Formulation of the Application of Restorative Justice to Offenders of Corruption in Indonesia

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Abstract

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Today's paradigm for resolving corruption issues should move from retributive to restorative justice. The existing criminal justice system, which stresses retributive justice, is incapable of achieving the goals intended by the law's drafters, namely the suboptimal restitution of public financial losses. In light of the failure of retributive justice to prevent and remove corruption, it is vital to adopt a new strategy called restorative justice. In addition to preventing and eradicating corruption offences, the restorative justice strategy may be utilized to maximize the recovery of losses to the state. This is a normative study with numerous primary, secondary, and tertiary legal resources serving as data sources. The evidence is then descriptively and qualitatively examined, resulting in a conclusion addressing the legal issues. The failure of retributive justice procedures based on vengeance and neoclassical theory to satisfy society's sense of justice sparked the idea of incorporating restorative justice into the concept of punishment, particularly the punishment of those who commit corruption offences. To use restorative justice approaches to resolving corruption cases, it is important to
establish systematized and exhaustive legal processes to eradicate corruption. The state has not yet created legal processes for resolving corruption cases utilizing restorative justice approaches. In this work, the author attempts to develop a legal system for resolving corruption cases with restorative justice approaches that consider crucial variables and the repercussions of implementing this procedure.

A. Introduction

Corruption has negatively affected numerous parts of people's lives, generations, and nations. According to Sudarto, "corruption" refers to dishonest, corrupt, and damaging money-related practices.\(^1\) The English word corruption derives from the Latin word corruptio. From Latin, corruption evolved into a variety of European languages, including corruption and corrupt in English, corruption in French, and korruptie in Dutch, before being incorporated into corruption in Indonesian.\(^2\) Corruption continues to grow from time to time. Corruption is one of the causes of the economic downturn in Indonesia. Corruption is a fraudulent act committed by misusing or embezzling state finances aimed at enriching oneself or someone who can harm. Generally, corruption is carried out in secret and involves elements of mutual obligations and benefits. corruption is a crime that causes great harms to the society. The act of corruption is an action that is against the general rules that apply in the community.\(^3\)

Qualitatively, the negative impact of corruption is to reduce revenues from the public sector and increase government spending on the public sector. At another level, corruption also contributes to a large fiscal deficit, increasing income inequality, because corruption distinguishes opportunities for individuals in certain positions to benefit from government activities at the costs actually borne by the community. Viewed from the aspect of public welfare, corruption also increases the poverty rate because government programs do not reach their targets, corruption also reduces the potential income that the poor may receive. Judging from this aspect, the punishment of the perpetrator corruption is clearly no longer possible by relying on a retributive approach. A systematic and comprehensive effort is needed to recover the consequences of corruption.\(^4\)

According to Henry Campbell Black, corruption is the act of providing an illegal benefit while breaching the rights of another party by using that party's position or reputation to advance one's own or another's interests.\(^5\) The definition of corruption crimes in UU No. 31 of 1991 Concerning the Eradication of Corruption Crimes, as changed by UU No. 20 of 2001 Concerning the Eradication of Corruption Crimes, is almost the same as Article 2 of Law No. 31 of 1991 Concerning the Eradication of Corruption Crimes, which says, "Any person who

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unlawfully commits acts of enriching himself or others or corporations that can harm the state finances or the country's economy.\(^6\)\(^6\)

One instance of state losses caused by corruption offenses is the hindrance to national progress, resulting in a decline in the level of public welfare. From 2017 to 2021, there were 1,166 investigations into corruption offenses, 936 prosecutions, and 427 Eintracht rulings, according to data from the Corruption Eradication Commission (KPK).\(^7\) In many parts of the world, the eradication of corruption has been the focus of state attention due to the perception that corruption is a heinous crime that threatens to ruin not just a country's economic but also its moral foundation. Corruption needs to be treated with "extraordinariness" to help efforts to completely and methodically get rid of it.

