

Recovering Justice Amid Restorative Approach: Finding the Silver Lining in Asset Recovery on Corruption Crimes

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Abstract

The criminal justice system is a judicial system that involves the police, prosecutors, courts, and correctional institutions as its sub-systems. This system adopts the interests of rights and remedies for criminals; the sharp criticism is that the criminal justice system ignores the rights and interests of victims, even though the victims suffer direct harm from a crime. The study aims to present how the restorative approach is applied to corruption crimes and how asset recovery mechanisms can contribute to the restoration of justice. The study applied legal research with a normative juridical approach. The primary and secondary data were analyzed using quantitative analysis. Acknowledged as an approach within criminology and criminal law, restorative justice facilitates communication among offenders, victims, and communities to address victims' concerns, bolster societal security, and deter the repetition of crimes. In instances of corruption, restorative justice employs asset recovery mechanisms, allowing



victims to recover state financial losses and empowering communities with rights to justice.

Keywords

Asset Recovery; Corruption; Restorative Justice.

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Introduction

The criminal justice system is a system approach to the mechanism of administration of the criminal justice system; in this case, it can be interpreted as the operation of a system that is the result of the interaction between legislation and administrative practices combined with social attitudes or behaviour (from people involved in the law). Thus, everything involved in the criminal justice system results from the interaction of all parties involved in the justice system.¹ Thomas J. Bernard defines the criminal justice system as “agencies process offenders, each subsystem takes offenders as input, does something to them or for them or with them, and sends them as output to the next subsystem unit or back to the external environment. Despite the controversies about conflicting goals, it seems that one common goal of the system is to change offenders into non-offenders”. From different perspectives, Mardjono Reksidiputro defines the criminal justice system as a system of control over crime, where the control system consists of police, prosecutors, courts, and correctional institutions.²

Thus, when focused on criminal law, the criminal justice system can be said to be a criminal law enforcement system (SPP) that is essentially identical to the system of judicial power in the criminal field.³ Based on the explanation above, it is clear that the criminal justice system prioritizes an offender-oriented approach, where the operation of the criminal justice system prioritizes the rights and remedies of the perpetrators of crime, especially the guarantee of human rights, especially for the perpetrators of crime, in this case, the suspect or defendant.

¹ Lyoyd E. Ohlin Frank J Remington, *Discretion In Criminal Justice: The Tension Between Individualization and Uniformity* (New York United State of America: State University Of New York, 1993).

² Mardjono Reksodiputro, “Sistem Peradilan Pidana Indonesia (Melihat Kepada Kejahatan Dan Penegakan Hukum Dalam Batas-Batas Toleransi)” (Jkaarta, 1993).

³ *Ibid.*

The criminal justice system approach pays little attention to the rights and interests of victims, because the criminal justice system does not provide space for victims to play an active role in fighting for their rights from the trial stage to the court decision stage.⁴ Whereas the victim of a crime is the person who suffers the most from the existence of crime, the victim does not receive recovery, and their rights are not cared for⁵.

Within the theoretical framework, the rigidity in the criminal justice system can be resolved through a restorative justice approach, which can be a way out of the rigidity that occurs in the application of the criminal justice system. The concept of restorative justice focuses on creating justice and balance for victims and perpetrators, seeking dialogical solutions between perpetrators, victims, and also the parties involved (the community) to solve problems collectively and prevent crimes from recurring in the future.⁶ Restorative justice seeks to restore crimes that have already occurred, avoiding the punitive aspect and encouraging offenders to repair the harm caused to their victims, families, and communities.⁷

Today, the application of restorative justice is limited only to the Child Protection Law. Still, in its development, restorative justice has developed very quickly and urgently needs to be applied in resolving criminal cases. For example, the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020, which addresses the termination of prosecution based on restorative justice, along with the Chief of Police Circular Letter Number SE/8/VII/2018 on applying restorative justice in resolving criminal cases, grants the Public Prosecutor the authority to use restorative justice to close cases. Supreme Court

⁴ Dikdik M. Arief Mansur dan Elisatri Gultom, *Urgensi Perlindungan Korban Kejahatan Antara Norma Dan Realita* (Jakarta: Raja Grafindo, 2008).

