



## Restorative Justice on Corruption Criminal Actions

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### **Abstract**

The concept of sentencing in Indonesia has long been a subject of debate, as it involves imposing punishment and restricting a person's rights. The current penal system in Indonesia heavily relies on the Retributive Justice model, which aims to settle criminal cases through punishment. However, this model tends to prioritize the perpetrator's punishment over the victim's rights. As time goes on, the Retributive Justice model has been challenged by an alternative approach, namely Restorative Justice. This approach aims to repair the harm caused by criminal acts, rather than solely punishing the offender. Restorative Justice has the potential to offer a different solution to the Indonesian criminal justice system. Furthermore, its implementation could help eradicate corruption crimes in the country.

**Keywords:** *Corruption Crimes; Criminal System; Punishment; Restorative Justice; Victim's Rights*

### **Introduction**

The concept of sentencing in Indonesia is still a long-standing debate because when imposing a sentence, a person must undergo a certain punishment which means a restriction on their rights. The current penal system in Indonesia is dominated by the Retributive Justice Model, which settles criminal cases by way of punishment. All forms of crimes and violations, both in the Criminal Code and outside of it, that are proven in court are decided by punishing the perpetrators, while the rights of victims and the public are not given much attention. The Retributive Justice model focuses more on the perpetrators and ignores the rights of the victims (Riishojgaard, 2019). The application of punishment serves to create a deterrent effect for perpetrators so that they do not repeat their actions, as well as being a lesson for others who may commit the same crime.

This punishment model pays little attention to the rights and interests of the victim because the victim does not participate directly in solving the case. So far, the rights and interests of victims have been represented by the state through law enforcement officials, and victims have only waited and attended legal efforts to resolve these problems, especially when court decisions obtained are sometimes

not what victims and society expect. Restorative justice in Indonesia is still not widely applied as the main approach in dealing with criminal acts (Jufri et al., 2019). However, several restorative justice programs have been developed and implemented by several government agencies and private organizations (Azhar, 2019).

In Indonesia, restorative justice is often used in the context of mediation and advocacy for victims, such as in cases of domestic violence and crimes against children. Restorative justice is also used as an alternative in handling social problems, such as disputes between communities and social conflicts. However, the implementation of restorative justice still encounters several obstacles, such as a lack of support and active role from law enforcement officials, a lack of capacity and competence for restorative justice mediators and facilitators, and a lack of resources and funds available for restorative justice programs (Zulfa, 2009).

To improve the implementation of restorative justice in Indonesia, efforts are needed such as strengthening and expanding restorative justice programs, increasing the capacity and competence of mediators and facilitators, and strengthening synergies between government agencies and private organizations in realizing effective and sustainable restorative justice.

As time goes by, the Retributive Justice model of punishment that is more familiar to the penal system in Indonesia is starting to get an alternative model of punishment, namely the existence of Restorative Justice which offers a different solution, a different settlement model, by involving both parties - the perpetrator, the victim, and even the community. This sentencing model focuses on restoring conditions before the occurrence of a crime, which is considered to be more humane and takes conscience into account (Hermann, 2017). Thus, the goal of law enforcement is not merely punishment, but also the restoration of relations between perpetrators and victims so that harmony returns. Efforts to eradicate corruption are not only to give punishment to those proven guilty with the harshest possible punishment, but also to ensure that all state losses caused by perpetrators of corruption can be recovered in the near future (Fatah et al., 2016).

### ***Formulation of the Problem***

Based on the description that has been described above, the main questions raised to be the topic of the problem are as follows:

1. What is the form of restorative justice in corruption crimes that occur in Indonesia?
2. How is the application of restorative justice in Indonesia towards Corruption Crimes?

