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Periscope of Ideas Selective Criteria for the Application of Restorative Justice in Corruption Crimes

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Abstract

This article applies the theory of restorative justice to the analysis of state losses resulting from corrupt activities. This study employs socio-legal research, which is a type of normative legal research that is dependent on values and facts. The study's findings revealed that two (2) points of view are based on the fundamental notion that restorative justice can compensate the state for damages incurred through acts of corruption. First, in order to make up for the losses sustained by the state as a result of corrupt criminal acts, law enforcement must be centered around the idea of restorative justice. Secondly, the fact that the Constitutional Court's ruling Number 25-PUU-XIV-2016 eliminated the word "*may*" from Article 2 paragraph (1) and Article 3 of Law Number 20 Year 2001 in combination with Law Number 31 Year 1999 for the Eradication of Corruption remains a reality. In order to ensure that substantive justice in the application of restorative justice does not clash with current laws and regulations and is administered with chosen criteria, the *a quo* ruling nullifies Article 4 of the Corruption Crime Eradication Law.

KEYWORDS *State Losses, Corruption Crimes,Restorative Justice*

Introduction

Transparency International contends that corruption crimes engender deleterious repercussions across various societal domains, including public policies, developmental initiatives, the commercial sphere, governmental governance, and the welfare of the impoverished. Furthermore, such transgressions have been observed to precipitate distortions or disruptions in the judicious allocation of resources.[1] Corruption transcends individual domains, permeating both local and national spheres with a pervasive ripple effect, notably manifesting in the debilitating grip of poverty. [2] Its detrimental impact extends far beyond mere financial malfeasance, eroding the integrity of governmental fiscal structures and imperiling the fundamental social and economic rights of the populace.[3] Bambang Waluyo underscores this societal scourge, delineating its corrosive influence on ethical norms, hindrance of progress, and systematic harm to various aspects of societal fabric.[4] Accordingly, Transparency International advocates for a unified, multi-stakeholder approach to combatting corruption, emphasizing the critical involvement of nations, the private sector, and civil society. This endeavor necessitates the cultivation of governance ethos rooted in principles of accountability, equity, justice, civic engagement, legal enforcement, transparency, and responsiveness.[5] Such efforts can be further bolstered by community-led initiatives targeting bribery, tax evasion, fraud, misappropriation of state assets, and disclosure of sensitive economic information.[6] Furthermore, the private sector must not only adhere to legal and ethical standards but also actively engage in collaborative endeavors

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1 Transparency International, "1998 Corruption Perceptions Index - Press - Transparency.Org," 1998, https://www.transparency.org/en/press/1998-corruption-perceptions-index.

2 Tim Penulis Buku Pendidikan Anti Korupsi, *Pendidikan Anti Korupsi Untuk Perguruan Tinggi*, ed. Yusuf Kurniadi Nanang T. Puspito, Hibnu Nugroho (Jakarta: Sekretariat Jenderal Kementerian Riset, Teknologi dan Pendidikan Tinggi, 2018).

3 Komisi Pemberantasan Korupsi, "Rencana Strategis KPK 2020-2024," 2020, https://www.kpk.go.id/id/tentang-kpk/rencana-strategis-kpk.

4 Bambang Waluyo, *Pemberantasan Tindak Pidana Korupsi: Strategi Dan Optimalisasi* (Jakarta: Sinar Grafika, 2022). Pg. 79

5 Juanda Nawawi, "Membangun Kepercayaan Dalam Mewujudkan Good Governance," *Government: Jurnal Ilmu Pemerintahan* 2, no. 1 (2009): 19, https://doi.org/https://doi.org/10.31947/jgov.v2i1.1130. https://doi.org/10.31947/jgov.v2i1.1130

6 Elwi Danil, *Korupsi: Konsep, Tindak Pidana Dan Pemberantasannya-Rajawali Pers* (PT. RajaGrafindo Persada, 2021). Pg. 53

with government and community stakeholders to effectively address and mitigate the pervasive scourge of corruption.[7]

Unfortunately, in Indonesia, corruption offenses are still being committed by a growing number of people and in a variety of ways. This fact is reflected in the Transparency International report that was just released in early 2023, which shows a decrease in score by 4 points, resulting in Indonesia being ranked 110th.[8] According to CPI 2022: Trouble At The Top, harboring corrupt assets, tolerating enablers, and perpetuating impunity are the main reasons behind flat or even falling CPI scores in some nations.[9]

Corruption stands as humanity's most formidable threat, wielding the power to distort economic progress and exacerbate societal inequality.[10] As evidenced by Tarek Ghalwash's research, empirical data from numerous studies suggests that corruption precipitates inefficiencies in government expenditure, thereby diminishing a nation's attractiveness for foreign investment and stifling its potential for economic growth. Consequently, these inefficiencies fuel political unrest and further impede economic development, creating a vicious cycle of stagnation and instability.[11]

Corruption has an impact on information monopolization, exclusivity, supply and demand imbalances, and social inequality among citizens.[12] Most people agree when they say that corruption is defined as "*the abuse of public office for private gain.*"[13] Corruption is substantively a financial crime.[14] Another definition of corruption is the misuse of authority in politics and

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[7] Marten Bunga et al., "Urgensi Peran Serta Masyarakat Dalam Upaya Pencegahan Dan Pemberantasan Tindak Pidana Korupsi," *Law Reform* 15, no. 1 (2019): 85–97, https://doi.org/10.14710/lr.v15i1.23356

[8] Transparency International, "2022 Corruption Perceptions Index: Explore The… - Transparency.Org," transparency.org, 2023, https://www.transparency.org/en/cpi/2022/index/idn.

[9] Transparency International, "CPI 2022: Trouble At The Top," 2023, https://www.transparency.org/en/news/cpi-2022-trouble-at-the-top.

[10] Eugen Dimant and Thorben Schulte, "The Nature of Corruption: An Interdisciplinary Perspective," *German Law Journal* 17, no. 1 (2016): 53–72, https://doi.org/10.1017/S2071832200019684.

[11] Tarek Ghalwash, "Corruption and Economic Growth: Evidence from Egypt," *Modern Economy* 05, no. 10 (2014): 1001–9, https://doi.org/10.4236/me.2014.510092.

[12] Martinus Tukiran, Eny Susilowati, and Imam Mahriyansah, *Membangun Sistem Manajemen Anti Penyuapan (SMAP) Berdasarkan ISO 37001: 2016* (PT Kanisius, 2021).

[13] Alhaji Marong, "Toward a Normative Consensus Against Corruption: Legal Effects of the Principles to Combat Corruption in Africa," *Denv. J. Int'l L. & Pol'y* 30 (2001): 99.