⁵ Bambang Waluyo, *Viktimologi Perlindungan Korban Dan Saksi*, 1st ed. (Jakarta: Sinar Grafika, 2012).

⁶ Afthonul Afif, *Pemaafan, Rekonsiliasi Dan Restorative Justice* (Yogyakarta: Pustaka Pelajar, 2015).

⁷ *Ibid.*

Through the Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Application of Restorative Justice, the purpose of this decision is to encourage the optimization of the application and implementation of restorative justice in the courts.

The application of restorative justice in corruption cases is not specifically addressed in Law Number 31 of 1999 on the Eradication of Corruption, nor in its amendments under Law Number 20 of 2001. However, from a theoretical standpoint, the principles of restorative justice, which aim to rectify the damages caused by criminal actions, could be applicable in such cases. In the context of state losses resulting from corruption, the proper management of public finances remains crucial. Consequently, any financial losses incurred due to corruption must be promptly recovered. This approach aligns with the restorative justice framework, which emphasizes the restitution of harm to victims of crime.

The current legal framework for sanctions in corruption cases predominantly relies on retributive measures, such as imprisonment, confinement, and fines. However, these sanctions often fail to address the recovery of the financial losses sustained by the state. In this context, the application of restorative justice presents a potential alternative for addressing corruption, with the primary goal of recovering state financial losses. It is crucial to develop legal provisions that optimize the use of restorative justice in the recovery of assets derived from corruption. The creation of such legal norms would provide a clear legal foundation for asset recovery in corruption cases, particularly where the state is the victim. This step is especially important given that, to date, Indonesia lacks specific legal provisions for asset recovery in corruption cases. As such, incorporating restorative justice into the process of asset recovery could represent a significant legal innovation, facilitating the return of assets

acquired through corrupt practices.

In theoretical discussions, the concept of positioning the state as a victim of crime is often debated. This approach risks categorizing the state within the realm of "victimless crimes." This is because, in some instances, neither individuals nor the state is directly harmed by the criminal act itself.⁸ However, in the case of corruption, it becomes justifiable to consider the state as a victim, primarily due to the violation of the law and the subsequent erosion of state sovereignty. In corruption-related crimes, the victim is clearly identifiable as the state, regarded as a collective entity.⁹ This is because the significant losses incurred in such crimes are a direct result of financial mismanagement, manipulation, and decisions that jeopardize the economic stability of the nation.¹⁰ The state, in this regard, can be seen as experiencing a form of "psychic shock" similar to individual victims, as corruption has a pervasive impact, often described as a form of "fiscal rape" that not only causes substantial economic harm but also threatens the public's trust in the legitimacy of the social order.¹¹

This study offers a novel perspective compared to previous research, such as the work by Murpraptono Adhi Sulantoro, titled *The Application of the Principle of Restorative Justice in the Context of Saving State Finances*. Sulantoro's analysis, rooted in economic theory concerning human behavior in criminal activities, argues that the restorative justice paradigm is unsuitable for addressing corruption cases. He suggests that, if applied to corruption, restorative justice could potentially lead to an increase in such crimes. This is because, under this framework, offenders might rationally perceive corruption as less risky, given the low probability of detection and the relatively lenient sanctions. These sanctions, in turn,

⁸ Eduard A. Ziegenhagen, *Victims, Crime and Social Control*. Praeger: New York, 1977

⁹ Hans Joachim Schneider (ed), *The Victim in International Perspective*, de Gruyter: Berlin, 1986

¹⁰ Edwin H Sutherland, E H (1945) "Is 'White-collar Crime' Crime" *American Sociological Review*, 1985

¹¹ Peter N. Grabosky and Martin Braihwaite, *Fraud Against the Government*, forthcoming, 1985

would be deemed sufficient to recover the financial losses incurred by the state. In terms of state financial recovery, Sulantoro contends that the extent of restitution is contingent upon the perpetrator's ability to provide compensation for the damages caused¹².

