonesia." *Datin Law Jurnal* 2 No.2 (2021):55 doi: <http://dx.doi.org/10.36355/dlj.v1i1>

³Gunawan H., Rodiyah N. "Restorative Justice Sebagai Penegakan Hukum Pidana Modern Dan Berkeadilan" *Collegium Studiosum Journal LPPM STIH AWANG LONG* 5 No. 1 (2022):27 doi: <https://doi.org/10.56301/csj.v5i1.495>

⁴Hartanti, Tindak Pidana Korupsi (Jakarta: Sinar Grafika, 2009), hlm. 1.

⁵Mardjono Reksodiputro, *Kriminologi dan Sistem Peradilan Pidana*, Jakarta, Pusat Pelayanan Hukum dan Keadilan, 2007.

⁶Evi Hartanti, Tindak Pidana Korupsi, Jakarta: Sinar Grafika, 2017, hlm. 1

⁷ Hestaria, Helena, Made Sugi Hartono, and Muhamad Jodi Setianto. "TINJAUAN YURIDIS PENERAPAN PRINSIP RESTORATIVE JUSTICE TERHADAP TINDAK PIDANA KORUPSI DALAM RANGKA PENYELAMATAN KEUANGAN NEGARA." *Jurnal Komunitas Yustisia* 5.3 (2022): 113

⁸Fransisco, Wawan. "Implementation of the Principle of Restorative Justice as an Alternative Resolving to Types of Crimes in the Related Criminal System Corruption Crimes in Indonesia." *LEGAL BRIEF* 11.4 (2022): 2249 doi: <https://doi.org/10.35335/legal.v11i4.324>

purposes.⁹ The principles of retributive justice put forward sentencing perpetrator corruption compared to focus on recovery consequence crime. In Chapter 4, corruption states that "*return loss finance country no abolishing a crime against someone as a criminal corruption.*" Kant and Hegel state that "*view Law is directed to the past (backward-looking), not to the future front as characteristic typical theory retributive justice.*"¹⁰

Restorative justice has the meaning of restoring justice. Restoration includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can convey the loss he has suffered, and the perpetrator can compensate for it through compensation mechanisms, peace, social work, or other agreements.¹¹

Law international has an open opportunity for all countries to complete case corruption through justice restorative in return assets for replacing loss finance country consequence corruption. Through United Nations Convention Against Corruption (UNCAC), signed by 133 countries, The United Nations obliges Member States to respond immediately to the existing Convention, especially those related to asset recovery.¹² According to Wright stated, "*The concept of justice restorative on basic simple, size justice no again based on retribution from the victim to the perpetrator (whether physical, psychological or punishment), but the painful act healed by providing support to victims and require perpetrator for responsible with help family and society when needed.*"¹³

The Public Prosecutor has the authority to close cases for legal purposes, one of which is because there has been an out-of-court settlement or an adorning buiten process as regulated in Article 3 paragraph (2) letter e Perja Number 15 of 2020. The Attorney General's regulation is in Article 3 paragraph (3) There is a provision if you want to settle a case out of court for certain criminal acts with a maximum fine being paid voluntarily or there has been a restoration of the original situation through restorative justice. The prosecutor, as Dominus Litisatau, or as a "case controller," can determine the urgency of a case by considering whether they can settle the case out of court by referring to Perja Number 15 of 2020.¹⁴ This study's novelty is applying the concept of restorative justice in the settlement of criminal acts of corruption with a comparison of restorative justice methods in other countries in returning state losses.

Responding to Thing the, Indonesia, through Apparatus enforcer Law, started to accommodate the concept of restorative justice by issuing a Circular Letter of the Deputy Attorney General for Special Crimes Number: B-113/F/Fd.1/05/2010, Circular Letter of the Attorney General of the Republic of Indonesia Number: B- 765/F/Fd.1/04/2018 and Attorney

⁹Aleksandar Fatic, Punishment and Restorative Crime – Handling. (USA: Avebury Ashagate Publishing Limited, 1995), hlm. 9

¹⁰Kant dan Hegel dalam Jan Remmelink, Hukum Pidana, Komentar atas Pasal-Pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia, (Jakarta: PT. Gramedia Pustaka Utama, 1993), hlm. 600.

¹¹ Taqiuddin, Habibul Umam, and Risdiana Risdiana. "Penerapan Keadilan Restoratif (Restorative Justice) Dalam Praktik Ketatanegaraan." *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6. No.1 (2022). Doi: <http://dx.doi.org/10.36312/jisip.v6i1.2972>

¹²Budi Suharianto, Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi demi Optimalisasi Pengembalian Kerugian Keuangan Negara, Jakarta, Kemenkumham, Volume 5, Nomor 3, Desember 2016, hlm. 423

¹³Kuat Yudi Prayitno, Restorative Justice Untuk Peradilan di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum in Concreto), dalam Jurnal Dinamika Hukum, Vol. 12, No 3 September 2012, hlm. 32.