[14] Sr Hope Kempe Ronald, "Channels of Corruption in Africa: Analytical Review of Trends in Financial Crimes," *Journal of Financial Crime* 27, no. 1 (2020): 294–306, https://doi.org/10.1108/JFC-05-2019-0053.

administration.[15] There are public officials elected through the political process, who are members or administrators of political parties. Even legal entities can be involved as perpetrators. If we delve more specifically into the data from the Corruption Eradication Commission, statistics on corruption crimes by agency from mid-2004 to 2022 show that the most corrupt agencies in Indonesia currently are district/city governments, followed by ministries/agencies, and then provincial governments ranking third. The breakdown is as follows:[16]

FIGURE 1. Criminal Acts of Corruption by Agencies

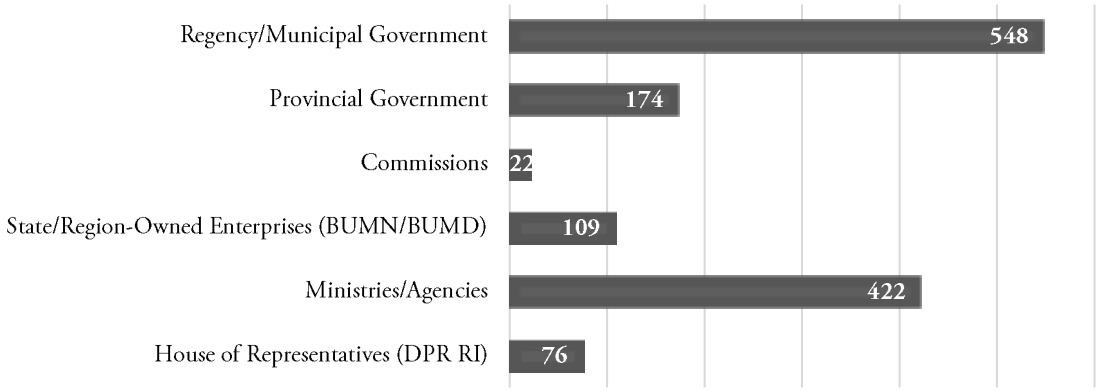
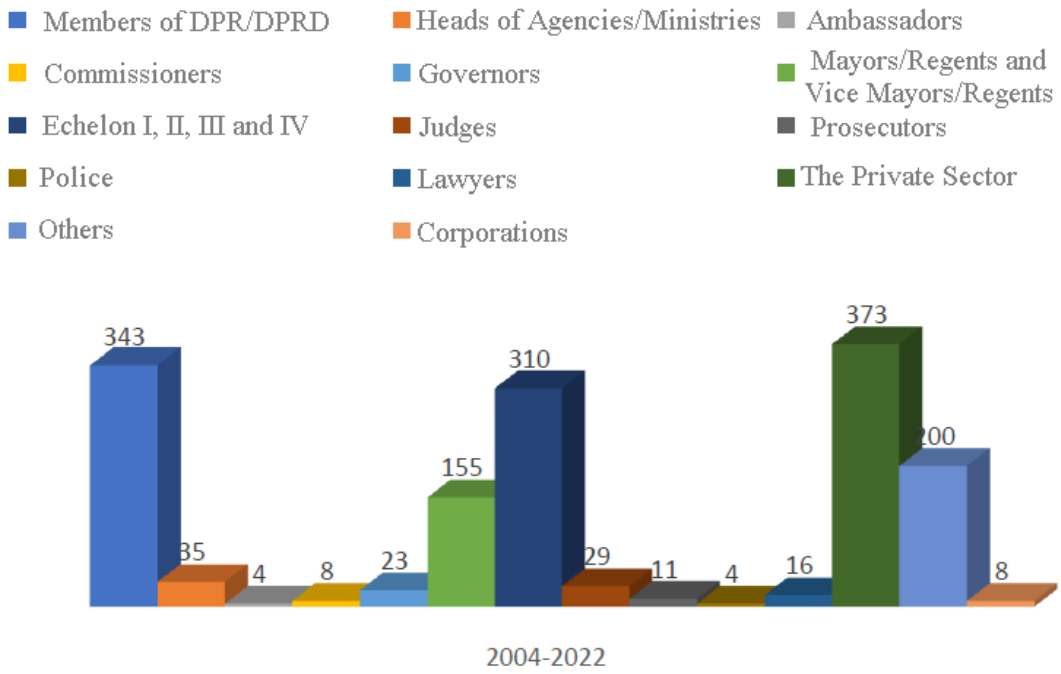


FIGURE 2. Criminal Acts of Corruption by Profession/Position

[15] James E Alt and David Dreyer Lassen, "Enforcement and Public Corruption: Evidence from the American States," *The Journal of Law, Economics, and Organization* 30, no. 2 (2012): 306–338, https://doi.org/10.1093/jleo/ews036.

[16] Komisi Pemberantasan Korupsi, "TPK Berdasarkan Instansi," 2023, https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-instansi.



Meanwhile, according to statistics on corruption offenses by profession and position, the private sector accounted for 1520 of the cases between 2004 and 2022 where the profession or post committed the most corruption crimes, followed by members of the Indonesian House of Representatives (DPR RI)/Regional House of Representatives (DPRD), and then in third place are officials at the I, II, III and IV echelon levels, as shown on Figure 2.[17]

Presently, a retributive justice strategy is prioritized in the prosecution of corruption offenses. Retributive justice theory legitimizes punishment as a "means of retribution for the crimes committed by someone. Crime is viewed as an amoral and immoral act in society, therefore perpetrators of crimes must be punished by imposing sanctions."[18] An approach that prioritizes criminal sanctions (*primum remedium*) has largely failed in preventing and combating crimes, including corruption crimes, because "even though criminal sanctions have benefits, the benefits of punishment obtained in certain cases are sometimes considered minimal."[19]

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[17] Komisi Pemberantasan Korupsi, "TPK Berdasarkan Profesi/Jabatan," 2023, https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-profesi-jabatan.

[18] Fahrizal S. Siagian, Susilawati, and Syarifuddin, "Penyidikan Terhadap Tindak Pidana Jual Beli Vaksin Secara Ilegal Dalam Penanggulangan Pandemi Covid-19 (Studi Pada Kepolisian Daerah Sumatera Utara)," *Jurnal Hukum Dan Kemasyarakatan Al-Hikmah* 3, no. 2 (2022): 417–45. https://doi.org/10.30743/jhah.v3i2.5418

[19] Marcus Priyo Gunarto, "Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (2009): 93–108, https://doi.org/10.22146/jmh.16248

The Indonesia Corruption Watch (ICW) report shows that "In 2021's first semester, the state suffered damages amounting to IDR 26.83 trillion as a result of corruption. Compared to the same period last year, which was IDR 18.17 trillion, this sum climbed by 47.63%. During that time, law enforcement discovered 209 corruption instances, and 482 people were investigated by the authorities."[20] The first semester's enforcement of anti-corruption measures by law enforcement agencies From 2017 to 2021, there was a tendency for fluctuations. Nonetheless, the tendency of governmental losses brought on by corruption grew yearly. ICW claims that the government's oversight of budget management to handle corruption cases is getting worse at the root of the problem. Even ICW notes the lack of openness in the information provided by law enforcement, particularly the police and prosecutors, about how they handle corruption,[21] as shown on Table 1.

TABLE 1. Based on Corruption Mapping by Mode in 2022[22]

Mode	Number of Cases	Value (IDR)		
		State Loss	Bribery & Extortion	Money Laundering
Budget Misuse	303	17.857.397.845.012	49.274.300.000	724.280.000.000
Fictitious Activities/Projects	91	543.896.258.643	-	-
Mark Up	59	879.376.625.833		224.700.000.000
Fictitious Report	51	108.212.755.788	-	-
Illegal Levy	24	1.758.710.325	17.544.207.750	7.000.000.000
Trade Influence	19	18.424.335.029.448	508.784.000.000	-
Cutting/Reduction	18	22.270.600.000	2.582.500.000	7.000.000.000
Illegal Permit Issuance	12	4.910.300.000.000	127.097.912.284	-
Tricking the witness	2	-	-	-

[20] Cindy Mutia Annur, "ICW: Kerugian Negara Akibat Korupsi Capai Rp 26,8 Triliun Pada Semester 1 2021," databoks, 2021, https://databoks.katadata.co.id/datapublish/2021/09/13/icw-kerugian-negara-akibat-korupsi-capai-rp-268-triliun-pada-semester-1-2021.

[21] *Ibid*

[22] Diky Anandya dan Lalola Easter, "Laporan Hasil Pemantauan Tren Penindakan Kasus Korupsi Tahun 2022 'Korupsi Lintas Trias Politika,'" *Indonesia Corruption Watch*, 2023, https://antikorupsi.org/sites/default/files/dokumen/Narasi Laporan Tren Penindakan Korupsi Tahun 2022.pdf.