In Indonesia, the eradication of corruption is governed by Law No. 31 of 1991, Law No. Mor 20 of 2001 on the eradication of corruption crimes, and Law No. 15 of 2002 on money laundering acts. Despite protecting state assets by requiring corrupt individuals to reimburse the government for losses they caused, these laws consistently fail to reflect the larger objective of eradicating corruption itself. The corruption eradication system, which views the punishment of corruption perpetrators through the lens of retributive justice, releases the punishment of corrupt criminals from everything but one purpose, retribution.\(^8\) The author argues that the current paradigm of retributive justice is no longer compatible with the primary objective of eradicating corruption, which in turn impedes efforts to recover state assets through the reparation of public financial damages caused by corruption offenses. These attempts are impeded at both the procedural and technical levels. For instance, not only does the defendant benefit from such corruption but so do third parties or fourth parties who are not defendants, making it impossible to recoup state damages. As a result of new modes or modus operandi in the criminal act of corruption, the existing legislation is unable to accommodate and compensate for these issues. If the criminal act of corruption is committed by a corporate legal entity, the law actually permits the management of the corporation to appoint other people as representatives of the corporation to litigate cases, and the judge's primary sanction for the crime is a maximum one-third additional fine.\(^9\) This impacts attempts to recover state financial losses, which are technically and procedurally challenging. On the one hand, Indonesia continues to emphasize vengeance and physical punishment of criminals as a means of combating crime, which is an ancient approach believed to be as old as human civilization itself. Even worldview, criminal record, and conviction are characterized by the term "previous notion of crime control".\(^10\) The reason for the criminal retaliation is that the criminal code was drafted using an indeterminist framework, which considers every action as the product of a person's free and unrestricted decision. Evil deeds are the result of acts of free will. Therefore, the interdeterminist position contends that free will necessitates punishment in exchange.\(^11\)

The purpose of battling corruption is to swiftly compensate for the nation's financial losses while simultaneously imposing the harshest punishments feasible on those found guilty. The drafters of Law No. 20 of 2001 intended for the judicial system to perform optimally in recouping state damages, as implied by the law's language. By comparing operational costs for handling cases to state financial losses, law enforcement tools should be able to detect

\(^6\) Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi pasal (2)
\(^11\) Sudarto, Hukum Pidana I (Semarang: Yayasan Sudarto Fakultas Hukum UNDIP, 2009).
corruption cases that are deemed detrimental to state finances so that they can be settled through the way of resolving matters outside of court (out of court settlement). Restorative justice refers to the practice of resolving criminal cases outside of court (out of court settlement).

The administration has implemented a variety of measures, including coercive ones, to combat corruption. Some cultures feel that the only way to minimize corruption is through harsh measures since, from their perspective, such actions inhibit corruptive practices or behaviors. The social, economic, and political realities of the present day have made widespread, organized, and systematic corruption possible in all spheres of life, including government institutions, state-owned businesses, locally or regionally owned businesses, banking institutions, financial services, and even small communities. This fact necessitates that this worldview be rejected immediately. Other preventative measures, in addition to repressive ones, must be given serious consideration if they are to have a lasting impact on future development. The principle of restorative justice can therefore be used as an alternative to solving corruption cases in accordance with the handling of corruption cases in accordance with the ratification of the anti-corruption convention in 2003 (Vienna Convention) and Law No. 7 of 2006 concerning the Ratification of the United Nations Convention Against Corruption.12

Restorative justice is a popular alternative to case settlement in many nations throughout the world for the treatment of illegal activities since it gives a comprehensive and effective solution (formil). According to John O. Haley, restorative justice was developed to solve the deficiencies of punishment and judgment.13 The administration of retributive justice for corruption offenses has not yet achieved the objectives set forth by legislators, namely that the return on state funds is not optimal. Applying retributive justice to people who commit crimes involving corruption will be detrimental to the state since corrupted state finances cannot be recovered in full, the legal process is too lengthy, and the state must spend more money to keep corrupt offenders in prison. Not to mention that many prisoners who have been convicted of corruption are now receiving "privileges" in their facilities and accommodations, such as Artalyta Suryani, who is currently being held at the Pondok Bambu Detention Center and enjoys her comfortable living conditions due to her access to luxurious amenities.14 In contrast to Gayus Tambunan, who bribed numerous guards at the Mako Brimob Detention Center in Kelapa Dua so that he could enter and depart the detainees, Agusrin Najamuddin, a former governor of Bengkulu, has a room with a mattress, cot, work desk, bookshelf, and music tape player.15 Therefore, the paradigm of law enforcement should be projected to incorporate the concept of restorative justice, particularly in cases of corruption offences. This illustrates that the concept of retributive justice, which seeks vengeance, has proven incapable of appreciating the importance of legal expediency.

