

Research Article

Opportunities for Restorative Justice in the Settlement of Corruption

Ade Mahmud*, Chepi Ali Firman Z, Husni Syawali, Tiara Azzahra Zaini, Indira Ratna Wismaya

Universitas Islam Bandung, Bandung, Indonesia

Abstract.

Corruption is a synonym for financial crime which is perceived by the public to be severely punished, so as to make the final justice system for the settlement of corruption cases. A severe punishment even though there are several corruption cases that have harmed the country's finances in small losses, and opened up opportunities for restoration. This study aims to analyze the criteria for corruption with small state losses that can be restored and the implications of implementing restorative justice for eradicating criminal acts of corruption. This study uses a normative juridical approach by using secondary data related to restorative justice and criminal acts of corruption and then analyzing them using qualitative techniques. The results of the study show that corruption with small losses can be restored if the value of the loss is not more than 1 billion rupiah, the perpetrator does not have an important role in the implementation of the crime and is not a repetition of the crime. The application of restorative justice is believed to have juridical implications in the form of recovering state losses due to corruption. The restoration process can speed up the stages of the case settlement process, making law enforcement cost efficient, it is an alternative choice to reduce the cost of handling cases to be efficient. This reduces the problem of overcapacity in correctional institutions, while socially this concept affects the public's perception that state losses due to corruption can be returned without punishment.

Keywords: corruption, opportunity, restoration

1. INTRODUCTION

The criminal act of corruption has been perceived as an extraordinary crime that endangers the life of the nation and state, the resulting impact disrupts the joints of the country's economy, forms a high-cost economy, afflicts the people and enriches some businessmen and cunning rulers. Corruption is always related to position and power, synonymous with abuse of authority to gain financial gain illegally and against the law. The nature of the criminal act of corruption which is attached to financial gain makes this crime mostly committed by businessmen who conspire with the authorities in the legislative, executive and judicial fields.

The characteristics of corruption crimes are close to material gain, so this type of crime is always correlated with direct or indirect losses to the state. State losses that

Corresponding Author: Ade Mahmud; email: ade.mahmud@unisba.ac.id

Published: 15 August 2024

Publishing services provided by Knowledge E

© Ade Mahmud et al. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the 6th SoRes Conference Committee.

OPEN ACCESS

arise directly such as corruption that occurs in tax payment evasion, fictitious projects in the procurement of government goods and services, mark ups and so on. While indirect state losses occur due to corruption in the form of bribes, gratuities, trading in influence and the like. Therefore, the criminal act of corruption is called an economic crime which has a broad impact in society, both directly and indirectly [1] .

The stigma of corruption as an extraordinary crime that has wide-reaching impacts on society means that the perception of punishment for perpetrators of corruption is very massive. It is rolled out by various elements of society, ranging from capital punishment to life imprisonment to the idea of impoverishing the perpetrators. This stigma is not wrong because the fact is that the phenomenon of corruption in society continues to occur, thus inviting various people's anger.

Even though there are many perceptions of punishment for corruptors, there is a fact that deserves common attention that not all corruption crimes result in large amounts of state losses. There are a number of corruption cases that show relatively small state losses. proved against the law. Corruption with relatively small losses is not exposed to society and also becomes a phenomenon that is judged massively to be severely punished, even though the value of the losses does not have a large impact on the state.

Corruption with small state losses should be the concern of law enforcers so that it can be resolved fairly, a guilty person must be punished but the type and severity of the sanctions must be applied proportionally and measurably. The state has no right to punish a corruptor if he is not proven guilty or does not cause the state to suffer losses. On the other hand, the state, through its law enforcers, is obliged to develop an alternative settlement that is fair for all parties.

Referring to Supreme Court Regulation No. 1 of 2020 concerning Guidelines for Criminal Acts of Corruption, the state loss is said to be light if it is more than IDR 200,000,000.- IDR. 1,000,000,000, - means that this loss is very likely to affect the sanctions that will be received by the perpetrator. The assumption is that the smaller the role and the value of the loss incurred, the lighter the criminal sanction. The greater the role and the value of the loss, the more severe the sanctions. The context of punishment like this is felt to be quite fair and in accordance with the theory of criminal proportionality.