¹⁴Karmilia, Rise. "PENERAPAN PRINSIP RESTORATIVE JUSTICE DI TINJAU DARI PERSPEKTIF ASAS KEPASTIAN HUKUM." *Journal Of Juridische Analyse* 1.No.2 (2022):5 doi: <https://doi.org/10.30606/joja.v1i2.1508>

General Regulation No. 15 the Year 2020 concerning Termination of Prosecution Based on Restorative Justice. So, the problem in this discussion can be formulated as follows. First, how is the concept of sentencing perpetrators of corruption in the perspective of restorative justice? And Second, how can an attorney apply the concept of restorative justice against corruption in the number of minors in region Lampung? This writer uses a method study with norm law Juridical normative in the study.¹⁵ A study of this base substance law on sources law that uses norm or rule law, regulation legislation which apply, theories, doctrine law from a para expert, jurisprudence, and materials literature.

B. Discussion

1. Approach to the Concept of *Restorative Justice* in Sentencing Corruption Perpetrators

Even though said as old as civilization, man's effort to countermeasures crimes through the criminal justice and corporal punishment against perpetrator crime is Street, which is the most classic. In a philosophical context, crime and punishment are referred to as the "*older philosophy of crime control*."¹⁶ Given the historical background of sentencing or penalty criminal, which condition with an explanation about treatment considered cruel and excessive according to the everyday moment, policy sentencing is questionable.¹⁷ Even Smith and Hogan call it "*a relic of barbarism*."¹⁸ With the development of the life and civilization of human beings, the application of criminal sanctions to revoke independence turns out to be more harmful than positive. Negative aspects resulting from the imposition of sanctions on the revocation of independence include dehumanization, prisonization, and stigmatization.¹⁹ Besides that, another negative aspect is that para enforcer law needs a long time to resolve a corruption case. A budget country must issue effort physical punishment rather than focus on recovering the consequences of corruption. Whereas in many things, corruption, consequence The adverse effects caused by corruption cases are more essential to be corrected than rob independence perpetrator and by practice, state financial losses are not fully recovered. One of the solutions from Thing the with apply restorative justice.

Justice restorative is an alternative general for dealing with unlawful acts in various parts of the world because it gives a comprehensive and practical solution.²⁰ According to John O. Haley, "*restorative justice exists to answer failure from destination sentencing with retribution/judgment*."²¹ So far, the retributive justice approach in a criminal act of corruption cannot fulfill the intended purpose of achieving a shaper Constitution to reach a refund of state finances less than optimal.²² With applied retributive justice, the perpetrator act of criminal corruption precisely will be a more harmful country because a finance country that has been corrupted no could be returned ultimately and takes too long a judicial process. The state must Secrete money to maintain convict case corruption in prison. This, of course, adds to the burden on the country.

¹⁵Satjipto Rahardjo, *Hukum dan masyarakat* (Angkasa, 1980).

¹⁶Gene Kassebaum, *Delinquency and Social Policy*, London: PrenticeHall, Inc,1974, hlm. 93

¹⁷M. Cherif Bassiouni, *Substantive Criminal Law*, Illinois USA: C. ThomasPublisher, 1978), hlm. 86.

¹⁸Smith and Hogan, *Criminal Law*, London: Butterworths, 1978, hal. 6.

¹⁹Muladi dan Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana*, Bandung:Alumni, 1984, hlm. 77-78

²⁰Dewi DS dan A. Syukur Fatahillah, 2011, *Mediasi Penal: Penerapan RestorativeJustice di Pengadilan Anak Indonesia*, Depok: Indie Publishing, hlm. 11

²¹John O. Haley, (2011), *Beyond Retribution An Integrated Approach To Restorative Justice*, dalam Washington Journal of Law and Policy, Volume 36, hlm. 8

²²Fadhil Zumhana, (2015), *Disertasi Doktor: Restorative Justice Sebagai Primum Remidium dalam Upaya Pengembalian Kerugian Keuangan Negara*, Surabaya: Universitas Airlangga, hlm. 2.

Policy restorative justice usually concerns the development of return connection Among victims like the beginning. Recovery connection Between perpetrator and victim could be achieved by agreement between the two parties.²³ Thinking this was conducted in several countries looking at the approach to justice treatment, which emphasizes compensation for loss caused by crime or related to crime as a concept following the goal of eradicating corruption in Indonesia.

