

## Restorative justice for perpetrators of corruption

Adi Nur Aziz<sup>1</sup>, Khamdan Safiudin<sup>2</sup>, Reviandy Azhar Ramdhani<sup>3</sup>, Qatrunnada Rania Hadad<sup>4</sup>  
FPP – Civic Law And Education, PGRI Wiranegara University

### ARTICLE INFO

#### Article history:

Received Dec 02, 2022

Revised Dec 16, 2022

Accepted Dec 31, 2022

#### Keywords:

Crime;  
Corruption;  
Restorative Justice.

### ABSTRACT

The rise of criminal acts of corruption, which are mainly committed by government officials, is increasing so that the impact of corruption develops in society. Some still believe that only repressive means can defeat corruption. Today's social, economic, and political conditions pave the way for massive, systematic, and structured corruption in various fields of life, including state institutions, government forums, and government forums. In finance and many other areas of civic life. This article is intended to examine the concept of sentencing perpetrators of corruption that is relevant to be applied in Indonesia according to what is required by law taking into account the development of life nation and state today. The study focuses on deepening the concept of restorative justice for maximizing returns on state finances in criminalizing corruption offenders in Indonesia. By using normative juridical research methods, this study concludes that the concept of restorative justice is the deep sentencing of perpetrators of corruption can be implemented in the form of strengthening norms of restitution of state losses as an additional punishment to the main punishment. As for anticipating that the perpetrator is unable to pay for the loss, then the concept of forced labor can be applied rather than imprison perpetrators of criminal acts of corruption).

### ABSTRAK

Maraknya tindak pidana korupsi yang terutama dilakukan oleh pejabat pemerintah semakin meningkat sehingga dampak korupsi semakin berkembang di masyarakat. Beberapa masih percaya bahwa hanya cara represif yang dapat mengalahkan korupsi. Kondisi sosial, ekonomi, dan politik dewasa ini membuka jalan terjadinya korupsi secara masif, sistematis, dan terstruktur di berbagai bidang kehidupan, termasuk lembaga negara, forum pemerintahan, dan forum pemerintahan. Di bidang keuangan dan banyak bidang kehidupan sipil lainnya. Kajian ini berfokus pada pendalaman konsep keadilan restoratif untuk memaksimalkan pengembalian keuangan negara dalam mengkriminalkan pelaku korupsi di Indonesia. Dengan menggunakan metode penelitian yuridis normatif, penelitian ini menyimpulkan bahwa konsep keadilan restoratif yaitu pemidanaan mendalam terhadap pelaku korupsi dapat diimplementasikan dalam bentuk penguatan norma pengembalian kerugian negara sebagai pidana tambahan terhadap pidana pokok. Adapun untuk mengantisipasi kerugian yang dialami pelaku tidak mampu, maka konsep kerja paksa dapat diterapkan daripada memenjarakan pelaku tindak pidana korupsi.

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### Corresponding Author:

Adi Nur Aziz,  
FPP – Civic Law And Education  
PGRI Wiranegara University,  
Jl. Ki Hajar Dewantara No.27-29, Tembokrejo, Kec. Purworejo, Kota Pasuruan, Jawa Timur 67118  
Email: [Khamdan@gmail.com](mailto:Khamdan@gmail.com)

## I. INTRODUCTION

The eradication of corruption has been achieved, albeit by different methods, in various countries of the world where the foundations of the struggle to secure and preserve national heritage have been

lifted. Therefore, anti-corruption laws must be designed to facilitate systematic and comprehensive anti-corruption efforts to achieve these goals. To achieve this goal, both in terms of the philosophy used and the theory applied, we need to create standards to eliminate corruption and build solid and relevant standards.