### ***Resume***

#### **A. Forms of Restorative Justice in Corruption Crimes in Indonesia based on the Criminal System in Indonesia**

Restorative Justice has been applied in Indonesia for a long time, as stated in Article 1, Paragraph (6) of Law (UU) No. 11 of 2012, which defines the Juvenile Criminal Justice System as a way to settle criminal cases involving perpetrators, victims, victims' families, perpetrators, and related parties. The goal is to find a fair solution that emphasizes restoration rather than retaliation. Over time, Restorative Justice has increasingly become a preferred method for sentencing in Indonesia, particularly in general criminal cases that meet certain criteria, including:

1. Criminal acts that are resolved which are light in nature or complaint offenses, whether absolute or relative in nature.
2. There is a desire from the parties to the dispute between the perpetrator and the victim to make peace. The consequences of these problems do not have a broad or negative impact on people's lives.
3. Reconciliation activities must be carried out to bring together litigants and involve social institutions such as local community leaders.
4. In resolving cases, it is necessary to pay attention to the factors of intention, age, socio-economic conditions, level of losses incurred, kinship family relationships. Not a repetitive or recidivist act.
5. If the action begins with an agreement or engagement, it leads to civil law.
6. The victim must withdraw the report or complaint.
7. If there is dissatisfaction with the parties to the case after it has been carried out outside the court mechanism, then the settlement is in accordance with applicable legal procedures.
8. If there is a repetition of the crime committed, the process must be carried out in accordance with applicable regulations or law.

The implementation of Restorative Justice for Corruption Crimes must be thoroughly considered and analyzed; as such crimes cannot be classified as falling within the requirements outlined in Article 12 letters A and B of the Regulation of the Chief of Police of the Republic of Indonesia Number 6 of 2019 concerning Investigation of Criminal Acts. Corruption is not a light or complaint offense, and it can cause significant harm to the wider community (Hutabarat et al., 2022). When examining the intention behind such crimes, it can be suspected that perpetrators engage in corruption to enrich themselves or their group, and they typically belong to the middle and upper socioeconomic status, which does not meet the predetermined conditions. Corruption is classified as a White Collar Crime, as outlined in Article 4 of the Corruption Act, which states that “the recovery of state financial losses or the country's economy does not eliminate the punishment of perpetrators of criminal acts.” Therefore, if the Restorative Justice method is to be used for the settlement of Corruption Crimes, it will likely focus more on recovering the losses suffered by the state due to the actions of the perpetrators, rather than on reconciling the perpetrators with their victims, given the difficulty of the reconciliation process. Corruption Crimes are often massive in scale, resulting in large losses and numerous victims. It is important to note that unlawful behavior can be classified into two types, namely against material law and against formal law.

1. Violating material law is an act that is contrary to the substance or content of legal regulations. For example, acts of stealing, killing, harming others, and so on.
2. Violating formal law is an act that is contrary to the form or process of legal regulations. For example, actions that do not meet administrative requirements, take actions that are prohibited by regulations, and so on

These two types of unlawful behavior have different impacts on individuals and society. Therefore, in dealing with unlawful nature, it is necessary to pay attention to the type of action and distinguish the sanctions to be applied (Saleh, 1987).

In considering factors that may eliminate the unlawful nature of a defendant's actions, it may be appropriate to declare the defendant free from all lawsuits, provided that certain conditions are met. These conditions may include:

- a. The defendant's actions were carried out in the public interest;
- b. The defendant did not obtain personal gain from their actions; and
- c. The actions did not result in any losses suffered by the state or society.

The factors that abolish lawlessness are only mentioned in the third chapter of the first book of the Criminal Code, which outlines reasons that may abolish punishment. However, in the theory of

criminal law, Achmad Soema provides a more detailed explanation of these reasons, which can be differentiated into three categories:

- a. Justification reasons, which refer to reasons that eliminate the unlawful nature of the act. In this case, the action committed by the defendant is deemed appropriate and correct.
- b. Reasons for forgiveness, which refer to reasons that eliminate the guilt of the accused. The actions committed by the defendant are still considered unlawful, but they are not punished because there was no mistake made.
- c. Reasons for removing the prosecution, which are not related to justification or forgiveness reasons. In this case, the government considers that it would be more beneficial to society not to prosecute the defendant, without considering the nature of the act or the person who committed it.

These reasons are included in the reasons for erasing and justifying reasons, including:

- a. Reasons for lack of accountability due to internal factors (*inwendig*), such as imperfect or disturbed growth of the soul due to illness (as stated in Article 44 of the Criminal Code).
- b. Reasons for lack of accountability due to external factors (*uitwendig*), which are outlined in Articles 48 to 51 of the Criminal Code. These include:
  - *Overmacht* (Article 48);
  - *Noodweer* defense (Article 49);
  - Implementation of laws (Article 50); and
  - Carrying out orders related to official position (Article 51).

