

The Role of Restorative Justice in Handling Corruption Crimes

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Received: March 03, 2025

Revised: March 19, 2025

Accepted: March 20, 2025

Published: March 22, 2025

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Abstract: Restorative justice is an alternative approach in the criminal justice system that focuses on recovering losses due to criminal acts, including corruption. This approach emphasizes the involvement of perpetrators, victims, and the community in finding fair solutions and prioritizing recovery for the impacts caused. This study discusses the role of restorative justice in dealing with corruption crimes by analyzing its effectiveness, challenges, and application in the legal system in Indonesia. With a juridical-normative method and a qualitative approach, this study finds that restorative justice can be an instrument that complements the retributive approach, especially in the recovery of state assets and the prevention of repeated corruption. However, its implementation faces obstacles in the form of regulations that are not comprehensive and resistance in the application of restorative justice for corrupt actors. This study emphasizes the importance of policies that support the application of restorative justice in corruption cases to increase the effectiveness of law enforcement and provide broader benefits to society and the state.

Keywords: Restorative Justice, Corruption, Asset Recovery, Justice System, Law Enforcement.

INTRODUCTION

Corruption is one of the serious problems faced by many countries, including Indonesia. Corruption not only harms state finances, but also hinders national development, undermines public trust in the government, creates social inequality, and reduces the country's economic competitiveness at the global level. According to Transparency International's report on the Corruption Perception Index (CPI), Indonesia still has a high level of corruption, which shows that this problem has not been fully addressed despite various eradication efforts by the government and law enforcement officials. The settlement of corruption crimes is different from the settlement of general crimes because corruption is a special criminal act where the material and formal provisions are outside the Criminal Code and the Criminal Code ¹. The formal provisions of corruption crimes are regulated in Law No. 46 of 2009 concerning the Corruption Court, hereinafter referred to as the Corruption Court.

¹ Salmon, H. C. J. (2024). Hubungan Antara Tindak Pidana Korupsi Dan Kerugian Ekonomi Negara. *LUTUR Law Journal*, 5(2), 97-104.



In efforts to eradicate corruption, a retributive approach that focuses on punishing perpetrators often does not provide the maximum deterrent effect. Many cases of corruption continue to occur even though legal sanctions have been strictly applied. In addition, law enforcement models that focus only on criminalization tend to be ineffective in optimally recouping state losses. Therefore, the idea of adopting an alternative approach that focuses more on restorative justice has emerged, namely the concept of **restorative justice**².

Restorative justice is an approach in the criminal justice system that is oriented towards recovering losses caused by a criminal act, both against the victim, the community, and the state³. In the context of corruption, this approach aims not only to punish the perpetrators, but also to ensure that the negative impact caused by acts of corruption can be reversed, especially in terms of the return of corrupted state assets. By applying the principles of restorative justice, corrupt perpetrators can be given the opportunity to be directly responsible by returning the proceeds of corruption crimes through mechanisms such as recovery agreements, compensation payments, or social contributions to society. In retrospect, the return of state losses is contrary to Article 4 of Law No. 31 of 1999 concerning Corruption Crimes which basically explains that the return of state losses does not remove criminality. The circular issued by the Prosecutor's Office has indeed received a lot of criticism and it is not uncommon for those to think that the Prosecutor's Office seems to underestimate the crime of corruption by releasing the corruptors. However, as one of the law enforcement officials who are given authority in handling corruption crimes, in making decisions regarding the circular, the Prosecutor's Office certainly does not originate in determining policies by taking into account the existing circumstances and also certain conditions, one of which is that the application of the restorative justice approach can only be applied to corruption crimes with small state losses.

A number of countries have tried to apply the principle of restorative justice in handling corruption cases with quite positive results. Countries such as Norway and New Zealand have integrated restorative justice elements in their legal policies to increase the effectiveness of corruption eradication. This approach has been proven to increase the return of corrupted assets and speed up the process of resolving cases more efficiently. In addition, this mechanism also has the potential to reduce the burden on the judicial system by avoiding long and complex litigation processes⁴.

In Indonesia, the application of restorative justice in corruption crimes is still a debate. Currently, the criminal justice system in Indonesia relies more on a retributive approach that prioritizes the punishment of perpetrators through prison sentences. However, this approach faces various challenges, one of which is the increasing number of inmates in corruption cases which adds to the burden on correctional facilities. In addition, the retributive system has not been fully able to guarantee the return of state assets that have been

² Mahmud, A. (2021). *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif*. Sinar Grafika (Bumi Aksara).

³ Arief, H., & Ambarsari, N. (2018). Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia. *Al-Adl: Jurnal Hukum*, 10(2), 173-190.