This approach is being adopted and has shown promising results significantly. The Netherlands, for example, is considered the most prosperous country in Indonesia in implementing restorative justice, especially regarding Follow Criminal Corruption. As a result, Dutch occupied a rating of 8th of 176 countries in the year 2016 based on the Corruption Perception Index (CIP). The Dutch Criminal Code has come into force since 1921, and there is an out-of-court institution called the transaction system, and no known criminal law applies in Indonesia now.²⁴ This shows that an approach to restorative justice could lower the number of crimes, specifically in field corruption, and also could repair corruption's consequences.

Apart from the Netherlands, other developed countries such as the United States and China have considered adopting effective and efficient methods in dealing with corruption cases.²⁵ Countries recover from criminal acts as prime remedium and impose sanctions to revoke independence from corruption as an ultimum remedium.²⁶ Restorative justice of several regulations has been widely translated. However, points The highlights of this rule are:

- a. There are several countries, such as Canada, Finland, Bulgaria, Australia, Belgium, and Ghanaian, that have mentioned the concept of mediation to open opportunities for solving crimes out of court.
- b. Several countries, such as England, New Zealand, and Africa South, are part of the sentencing system.

From the description in on, restorative justice is a mechanism handling case criminal outside the criminal justice system and gives rise to new criminal sanctions that are different from the procedure criminal conventional. (retributive justice) which was known During this.

2. Application of Restorative Justice Against Corruption Perpetrators in Indonesia Region Lampung High Court

Could solve all cases through discussion, which aims to reach balance or recovery circumstances. According to Tony F. Marshall, "Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future." (Restorative justice is a process in which all parties interested in certain violations gather to determine how to resolve the consequences of the violation for the sake of profit in Century future). The restorative justice approach procedure is carried out following guidelines, so that transfer of

²³Hambali Azwad Rachmat, "Penegakan Hukum melalui Pendekatan RestorativeJustice Penyelesaian Masalah Pidana," *Kalabbirang Law Journal* 2, no. 1 (2020):69–76.

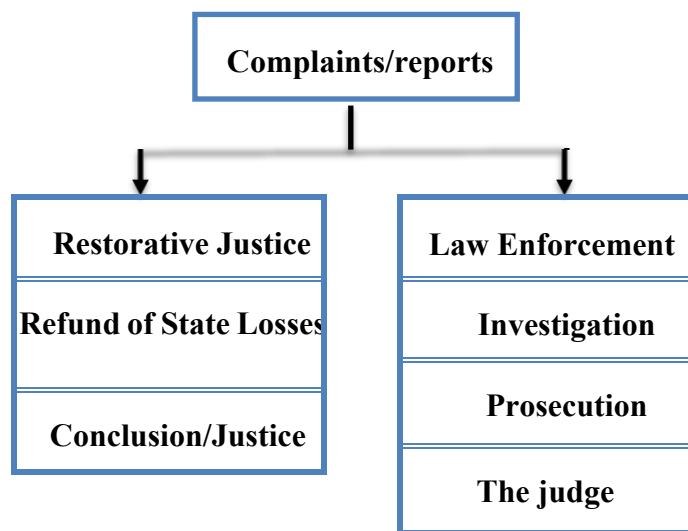
²⁴Adami Chazawi, *Pelajaran Hukum Pidana* 2, Jakarta: PT. Rajagrafindo Persada,2002, hlm. 182-183.

²⁵Budi Suhariato, *Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi demi Optimalisasi Pengembalian Kerugian Keuangan Negara*, Jakarta, Kemenkumham, Volume 5, Nomor 3, Desember 2016, hlm. 435

²⁶ Sitepu, Rida Ista, and Yusona Piadi. "Implementasi Restoratif Justice dalam Pemidanaan Pelaku Tindak Pidana Korupsi." *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1.1 (2019): 67-75. Doi: <https://doi.org/10.52005/rechten.v1i1.7>

criminal prosecution procedures outside the procedure court criminal comes true and is solved with process discussion.