In terms of law enforcement's performance, the Prosecutor's Office reported that 405 cases and 909 suspects (cases) were handled in 2022. In contrast, the Indonesian National Police handled 138 cases with 337 suspects, out of a total of 405 cases and 909 suspects. Subsequently, the Corruption Eradication Commission dealt with 36 cases involving 150 people.[23]

The statistical data mentioned above can be categorized as systemic corruption because, despite being handled in a casuistic way, it sheds light on corruption from the viewpoint of those who do it. This is the case with corruption in Indonesia. Systemic corruption behaviour is not only related to criminal acts such as bribery. Behaviors related to systemic corruption are also connected to other immoral and unlawful activities, like illicit partnerships. Corrupt behavior can take many forms, from small-scale to large-scale.[24] A component of fraud is corruption, which is the covert or overt use of deprivation, robbery, theft, or embezzlement for one's own gain at the expense of others.[25] There are two types of corruption: active corruption and passive corruption. The use of office for one's own benefit or the benefit of others is known as passive corruption, but providing a bribe to a public servant to persuade them to perform, refrain from performing, or postpone performing an official act is known as active corruption.[26]

Corruption eradication in various countries certainly varies. Some are based on institutional strengthening[27] and certain policies are grounded in criminal corruption. Of course, "the social, cultural, political, and economic conditions of a nation" also have an impact on this disparity. "[28] All nations, notwithstanding their differences in approach, aim to preserve public budgets.

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[23] Diky Anandya dan Lalola Easter.

[24] Lorenzo Pasculli, "Seeds of Systemic Corruption in the Post-Brexit UK," *Journal of Financial Crime* 26, no. 3 (2019): 705–18, https://doi.org/https://doi.org/10.1108/JFC-09-2018-0094.

[25] Hendi Prihanto and Itjang D Gunawan, "Corruption in Indonesia (Is It Right to Governance, Leadership and It to Be Caused?)," *Journal of Economics and Sustainable Development* 11, no. 2 (2020): 56–65, https://doi.org/10.7176/JESD/11-2-06.

[26] Peter Kratcoski, "International Perspectives on Institutional and Police Corruption," *Police Practice and Research* 3, no. 1 (2002): 73–78,h ttps://doi.org/10.1080/15614260290011345.

[27] Marina Zaloznaya, Vicki Hesli Claypool, and William M Reisinger, "Pathways to Corruption: Institutional Context and Citizen Participation in Bureaucratic Corruption," *Social Forces* 96, no. 4 (2018): 1875–1904, https://doi.org/10.1093/sf/soy007.

[28] Samsul Huda et al., "Settlement of A Corruption Criminal Offence Based on the State's Financial Loss Value Using An Economic Analysis of the Law," *JL Pol'y & Globalization* 93 (2020): 102.

To ensure that these objectives are met, Indonesia's anti-corruption criminal legislation must be crafted in a way that makes thorough and organized anti-corruption initiatives possible. "From a theoretical and philosophical perspective, the anti-corruption norms must be established and structured with solid and adequate foundations in order to reflect these objectives."[29] Article 4 of Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 Year 2001, clearly emphasizes the retributive justice paradigm by stating that the criminalization of those who commit crimes, as mentioned in Articles 2 and 3, does not cease with the return of state losses or the state economy. The word "may" that is stated in Articles 2 and 3 creates legal uncertainty, and both Articles may even be abused by law enforcement agencies that believe that government officials have abused their powers. This is why the phrasing of this article has caused legal dispute. A judicial review petition concerning the drafting of Articles 2 and 3 of the Corruption Eradication Law has been filed with the Constitutional Court under Case Number 25_PUU_XIV-2016.

With that background in mind, the authors would like to address the question of how restorative justice fits into the general idea of returning state losses in corruption cases and how this idea is currently implemented in practice. The practice of restorative justice has a lengthy historical background. Ancient Arab, Greek, and Roman civilizations were well familiar with restorative techniques. In the 1970s, it then made a comeback in Western society.[30] However, in real-world applications, restorative justice inherently faces challenges when working with traditional legal institutions.[31] In a number of common law jurisdictions, "restorative" approaches to crime and conflict have been put forth in a range of legal contexts, including civil and criminal.[32]

The value of restorative justice in addressing criminal offenses is due to a number of factors. First of all, the criminal justice system is obviously far from

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[29] Rida Ista Sitepu and Yusona Piadi, "Implementasi Restoratif Justice Dalam Pemidanaan Pelaku Tindak Pidana Korupsi," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 1 (2019): 67–75, https://doi.org/10.52005/rechten.v1i1.7

[30] Anu Thomas, "A Reimagined Foreign Corrupted Practices Act: From Deterrence to Restoration and Beyond," *Temp. Int'l & Comp. LJ* 30 (2016): 402.

[31] Martin Wright, "The Court as Last Resort: Victim-sensitive, Community-based Responses to Crime," *British Journal of Criminology* 42, no. 3 (2002): 654–67, https://doi.org/10.1093/bjc/42.3.654.

[32] Katherine Beaty Chiste, "Retribution, Restoration, and White-Collar Crime," *Dalhousie LJ* 31 (2008): 87, https://heinonline.org/HOL/LandingPage?handle=hein.journals/dalholwj31&div=6&id=&page=.

ideal.[33] In this instance, restorative justice is a remedy for the criminal justice system's shortcomings.[34] Second, restorative justice is comprehensive and coherent in creating justice.[35] Third, An attempt has been made to address some of the shortcomings and inadequacies of the conventional criminal justice system through restorative justice.[36] Fourth, According to research, restorative justice can reduce recidivism by up to 25% and increase satisfaction while doing so at a significantly reduced cost.[37] Fifth, Restorative justice has emerged as a viable substitute for the traditional legal system in numerous nations. This is the result of growing discontent and annoyance with the legal system.[38] Sixth, The primary tenet of restorative techniques, which set them apart from criminal justice, is that crime is best addressed holistically by all parties involved, including offenders, victims, and the larger community.[39]

The research in question adopts a socio-legal framework, characterized by its fusion of legal analysis with empirical investigation. Adrian Bedner posits that normative inquiries precede empirical investigations, providing a foundational understanding of practical complexities before delving into textual, normative, and legal operational aspects.[40] This delineation underscores socio-legal research as an endeavor that initially scrutinizes and resolves the normative framework surrounding a given issue.[41] Methodologically, the study

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[33] Zvi D Gabbay, "Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices," *J. Disp. Resol.*, 2005, 349, https://heinonline.org/HOL/LandingPage?handle=hein.journals/jdisres2005&div=21&id=&page=.

[34] Kelly Richards, "A Promise and a Possibility: The Limitations of the Traditional Criminal Justice System as an Explanation for the Emergence of Restorative Justice," *Restorative Justice* 2, no. 2 (2014): 124–41, https://doi.org/10.5235/20504721.2.2.124.

[35] Kent Roach, "Changing Punishment at the Turn of the Century: Restorative Justice on the Rise," *Canadian Journal of Criminology* 42, no. 3 (2000): 249–80, https://doi.org/10.3138/cjcrim.42.3.249.

[36] Richards, "A Promise and a Possibility: The Limitations of the Traditional Criminal Justice System as an Explanation for the Emergence of Restorative Justice."

[37] Thom Brooks, "Punitive Restoration and Restorative Justice," *Criminal Justice Ethics* 36, no. 2 (2017): 122–40, https://doi.org/10.1080/0731129X.2017.1358930.

[38] Yvon Dandurand and Curt Taylor Griffiths, *Handbook on Restorative Justice Programmes* (UN, 2006), https://www.ojp.gov/ncjrs/virtual-library/abstracts/handbook-restorative-justice-programmes.