Research conducted by Iqbal Felisiano and Amira Paripurna, titled *Application of Restorative Justice and Gaps in Corrupt Practices*, concluded that in practice, there are several vulnerabilities within the application of restorative justice when addressing corruption. These vulnerabilities hinder the realization of the ideal values that restorative justice seeks to achieve. One major issue is the potential for abuse in the mediation role performed by investigators and law enforcement officers, which is exacerbated by disjointed regulations, insufficient oversight mechanisms, and the conflicting interests of the parties involved. Corrupt practices often emerge through the "buying and selling" of cases, which could, in theory, be addressed through restorative justice processes. The Victim-Offender Mediation and Family and Community Group Conference models, which are key restorative justice approaches, present valuable advantages that should be more widely implemented by law enforcement in handling criminal cases based on restorative justice principles.¹³

Warih Anjari's research, titled *Corruption Offender Punishment in the Restorative Justice Perspective: A Study of Decision Number 29/PID.SUS-TPK/2021/PN.JKT.PST*, concluded that the application of restorative justice in corruption cases, as seen in Decision Number 29/PID.SUS-TPK/2021/PN.JKT.PST, can be effectively implemented

¹² Murpraptono Adhi Sulantoro, *Penerapan Prinsip Restorative Justice Dalam Rangka Penyelamatan Keuangan Negara*, jurnal *Dharmasiswa*: Vol. 1, Article 26 (2021) https://scholarhub.ui.ac.id/dharmasiswa/vol1/iss2/26?utm_source=scholarhub.ui.ac.id%2Fdharma%2Fvol1%2Fiss2%2F26&utm_medium=PDF&utm_campaign=PDFCoverPages

¹³ Iqbal Felisiano and Amira Paripurna, *Penerapan Keadilan Restoratif Dan Celah Praktik Korupsi, Dalam Integritas*, Jurnal *Antikorupsi* Vol 9, No. 1 (2023), <https://doi.org/10.32697/integritas.v9i1.986>

with regard to material losses. Specifically, it allows for the imposition of a criminal obligation to pay restitution equivalent to the amount of the bribe received by the convict. However, when it comes to immaterial losses, such as the deprivation of public interest, restorative justice is insufficient if it is limited to the payment of restitution or asset recovery alone. In such cases, further measures would be required to address the harm caused fully.¹⁴

In line with this, the biggest challenge is whether the concept of restorative justice can then be used to solve the problem of corruption crimes, considering that in corruption crimes, the victims are not individuals but the state. Baharudin Lopa, quoting David M. Chamlers, stated that corruption is related to financial manipulations and delusions injurious to the economy are often labeled corrupt, where corruption is a form of manipulation and decisions regarding state finances that endanger the country's economy. This is important because the eradication of corruption has always experienced a dead end and must be overcome, because corruption has a very dangerous effect, especially in contributing to the poverty rate of a country. Therefore, the restorative justice approach is expected to be a way out in tackling corruption crimes, especially in terms of encouraging perpetrators of corruption crimes to recover assets through the means of restorative justice.

The author's research differs notably, particularly in its exploration of the issues surrounding the formulation of problems related to the ratio legis of restorative justice and the application of restorative justice in asset recovery to compensate for losses resulting from corruption crimes.