In solution act criminal corruption with loss country which small use approach justice restorative on generally are at the stage of investigation and investigation only where the investigation is "a series of investigative actions" for look for and find something incident which suspected as act criminal to use determine could or whether or not conducted the investigation." While the investigation is "a series of actions" investigators to seek and collect evidence that occurred and to find the suspect." The prosecution process will continue unless there is an agreement for complete case corruption staged investigation. As for the scheme solution act, criminal corruption like below this:²⁷



Taking this into account, the Attorney General is given the authority to issue policies to their staff regarding policies carried out by the Prosecutor's Office, signing the Scope of regional law attorney Tall Lampung to apply justice restorative through the concept of Alternative Dispute Resolution (ADR). Corruption cases declared Alternative Dispute Resolution (ADR) by the Bandar Lampung District Attorney based on the Letter of Circular prosecutor significant Number B-1113/F/Fd.1/05/2010, Prioritizing the sense of community justice with the awareness of the perpetrator's corruption return loss finance country, Thing the is a settlement process that is outside the provisions program appropriate criminal justice with law Indonesia

Alternative Dispute Resolution (ADR) is implemented by bringing together victims and perpetrators. After met by, they conducted mediation and achieved a peace agreement. If peace is reached, then corruption cases minor is declared over and will not proceed to the judicial

²⁷ Pradana, Verdinan. Analisis Keadilan Restoratif Dalam Penyelesaian Tindak Pidana Korupsi Dengan Kerugian Negara Yang Kecil Oleh Kejaksaan Negeri Bandar Lampung (Skripsi, Universitas Lampung, Lampung, Indonesia, 2017)

process criminal. But only some things can be solved through the concept of Alternative Dispute Resolution (ADR) because can only use alternative Dispute Resolution (ADR) can only use alternative Dispute Resolution (ADR) for the type of corruption that belong to small under Rp 300,000,000 (three hundred million rupiahs). Alternative Dispute Resolution (ADR) is not accommodated in the law but is a form of discretion used for completing something case.²⁸

It is necessary to know the state budget for the settlement of one case of corruption starting from investigation, investigation, prosecution, the judge, and execution that is as big as Rp 200,000,000,- (two hundred million rupiah). This is not comparable to a corruption case small if solved without a method of restorative justice. There is several case act criminal corruption in region attorney Tall Lampung which were solved through justice treatment as follows:

- 1) The Tanggamus District Prosecutor's Office implements the therapeutic method of justice in the year 2019. Is 1 (one) case with a score loss finance country as big as Rp 15,000,000,- (five mercy million rupiahs);
- 2) attorney Country Pringsewu doing 3 (three) case restorative justice, if the total is as big as Rp. 500,000,000,- (five hundred million rupiah);
- 3) Djamaludin (Dj), with case guess deviation, funded regional project 1,000 Certificates with a loss of Rp 14,000,000 (four twelve million rupiahs) and carried out restorative justice.
- 4) to ratify with a loss of Rp. 109,000,000 (One Hundred and Nine Million Rupiah) conducted restorative justice.
- 5) Masruf Basri (MB) with the alleged misappropriation of funds BUMD with a loss of Rp. 165,000,000 (one hundred and sixty-five million rupiahs) is carried out through restorative justice.

The novelty of this research is about the concept of restorative justice in criminalizing corruption perpetrators, which is an alternative, and the application of restorative justice in the district attorney's office in Lampung in solving corruption crimes with small state losses. Before implementing the concept of restorative justice, the state, as the representative public, realized only punishing perpetrators (retributive justice) for giving effect deterrent rehabilitated rehabilitation, but this has not been able to touch the interest eradication act criminal corruption, that is, return loss finance country. For that system, Justice criminals who like that must put forward the interested public so that no one always must blame and punish. Because with If the perpetrator is imprisoned, then the case is over.

C. Conclusion

Based on the discussion in the study, the writer concludes that the concept of restorative justice is an alternative solution to case corruption because it gives a comprehensive and practical solution. With the existence of Letter Circular prosecutor Agung Muda for Special Crimes Number: B-113/Fd.1/05/2010 and Letter Circular prosecutor significant RI Number: B-765/Fd.1/04/2018, the application of restorative justice can be carried out well in the Lampung High Prosecutor's Office with several cases which are resolved. But some minor corruption cases cannot be solved through restorative justice; things are different from Budget country for solving one corruption case. Due to retributive justice being unable to meet the

²⁸B.D. Sri Marsita, Sri Humana, 2015, *Penyelesaian Perkara Tindak Pidana korupsi Yang Nilai Kerugian Keuangan Negaranya Kecil*, Pusat Penelitian dan Pengembangan Kejaksaan Agung R.I. Jakarta Selatan, hlm. 21

goal of not optimal returns loss finance country.

Suggestion

Based on the explanation of the problem, the author has suggestions which, with still lack of implementation of justice restorative in solution case corruption, big hope later solution case through restorative justice could more put forward by formulating a regulation that contains procedures implementation of restorative justice case corruption small, medium and tall by detail, so that clarify implementation and can be a frame in the handling process case corruption.

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