The existence of penal guidelines that regulate the amount of state losses opens up opportunities for the application of restorative justice in the settlement of corruption crimes with small state losses. Various possibilities can occur when handling cases, for example the perpetrator admits mistakes and returns state losses. In such a position, law

enforcers are open to the possibility of resolving a win-win solution without having to use criminal law. cost and benefit considerations in corruption cases with small losses seem to have to be applied because they have sufficient benefits for both the perpetrators and the state as victims of criminal acts [2].

Restorative Justice is a popular alternative in various parts of the world for handling certain crimes because it offers a comprehensive and effective solution [3]. for Indonesia, restorative justice has been in force, but limited to criminal acts that are punishable by light crimes and has not yet been applied to corruption crimes because most people view corruption as a serious crime. Mechanisms and direction of criminal justice for corruption are still focused on punishment and have not provided a place for perpetrators to resolve it in a restorative manner [4].

Seeing the development of punishment theory which was initially only focused on a deterrent effect on perpetrators in the form of prison sentences shifted to an important role for victims through the application of restorative justice, this opens up opportunities for this concept to continue to be developed for other crimes such as corruption with small state losses so as to bring changes to the settlement system Cases that have so far been oriented towards punishing perpetrators have shifted towards recovery of losses.

The legal issue that arises is how law enforcement determines the criteria for a criminal act of corruption to be resolved by restorative justice, to what extent this opportunity can be applied considering that there are no regulations that form the basis for the application of restorative justice in corruption cases.

2. IDENTIFICATION OF PROBLEMS

1. How the criteria for corruption with small state losses be resolved by the concept of restorative justice?
2. How the implications of implementing restorative justice for eradicating corruption in Indonesia?

3. METHOD

To produce precise findings, the author applies a normative juridical approach that uses secondary data in the form of research results such as journals, international proceedings, reference books, legal dictionaries, encyclopedias and studies of various

laws and regulations, the United Convention Against Corruption which regulates. The secondary data is obtained using literature study techniques, all existing research data is inventoried and analyzed using qualitative analysis techniques so as to produce descriptive analytical research.

4. DISCUSSION

4.1. Settlement of Corruption Crimes with Small State Losses Through the Concept of Restorative Justice

The idea of restorative justice basically cannot be separated from criminal acts or violations of the law committed by someone, especially perpetrators of corruption because every act that violates must be legally accountable. However, this form of legal responsibility shifts from the idea of retaliation towards fostering human beings who are aware of mistakes.

In its development, the concept of restorative justice continues to evolve with various terms and becomes the dominant model in criminal justice throughout most of the history of mankind from all nations [5]. This idea is considered good because it can be implemented effectively and contains great value for the perpetrators and victims. The benefits that exist in restorative justice can be developed more broadly against various forms of crime, not limited to crimes that are subject to light sanctions. This is important because the punishment pattern that prioritizes imprisonment has created various new problems for the perpetrators and the state. It is said so, because punishment in correctional institutions has spawned crimes that are studied by convicts. Problems over capacity, drug trafficking, sale of luxury facilities and various other problems.

Particularly for corruption perpetrators, the sentencing process in correctional institutions raises doubts because the perpetrators are educated members of the public and have an established social status, giving rise to apathy towards coaching programs for corruption convicts. These various problems encourage the emergence of the application of the concept of restorative justice to criminal acts of corruption which are expected to open up new insights.

The hope for the application of restorative justice to criminal acts of corruption theoretically opens up debate between the pros and cons. For those who are pro this concept is believed to produce a corruption case settlement system that is short, cheap and able to recover state losses, but for those who are against it argues that restorative justice will eliminate the deterrent nature of perpetrators because it opens

up opportunities to escape criminal sanctions, places corruption as an ordinary crime because generally this opinion is oriented towards the idea of revenge [6].