¹⁴ Warih Anjari, *Pemidanaan Pelaku Korupsi dalam Perspektif Restorative Justice Kajian Putusan Nomor 29/PID.SUS-TPK/2021/PN.JKT.PST*, Jurnal yudisial Vol. 16 No. 2 (2023), DOI: 10.29123/jy/v16i2.589

Method

This study employs a normative juridical approach along with library data drawn from primary, secondary, and tertiary sources on restorative justice in corruption cases, particularly those involving the state as the victim. The data collected is systematically examined, further analysis is carried out using descriptive analysis method, which is the processing of secondary data related to the implementation of restorative justice in this study, especially on asset recovery related to corruption cases, which will be compiled, explained, and interpreted to answer the two research questions, thereby ensuring that answers can be drawn from questions related to efforts to apply restorative justice in corruption cases.

Result and Discussion

A. The Restorative Approach Application on Corruption Crimes

The concept of "restorative justice" is widely recognized in criminal law and criminology, gaining significant traction as a global approach to addressing crime. Albert Eglash introduced it in his 1977 publication, *Beyond Restitution-Creative Restitution*. According to Eglash, justice in the criminal justice system is divided into retributive justice, substantive justice, and restorative justice. With regard to restorative justice, Eglash proposes restitution as its hallmark in dealing with crime. Eglash calls this creative restitution. Restorative justice primarily focuses on the harmful effects of criminal behavior and the impact it has on the victim. From the victim's perspective, both punishment and therapeutic treatments often overlook their needs, with the exception of those who serve as witnesses.¹⁵ In contrast, creative restitution places considerable emphasis on the victims

¹⁵ John Bradford Braithwaite, "Restorative Justice and Responsive Regulation: The Question of Evidence," *SSRN Electronic Journal*, 2016, <https://doi.org/10.2139/ssrn.2839086>.

and their needs, giving them an important role in reclaiming their rights within the criminal justice system.¹⁶

Tony Marshall explains that restorative justice is a process in which all parties affected by a particular offense come together to determine how to address the consequences and impact of the crime. The core idea is to restore the victim, the offender, and the community.¹⁷ In the process, the victim will meet with the offender and be facilitated to resolve the aftermath of the crime and recover the victim's losses. The mechanism is that they begin by discussing what went wrong, identifying who was harmed, and exploring ways to make things right. Then, they create an action plan and follow up to ensure it is completed in a way that satisfies everyone involved.¹⁸

Allison Morris and Gabrielle Maxwell describe restorative justice as a process that reduces the involvement of courts and law enforcement in the criminal justice system. It allows victims and offenders to regain their roles and empowers them to decide the most appropriate response to the crimes committed.¹⁹ Meanwhile, according to Daniel W. Van Ness and Karen Heetderks, restorative justice is a theory of justice that emphasizes reparation of the harm caused by criminal behavior. This is best achieved through a collaborative process that includes all stakeholders. Restorative justice is also a criminal justice paradigm that emphasizes the recovery of victims. Restorative justice is centrally concerned with recovery, namely relating to the recovery of victims, the restoration of offenders to a law-abiding life, and the restoration of damage caused by crime to society.²⁰

¹⁶ Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, *Restoring Justice: An Introduction to Restorative Justice: Fifth Edition*, 2014.

¹⁷ Yutaka Osakabe, "Restoring Restorative Justice: Beyond the Theology of Reconciliation and Forgiveness," *International Journal of Public Theology* 10, no. 2 (June 2016): 247–71, <https://doi.org/10.1163/15697320-12341445>.

¹⁸ Howard Zehr in the Foreword of Mark Umbreit and Marilyn Peterson Armour, *Restorative Justice Dialogue, an Essential Guide for Research and Practice* (New York: Springer Publishing Company, 2011).

¹⁹ Adam Crawford and Jo Goodey, *Integrating a Victim Perspective within Criminal Justice*, ed. Adam Crawford and Jo Goodey, *Integrating a Victim Perspective within Criminal Justice: International Debates* (Routledge, 2019), <https://doi.org/10.4324/9781315252179>.