[39] Rachel Rogers and Holly Ventura Miller, "Restorative Justice," *The Handbook of Social Control*, 2018, 167–80, https://doi.org/10.1002/9781119372394.ch12.

[40] Jan Hendrik Rapar, *Filsafat Politik: Plato, Aristoteles, Augustinus, Machiavelli* (Rajagrafindo Persada, 2002). Pg. 45-46

[41] Peter Mahmud Marzuki, *Penelitian Hukum : Edisi Revisi* (Jakarta: Prenadamedia Group., 2014).

employs a legal approach, entailing comprehensive examination of pertinent laws and regulations.[42] Additionally, a structural approach is employed, involving the systematic exploration not only of isolated elements but also their interconnections. Complementing this, a conceptual methodology is applied, focusing on legal concepts as the linchpin for analytical scrutiny.[43]

The Basic Idea of State Loss Recovery in Corruption Crimes through Restorative Justice

Plato proposed that ideas are the true reality of everything that exists and can be known through the senses. Ideas are not just mere thoughts or images that exist only in the human mind. Ideas are not just subjective creations of human thought and therefore depend on human thought. For Plato, *ideas are objective, whose existence does not depend on human thought. In fact, ideas are independent, perfect, eternal, and unchanging.*[44] If we relate Plato's thinking to the basic idea of state loss recovery in corruption crime through restorative justice objectively with a scientific and legal basis accepted for the benefit of society. The authors note that there are 2 (two) basic ideas for state loss recovery with restorative justice; first, citing Andreas H. Marbhun "The development of a conceptual knowledge of restorative justice is necessary for the recovery of corruption crimes using this approach."[45]. Second, regarding the eradication of criminal acts of corruption, the authors acknowledge the fact of the Constitutional Court's judgment number 25-PUU-XIV-2016, which struck down the word "may" from Article 2 paragraph (1) and Article 3 of Law number 20 Year 2001 in conjunction with Law number 31 Year 1999.

The first fundamental concept that has to be looked at is the knowledge that specialists have about restorative justice and what is contained in the rules issued by criminal justice system agencies. Restorative justice, in Joshua Dressler's words,

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[42] Irwansyah, *Penelitian Hukum ; Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020). Pg. 205

[43] Salim dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: PT. RajaGrafindo Persada, 2014).

[44] Jan Hendrik Rapar. *Loc.Cit*

[45] Andreas H. Marbhun, *Apakah bisa Restorative Justice Dalam Kasus Korupsi*, presented at the National Webinar, Collaboration of Persada Universitas Brawijaya, DECRIM, IKA FH Universitas Diponegoro and ICJR, Via Zoom, Friday October 28, (2022).

> "*highlights the significance of the role played by community members and crime victims, holds offenders directly accountable to the people they have harmed, makes good on the material and emotional losses suffered by victims, and offers a variety of avenues for communication, compromise, and problem-solving that can result in increased community safety, the resolution of conflicts, and closure for all parties involved.*"[46]

Howard Zehr, known as the architect of restorative justice development explains that *"In order to heal and make things right as much as possible, restorative justice involves as many people as possible who have a stake in a particular offense. Together, they identify and address needs, obligations, and harms."*[47] In line with that, Menkel Meadow explains as follows:

> "*The term "restorative justice" refers to a range of approaches, such as offering reparations, acknowledging wrongs, and apologizing, in addition to other initiatives aimed at assisting criminals in recovering and reintegrating into their communities—with or without further punishment. In order to practice restorative justice, victims and offenders typically communicate directly with a facilitator. Some or all of the relevant impacted community's representation may also be involved.*"[48]

A facilitator, victims, offenders, and some members of the impacted community or the community at large are usually involved in restorative justice cases involving direct parties in the community.[49] In order to practice restorative justice, families and communities must voluntarily gather in person as justice

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[46] Joshua Dressler, *Encyclopedia of Crime and Justice: Abortion to Cruel & Unusual Punishment*, vol. 1 (Macmillan Reference USA, 2002).

[47] Diah Sulistyani Muladi and Diah Sulistyani, "Catatan Empat Dekade Perjuangan Turut Mengawa Terwujudnya KUHP NASIONAL (Bagian I, 1980-2020)" (Semarang Press, Semarang, 2020). Pg. 78

[48] Carrie Menkel-Meadow, "Restorative Justice: What Is It and Does It Work?," Annu. Rev. Law Soc. Sci. 3 (2007): 161–187. https://doi.org/10.1146/annurev.lawsocsci.2.081805.110005

[49] Nur Rochaeti, Mujiono Hafidh Prasetyo, Umi Rozah, Jihyun Park, *A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices, Sriwijaya Law Review Volume 7 Issue 1* (2023) : 87. http://dx.doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104 Wood, William R., Masahiro Suzuki, and Hennessey Hayes. "Restorative Justice in Youth and Adult Criminal Justice," September 15, 2022. https://doi.org/10.1093/acrefore/9780190264079.013.658.

stakeholders. Additionally, a renewed and stronger social network must be the main focus.[50]

Regulation Number 6 Year 2019 about Criminal Investigation by the Indonesian National Police Chief governs restorative justice at the investigative level. This rule establishes a number of formal and substantive prerequisites for the use of restorative justice during the investigative phase. The necessary materials include:

a. not stirring up riots in the community;
b. not giving rise to social unrest;
c. all parties concerned have agreed to oppose, give up their right to demand something, and adhere to the concept of limits.[51]

Although the official prerequisites consist of:

a. a letter from the defendant and the complaint asking for reconciliation);
b. a letter of reconciliation (*acta van dading*) and the resolution of disagreements between the parties to the case (the defendant and/or defendant's family, the complainant and/or complainant's family, and a representative of the community leaders) that the investigating supervisor is aware of;
c. minutes of follow-up interviews with the parties following the restorative justice resolution;
d. a suggestion for a special case proceeding that accepts the restorative justice settlement, to which the offender has no objections, and that is carried out willingly with accountability and recompense.[52]

The term "*restorative justice*" is defined as "*the settlement of criminal cases by involving the perpetrator, victim, perpetrator's family, and other related parties to seek a fair solution emphasizing restoration to the original state rather than retaliation.*" This definition can also be found in Article 1 Paragraph 1 of Attorney General Regulation No. 15 Year 2020 concerning Termination of Prosecution based on Restorative Justice. Cases can be settled out-of-court by using the clauses that:

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[50] Chiste, "Retribution, Restoration, and White-Collar Crime."

[51] The principle of limitation consists of: a) on the perpetrator, which means that the level of the perpetrator's mistake is relatively not severe, namely mistakes in the form of intention and the perpetrator is not a recidivist; b) on the criminal offense in the process, the investigation and inquiry before the order letter to begin the investigation is sent to the public prosecutor.

[52] Maria Silvya E Wangga, "Implementation of Restorative Justice in Criminal Cases in Indonesia," *Law and Humanities Quarterly Reviews* 1, no. 3 (2022): 133, https://doi.org/10.31014/aior.1996.01.03.25

a. In compliance with the laws, the maximum fine penalty for some criminal offenses is paid willingly; or
b. A restorative justice strategy has been used to return things to as they were.

The Public Prosecutor, who is in charge, will cease prosecution when cases settled outside of court using the restorative justice method. The cases will be progressively handed to the Chief of the High Prosecutor's Office. This concept stems from the belief that punishing the offender criminally does not end the victim's pain,[53] Therefore, in actuality, a different or alternate strategy is required to enhance the criminal justice system by combining restorative justice principles with non-litigation settlement.[54] Article 4 Paragraph (1) of Indonesian Attorney General Regulation No. 15 Year 2020 about Termination of Prosecution based on Restorative Justice refers to the process of ending prosecution based on restorative justice, which is carried out by taking into account a number of requirements:

a. The victim's interests as well as other legally protected interests;
b. Steer clear of harmful stigma;
c. Refraining from reprisals;
d. The harmony and reaction of society; and
e. Public order, ethics, and property.