⁴ Yunus, A. S. (2021). *Restorative Justice Di Indonesia*. Guepedia.

misappropriated by the perpetrators⁵. In some cases, criminal penalties imposed on corruptors are not always followed by the return of the money from corruption, thus harming the state's finances in the long run.

Although the concept of restorative justice offers a more inclusive and recovery-oriented solution, its implementation in corruption cases in Indonesia faces a number of obstacles. In terms of regulations, there is no legal basis that explicitly regulates the restorative justice mechanism for corruption crimes. Although in some cases, asset recovery has become part of the court verdict, a more systematic mechanism is still needed. In addition, there are concerns that the application of restorative justice can weaken the deterrent effect on corrupt perpetrators and give the impression that corruptors can easily avoid prison sentences simply by returning the assets they corrupted. Therefore, the application of this concept requires the formulation of strict policies so that the balance between recovery and deterrent effects is maintained.

In addition to the legal aspect, the application of restorative justice in corruption cases also faces challenges from a social and cultural perspective. Indonesian people still have the perception that corruption is a serious crime that must be punished as severely as possible. Therefore, softer approaches such as restorative justice can generate resistance among the community. Effective education and socialization are needed so that the public understands that the main purpose of this approach is not to provide leniency to perpetrators, but to optimize the recovery of state losses and accelerate the resolution of corruption cases⁶.

In this study, it will be further examined how the role of restorative justice in handling corruption crimes, including its effectiveness in recovering state assets and the challenges faced in its implementation. This study is expected to contribute to the development of fairer and more effective legal policies in handling corruption cases in Indonesia. In addition, this research will also explore how restorative justice principles can be integrated with existing legal systems to create a more balanced approach between sentencing and restoration. Thus, it is hoped that the application of restorative justice in corruption cases can be a more effective solution in efforts to eradicate corruption in Indonesia.

METHOD

The research method used in this study is a qualitative method with a normative juridical approach. This approach aims to analyze the concept of Restorative Justice in dealing with corruption crimes based on applicable laws and regulations and legal practices applied in Indonesia. The data used in this study is sourced from literature studies, including laws, related regulations, scientific journals, and relevant court decisions. The data collection technique is carried out through document analysis, while the data analysis technique is carried out by the descriptive-analytical method, which is to describe the concept of Restorative Justice and evaluate its effectiveness in the context of eradicating corruption. In addition, this study also considers the views of legal experts and related case studies to gain a comprehensive understanding of the application of Restorative Justice in the criminal justice system to corruption cases

⁵ Fuad, K. (2023). *Penerapan Restorative Justice Dalam Tindak Pidana Korupsi Dikaitkan Dengan Surat Edaran Jaksa Agung Muda Tindak Pidana Khusus* (Master's thesis, Universitas Islam Sultan Agung (Indonesia)).

⁶ Pratama, N. A., & Pangestika, E. Q. (2024). Peran Aparat Penegak Hukum dalam Mendukung Kebijakan Restorative Justice di Indonesia. *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 5(1).

DISCUSSION

1. The Application of Restorative Justice in Corruption Cases

Restorative Justice is an approach in the criminal justice system that emphasizes the recovery of losses for victims and reconciliation between perpetrators, victims, and society. This approach is generally applied in crimes that have direct victims, such as misdemeanors and crimes against individuals⁷. However, the application of Restorative Justice in corruption crimes is still a debate in Indonesia, considering that corruption is categorized as an extraordinary crime that has a wide impact on the country's economy and people's welfare.

One of the main challenges in the application of Restorative Justice in corruption crimes is the nature of the crime which is different from conventional crimes. Corruption not only harms individuals directly, but also causes systemic impacts on state finances and public services. In the case of corruption, the main victims are the state and society at large, making it difficult to have a direct dialogue between the victim and the perpetrator. In addition, if the perpetrator of corruption can solve his case simply by repaying the state's losses, there are concerns that criminal punishment will not have a strong enough deterrent effect. Another obstacle is the lack of clear regulations in the Indonesian legal system to explicitly accommodate this approach in corruption cases⁸.

Nevertheless, several elements of Restorative Justice have begun to be applied in the settlement of corruption cases, especially in efforts to recover state losses. One of the steps that has been taken is the return of assets resulting from corruption crimes. Based on Article 4 of Law Number 31 of 1999. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the return of assets does not remove the crime against the perpetrator, but can be a factor that mitigates the punishment⁹. In addition, the Attorney General's Office and the KPK have implemented a more flexible approach in handling corruption cases, especially related to the recovery of state losses and efforts to save state finances. Some corruption cases with smaller losses tend to be considered for a restorative approach, especially if the perpetrators are willing to cooperate in the legal process and fully recover state losses.