As reflected in Law No. 31 of 1999 which was replaced by Law No. 20 of 2001 concerning the eradication of corruption and Law No. 15 of 2002 which was replaced by Law No. 25 of 2003 concerning the crime of Money Laundering, anti - Corruption standards in Indonesia currently in force do not systematically reflect objective anti-corruption principles, namely the eradication of corruption. state protection of property returned from the state taken by criminals. Corruption crimes. Anti-corruption laws in Indonesia are still exploring criminal justice models in punishing actors of corruption. Therefore, punishment for corruptors has no other purpose than revenge. (No & Azhar, 2022)

The rise of corruption, especially by government officials, continues to fuel the public stigma against corruption. The meaning of the maxim *Culpe poenacpar esto* is far from the essence of judicial reform, which requires law enforcement to return to the purpose of the law, which is primarily intended for justice and the welfare of all people. The Indonesian government has in fact recently found increasing pressure to really fight corruption, with widespread reports of some law enforcement officials predicted to carry out extremely heinous acts. Regardless of who is right or wrong, it is clear that the topic of combating corruption continues to be widely praised in print and online news messages.

On the other hand, restorative justice, for some scholars such as Dignan, has reported that "restorative justice is a new framework for tackling conflict and error that is rapidly gaining acceptance and support from experts in the fields of learning, Law, Social Work, and community councils and groups, causing harm and conflict, with a focus on the vulnerable, the disadvantaged and those affected by citizens." (DR. M. Hatta Ali, S.H., 2022)

For Mark Umbreit, "restorative justice offers a very different framework for mastering and answering crime. Crime is considered to harm people and citizens, not just an abstract violation of the law against the state. This is directly influenced by victims of crime, so members of the public and actors are encouraged to function actively in the judiciary. Instead of focusing on punishing such actors today, physical and mental compensation for the destruction caused by crime is far more meaningful".

For Braithwaite " " from a( procedural) perspective, restorative justice is a progression that brings together the totality of those affected by harm. A series of stakeholder meetings were held to assess how the restoration of justice in Indonesia was affected by the events. the victim and reach a convention on what must be tried to correct the victim's mistakes. His argument is restorative justice is about treating victims rather than hurting them".

For Howard Zehr, through the lens of restorative justice" " crime is a violation of people as well as ties. By generating the obligation to fix it. Justice links victims, aggressors, and communities or citizens in search of solutions conducive to recovery. conciliation and guarantees". (Siregar et al., 2022)

Therefore, the author wants to explore restorative justice law when applied to perpetrators of corruption will be like what and how. This research will be developed based on a literature review from various kinds of literature.

## II. RESEARCH METHOD

The article entitled restoration Justice for corruption is an article with the theme of legal articles in which this article applies a qualitative descriptive method by applying a literature review method or often referred to as a literature study. Research in making this article is done the comparative study by looking at various references to articles and other literature review materials that are significant and have a relationship related to the theme of the article that we raise, which of course we also do paraphrase (word change) so as not to detect plagiarism.

## III. RESULTS AND DISCUSSION

1. Restorative justice Program objectives and if applied to perpetrators of corruption

a. Encourage the taking of responsibility by all parties involved, especially offenders, The recovery process aims to make it easier for the perpetrator to take responsibility for his behavior and its consequences. The recovery process is not just an assessment of lawlessness but also an attempt to determine responsibility for the conflict and its consequences (Menkel-Meadow, 2007). Actively acknowledging and accepting personal responsibility for crimes and their consequences, rather than just passive sins imposed by others, is strongly encouraged. Others who played a role in the offense or the circumstances that led to the offense are also encouraged to take responsibility for their role in the incident. This has an impact on expanding the process beyond the specific incident, victim, and perpetrator. How this liability will lead to action, especially apology and compensation, is determined by the process itself and not by the automatic application of the rule of law. At best, this process can result in the perpetrator not only accepting responsibility, but also experiencing cognitive and emotional transitions as well as strengthening relationships with society and, depending on the circumstances, with the victim and his family. If this is true for the perpetrators of corruption, the consequences for the corruptors are the full responsibility of the state, the authorities, and the affected agencies, especially how the corruption is born at the cognitive and affective level of the state. to lead to action and restore dignity and dignity. and their dignity before society.