If Restorative Justice is applied to a large-scale corruption case accompanied by money laundering, tax evasion, and other concurrent crimes, it is important to consider Article 4 of the Corruption Law, which states that the return of state losses alone cannot eliminate the crime committed. Moreover, Restorative Justice for Corruption Crimes should not only focus on corruption, but also on the broader scope of financial crimes that may be involved. Additionally, it is important to consider the Restorative Justice approach in facilitating the process of recovering assets abroad.

## **B. How Is the Application of Restorative Justice in Indonesia towards Corruption Crimes**

Restorative justice is an approach to justice that prioritizes repairing the harm caused by criminal behavior rather than solely punishing the offender. In the context of corruption crimes, restorative justice may involve the perpetrator acknowledging the harm they have caused and taking steps to make amends, such as returning stolen funds or participating in anti-corruption programs. Additionally, the process of restorative justice often involves forgiveness from the victim, which precedes any admission of guilt from the perpetrator. Restitution is a key aspect of restorative justice, involving compensation to the victim in order to restore losses and improve relationships, and may involve the use of mediators in the process of penal mediation to help cut the cycle of revenge.

Several paradigms or rationales have been developed and are currently being used by the criminal law system in Indonesia to implement the eradication of criminal cases. The primary objective of the system is to reveal criminal acts that have taken place, identify the perpetrators, and impose criminal sanctions on those responsible for committing the crimes. Corruption is a particularly prevalent issue in Indonesia, and these paradigms have been developed to address this problem. The paradigms used in Indonesia include:

1. Follow the suspect: This approach focuses on identifying and locating the perpetrators of a criminal act.

2. Follow the money: This approach prioritizes tracking money or assets resulting from a crime, with the goal of obtaining evidence that can then be used to identify the perpetrators and the crimes committed. A financial analysis approach is often used to investigate the results of criminal acts.

When it comes to disclosing money laundering crimes, the focus should be on tracing the flow of funds or financial transactions of criminals since the proceeds of crime are the lifeblood of the crime itself (PPATK, 2006). The primary paradigm in addressing money laundering is to prioritize the asset approach, which involves tracing the flow of money or assets resulting from the crime. When allegations of money laundering are reported, law enforcers should use a "follow-the-money" approach, which refers to tracing the flow of funds (Yusuf et al., 2011). This helps identify the forms of assets that resulted from the crime, where they are stored, in whose name the money is, and who or which institutions assist the perpetrators of the crime of money laundering. The "follow-the-money" approach prioritizes looking for money or assets resulting from the crime, rather than finding the perpetrators of the crime. Once results are obtained, then the culprits and crimes committed can be identified. A financial analysis approach is used in seeking the results of criminal acts (Husein, 2008). On the other hand, the "follow-the-suspect" approach involves pursuing and punishing the perpetrators of criminal acts, with a focus on the perpetrators themselves. Legal action on the assets of a crime must wait for the punishment of the predicate crime, which may potentially reduce the achievement of criminal goals and punishment. One of the purposes of punishing criminal acts involving assets is to save or return them. However, this may not be achieved if the "follow-the-suspect" approach is prioritized over the "follow-the-money" approach (Kristiana, 2015).

If corruption crimes are handled using the restorative justice method, it is important to pay attention to the criteria for corruption crimes that can be addressed through this approach. These criteria include:

1. The state losses are relatively insignificant: Cases where the state losses are relatively small can be considered for restorative justice.
2. The defendant's mistakes are not significant: Cases where the defendant's mistakes are not significant and do not involve complex corruption schemes can be considered for restorative justice.
3. The position of the accused in corruption is not primary: Cases where the accused played a secondary role in the corruption scheme can be considered for restorative justice.
4. The impact of the crime on the country's economy and society: Cases where the impact of the crime on the country's economy and society is not significant can be considered for restorative justice.
5. Corruption does not attract the public: Cases where the corruption does not attract the public's attention or outrage can be considered for restorative justice (Rozah, 2019).