The Indonesian Attorney General Regulation No. 15 Year 2020, Article 4 Paragraph 2, on the Termination of Prosecution based on Restorative Justice, specifies that the following factors must be taken into account when terminating prosecution based on restorative justice:

a. Subject, object, category, and threat of criminal acts;
b. The circumstances surrounding the commission of criminal acts;
c. Level of culpability;
d. Damage or repercussions brought on by illegal activity;
e. The price and return on case management;
f. Returning to the initial condition; and
g. The victim and the suspect have reached a peaceful resolution.

The following conditions must be met in order for a criminal case to be closed and the prosecution to be halted in accordance with restorative justice,

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[53] Cindy Oktaviany Pepa, "Implementation of Criminal Law Provisions Against Serious Killers in Indonesia," *JURNAL LEGALITAS* 15, no. 2 (2022): 122–35, https://doi.org/10.33756/jelta.v15i2.15592.

[54] Maman Budiman, "Implementasi Prinsip Restorative Justice Dalam Penghentian Penuntutan Perkara Korupsi Oleh Kejaksaan Republik Indonesia," Syntax Literate; Jurnal Ilmiah Indonesia 7, no. 3 (2022): 1045–1053. https://doi.org/10.36418/syntax-literate.v7i3.6405

as stated in Article 5 Paragraph (1) of Indonesian Attorney General Regulation No. 15 Year 2020:

a. This is the first time the suspect has committed a crime;
b. The maximum penalty for the criminal act is a fine or a maximum of five (five) years in jail; and
c. The evidence or losses resulting from the criminal act do not exceed IDR 2,500,000 (two million five hundred thousand rupiahs);
d. The suspect has returned everything to how it was before:
    1. Giving the victim back the items that were obtained during the criminal act;
    2. Making up for the victim's losses;
    3. Paying for the costs brought on by the illegal act; and/or
    4. Making up for the harm the illicit conduct created.
    5. The victim and the suspect have reached a peace accord;
    6. The neighborhood has reacted favorably.

Article 5 Paragraph 8 of Indonesian Attorney General Regulation No. 15 Year 2020 concerning the Termination of Prosecution Based on Restorative Justice lists cases that cannot be dismissed based on restorative justice. These cases are as follows:

a) Crimes against public order, morals, friendly nations, state heads of state and their deputies, the President and Vice President's dignity, and state security;
b) Crimes for which a minimum penalty is applicable;
c) Drug-related offenses;
d) Pollution-related offenses; and
e) Criminal activity carried out by companies.

According to Andreas H. Marbhun, law enforcement's understanding of restorative justice can be used to apply restorative justice in cases involving corruption. "The restorative approach should be seen as an addition to retributive punishment, not a replacement for the retributive nature of the criminal justice system," according to Zvi D. Gabbav, who is cited by Marbhun.[55] This implies that rather than being an alternative to punishment, the restorative component should be viewed as an additional kind of discipline. The concept of restorative justice, according to Marbhun, should instead be understood as a broader attempt to satisfy the sense of justice for all parties involved in criminal cases by involving the victim, the offender, the local community, and moderators such as investigators and prosecutors. This is because it involves more than just a peaceful way to end a case. "One of the

[55] Andreas H. Marbhun, *Op.Cit*, 3

formats used for case settlements is a peace agreement, and the judge must impose the revocation of the victim's right to prosecution through the public prosecutor's office in order to do so."[56]

Restorative justice is only applicable to offenses involving victims. Of fact, one may wonder if victims of corruption crimes exist. Corrupt practices are defined as "white collar crimes that have specific victims, to borrow Marbhun's words.[57] It is important to realize that "a crime committed by someone who is highly respected and has a high social status in their job" is referred to as white collar crime."[58] White collar crime, and corruption crimes in particular, imply that the victims are not named but rather members of the general public, who are numerous. One example of this is the victims of the Electronic ID Card (KTP) corruption case, which cost the state's coffers IDR 2.5 trillion. In the meantime, the Asabri or Jiwasraya corruption cases are the particular victims of corruption offenses. Sadly, most people do not believe that they are the victims of these crimes. As mentioned by Novi Juli Rosani Zulkarnain, who cited Marshall B. Clinard and Peter C. Yeager Clinardang, who said that:

> *"Corporate crime victims frequently don't even realize they've been taken. Examples include consumers who have paid an inflated price for a product due to antitrust collusion, stakeholders who receive a falsified balance sheet, and consumers who have blindly accepted the product's deceptive advertising claims without understanding the consequences the product would have on their finances or health.*"[59]

The decision of the Constitutional Court Number 25-PUU-XIV-2016, which eliminated the word "may" from Article 2 paragraph (1) and Article 3 of Law Number 20 Year 2001 in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, is referenced in the second underlying idea of the restitution of state losses in corruption cases through restorative justice. The phrase "may" in Article 2 paragraph (1) and Article 3 was deemed by the justices to be in conflict with the 1945 Constitution of the Republic of Indonesia and to have no legally binding significance. The

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[56] Andreas H. Marbhun, *Ibid*, 3

[57] Andreas H. Marbhun, *Ibid,* 6

[58] S Elfina Lebrine, "Pengaruh Etika Bisnis Terhadap Kejahatan Korporasi Dalam Lingkup Kejahatan Bisnis," *Jurnal Laboratorium Hukum Pidana Universitas Surabaya,* 63 (2010). Pg. 60. https://doi.org/10.9744/jmk.12.1.pp.%2056-65

[59] Novi Juli Rosani Zulkarnain, "The Influence Ethics on Corporate Crime Within The Scope Business Crime," *LEGAL BRIEF* 10, no. 2 (2021): 294–303.

judges of the Constitutional Court believed that Article 2 Paragraph (1) and Article 3 of the Corruption Eradication Law violated the 1945 Constitution's Article 28G Paragraph (1) guarantee that every person shall feel safe and safeguarded from the threat of dread. Additionally, the word "may" was used in violation of the Corruption Eradication Law's Article 2 Paragraph 1 and Article 3 provisions, which stipulate that criminal acts must be formulated in accordance with the written law principle (lex scripta), be interpreted as read (lex stricta), and not be subject to multiple interpretations (lex certa), Consequently, it is believed to be in opposition to the rule of law, as articulated in Article 1 Paragraph (3) of the 1945 Constitution. The word "may" in Article 2 Paragraph 1 and Article 3 of the Corruption Eradication Law was deemed to be in violation of the 1945 Constitution and to have no legally enforceable meaning, according to the Constitutional Court justices' varied considerations in the ruling in Case Number 25-PUU-XIV-2016.

The Constitutional Court's ruling in Number 25-PUU-XIV-2016 has altered the way criminal legislation are developed, fundamentally redefining and assessing legal concepts. As said by Paton, "The law is more than just a body of rules; the legal principle is what gives the law life, growth, and development. This is predicated on the idea that the principles include moral requirements and values."[60] The same is also said by Bagir Manan, who says that "Legal principles are crucial because a legal system cannot exist without them."[61]

According to the author, there are five restorative approach models, if the restitution of state losses in corruption cases through restorative justice is to be understood in terms of Van Ness's approach model: The first five systems are the unified system, the dual track system, the safeguard system, the hybrid system, and the model dual track system selective. "[62]

1. *Unified System.*

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[60] Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban (Bacaan Mahasiswa Program Doktor Ilmu Hukum Universitas Diponegoro)* (Jakarta: Uki Press, 2006). Pg. 128

[61] Muhammad Halim, "Asas-Asas Hukum Modern Dalam Hukum Islam," *Jurnal Media Hukum* 17, no. 1 (2010): 156.