Regardless of the pro and con views, the opportunity for restorative justice has emerged as a new alternative that continues to develop in the settlement of criminal cases in Indonesia. Various things that characterize this process are (a) emphasizing efforts to produce solutions to crimes experienced by victims; (b) the victim is positioned as a party receiving attention to restore his condition; (c) there is a dialogue process between the parties to resolve problems and recover losses; (d) law enforcers must ensure that recovery goes well according to the agreement to prevent prolonged conflicts; (e) encouraging civil society.

This process opens opportunities to be applied in corruption cases with small state losses. Loss criteria ranging from Rp. 200,000,000-Rp 1,000,000,000, - is the main reference for law enforcement to sort out cases that do not need to be resolved in court. If corruption is always juxtaposed with state losses, then the benchmark for determining corruption cases that can be restored is to look at the value of the losses. Nonetheless, the small state loss standard set out in a Supreme Court Rule raises the question of whether it is mandatory for other law enforcers to comply. Thus the criteria for implementing restorative justice are not enough to just refer to the regulations of the supreme court.

Another standard that must be determined is by looking at the extent of the role of the actors in the occurrence of corruption. The formula is that the smaller the role of the perpetrator in organizing and carrying out corruption, the greater the chance of being subject to restorative justice. Thus, in a corruption case involving many parties, there is a possibility that the settlement process will be different, one party being resolved in court and the other party with restoration. This has the potential to create a feeling of unfairness among the perpetrators, but if this is the case, there is an opportunity for parties whose role is not so important to be free from serious criminal sanctions.

The next standard that is important to be used as a reference is that a criminal act of corruption is being committed for the first time in the sense that it is not a repetition (recidive). In theory, recidive criminal law is a factor that will aggravating punishment because the perpetrator is not aware of his mistakes and corrects himself after completing his sentence so that it is logical that if someone repeats a crime, the punishment must be tougher. For first-time corruptors, it is worth considering to get a restorative solution because there are many factors that influence someone to commit corruption.

These various standards deserve to be the main criteria that can be formulated as the basis for the application of restorative justice to corruption cases. At least there are several advantages gained by perpetrators and victims when the concept is applied, namely (a) shortening the process of settling cases because there is no need to go through the process of prosecution and examination in court; (b) corruption is synonymous with the emergence of state losses, so through this concept there is an opportunity for these losses to be returned by the perpetrators; (c) minimize the negative impact of imprisonment, especially for the perpetrator, family and society; (d) correcting the wrongdoing of the perpetrator without a lengthy criminal process.

Restorative justice is not just applying decisions about who wins and who loses in a criminal justice system that is hostile/resistance, the restorative justice process seeks a dialogue facility between all parties affected by crime including victims, perpetrators, supporters, and society as a whole . This concept involves a process in which all parties at risk in a particular crime jointly try to resolve collectively how to deal with the aftermath of a crime and its implications in the future [7].

Wright argues that the concept of restorative justice is basically simple. The measure of justice is not on the side of proper retaliation from the victim to the perpetrator (whether physically, psychologically, or punishment) but the harmful act is cured by providing support to the victim and requiring the perpetrator to be responsible with the help of family and society when needed [8].

The public's view of corruption needs to be directed to the perception that losses due to corruption must be recover and not focused on punishing the perpetrators, because no matter how severe the criminal sanctions the perpetrators are serving, there is no positive value if state losses cannot be recovered.

4.2. Implications of Implementing Restorative Justice for Corruption Eradication in Indonesia

The concept of Restorative Justice is relatively new in the criminal law enforcement process in order to hold perpetrators accountable. Philosophically, this concept offers a form of solving various legal cases that occur outside the existing criminal justice process, so that society does not only depend on the current procedures in accordance with the reflection of Pancasila values in order to achieve social justice for all people or members of the community. in the Republic of Indonesia.

In various countries, restorative justice has been implemented at all stages of the conventional criminal justice process, namely the stages of investigation and prosecution, adjudication and execution stages of imprisonment. Restorative Justice includes actions to restore the relationship between the victim and the perpetrator. Restoration of this relationship can be carried out by mutual agreement between the victim and the perpetrator. The victim can convey the loss suffered and the perpetrator is given the opportunity to make amends through mechanisms of compensation, peace, social work, and other agreements.