b. Repair relationships damaged by crime, in part by reaching a consensus on how best to respond. It is often even said that prevention focuses not only on crime but also on relationships that have been damaged or harmed. Fortifying a community can sometimes prevent further damage (DR. M. Hatta Ali, S.H., 2022). The main feature of restorative justice is that the response to offenses focuses not only on the offender and the perpetrator. Peace, resolution dispute resolution, and rapprochement are seen as the main ways to achieve justice and help victims and perpetrators, as well as communities. It can also help identify the causes of crime and develop crime prevention strategies. This means that the community here is the people or society as well as the state and government agencies that are harmed by corrupt actors. Corruptors will certainly have a bad impact on the relationship of trust of the state or government agencies to the perpetrators. Including all people will also respond similarly to the perpetrators, thus creating a rift and stigma that can damage the order of the community in this case the state. The restorative justice Model can support a process in which the views and interests of the victim are taken into account which in this case the victim is a community in this case the presupposition of a state (made up of the people and government agencies that are harmed). They can participate and be treated fairly and respectfully and have access to remedies and legal benefits. By participating in the decision-making process, victims can influence what would be an acceptable outcome for the process and take steps to improve it.

c. Identify restorative and forward-looking outcomes. Rather than stressing the rules that have been broken and the penalties that must be meted out, restorative approaches focus primarily on the affected individual is adversely affected. Restorative justice processes do not necessarily exclude all forms of punishment (e.g., fines, arrests, probation), but remain focused on strong, forward-looking outcomes. (Herman et al., 2022). The restorative

result sought is to repair as much damage as possible caused by the crime by giving the criminal the opportunity to carry out meaningful reparations. Restorative justice is relationship-based and seeks outcomes that satisfy multiple stakeholders. If this applies to the perpetrators of corruption, then the punishment applied does not include fines, detention, or probation but is more integrated into efforts to remedy as far as possible the harm caused by the corruption of the perpetrators concerned by performing respiration means. So that the essence of restorative justice can seek maximum and satisfactory results for stakeholders, especially victims, in this case, corrupted government agencies or affected communities.

## **2. Criminal prosecution of perpetrators of corruption in the perspective of Restorative Justice**

The failure of the hunting Model of attempts to eradicate crime through the use of criminal justice institutions and corporal punishment of perpetrators of crimes is considered to be as old as the foundations of the criminal justice system of human civilization, but it is the most classic way (Erick et al., 2022). In a philosophical context, crime and punishment are even called the "old philosophy of crime management". process. . This is considered cruel and irrelevant by today's standards. Even Smith and Hogan called it a "relic of barbarism." Criminal retaliation occurs because criminal law itself is built on determinism. Determinism treats people as essentially having free will to act. Free Will is the basis of criminal activity. Thus, the transtemporal view holds that human free will should be rewarded with punishment.

With the development of human life and civilization, in fact, the use of criminal sanctions for the deprivation of human freedom has more negative aspects than positive aspects. Another weakness is that law enforcement and government budgets rarely focus on carrying out crimes rather than solving attempted crimes. In many criminal cases, the destruction or negative consequences of crime amount to more compensation than deprivation of Liberty. Philosophy and theory are in fact no longer in line with the main purpose of the Corruption Eradication Act, which is the emphasis on maintaining a focal point. accused. Nation. property or property. Legal interests that need to be protected are state finances. After that, many problems of bribery using large amounts of public funds were revealed. Moreover, their arrival in the criminal system weakens the psyche of law enforcement officers, thereby stimulating further criminal activity. Moreover, corrupt convicts have used money from corruption to bribe prisoners to elegant institutions. Not only that, the actors of corruption are often industries rather than people. In this context, the model of indeterminism and critical justice in tackling corporate corruption is clearly not appropriate. Moreover, some of the obstacles in protecting government finances are corrupted by corporations. criminalization of corporations. Corruption actors are no longer aligned legally, structurally, and culturally with the concept of Justice.