[62] Van Ness in Pujiyono, *Pembaruan Pertanggungjawaban Pidana Korporasi Melalui Pendekatan Restoratif Justice Dalam Model Dual Track System Selective,* Inauguration Speech, delivered during the Ceremony of Presentation of Professorship in Criminal Law Science at the Law Faculty of Diponegoro University, Semarang, December 17, (2019). 25-30, compare also with Pujiyono Pujiyono Pujiyono and Rahmi Dwi Susanti, "Alternatif Model Pertanggungjawaban Pidana Korporasi Melalui Pendekatan Keadilan Restoratif," *Pembaharuan Hukum Pidana* 2, no. 2 (2019): 32–34. compare with Maria Silvya E Wangga et al., "*Criminal Liability of Political Parties from the Perspective of Anti-Money Laundering Act,*" *JILS (Journal of Indonesian Legal Studies)* 7, no. 1 (2022): 254–256.

Since it obtains dispute resolution authority from the state, this paradigm is regarded as radical. According to this approach, the state has taken conflict from the parties and is returning it to its "owners" by allowing the victim and the offender to handle the legal proceedings and decide the outcome of the conflict resolution process independently. According to this concept, the criminal justice system's entire dispute settlement process should be replaced by the restorative method since the state "has no absolute right to conflict resolution."[63] Pujiyono claims that this "model is too radical and it sets aside the state's role as the people's representative."[64]

2. *Dual Track System*

   The alternative partner of the conventional procedure (criminal justice system) is the restorative model. If both parties agree to use the restorative model to resolve the problem, the criminal justice system will be terminated. The parties are given the choice to choose the criminal case resolution approach. On the other hand, the criminal justice system will seek a resolution if the restorative approach proves ineffective.[65] According to this model, the idea of restorative justice is fundamental or primal. The legal system in Japan has adopted this concept successfully, and the police, prosecutors, attorneys, and judges all fully embrace it.[66]. Pujiyono believes that this paradigm is comparatively excellent to adopt because "it places little emphasis on repressive or retributive methods. But this model has a drawback: there are no restrictions or requirements on what kinds of problems can be resolved using the restorative paradigm."[67]

3. *Safeguard System*

   The restorative idea is employed in this approach to address criminal acts, with restoration programs serving as the primary means of resolving criminal act issues and facilitating the transition from the criminal justice system to the restorative justice system. This paradigm means that not every case can be resolved by restorative justice because some cases will still need to go to court. "Although this concept is similar to the Unified System, it is less extreme and more moderate because it still acknowledges the state's involvement in resolving some criminal justice system issues."[68]

4. *Hybrid System*

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[63] *Ibid, 25*
[64] *Ibid,* 26
[65] *Ibid*, 26
[66] *Ibid,* 26
[67] *Ibid,27*
[68] *Ibid,* 28

The criminal justice system and the restorative method are normative components of the justice system, according to this concept. This approach highlights that the criminal justice system will decide whether someone is guilty and that the restorative idea will determine the appropriate punishment.[69] Martin Wright establishes "a framework for the authoritarian and democratic restorative justice systems in relation to this approach."[70] According to this concept, decisions in the authoritarian restorative justice system are decided by two separate justice systems in separate courts, each with distinct jurisdictional boundaries. The victim, the offender, and community members make decisions in the democratic restorative justice system, which operates independently of the criminal justice system.

5. *Dual Track System Selective Model*
   The foundation of this paradigm is its assessment of the criminal justice system channel alongside the channel of settlement through a restorative approach. In a selective way, the concept of the restorative method is positioned as the principal means. This implies that selected criminal cases with "unique characteristics can be handled selectively based on defined parameters, rather than all criminal cases being handled through the restorative channel and ending up in the criminal court system."[71]

Implementation of Restitution of State Losses in Criminal Acts of Corruption through Restorative Justice

The Constitutional Court's decision number 25-PUU-XIV-2016, which eliminated the word "may" from Article 2 paragraph (1) and Article 3 of Law Number 20 Year 2001 in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, and established two fundamental concepts for the restoration of state losses in corruption cases through restorative justice, "has not been able to be implemented in various corruption cases."[72] as demonstrated by the table that follows, which maps corruption cases that were handled by criminal justice systems.

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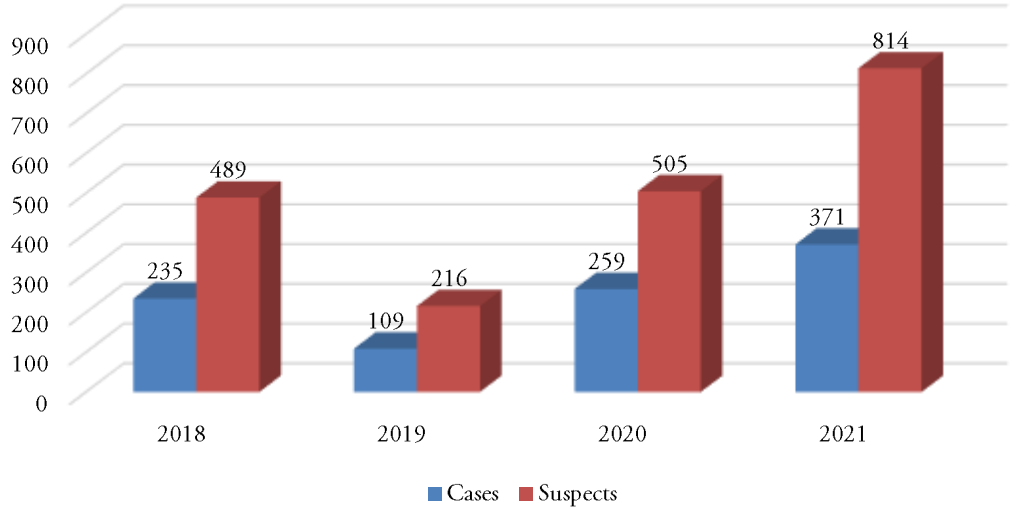
[69] *Ibid,* 28

[70] *Ibid,* 28

[71] *Ibid,* 29

[72] From the interview with Mr. Suyanto R. Sumarta, SH., MH, Section Head of Region II, Directorate of Investigation, Deputy Attorney General for Special Crimes (Jakarta: Attorney General's Office of the Republic of Indonesia, December 2, 2022, At 11.00 AM)

FIGURE 3. Performance of Corruption Prosecution by the Prosecutor's Office (Medio 2018-2021)



The Indonesian Republic Prosecutor's Office's performance in prosecuting cases of corruption is displayed in the following table. In 2021, there were 61.19% more corruption suspects than there were in 2020 (505). This number is the highest for the years 2018–2021. Out of 242 suspects, the state civil apparatus (ASN) accounted for the majority of corruption suspects in 2021. There were 162 corruption suspects from the private sector, and 101 of them were village chief suspects. "It is estimated that the Indonesian Republic Prosecutor's Office has handled corruption cases totaling IDR 2.3 trillion in state losses."[73] "The Prosecutor's Office has not used restorative justice procedures to resolve any of its corruption cases."[74] Cases that cannot be dismissed in accordance with the principles of restorative justice, according to Indonesian Republic Prosecutor's Office Regulation Number 15 Year 2020, are:

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[73] Monavia Ayu Rizaty, "Kejaksaan Agung Tangani 371 Kasus Korupsi Sepanjang 2021," Dataindonesia.id, 2022, https://dataindonesia.id/ragam/detail/kejaksaan-agung-tangani-371-kasus-korupsi-sepanjang-2021.

[74] From the interview with Bapak Suyanto R. Sumarta, S.H, M.H., Section Head of Region II, Directorate of Investigation, Deputy Attorney General for Special Crimes (Jakarta: Attorney General's Office of the Republic of Indonesia, December 2, 2022, At 11.00 AM)

a) Crimes against public order, morals, friendly nations, state heads of state and their deputies, the President and Vice President's dignity, and state security;
b) Crimes for which a minimum penalty is applicable;
c) Drug-related offenses;
d) Pollution-related offenses; and
e) Criminal activity carried out by companies.