²⁰ *Ibid.*

The emergence of restorative justice is a strong criticism of the traditional criminal justice system that focuses only on the handling and rehabilitation of criminals.²¹ At the same time, the criminal justice system ignores the role and existence of victims of crime, the system excludes victims of crime, and the position of victims in the criminal justice system is only placed as witnesses who help the prosecutor to prove that the perpetrator is guilty of the crime they committed.²² Theoretically, then, restorative justice is present as a means of restoring the function of victims and restoring victims' losses in the criminal justice system so that the position of victims is not marginalized and ignored in the law enforcement process.²³

Restorative justice approaches must represent the interests of victims and the public interest. This is in line with the victims' rights movement, which seeks to incorporate victims and offenders as well as the community in the criminal justice system. In this sense, raising awareness of victims' rights becomes a central element of restorative justice. This shift arises from efforts to challenge the traditional criminal justice system, which is often seen as flawed for focusing solely on the offender while neglecting the needs and interests of victims. Daniel W. Van Ness identifies several reform movements that form the basis of restorative justice, with the victims' rights movement being one of the key examples.

The 2002/12 ECOSOC Resolution, found in the chapter on the Basic Principles for the Use of Restorative Justice Programs in Criminal Matters, also advocates for restorative justice. According to its annex, particularly paragraph 4 of Part I on terminology, the key participants in the restorative process are the victim, the offender, and any other individuals or community members who may be affected or involved.²⁴ The

²¹ Bayu Mediansyah, "Restorative Assessment Based on The Results of Integrated Assessment Prosecution of Restorative Justice Abuse," *Cepalo* 6, no. 1 (October 2022): 51–62, <https://doi.org/10.25041/cepalo.v6no1.2648>.

²² Anna Maria Salamor et al., "Application of Restorative Justice In The Settlement of Customary Criminal Cases," *SASI* 29, no. 2 (April 2023): 227, <https://doi.org/10.47268/sasi.v29i2.1259>.

²³ Lyle Keanini, "ADR in Hawai'i Courts : The Role of Restorative Justice Mediators," *Asian-Pacific Law & Policy Journal*, 2011.

²⁴ Risqi Akbar, Sri Kusriyah, and Achmad Sulchan, "The Implementation of Restorative Justice Approach through Restorative Justice Handling in Criminal Acts of Fraud & Embedding," *Law Development Journal* 4, no. 3 (August 2022): 381, <https://doi.org/10.30659/ldj.4.3.381-388>.

victim, the offender, and the affected community, including the families of both the victims and offenders, can all benefit from the proposed solutions.²⁵ Braithwaite explains that the main goal of restorative justice is to restore the interests of victims, offenders, and communities affected by crime.²⁶

The application of restorative justice in corruption cases introduces a distinct approach, as it contrasts with the prevailing doctrine that "the return of state money does not erase criminal sanctions." This principle underscores the prevailing legal stance on corruption, which still prioritizes retributive justice and ultimum remedium, with imprisonment serving as the primary sanction for offenders.²⁷ Nevertheless, restorative justice presents a potential alternative in corruption cases, particularly in its capacity to facilitate the recovery of state financial losses incurred due to corruption. These financial losses are integral to the nature of corruption crimes, which are characterized by the illicit misappropriation of public funds. In international legal practice, the use of restorative justice to address corruption is supported by frameworks such as the United Nations Convention Against Corruption (UNCAC), which encourages the use of asset recovery mechanisms as a means of redress, rather than relying solely on imprisonment as a punitive measure.

The United Nations Convention Against Corruption (UNCAC) underscores the importance of addressing corruption crimes by focusing on the consequences of the crime itself. This perspective offers a potential legal foundation for applying restorative justice in the recovery of state losses. Specifically, Article 26, titled "Liability of Legal Persons," introduces the concept of corporate liability, which does not necessarily involve criminal sanctions but allows for alternative sanctions that are effective and proportionate. The interpretation of this article suggests that, while criminal sanctions for corruption remain a primary option, there is

²⁵ Iqbal Taufik Huwae, Viona, Deassy Hehanussa, "Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana Pencemaran Nama Baik Di Bidang Informasi Dan Transaksi Elektronik," *Pattimura Law Study Review* 1, no. 1 (2023): 124–36, <https://doi.org/https://doi.org/10.47268/palasrev.v1i1.10875>.