In accordance with the Prosecutor's Regulation of the Republic of Indonesia for Restorative Justice, restorative justice is generally applicable only in cases involving small communities. In order to reach the ideal goal of giving the maximum legal benefit to all levels of society, the implementation of restorative justice must be able to touch all levels of society, including efforts to eradicate corruption.

The author formulates a number of researched concerns, including how Indonesian restorative justice should be employed to punish corrupt individuals, based on the description previously provided. How might the formulation then be utilized to prosecute corruption offenders in Indonesia's restorative justice system?

This investigation is a standard legal inquiry. The data source consists of primary, secondary, and tertiary legal information. The majority of basic legal knowledge comes from laws, rules, court decisions, and other authoritative and binding sources. While dictionaries and the Internet provide tertiary legal materials, secondary legal sources can be found in countless publications and literary works that explain the main legal sources. These various data sources were collected using documentary methods and analyzed descriptively and qualitatively. Scholarly methodologies include legislation, comparative analysis, and conceptual approaches. The novelty of this research is about the paradigm of restorative justice to maximize the recovery of state losses and prevent and eradicate corruption. with the aim of upholding restorative justice.

The results of the available descriptions are then analyzed from the perspectives of theories, expert opinions in the field of criminal law, and the author's own interpretation. This is intended to provide support for a conclusion that can define and solve the difficulties raised in this study.

B. Discussion
1.1 Restorative Justice Against the Conviction of Corruption Offenders in Indonesia

Currently, it appears that administering criminal sanctions in the form of revocation of a person's independence has more negative than positive repercussions. Regaining a person's indignity is associated with dehumanization, imprisonment, and stigmatization. In addition, the number of crimes authorized by the loss of autonomy is increasing, which is overwhelming law enforcement organizations. When it comes to funding, the state budget focuses solely on physical punishment rather than recovering the costs associated with crimes. Whereas in many criminal situations of the present day, it is preferable to restore the damage and negative effects caused by a crime rather than deny the perpetrator his or her freedom. Beyond punishment theory and philosophical studies, the concept of retributive justice, which is no longer relevant to the legal objectives of eradicating corruption in Indonesia, has a significant impact on the setting of criminal corruption. Yes, it places a significant emphasis on safeguarding state wealth and assets. In addition, the safeguarding of public funds is a legal interest. Recently, it was discovered that many defendants accused of corruption who caused significant harm to the nation wanted to enjoy their prison terms. In reality, their existence in the criminal justice system will damage the mindset of law enforcement, thereby encouraging future criminal conduct. It is apparent that some individuals convicted of corruption have a habit of bribing LAPAS personnel to get luxurious jail lodgings while serving their sentences.

Corruption will have dual effects on the economy: it will increase state spending in the public sector and decrease state earnings from the public sector. Corruption adds to a major fiscal imbalance and causes wealth disparity due to the fact that it separates the opportunities for individuals in particular positions to profit from government activities at the expense of society. Corruption encourages an increase in poverty rates due to the inability of government initiatives to reach their intended recipients. In addition, corruption hinders the participation of eligible individuals in government assistance programs.

17 Rida Ista Sitepu and Yusona Piadi, op. cit. hlm. 63.
18 Ibid.
From this point on, it is clear that retributive justice cannot be the exclusive basis for corruption convictions. To undo the impacts of corruption, an alternative that is comprehensive and systematic is required. The incapacity of retributive justice procedures centered on retribution and neo-classical ideas to fulfill a society's sense of justice led to the idea of infusing restorative justice into the concept of punishment, and specifically the punishment of those who commit corruption offences. Legal proceedings that result in a judge's conviction, according to Satjipto Raharjo, put law enforcement in the slow lane. For the restorative justice strategy to be viewed as a superior and more effective means of case resolution than the retributive justice approach, it must be perceived as such. In addition, this is compatible with Luhut MP Pangaribuan's position. According to Pangaribuan, a criminal matter is no longer resolved by jail because it is both a symbol and a financial burden on the state. Rather, it is resolved through mending the relationships between the perpetrator and the victim and society.

Restorative justice focuses less on the courts and more on the circumstances that can lead to justice and equilibrium for both criminals and their victims. The goal is to prioritize restorative or peaceful justice in the treatment of criminal matters. The objective of the integral-systemic policy for combating corruption crimes is to integrate strategies for crime prevention with the overall strategy for system development. In addition to the "treatment of criminals," which means punishing lawbreakers, there must also be a "treatment of society," which entails fostering situations that can inhibit criminogenic elements like facto.