The Restorative Justice movement originally started as an attempt to rethink a need that was not being met in the ordinary justice process. Restorative Justice expands the circle of stakeholders or parties involved in events or cases which are not just the government and perpetrators but also include victims and community members [9].

The implementation of restorative justice needs to continue to be developed for various specific crimes, especially corruption. In various cases the concept of restoration succeeded in resolving cases in a relatively short time and the results were satisfactory to the parties, especially the victims. The granting of restitution from the perpetrators to the victims led to an improvement in the condition of the victims after the crime occurred. The perpetrator has the opportunity to correct the mistake by restoring the victim's condition, both material and immaterial, especially in cases of crimes against property that are easy for the perpetrator to restore. Corruption is included in the category of crimes against state-owned assets that were taken unlawfully by officials who abused their authority, so that the opportunity to apply the restoration concept is quite open, but it still raises debate among those who are pro and con.

The concept of restorative justice, if applied effectively, actually offers an optimal and effective recovery process for the situation and the impact felt by victims as well as perpetrators. Because it cannot be denied, the process of trial procedures and case administration which is long, rigid, and normative-legislative, is certainly not the only effective solution in restoring the relationship between victims and perpetrators of criminal acts that have been committed.

In terms of the procedural law mechanism, it is clear that neither the judge nor the prosecutor can know in detail the psychological and mental condition experienced by both the victim and the perpetrator during this kind of conventional criminal mechanism, even until the judge's verdict is passed on the perpetrator.

In this position, actually the principle of restorative justice can be an alternative in assisting the process of resolving criminal cases. The practice of restorative justice should be more appropriate to implement than retributive justice in countries where

the judicial system has not run optimally. Through restorative justice there are efforts to improve social welfare guarantees as well as being the main element in this principle. As a consequence, peace and reconciliation are focused on restorative justice, rather than retaliatory punishments which provide the maximum possible deterrent effect on perpetrators, even to the extent of requiring death or life sentences [10].

The application of the restoration concept is believed to have major implications for the corruption eradication movement in Indonesia, both in terms of the judicial process and public perceptions of corruption crimes. The author identifies several potential implications if the restoration concept is applied, namely (a) the completion of restorative justice has the potential to be able to restore state losses arising from corruption so that the negative impact can be minimized, reflecting on the various practices of many actors who admit mistakes and are willing to recover losses; (b) the restoration process can speed up the process of settling cases, the mechanisms and procedures for formal justice are felt to be rigid and rigid having to go through various stages starting from investigation, prosecution to examination in court while the results do not have a positive impact on the condition of state losses, this position is very counter productive with the process that must be passed; (c) making law enforcement cost efficiency, the long and time-consuming formal justice stages make the cost of handling cases enormous, this needs to be evaluated comprehensively so that the concept of restoration is relevant enough to be an alternative choice to reduce the cost of handling cases efficiently; (d) reducing the problem of overcapacity in correctional institutions, the existing social facts show that the coaching of corruption convicts is not going well because the perpetrators have an established social status compared to correctional officers so they tend not to go deep and live up to the coaching process.

Nonetheless, the negative implications of restorative justice have the opportunity to occur because there is potential that law enforcers and perpetrators can misuse. Some of these implications are (a) the occurrence of illegal agreements between perpetrators and law enforcement officials to restore losses even though they do not meet the requirements to carry out restorative justice, this potential may occur if law enforcers do not have integrity and professionalism in applying the law so that they abuse their authority; (b) after the agreement, the actor does not fully carry out his obligations, such as not returning the state's losses in full but only in part. This will make the state still lose money and the perpetrator will actually benefit; (c) creates the perception that the public and perpetrators believe that the punishment for corruptors is degraded and raises the assumption that corruption is a minor crime that can be resolved without a formal judicial process.