Related to the Criteria for a Corruption Crime, there are elements that must be fulfilled so that an act can be categorized as a criminal act of corruption that can be studied using several theoretical approaches, including:

1. Sanction Theory - This theory argues that sanctions applied to perpetrators of corruption can help prevent criminal acts of corruption. Sanctions applied can be in the form of criminal penalties such as imprisonment, fines, and others.
2. Deterrence Theory - This theory argues that the threat of sanctions can help prevent acts of corruption by making perpetrators consider the risks and potential losses associated with acts of corruption.
3. Organizational Culture Theory - This theory argues that culture and values applied in an organization can affect individual actions in the organization, including acts of corruption.

4. Trust Theory - This theory argues that the level of public trust in government officials and government institutions can influence acts of corruption.
5. Social Control Theory - This theory argues that the level of social control carried out by the community can help prevent criminal acts of corruption.
6. Plea Bargaining in the prosecution, which if there is a return of state losses is only an excuse for mitigating the crime

The direction of criminal justice in Indonesia is currently experiencing a shift from the previous retributive model to a restorative and rehabilitative approach, or *daad dader strafrecht*, also known as the balance of interests model. In line with this shift, Indonesia has made developments related to legal norms used in handling criminal cases, which have been introduced by various agencies including:

- Law No. 12 of 2011 concerning SPPA, which introduces the concept of restorative justice in handling cases involving child offenders.
- Government Regulation No. 19 of 2020 concerning the National Medium-Term Development Plan for 2020-2024, which mandates the improvement of birth penalty due to overloading of detention centers that exceed capacity.
- Perja No. 15 of 2020 concerning Termination of Prosecution based on Restorative Justice.
- Guidelines for the Attorney General No. 18 of 2021 on Narcotics Abuse through Rehab with a Restorative Justice approach.
- Police Regulation No. 8 of 2021 concerning Restorative Justice Criminal Handling.
- Decree of the Director General of Badilum of the Supreme Court No. 1691/09UJSK/PJ.00/12/2000.
- Law No. 11 of 2021 concerning the Attorney General's Office.
- Law No. 22 of 2022 concerning Corrections.

If Restorative Justice is used for Corruption Crimes, then its meaning is not to carry out or aim to terminate the case, which can carry out several other options in the application of Restorative Justice to Corruption Crimes, including:

- a. Termination of a case can be a product of Restorative Justice with examples of Diversion and Penal Mediation
- b. Not all cases of termination are the application of Restorative Justice
- c. Restorative Justice does not replace or alternative SPP, in which Restorative Justice is complementary to SPP and does not have to abolish punishment.

The restorative approach should be seen as an addition to retributive punishment, rather than a replacement for the retributive nature of the criminal justice system. In other words, the restorative justice component must be seen as an additional form of punishment, not an alternative to punishment (Gabbay, 2005). Restorative justice has so far been the paradigm in society for crimes that have identifiable victims. However, corruption crimes do have victims, even though they are not identified. As explained by the Newburn Team in 2007, corruption is a white-collar crime that also has victims. The victims of corruption crimes are the general public, who are negatively affected by the corrupt acts. Specifically, what needs special attention in eradicating corruption is the return of state assets lost due to corruption. The success of law enforcement in taking firm action against perpetrators of corruption to recover state assets lost due to corruption is more important than simply punishing the convicted person with imprisonment. Moreover, corruption is classified as a white-collar crime because most of the perpetrators are intellectuals and have influence in government power (Darmawati, 2020). Narcotics, prostitution, and assisted suicide are examples of victimless crimes.



## Conclusion

The Restorative Justice approach in Indonesia aims to improve relationships between perpetrators and victims of crimes through a process of recovery and dialogue. However, its implementation is still limited and not widely accepted by society and law enforcement. To be effective, Restorative Justice requires active participation from offenders, victims, and society in the process of recovery and conflict resolution. This model has the potential to be an alternative and comprehensive solution to criminal problems, and help achieve legal certainty, benefit, and justice for all people in Indonesia.

When it comes to applying Restorative Justice to Corruption Crimes, the punishment system cannot be used selectively as many Corruption Crimes do not meet the conditions set for a criminal act. Article 4 of the Corruption Law states that “Recovery for state losses does not eliminate the punishment of the perpetrators of criminal acts,” which contradicts the conditions for recovering losses under Restorative Justice. However, Restorative Justice can still be used as an alternative or assist in disclosing Corruption Crimes.

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