To strengthen the application of Restorative Justice in corruption cases without eliminating the deterrence aspect, some steps that can be considered include the drafting of special regulations that accommodate this approach in corruption crimes, including a more effective asset return mechanism¹⁰. In addition, the

⁷ Sulaiman, A., & ul Hosnah, A. (2022). Analisis Penerapan Restorative Justice Dalam Kasus Tindak Pidana Ringan Sebagai Upaya Mengurangi Over Kapasitas Di Lembaga Pemasyarakatan. *International Journal Of Social, Policy And Law*, 3(2), 57-67.

⁸ Hasan, I. N. (2020). Upaya Penegakan Hukum Pengembalian Kerugian Negara oleh Komisi Pemberantasan Korupsi akibat Tindak Pidana Korupsi.

⁹ Sandi, M. P. A., & Widjajanti, E. (2024). Korupsi Dan Pendekatan Restoratif: Upaya Membangun Pemulihan Sosial Dan Kepercayaan Publik. *Jurnal Kritis Studi Hukum*, 9(11).

¹⁰ Sudewo, F. A. (2021). *Pendekatan Restorative Justice Bagi Anak Yang Berhadapan Dengan Hukum*. Penerbit Nem.

application of Restorative Justice can be carried out selectively in corruption cases with smaller state losses or for perpetrators who show good faith in returning assets. Greater transparency and oversight are also needed to prevent the misuse of this approach, with oversight by independent agencies to ensure that justice is maintained.

The application of Restorative Justice in corruption cases is still a big challenge in Indonesia. Although there is a tendency to adopt its principles in the recovery of state losses, clear regulation and strict supervision are still needed to ensure that this approach is not abused. With the right approach, Restorative Justice can be an additional instrument in eradicating corruption without reducing the deterrent effect for perpetrators.

2. Analysis of Regulations and Policies on Restorative Justice in Corruption Cases

In terms of regulations, criminal law in Indonesia has so far still prioritized a repressive approach in handling corruption crimes. Law Number 31 of 1999. Law Number 20 of 2001 regulates severe criminal sanctions for corrupt perpetrators with the main purpose of providing a deterrent effect and preventing similar practices in the future. These sanctions include lengthy prison sentences as well as significant fines. The purpose of this repressive approach is to give a firm warning to the public that corruption is an act that is very detrimental to the state and society, and must be punished accordingly. However, as time goes by, questions arise about the effectiveness of this system in handling corruption cases that are increasingly complex and involve many parties¹¹.

Several policies in Indonesia provide a loophole for the application of the principle of Restorative Justice (RJ) in the context of corruption crimes, especially in efforts to recover state losses caused by these actions. Restorative Justice itself emphasizes more on the restoration of damaged relationships, the restitution of losses suffered by the aggrieved party (in this case the state), and providing opportunities for the perpetrator to take responsibility for his actions in a more rehabilitative way than punishment that is only punitive¹². One of the legal bases that can support the implementation of RJ in corruption cases is Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK). In this law, the KPK is given the authority to recover state assets that have been corrupted, which is in line with RJ's goal to restore losses suffered by the state without always having to prioritize heavy criminal sanctions.

The Supreme Court Regulation (Perma) Number 2 of 2012 concerning the Adjustment of Limits on Misdemeanor Crimes and the Number of Fines in the Criminal Code also opens up opportunities for the settlement of certain cases through a recovery approach. Although this rule is more focused on

¹¹ Budiman, M. (2022). Implementasi Prinsip Restorative Justice Dalam Penghentian Penuntutan Perkara Korupsi Oleh Kejaksaan Republik Indonesia. *Journal of Syntax Literate*, 7(3).

¹² KUSUMAATMAJA, A. H. (2024). *Analisis Kebijakan Restorative Justice Dalam Pemberantasan Tindak Pidana Korupsi* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

misdeemeanors, the principle of restoration-oriented settlement can be adapted and applied to other criminal cases, including corruption, by prioritizing the return of state losses and rehabilitation of the perpetrators¹³.

However, the application of Restorative Justice in corruption crimes faces a number of major challenges. One of them is how to ensure that this approach is not abused for personal or political gain, which can actually harm the state and worsen the image of the legal system in Indonesia. In the absence of clear and detailed regulations on the mechanism for implementing RJ in corruption cases, the risk of abuse by corrupt perpetrators to avoid severe criminal penalties is very high¹⁴. Therefore, stricter regulations are needed that clearly regulate the procedures, conditions, and restrictions that must be met so that the application of Restorative Justice in corruption continues to have a good goal, namely the recovery of state losses and the rehabilitation of perpetrators, without reducing the deterrent effect and justice for society.