²⁶ Armour, *Restorative Justice Dialogue, an Essential Guide for Research and Practice*.

²⁷ Aleksandar Fatic, *Punishment and Restorative Crime – Handling*. (USA: Avebury Ashgate Publishing Limited, 1995)

flexibility to adopt non-criminal sanctions. This shift opens the door for restorative justice to be used as a viable alternative in addressing repeated corruption offenses.²⁸

B. Restorative Justice, Asset Recovery Mechanism, and Justice Restoration

Asset recovery in the form of returning assets resulting from corruption as an effort to minimize state losses caused by corruption is an effort that is no less important than punishing the perpetrators with severe punishment, so the return of corruption assets has occupied an essential position in the eradication of corruption. Asset recovery is defined as a law enforcement system carried out by the state victims of corruption to revoke, Through a series of processes and mechanisms, both criminal and civil, assets resulting from corruption, both at home and abroad, are tracked, frozen, seized, confiscated, handed over, and returned to the state victims of corruption, to restore state financial losses caused by corruption and prevent perpetrators of corruption from using assets resulting from corruption as a tool or means to commit criminal acts.²⁹

Asset recovery in common law countries is known as Asset Forfeiture or Asset Seizure. Asset Forfeiture allows for the confiscation or forfeiture of criminal proceeds without a court decision. However, this is not the case in civil law countries. Asset forfeiture is only known in the criminal law system, which is known as confiscation or return after a court decision that has permanent legal force.³⁰ In countries that follow the Civil Law system, asset recovery refers to any property obtained, either directly or indirectly, through illegal activities, both before and after the law was enacted. The assets that can be confiscated are adjusted to the type of crime related to the assets to be confiscated, which has the criteria as every property resulting

²⁸ Budi Suharianto, *Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi demi Optimalisasi Pengembalian Kerugian Keuangan Negara*, Jakarta, Kemenkumham, Volume 5, Nomor 3, 2016, <https://dx.doi.org/10.33331/rechtsvinding.v5i3.153>

²⁹ Ade Mahmud, *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif* (Jakarta: Sinar Grafika, 2021).

³⁰ Rahmayanti, "Rekonstruksi Pengembangan Civil Forfeiture Untuk Meningkatkan Pengembalian Kerugian Keuangan Negara Berbasis Nilai Keadilan Bermartabat" (Universitas Islam Sultan Agung Semarang, 2020).

from a criminal act or obtained from the proceeds of a criminal act, property used as a tool, means, or infrastructure to commit a criminal act or support a crime organization, every property related to a criminal act or crime organization, property used to finance a criminal act or crime organization, everything that belongs to the perpetrator of a criminal act or crime organization.³¹

Asset recovery can be done with two mechanisms, namely criminal law mechanisms and civil law mechanisms. Where asset recovery through criminal law mechanisms (criminal-based forfeiture) is carried out by tracking assets, taking preventive measures to stop the transfer of assets through freezing mechanisms, confiscation, and transferring assets from the recipient country to the victim country where the assets were illegally obtained. In addition to criminal asset recovery, there is also asset recovery through civil law mechanisms as stipulated in Article 38 C of Law Number 20 of 2001 on Corruption Crimes, which authorizes the Prosecutor as the state attorney to file a civil lawsuit for state losses.