Several countries throughout the globe have adopted restorative justice practices as an alternative to dealing with corruption offenses. Due to the nearly nonexistent crime rate, the Netherlands were able to close twenty-four (24) prisons between 2013 and January 2017. Similarly, the Netherlands use restorative justice to resolve instances of corruption. In 2016, the Corruption Perceptions Index ranks the Netherlands eighth out of 176 countries as the least corrupt nation in the world. This suggests that restorative justice approaches are more effective at reducing crime rates, especially corruption-related offenses, and repairing the damage caused by criminal activities. To accomplish this, the state, offenders, and community must collaborate to recover losses caused by criminal acts. Effective and efficient approaches include making rehabilitation from criminal activities a priority and sanctioning corrupt persons only as a last resort. Instead of implementing the deprivation of the perpetrator's autonomy, the focus of legal attention in the context of corruption must be on how the state's losses can be recovered.

1.2 Application of Restorative Justice to Offenders of Corruption in Indonesia

The concept of restorative justice in general criminal situations is the resolution of criminal cases by bringing together the perpetrator, victim, victim's family, and other parties to reach a fair resolution while emphasizing restoration to the original situation rather than retribution. It is essential to emphasize that the victim of corruption-related crimes is the state. To ensure that the criminal compensates the state for losses sustained as a result of corruption.

Restorative justice is a method of loss recovery used instead of the criminal law developed from retributive justice to handle situations involving corruption crimes. Once the victim's losses have been fully repaid by the perpetrator, criminal legislation is no longer necessary.

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21 Drani, op. cit. hlm. 610.
According to criminologist Nigel Walker of Kings' College Cambridge, the criminal justice system should not be used to:

a) The Target of Punishment;
b) Activities that do not result in casualties or losses;
c) Where it is still possible to combat offensive behaviors with more effective methods that cause less harm.
d) When an illegal act has a greater negative impact than it has on its own;
e) If public opinion does not firmly support it
f) If it has been calculated, it will not work or be implemented.

According to Didik Endro Purwoleksono, who is cited by the author in the context of corruption, if all the proceeds of corruption crimes are returned by the suspect or defendant, it can be used to remove the unlawful nature of the criminal law, specifically the criminal act of corruption, so that the suspect or defendant does not need to be found guilty. The loss of the criminal nature of a corruption offense is caused by the following three (3) elements or circumstances:

1) There was no benefit for either the suspect or the defendant.
2) There is no danger to the state.
3) The community is aided.

The preceding explanation leads to the conclusion that, if the perpetrator of the corruption crime returns all the proceeds of the crime and all the profits earned from the proceeds of corruption, then, in essence, the perpetrator does not benefit, the state does not incur financial losses, and the community is served by the return of all the proceeds of corruption and all the profits. In this context, "community serviced" refers to the state's ability to construct facilities that benefit the entire community by returning all gains and the community's needs will not be addressed. The corrupt individual will continue to profit from his or her crimes, so the illegal nature cannot be eradicated by returning a portion of the proceeds. To remove their illegal nature, the proceeds of corruption-related crimes must be repaid by corrupt acts. The author claims that returning the outcomes of corruption crimes, as well as the consequences suffered by suspects or defendants in corruption crimes, has the following consequences:

1) If there are no losses or fatalities, there is no longer any financial loss to the state;
2) There are further alternatives that are more effective and result in reprehensible losses, allowing the state to spend less money prosecuting, convicting, and feeding corrupt persons who have already been proven guilty.

Therefore, it may be argued that applying restorative justice to crimes involving corruption is more profitable for the state if corruption perpetrators restore all of the proceeds and benefits they gained as a result of their crimes. With the implementation of restorative justice, the state is no longer forced by financial constraints to incur costs against those who have been found guilty of corruption crimes, and if the retributive justice method is still used, corruption criminals are more likely to choose an alternative sentence of imprisonment over making restitution to the state. Clearly, this is even worse for the country. Currently, the following procedures are employed to implement restorative justice to persons who have committed corruption-related offences using law enforcement instruments:

1) Previous to the investigation;
2) When the investigation is carried out; and
3) Whereas the investigation was being conducted.