These various implications are identified in accordance with the objective conditions that exist in the criminal justice system which are influenced by the quality factors of the laws and regulations that apply as the legal basis for the exercise of authority, the integrity factor and the capacity of law enforcers as implementers of regulations in the hands of the apparatus, the law is implemented in accordance with the sense of justice of society whether or not and the community's cultural factors that are quite decisive, if the community has an attitude of obedience and obedience to the law then the process of implementing restorative justice will be easy to carry out because it has the support of social forces.

If analyzed in depth, the implications of restorative justice for the settlement of criminal acts of corruption can be seen from two sides, namely from the juridical and social aspects. Examined from the juridical aspect, this concept has an influence on the effectiveness of the process, costs and results of case handling and from a social perspective it can influence the perception of law enforcement and the public that corruption is not a complicated crime to resolve as long as the law is enforced with integrity and supported by simple and non-overlapping regulations.

Law enforcement in eradicating corruption should not only prioritize legal certainty, but also consider the value of justice and expediency. Recovering state losses caused by criminal acts of corruption is seen as more just and beneficial for developing the country. Corruption is considered a crime of calculation that uses the mind, not emotional impulses. Corruption is considered a factor inhibiting national economic growth so that the eradication of corruption needs to be carried out progressively to have a significant impact on the recovery of state finances [11].

The legal need in eradicating corruption today is law enforcement that is oriented towards returning state losses that are corrupted and enjoyed by corruptors. Corruption that occurs in Indonesia is not based on motivation to survive (corruption by need), but is driven by a high lifestyle (corruption by life style). Therefore, the application of criminal sanctions needs to shift from the follow the person paradigm to follow the money and assets.

The law enforcement strategy with the concept of restorative justice to recover state losses and shorten the legal settlement process is not an emotional effort but an effort to build an efficient legal system based on theoretical arguments. The theoretical basis for applying the concept of restoration is to use a lens of punishment that is proportional to the adage 'the severity of the sanction depends on the degree of wrongdoing, the role of the perpetrator and the value of the state's losses. In practice, it can be seen that judges when examining corruption issues show a tendency to follow a positivistic paradigm

and there are still very few judges who follow the restorative way of administering law as initiated by many legal experts. The notion of legal-positivism is still the mainstream paradigm among judges. The strength of this legal-positivism way of thinking in the realm of practice has implications for the judge's decision in recovering state losses through criminal restitution of state losses [12].

The paradigm of restoration law must not only be instilled in law enforcers but also in society, especially victims of corruption crimes who generally want the perpetrators to be severely punished without thinking about the value of the losses suffered by the state. Examined from the aspect of the benefits of restoration in the form of returning money to the state treasury the benefits are much higher for the community than just punishing the perpetrators while the state still loses money. The way people think about the concept of punishing corruptors needs attention to be changed towards restoration, not just giving sanctions.

Law enforcers as representatives of the state who are victims of corruption can provide avenues and opportunities for perpetrators to restore losses suffered by the state and society as a result of crime. Restoration of this relationship can be based on mutual agreement between the victim and the perpetrator. Victims represented by law enforcement can convey the losses they have suffered and perpetrators are given the opportunity to atone for them, through mechanisms of compensation, reconciliation, social work, or other agreements.

Various agreements are set forth in writing in the minutes that bind the parties as a reference in settling cases and the basis for recovering losses without criminal proceedings, the perpetrator is committed to carrying out his legal obligations to the state as a victim since the agreement was signed. Violation of the agreement makes the results annulled and the criminal process can be continued so that this concept requires high legal awareness for perpetrators to realize their mistakes, improve themselves and have a commitment to be fully responsible for the impacts that occur as a result of corruption.

The discourse on law enforcement in Indonesia as one of the dominant discourses finds its meaning when it comes to the alternative context of law development against corruption crimes that have distorted the foundations of national and state life. Globalization and liberalization as well as the development of science and technology have also encouraged the growth of various new crimes in the economic, business and financial fields where the impact resulting from these crimes is far more dangerous than conventional crimes or crimes such as robbery, fraud and ordinary theft. Research results also show that corruption has increased from time to time, both in quantity and

quality, indeed the perpetrators of crime have now experienced an increase and shift from what was originally only conventional crime (warungan), corruption has shifted into extraordinary crimes, along with Indonesia's predicate as the most corrupt country [13].