## **3. Implementation of Restorative Justice in the eradication of corruption**

Elaborated that the draft concept of restorative justice to punish perpetrators of corruption does not abolish criminal sanctions entirely, but rather prioritizes the application of tougher sanctions and strengthens remedial efforts after the crime is committed. The author proposes two models of restorative justice implementation in criminalizing anti-corruption laws in Indonesia. This is explained below. With UU No. 31 of 1999 as amended by law number. 20 of 2001 on the enforcement of the eradication of corruption is a crime that causes great harm to finance and the national economy and hinders national development, national development, and survival at the national level is very efficient. In addition, the provisions of the balancing act regulate that corruption is treated as a violation of the economic and social rights of citizens so that corruption is mistaken for a criminal offense. I'm obligated to pay the bribe. with an unusual method. As a result, the imposition of fines and penalties is part of the government's efforts to recover its

financial losses. Meanwhile, all anti-corruption laws in Indonesia distribute financial compensation to violators.

Article 3 of the 1971 Criminal Code No. 3 regulates the replacement of components and the number of replacement parts is at most equal to the number of damaged components. However, the disadvantage of the law is that it does not specify the timing of compensation and the form of punishment for those who do not pay compensation. The law further undermines liability for damages. The clarification of the law states that if you cannot pay on your behalf, the provisions regarding the payment of fines will apply. Similarly, Act No. 31 of 1999 and act No. 20 of 2001 also provides for compensation. Article 18(1) (b) stipulates that the person who carries out the crime of corruption can be punished with a bonus by paying money instead of property obtained from the crime. corruption. There has been some progress in this legislation and altcoins are more regulated. That is, if the payment is not attempted within one month, the actor will be put in jail and executed immediately.

Criminal or imprisonment is determined by a judge's decision and the duration may not exceed the principal crime for the principal offense. However, the concept of restorative justice has not yet been fully applied to reconciliation. Because the law does not say so. Eradication of corruption contained in law number. 31 of 1999 and act number. 20 of 2001 establishes a verdict payment term of one month. The verdict of the legal council has a permanent impact on *res judicata*, and if the convict does not have sufficient assets to pay compensation, he is punished with imprisonment up to the principal crime. This criterion again shows that state deformation is a secondary offense, not a primary offense. Especially if the prisoners are unable to pay, if the country is harmed, the solution is to imprison the prisoners before they take the main punishment. The concept of the restorative justice approach must be carefully observed so that state losses are counted as a major crime. (Norman, 2022). This is because, if state compensation is still an additional crime, the judge still has the authority to impose an additional crime or alternative imprisonment if the convicted person cannot compensate for the loss. compensating, the state is more likely to provide employment opportunities to those who pay bribes than to imprison prisoners. according to their expertise. Basically, the perpetrators of corruption are very competent people. The resulting forced labor was confiscated by the state to compensate for losses that the prisoners could not pay. The development of this concept in the anti-corruption law aims to correct or compensate for the destruction of the government caused by corruption. On the other hand, the concept of punishment has many advantages in the description of punishing actors. Prisoners, who have a non-negotiable right to compensation, work on the basis of state supervision to correct the destruction caused by their actions.

#### IV. CONCLUSION

The paradigm or model of retaliatory criminal justice that is the basis or basis of the Corruption Eradication law has nothing to do with the main purpose of the Indonesian anti-corruption law. The ethos of protecting the country's wealth should be based on the idea of restoring justice to cure corruption rather than imprisoning the perpetrators. The concept of restorative justice in the prosecution of bribes can be an increase in standards for the restoration of the state, from additional punishment to serious crimes. The concept of forced labor can be used as an alternative to the imprisonment of the bribe giver in order to prevent possible compensation for the offender.

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