There are no exclusions for corruption charges under this Prosecutor's Office of the Republic of Indonesia Number 15 Year 2020 Regulation. The authors claim that the lack of corruption cases in the Republic of Indonesia Number 15 Year 2020 Regulation of the Prosecutor's Office may present opportunities for restorative justice to be used to resolve corruption cases with relatively minor losses and infractions that fall under the purview of administration, or even without any mens rea.

The authors contend that differing views that embrace and oppose restorative justice are to blame for the challenges encountered in putting into practice the restoration of state losses in corruption instances through restorative justice. Restorative justice is based on Article 4 of Law Number 20 Year 2001 in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, which states that "the return of state financial or economic losses does not eliminate the criminal liability of perpetrators as referred to in Article 2 and Article 3." Fachrizal Afandi and Narendra Jatna's statements demonstrate the opposing views. “They contend that restorative justice cannot be applied in corruption cases.”[75] For Topo Santoso, " For abstract or mass crimes like corruption and electoral crimes, restorative justice is not appropriate.”[76]

Article 4 of Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 Year 2001 is likewise null and void due to the Constitutional Court's ruling invalidating Article 2 (1) and Article 3 of the Anti-Corruption Law. Due to the

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[75] Narendra Jatna, *Konsep Restorative Justice dalam kaitan Dengan Pasal 4 UU Tipikor*, delivered in the National Webinar, Collaboration of Persada Universitas Brawijaya, DECRIM, IKA FH Universitas Diponegoro and ICJR, Via Zoom, Friday, October 28, 2022, compare with Fachrizal Afandi, *Restorative Justice untuk Penyelesaian Kasus Korupsi*, delivered at the National Webinar, Collaboration of Persada Universitas Brawijaya, DECRIM, IKA FH Universitas Diponegoro and ICJR, Via Zoom, Friday, October 28 (2022), 3

[76] Topo Santoso, *Sistem Peradilan Pidana, Kejaksaan dan Perkembangan Restorative Justice di Indonesia*, material presented in the national symposium, Jakarta, December 8 (2022), 45

Constitutional Court's decision, restorative, rehabilitative, and corrective justice now dominate the paradigm for resolving corruption.

Since the word "may" was declared invalid in Article 2 (1) and Article 3 of Law Number 20 Year 2001 in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, the author believes that Article 4 is no longer enforceable. This is according to Constitutional Court decision number 25-PUU-XIV-2016. This indicates that the application of restorative justice in substantive justice does not contradict with currently in effect regulations. In its consideration, the Constitutional Court highlights that criminal corruption charges are not always applicable to the provisions of Law Number 30 Year 2014 concerning Government Administration, also known as the Government Administration Law. This law contains Article 20 paragraph (4), which addresses the return of state losses resulting from administrative errors caused by the abuse of authority by government officials. Since criminal law is not often used in resolutions, the Government Administration Law is used as a last resort or ultimum remedium.

If there is a component of illegality and abuse of power, the Constitutional Court further holds that state losses turn into a component of corruption. An abuse of power can only be considered a component of corruption if it results in losses for the state (barring corruption acts like bribery, gratuities, or extortion), the offender receives illicit benefits, the community is not served, or the act is reprehensible. The application of the element of inflicting financial loss to the state has changed to consequences (material offense) by attaching it to Article 2 (1) and Article 3 of the Corruption Eradication Law. It no longer only satisfies the requirements of criminal acts. This means that in order for the element of state loss to apply to criminal acts of corruption, it must now be viewed as a real loss rather than an estimate (possible loss). This is consistent with the view of Ahmad Rustan Syamsuddin, which highlights the need for "the Public Prosecutor to prove in court the elements of actual state losses, as well as other related elements, including illegality and abuse of authority."[77]

The Republic of Indonesia's Constitutional Court further holds that Articles 2 (1) and 3 of the Anti-Corruption Law violate Article 28G (1) of the 1945 Constitution, which guarantees that everyone feels safe and protected from the threat of dread. Additionally, as stated in Article 1 Paragraph (3) of the 1945 Constitution, the word "may" in Article 2 Paragraph (1) and Article 3 of the Corruption Eradication Law violated the principle of drafting criminal

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[77] Ahmad Rustan Syamsuddin, "Pembuktian Penyalahgunaan Wewenang Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang Dan Jasa," *Jambura Law Review* 2, no. 2 (2020): 161–81, https://doi.org/10.33756/jlr.v2i2.5942

acts that adhere to the written law principle (lex scripta), must be interpreted as read (lex stricta), and not be subject to multiple interpretations (lex certa). As a result, it was deemed to be against the principle of the rule of law. The term "may" in Article 2 paragraph (1) and Article 3 of the Law on Eradication of Criminal Acts of Corruption is deemed to be in conflict with the 1945 Constitution and to have no legally binding force, according to the verdict of the Constitutional Court of the Republic of Indonesia Number 25-PUU-XIV-2016. According to Umi Rozah, in order to apply restorative justice to restore state losses in corruption cases, one must comprehend that the criminalization of corruption cases follows the "follow the suspect and follow the money (asset recovery)" paradigm."[78] Moreover, Umi Rozah said that cases of corruption must meet specific requirements in order to qualify for restorative justice. These requirements include:

1. "The state's losses are not very valuable;
2. The defendant's negligence or being duped do not constitute a significant fault;
3. The main focus of the corruption case is not the defendant's position;
4. The effects of corruption on society and the state's economy;
5. The illegal activity is not widely reported." [79]

The writers investigate Umi Rozah's claim by dividing corruption charges into seven (seven) categories, including:

1. Article 2 paragraph (1) pertaining to unlawful conduct and Article 3 pertaining to misuse of power contain references to corruption crimes including losses to the state. As formal violations, both of these articles qualify as such; thus, actual state damages are not necessary in order to deem someone guilty of a corruption crime. The definition of losses in Articles 2 and 3 becomes a material crime with the Constitutional Court's Decision Number 25 Year 2017. Thus, genuine state losses must occur in order to consider someone guilty of a corruption crime.
2. Twelve articles mention bribery in incidents of corruption, including:
   a) In Article 5 paragraph (1) a, "active bribery of civil servants and state officials" refers to the giving or promising of anything to those individuals in order to influence them to behave or not act in a way that is inconsistent with their official obligations;

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[78] Umi Rozah, *Restorative Justice untuk Penyelesaian Kasus Korupsi*, delivered in the National Webinar, Collaboration of Persada Universitas Brawijaya, DECRIM, IKA FH Universitas Diponegoro and ICJR, Via Zoom, Friday, October 28 (2022)

[79] *ibid*

b) In Article 5 paragraph (1) b, "active bribery of civil servants and state officials" refers to any individual who contributes something to civil servants or state officials in connection with or because of a matter that interferes with their ability to carry out their duties or refrain from doing so;
c) The term "passive bribery" in Article 5 paragraph (2) refers to the practice of giving presents or promises to state officials or public servants as specified in Article 5 paragraph (1) sub-paragraphs a and b;
d) Judges actively buying off decisions in instances that are still pending under Article 6 paragraph (1) sub-paragraph a;
e) Active bribery of attorneys in order to sway judgments in instances that are still pending under Article 6 paragraph (1) sub-paragraph b;
f) Passive bribery for judges and attorneys who accept gifts or assurances mentioned in sub-paragraphs a and b of Article 6 paragraph (1);
g) Passive bribery for state officials or civil workers who are believed or known to have accepted gifts or promises as a result of their positional authority or as a result of public perception of their status, as stated in Article 11;
h) Article 12a prohibits passive bribery for civil servants and state officials who accept gifts or promises but are aware or suspect they may have received gifts or promises to change their behavior in a way that interferes with their official duties;
i) Article 12b prohibits passive bribery for state employees or civil servants who accept gifts or promises in exchange for performing or refraining from acting in a way that interferes with their official obligations;
j) Passive bribery under Article 12c for judges who accept or make promises, even when it is known or believed that the purpose of the gifts or promises is to sway the outcome;
k) Passive bribery under Article 12d for attorneys who accept gifts or promises, even where it is known or believed that the gifts or promises are intended to sway the outcome;
l) According to Article 13, active bribery is defined as giving a present or making a promise to a public official while taking into account the power or authority that the official's position or status entails.