It is also important to create a transparent and accountable supervision system in the implementation of RJ in corruption cases. Effective oversight can ensure that this process is done fairly and not abused. The use of transparency mechanisms in case settlement can also prevent new corrupt practices that may arise due to the improper implementation of RJ. Overall, while there is potential for the application of Restorative Justice in corruption cases to provide more rehabilitative solutions and recovery of state losses, this requires more in-depth regulatory reform, as well as strict supervision. Thus, this approach can be an effective alternative, not only to provide appropriate punishment but also to restore the conditions harmed by the crime of corruption.

3. Case Study of the Application of Restorative Justice in Corruption in Indonesia and Other Countries

The application of Restorative Justice (RJ) in handling corruption crimes has been implemented in several countries with the main objective of accelerating economic recovery and providing incentives for perpetrators to cooperate in investigations¹⁵. One of the prominent examples is in Colombia, through the *Justice and Peace Law* program. This program provides an opportunity for perpetrators of economic crimes to return corrupted assets as part of their legal process. Thus, the program not only focuses on providing criminal sanctions, but also seeks to recover state losses in a more rehabilitative way. In addition, this program is expected to accelerate the country's economic recovery which may be disrupted due to corrupt practices. Perpetrators who show good faith by returning some or all of the corrupted assets often get leniency or even acquittal of some charges, as long as they cooperate with the authorities.

The application of the RJ principle in Colombia shows that this mechanism can help encourage perpetrators to repay the losses suffered by the state and give them the opportunity to show remorse, without ignoring

¹³ Lelina Dewi, S. (2024). *Penerapan Restorative Justice Terhadap Pelaku Tindak Pidana Lanjut Usia* (Doctoral dissertation, Universitas Muhammadiyah Surakarta).

¹⁴ Irsyad Dahri, S. H. (2020). *Pengantar Restorative Justice*. Guepedia.

¹⁵ KUSUMAATMAJA, A. H. (2024). *Analisis Kebijakan Restorative Justice Dalam Pemberantasan Tindak Pidana Korupsi* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

the existing principles of justice. This serves as an example for other countries, including Indonesia, to consider a similar approach in handling corruption cases.

In Indonesia, the application of Restorative Justice in corruption cases is still in a limited stage and has not been clearly structured. One example that can be exemplified is in the case of corruption of village funds in several regions. In some cases, perpetrators who are willing to return corrupted funds receive lighter legal considerations, and may even be spared prison sentences if they return all or part of the state's losses¹⁶. The prosecutor's office, in some cases, also prioritizes the return of assets through a negotiation mechanism with the defendant. In this case, the implementation of RJ allows for faster settlement and recovery of state losses in a more practical way.

However, the implementation of this approach in Indonesia still does not have a strong legal basis and often depends on the internal policies of law enforcement officials. This makes the application of Restorative Justice in corruption cases inconsistent and vulnerable to abuse, especially if the perpetrator only returns a small portion of the corrupted assets to avoid harsher punishments. This is the main problem that must be fixed in the Indonesian legal system, so that the application of RJ in corruption cases can be fairer and more effective¹⁷.

With the existence of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office now has the authority to settle cases through the asset recovery approach, which basically provides space for the application of RJ in the settlement of corruption cases¹⁸. However, this regulation is still general and does not explain in detail the mechanisms and limitations required in the implementation of RJ. For this reason, it is important for the government and law enforcement agencies in Indonesia to make more specific and clear rules regarding the application of Restorative Justice in corruption cases, in order to ensure that this practice is not abused for personal or political gain, which can ultimately harm the community.

In addition, experiences from other countries such as Colombia can be used as evaluation and reference material in designing a more solid RJ implementation system in Indonesia. Similar programs can be considered to regulate how corrupt actors can actively participate in the return of state losses through transparent and structured programs, without lowering the principles of justice and deterrence effects for perpetrators. Overall, although the implementation of Restorative Justice in corruption in Indonesia shows positive potential, it requires clearer regulation and strict oversight. Only in this way can the Indonesian legal system optimize the implementation of the RJ in efforts to eradicate corruption without sacrificing justice or making it easier for perpetrators to avoid the sanctions they should receive..

¹⁶ Hasan, I. N. (2020). Upaya Penegakan Hukum Pengembalian Kerugian Negara oleh Komisi Pemberantasan Korupsi akibat Tindak Pidana Korupsi.