24 Barda Nawawi Arief, Bunga Rampai Hukum Pidana (Bandung: Citra Aditya Bakti, 2002).
According to the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning the Termination of Prosecution Based on Restorative Justice, which outlines the requirements for Termination of Prosecution, Case Closure, and peace procedures to the peace process between victims and perpetrators in litigation, the procedural application of restorative justice has been implemented. The application of restorative justice to corrupt acts has not been specifically addressed by this regulation in the context of corruption offenses.

The author creates a method for employing restorative justice to address corruption crimes by focusing on the numerous features and results that will result from employing restorative justice to address corruption crimes. The public prosecutor is a prosecutor authorized to resolve corruption cases through restorative justice on behalf of the state. The victim of corruption is the state, which incurs financial losses as a result of corruption-related crimes. A suspect is also someone who, according to the facts, should be accused of committing a crime of corruption based on their behavior or other circumstances. To conclude the prosecution of corruption cases, a restorative justice strategy is utilized, which is founded on the principles of justice, proportionality, public interest, speed, simplicity, and cheap costs. In this circumstance, the public prosecutor or prosecutor duly filed in tiers to the office of the top prosecutor has the right to close corruption cases. Initial closure of a corruption case occurs when the original circumstances have been restored, in this case by returning all benefits and compensating the state for financial damages caused by the corruption crime.

If restorative justice tactics are utilized to cease the prosecution of corruption cases, the public prosecutor must at least consider the following:

1) State and other legal interests are the victim's interests in this situation;
2) Avoiding Retaliation;
3) Avoid behavior that is stigmatizing and dehumanizing;
4) Public order and decency;
5) Social response and harmony

In addition to the foregoing considerations, the prosecutor must take the following into account prior to requesting a termination of the case:

1) Context of corruption crime prevalence and behavior
2) Level of condemnation
3) Corruption-related losses and repercussions
4) Case management fees
5) Recovery returns to its original state.

If it relates to the Decree of the Director General of the General Judicial Agency at the Supreme Court, the emphasis of restorative justice is on general crimes, particularly minor offenses such as those described in Articles 363, 373, 379, 384, 407, and 482 of the Criminal Code (KUHP). However, the current state of affairs demonstrates that retributive justice cannot solve the issue of existing corruption offences. In certain instances of corruption, inmates who cannot pay the surrogate's fee opt to spend time in jail (subsidiary). This is inconsistent with adopting corruption legislation that is supposed to emphasise the restoration of financial damages to the state above the conviction of offenders. However, in the case of corruption offences, clear limits must be established so that law enforcement can implement the law

without trouble. The novelty of this research is about restorative justice in corruption cases and the application of restorative justice as an alternative in eradicating corruption.

If the following conditions are met, corruption charges can be dismissed and prosecution halted utilizing a restorative justice strategy:

1) Initially, the suspect committed a criminal offense;
2) The greater of the value of the evidence or the value of losses incurred as a result of corruption offenses cannot exceed Rp 500,000,000. (five hundred million rupiah).
3) As part of a restorative justice strategy, suspects are required to return all of the benefits they received from the proceeds of corruption offenses to the state within sixty days of the settlement agreement.
4) If the suspect is unable to compensate the state for its financial losses, the suspect's property is seized and sold at auction.

C. Conclusion

1) The concept of retributive justice, which is no longer relevant to the principles of the Indonesian anti-corruption law, which prioritizes the protection of state assets and wealth, has a significant impact on corruption if we look beyond punishment theory and philosophical studies. Evidently, retributive justice strategies alone cannot be relied on to successfully convict corruption cases. To undo the impacts of corruption, an alternative that is comprehensive and systematic is required. The incapacity of retributive justice procedures centered on retribution and neoclassical ideas to fulfill a society's sense of justice led to the idea of infusing restorative justice into the concept of punishment, and specifically the punishment of those who commit corruption offences. Effective and efficient alternatives include making recovery from criminal activity a priority and sanctioning corrupt individuals as a last resort. Instead of enforcing the deprivation of the perpetrator's independence, the law should focus on how to recover the state's losses in the context of corruption crimes.

2) It may be argued that the state will profit more from adopting restorative justice in corruption situations if offenders are obliged to restore all the advantages and revenue from their crimes. With restorative justice, the state is no longer financially burdened by the expenditures expended against convicted corruption offenders. The criminal justice system becomes balanced when corruption is addressed with restorative justice. Implementing restorative justice has several obstacles because it has not been governed by explicit norms and because of its technological execution. It is possible to execute restorative justice in corruption situations while still adhering to the author's previously outlined limitations.

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