Asset recovery mechanisms through civil law mechanisms can be carried out in cases where there is insufficient evidence to prove the criminal elements of corruption (acquittal does not preclude civil lawsuit efforts), in cases where the suspect dies (suing his heirs), and in cases where the defendant dies (suing his heirs). The Asset Recovery mechanism through civil lawsuits is carried out to fulfill the public's sense of justice and to show that criminal law norms alone are not sufficient to recover state financial losses.³²

Although linked to corruption charges, the asset recovery process through civil instruments is entirely regulated by both the substantive and procedural rules of civil law. In asset recovery, the criminal process adheres to a material-proof system. In contrast, the civil process adheres to a formal proof system, which can be more complicated than material proof. In corruption cases, the burden of proof lies not only with the public

³¹ Muhammad Yusuf, *Merampas Aset Koruptor (Solusi Pemberantasan Korupsi Di Indonesia)* (Jakarta: Kompas Media Nusantara, 2013).

³² Henny Saida Flora, "The Living Law's Restorative Justice: Implementation of Restorative Justice as an Integrative Mechanism in Criminal Law," *Unram Law Review* 7, no. 1 (April 2023), <https://doi.org/10.29303/ulrev.v7i1.279>.

prosecutor but also with the defendant. Specifically, the defendant must demonstrate that their property was not acquired through corruption.³³ It places the opposite burden of proof on the defendant. In this case, the plaintiff, such as the State Attorney or the affected agency, carries the burden of proof when seeking asset recovery through civil law channels. In this case, the plaintiff must prove that state funds have been lost, that the loss is linked to the actions of suspects, defendants, or convicted individuals involved in corruption, and that these individuals possess assets that can be used to recover the lost funds.³⁴

The aim of this civil case, concerning the recovery of state damages, is to ensure public justice for the illegal actions of corrupt officials. A violation of legal duties is one of the criteria for an act to be deemed unlawful. This suggests that it conflicts with a legally binding provision issued by an authorized authority. Since no one should benefit from the proceeds of a crime, a criminal act is not only prohibited under criminal law but, in some cases, also under civil law, with liability extending to the perpetrator's heirs. This provision may fall under public law, including criminal law, or private law, such as civil law. To effectively restore assets or recover state damages caused by corruption, civil law enforcement must work alongside criminal law enforcement against corrupt individuals and their heirs.

Based on the above provisions, it is clear that asset recovery through criminal law mechanisms and civil lawsuit mechanisms has the value and philosophy of restorative justice, even though it still uses court facilities and court decisions, the value and philosophy of restoring or returning victims' losses can be achieved. The value and philosophy of recovering state losses through asset recovery mechanisms show that these mechanisms are in line with the principles of restorative justice, where the state, as a victim of corruption crimes, gets its rights back. State financial losses can be returned,

³³ Nur Jannah, M. Khoidin, and Slamet Suhartono, "Analyzing the Legality of Confiscating Third Party Property in Cases of Corruption," *Nurani Hukum* 6, no. 1 (June 2023): 181, <https://doi.org/10.51825/nhk.v6i1.19395>.

³⁴ Michael Julnius Christophorus Siahaya, "Pengembalian Kerugian Keuangan Negara Dalam Tahap Penyidikan Tindak Pidana Korupsi," *Lex Crimen* 4, no. 2 (2015): 13–22.

so that state finances and society in general can be accommodated for their justice rights that are violated in corruption crimes.

To effectively implement the asset recovery mechanism outlined above, a comprehensive legal framework is necessary to facilitate the identification, tracing, confiscation, and restitution of assets obtained through corruption. Such a legal foundation would support the processes of asset tracking, securing, managing, seizing, and ultimately returning assets to the state, thereby enabling the recovery of financial losses resulting from corruption. In practice, however, Indonesia currently lacks specific legal provisions for asset recovery, which hinders its optimal implementation. This gap is primarily due to the absence of clear regulations and the inadequate coordination between law enforcement agencies.³⁵

To address this legal gap, a restorative justice approach can be utilized in asset recovery as an alternative method for tackling corruption crimes. One such mechanism within restorative justice is the Non-Conviction-Based (NCB) asset seizure process. This approach enables the government to confiscate assets derived from criminal activities without the need to await a final court judgment against the offender. As a result, the asset recovery process can be expedited, making it more efficient and timely while also serving as a deterrent to potential perpetrators of corruption.