¹⁷ Ricardo, R. (2024). *Penerapan Konsep Restorative Justice Jaksa Sebagai Paradigma Pemidanaan Keadilan* (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).

¹⁸ Akbar, M., Thalib, H., & Poernomo, S. L. (2024). Efektivitas Kewenangan Kejaksaan Dalam Undang-Undang Nomor 11 Tahun 2021 Tentang Kejaksaan Republik Indonesia Terhadap Penyidikan Tindak Pidana Korupsi Akibat Kerugian Negara. *Journal of Lex Philosophy (JLP)*, 5(2), 552-569.

CONCLUSIONS

The application of Restorative Justice in corruption cases in Indonesia is still a debate because of its nature as an extraordinary crime that has a wide impact on the state and society. Although the principle of state loss recovery has been adopted in some cases, the main challenge is to ensure this approach does not weaken the deterrent effect for the perpetrator. In terms of regulations, Indonesian law still emphasizes a repressive approach with severe punishment as a preventive measure, but some regulations such as the KPK Law and the Supreme Court Regulation provide a loophole for the application of Restorative Justice in the context of the return of state assets. Some countries such as Colombia have successfully implemented this approach by providing incentives for actors to return corrupted assets, while in Indonesia, a similar approach has been applied in some cases, such as the corruption of village funds, although it is not well structured. Therefore, clearer, more transparent, and accountable regulations are needed so that the implementation of Restorative Justice in corruption cases can be carried out effectively without sacrificing the principle of justice and a deterrent effect for perpetrators.

REFERENCES

Book

- Mahmud, A. (2021). *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif*. Sinar Grafika (Bumi Aksara).
- Sudewo, F. A. (2021). *Pendekatan Restorative Justice Bagi Anak Yang Berhadapan Dengan Hukum*. Penerbit Nem.
- Yunus, A. S. (2021). *Restorative Justice Di Indonesia*. Guepedia.

Journal

- Arief, H., & Ambarsari, N. (2018). Penerapan Prinsip Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia. *Al-Adl: Jurnal Hukum*, 10(2), 173-190.
- Hasan, I. N. (2020). Upaya Penegakan Hukum Pengembalian Kerugian Negara oleh Komisi Pemberantasan Korupsi akibat Tindak Pidana Korupsi.
- Pratama, N. A., & Pangestika, E. Q. (2024). Peran Aparat Penegak Hukum dalam Mendukung Kebijakan Restorative Justice di Indonesia. *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, 5(1)
- Salmon, H. C. J. (2024). Hubungan Antara Tindak Pidana Korupsi Dan Kerugian Ekonomi Negara. *LUTUR Law Journal*, 5(2), 97-104.
- Salsabila, S., & Wahyudi, S. T. (2022). Peran Kejaksaan Dalam Penyelesaian Perkara Tindak Pidana Korupsi Menggunakan Pendekatan Restorative Justice. *Masalah-Masalah Hukum*, 51(1), 61-70.

- Sandi, M. P. A., & Widjajanti, E. (2024). Korupsi Dan Pendekatan Restoratif: Upaya Membangun Pemulihan Sosial Dan Kepercayaan Publik. *Jurnal Kritis Studi Hukum*, 9(11).
- Srijadi, Y. K. (2023). Peranan Kepolisian Dalam Penyelesaian Perkara Pidana Melalui Mekanisme Restorative Justice. *Wacana Paramarta: Jurnal Ilmu Hukum*, 22(2), 19-28.
- Sulaiman, A., & ul Hosnah, A. (2022). Analisis Penerapan Restorative Justice Dalam Kasus Tindak Pidana Ringan Sebagai Upaya Mengurangi Over Kapasitas Di Lembaga Pemasyarakatan. *International Journal Of Social, Policy And Law*, 3(2), 57-67.

Thesis and Dissertation

- Fuad, K. (2023). Penerapan Restorative Justice Dalam Tindak Pidana Korupsi Dikaitkan Dengan Surat Edaran Jaksa Agung Muda Tindak Pidana Khusus. (Master's thesis, Universitas Islam Sultan Agung (Indonesia)).
- Kusumaatmaja, A. H. (2024). Analisis Kebijakan Restorative Justice Dalam Pemberantasan Tindak Pidana Korupsi. (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).
- Lelina Dewi, S. (2024). Penerapan Restorative Justice Terhadap Pelaku Tindak Pidana Lanjut Usia. (Doctoral dissertation, Universitas Muhammadiyah Surakarta).
- Ricardo, R. (2024). Penerapan Konsep Restorative Justice Jaksa Sebagai Paradigma Pemidanaan Keadilan. (Doctoral dissertation, Universitas Islam Sultan Agung Semarang).