3. Five (5) articles contain corruption offenses associated with embezzlement. These entries include:

a) Article 8: When a public official or anybody else appointed to a position of trust purposefully embezzles funds or securities held in trust for them, or permits someone else to do so;
b) Article 9: When a public servant, official, or other anyone tasked with carrying out a public function knowingly falsifies a special book or register for administrative examination;
c) Article 10a: embezzlement, destruction, damage, or willful rendering unusable of goods, deeds, papers, or registers in order to persuade or prove something in front of authorized officials by a public official or any other person assigned to execute a public role.
d) Article 10b: When a public official or anyone else designated to carry out a public function knowingly permits another person to pilfer, destroy, damage, or render commodities, deeds, documents, or registers unusable.
e) Article 10c: purposeful assistance by a public official or any other person appointed to a public post in embezzling, destroying, injuring, or rendering unusable commodities, deeds, papers, or records.

4. Three (3) provisions govern extortion-related corruption charges, particularly:
   a) A public official or state official who, in violation of Article 12e, coerces someone into giving anything, paying or receiving money at a discount, or doing something for him with the goal of unjustly enriching himself or others or by abusing his position;
   b) A public official or state official who, while performing their duties, asks, accepts, or withholds payments from other public officials, civil servants, or the public treasury in the false belief that they owe him money, even though they are aware that this is not the case, as stated in Article 12f;
   c) A state or public official who, while performing their duties, accepts, asks, or distributes commodities as though they were owed to them, even though they are not, in accordance with Article 12g.
5. Six (6) articles govern corruption offenses that take the form of fraudulent conduct. These articles include:
   a) Under Article 7 paragraph (1) a) Builders and contractors who, while creating or marketing a building, engage in dishonest behavior that could jeopardize public safety, private property, or state security during times of conflict;
   b) Anyone tasked with overseeing the construction or delivery of building supplies willfully permits fraudulent conduct as listed in

letter a, which are prohibited by Article 7 paragraph (1) sub-paragraph b;

c) Any individual who engages in fraudulent activities that could jeopardize state security during times of conflict or who violates the provisions of Article 7 paragraph (1) sub-paragraph c when transporting supplies for the Indonesian National Military (TNI) or the Indonesian National Police (RI Police);
d) Anyone tasked with overseeing the procurement of TNI and/or RI Police goods knowingly permits fraudulent conduct as listed in letter c, which are governed by Article 7 paragraph (1) sub-paragraph d;
e) For those who accept the delivery of TNI, RI Police supplies, or building materials and permit fraudulent conduct as mentioned in paragraph (1) sub-paragraphs an or c;
f) State employees or civil servants who, in the course of performing their duties, have utilized state property on which a usage right exists as if it were compliant with laws and regulations, harming the rightful owners of the land even though they were aware that such actions were against the law; or, in Article 12h;

6. Article 12i regulates the criminal act of corruption pertaining to the procurement of goods and services. This includes state officials or civil servants who, through direct or indirect means, take part in bidding, procurement, or leasing and who, at the time of the act, are assigned to manage or oversee it, either entirely or in part.
7. Articles 12B and 12C provide regulations governing the illegal conduct of corruption in the form of gratuities. The following is the text of the articles:

   Article 12B

   (1) With the following exceptions, any gratuity paid to state employees or civil servants is deemed bribery if it is connected to their job and violates their duties or obligations:

   (2) Life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years of imprisonment, along with a minimum fine of IDR 200,000,000 (two hundred million rupiah) and a maximum fine of IDR 1,000,000,000 (one billion) rupiah, is the penalty for civil servants or state officials mentioned in paragraph (1).

   Article 12C

   (1) If a gratuity receiver discloses the gratuity to the Corruption Eradication Commission, the provisions mentioned in Article 12B paragraph (1) do not apply.

(2) Within 30 (thirty) working days of the gratuity date, the beneficiary of the gratuity must submit the report mentioned in paragraph (1).
(3) Within a maximum of 30 (thirty) working days of receiving the report, the Corruption Eradication Commission is required to establish whether the gratuity belongs to the beneficiary or the state.
(4) The Corruption Eradication Commission law regulates the guidelines for the report submission process mentioned in paragraph (2) and the assessment of the gratuity status mentioned in paragraph (3).

In the explanation of Article 12B, "*grate*" refers to a wide range of giving, such as money, commodities, discounts, commissions, interest-free loans, airline tickets, hotel accommodations, travel, free medical care, and other services. Gratuities can be given both domestically and internationally, with or without the use of electronic devices. It is imperative to comprehend that a gratuity is an implicit but genuine incentive from the vendor, which is supplied voluntarily in exchange for future benefits."[80]

The authors state that restorative justice for corruption offenses tied to state losses under Articles 2 and 3 of Law Number 20 Year 2001 in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption with a value of losses of IDR 50,000,000 (fifty million rupiahs) cannot be applied to all corruption offenses. Instead, it can only be applied to corruption offenses related to victim losses.

Conclusion

Two key concepts underpin the implementation of restorative justice-based state loss reparations in corruption instances. First, how restorative justice is defined affects the ability to use it to restore state losses in corruption cases. Second, this is in light of the fact that the word "may" was removed from Article 2 paragraph (1) and Article 3 of Law Number 20 Year 2001 in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, as a result of Constitutional Court Decision Number 25-PUU-XIV-2016. Because there are differing opinions regarding restorative justice, it has not been possible to apply restorative justice's restitution of state losses in corruption cases while treating corruption matters inside the criminal justice system. Article 4 of Law Number 20 Year 2001, in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of

[80] Supeni Anggraeni Mapuasari and Hadi Mahmudah, "Korupsi Berjamaah: Konsensus Sosial Atas Gratifikasi Dan Suap," *Integritas: Jurnal Antikorupsi* 4, no. 2 (2018): 159–76, https://doi.org/10.32697/integritas.v4i2.279

Corruption, provides support for the opposing viewpoint. It asserts that the return of state financial or economic losses does not absolve the offender of criminal liability for corruption crimes as specified in Articles 2 and 3. In order to ensure that the implementation of restorative justice does not conflict with current laws and regulations, the Constitutional Court's Decision Number 25-PUU-XIV-2016, which eliminated the word "*may*" from Article 2 paragraph (1) and Article 3 of Law Number 20 Year 2001 in conjunction with Law Number 31 Year 1999 concerning the Eradication of Criminal Acts of Corruption, renders the norm in Article 4 without legal force. It is hoped that in the future, the model of punishment in corruption cases—following the money and the suspect—will be able to be used to the execution of restorative justice's repayment of state losses in corruption cases (asset recovery). Using restorative justice to implement selective criteria for corruption offenses include establishing minimum-maximum standards for minor corruption committed by offenders; insignificant mistakes made by the defendant (ignorance), which refers to unintentional errors made by mistake or based on orders from authorities accompanied by threats and pressure; not being the primary actor in corruption; and not having an impact on the national economy or failing to meet the minimum-maximum standard criteria for minor corruption as defined by applicable laws and regulations.

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