The Non-Conviction Based (NCB) mechanism represents a significant legal advancement, first introduced in Chapter V of the United Nations Convention Against Corruption (UNCAC). In 2007, the World Bank launched the Stolen Asset Recovery (StaR) initiative, designed to support technical efforts in asset recovery, including the development of several key guidelines outlined in A Good Practices Guide for Non-Conviction Based Asset Forfeiture. Under the NCB mechanism, the confiscation of assets derived from corruption is conducted through a process distinct from the criminal justice system. Importantly, this

³⁵ Sugama, F., Rahmad, Y., Az, M. R., Ridwan, M. A., Rozi, F., & Azis, A. (2024). Efektivitas Penerapan Restorative Justice dalam Penyelesaian Tindak Pidana Anak di Indonesia. *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin*, Volume 1 No. (3), <https://doi.org/10.71153/jimmi.v1i3.148>

approach requires clear evidence that the assets in question are indeed proceeds of corruption.³⁶

The Non-Conviction Based (NCB) mechanism enables the state, as the victim of corruption, to confiscate assets derived from criminal activities, particularly when there is insufficient evidence to prove a criminal offense.³⁷

Its primary objective is to prevent the misuse of illegally acquired assets and to recover the financial losses incurred by the state. The NCB mechanism can be employed when criminal remedies are no longer viable for recovering state losses due to corruption. This may occur in situations where there is inadequate evidence, the suspect, defendant, or convict has died, the defendant has been acquitted, or allegations exist regarding the existence of unconfiscated proceeds of corruption, even after a legally binding court decision (*inkracht*).³⁸ The NCB mechanism provides a foundation for restorative justice in the recovery of state losses through asset forfeiture procedures. It allows the state, as the victim of corruption, to seize assets suspected of being proceeds of corruption crimes. If the perpetrator fails to demonstrate the legal ownership of the property, a strong presumption arises that the property is the result of criminal activity. In such cases, the court may declare the property to be "legally tainted," thus facilitating its forfeiture.³⁹

Conclusion

The main criticism of law enforcement is that the interests of victims are not accommodated. Even though the victim is the one who feels the direct loss of a crime, their position has no place in defending their rights. Restorative justice is present to become an analysis of the criminal justice

³⁶ Theodore S. Greenberg et. al., *Stolen Asset Recovery: A Good Practice Guide For NonConviction Based Asset Forfeiture*, Washington DC, World Bank, 2009

³⁷ Theodore S. Greenberg

³⁸ Sudarto, "Mekanisme Perampasan Aset Dengan Menggunakan Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara Akibat Tindak Pidana Korupsi," *Jurnal Pasca Sarjana Hukum UNS*, Vol. 4 No. 2, 2016, <https://doi.org/10.20961/HPE.V5I1.18352>

³⁹ Yunus Husein, *Bunga Rampai Anti Pencucian Uang*, Books Terrace & Library, Bandung, 2007

system to solve crimes in a dialogical manner between the perpetrator, victim, and society, so that the interests of victims and society can be addressed and prevent future crimes. In the case of corruption crimes, asset recovery that prosecutors can carry out for perpetrators of corruption crimes can be done through criminal law and civil law mechanisms. In practice, the asset recovery mechanism faces juridical challenges due to the lack of legal provisions establishing a clear basis for its implementation. As a result, a legal innovation is required, specifically through the adoption of a restorative justice approach in asset recovery, utilizing the Non-Conviction Based (NCB) mechanism. Philosophically, asset recovery is under the value of restorative justice, which restores state losses seized by the perpetrators of corruption and provides protection to the community concerning the community's sense of justice.

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