5. CONCLUSIONS

(1) The criminal act of corruption has an opportunity to be resolved with the concept of restorative justice as long as it fulfills various basic criteria in the form of a relatively small state loss of around Rp. 200,000,000-Rp 1,000,000,000, - the perpetrator does not have a strategic role in the planning and implementation of corruption and the act is the first time it has been committed, meaning it is not a repeat crime. Regardless of the various pros and cons of implementing restorative justice for criminal acts of corruption, this concept has advantages that can be offered to law enforcers to apply such as efficiency in case settlement time, solutions for recovering state losses without imprisonment and minimizing the negative impact of prolonged prison sentences, and

(2) The application of restorative justice to criminal acts of corruption is believed to have juridical and social implications. The juridical aspect of this concept has an effect on recovering state losses arising from corruption so that they can be recovered, the restoration process can speed up the stages of the case settlement process, making law enforcement costs efficient, the restoration concept is quite relevant as an alternative option to reduce the cost of handling cases more efficiently, reduce the problem of overcrowding. capacity in correctional institutions due to social facts depicting that the training of corruption convicts is not going well because the perpetrators have an established social status compared to correctional officers, so they tend not to go deep into and live up to the coaching process.

References

- [1] Mahmud A. Pengembalian Aset Tindak Pidana Korupsi Pendekatan Hukum Progresif. Jakarta: Sinar Grafika; 2020.
- [2] Sahputra M. Restorative Justice Sebagai Wujud Hukum Progresif dalam Peraturan Perundang-undangan di Indonesia. *J. Transform. Adm.* 2022;12(1):87–96.
- [3] B. Hartono, "Analisis Keadilan Restoratif (Restorative Justice) dalam Konteks Ultimum Remedium sebagai Penyelesaian Permasalahan Tindak Pidana Anak," *Pranata Huk.*, vol. 10, no. 2, 2015.

- [4] Candra S. Restorative Justice: Suatu Tinjauan Terhadap Pembaharuan Hukum Pidana Di Indonesia. *J. Rechts Vinding Media Pembn. Huk. Nas.* 2013;2(2):263.
- [5] Braithwaite J. Restor Justice. 1998.
- [6] Afif A. Pemaafan, Rekonsiliasi dan Restoraive Justice. Yogyakarta: Pustaka Pelajar; 2015.
- [7] E. Syaputra, "Penerapan Konsep Restorative Justice Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang," *Lex Lata*, vol. 3, no. 2, 2021. <https://doi.org/10.28946/lexl.v3i2.1209>.
- [8] D. D.S. F. A. Syukur, and T. Retno, *Mediasi Penal: Penerapan Restorative Justice di Pengadilan Anak Indonesia*. Depok: Indie-Publishing; 2011.
- [9] Junius Fernando Z. Pentingnya Restorative Justice Dalam Konsep Ius Constituentum. *AL IMARAH J. Pemerintah. DAN Polit. Islam.* 2020 Aug;5(2):253.
- [10] Mirza IM, Zen AP. Strategi Internalisasi Asas Restorative Justice dalam Sistem Peradilan Indonesia. *Pancasila J. Keindonesiaan.* 2022 Sep;2(2):149–62.
- [11] Mahmud A. Strategi Penegakan Hukum Progresif untuk Mengembalikan Kerugian Negara dalam Tindak Pidana korupsi Melalui Pidana Uang Pengganti. *Nagari Law Rev.* 2019 Dec;3(1):1.
- [12] Rifai A. Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif. Volume 261. Jakarta: Sinar Grafika; 2014.
- [13] H. Suherman, "Criminal Law Policies In Overcoming Corruption In Indonesia Through Death Penalty In Relation To The Principle Of Justice," *Syar Huk. J. Ilmu Huk.*, vol. 20, no. 2, 2022.