



Restorative Justice in Indonesia Corruption Crime: a Utopia

Orin Gusta Andini¹, Nilasari^{2*}, Andreas Avelino Eurian³

^{1,3} The Center for Anti-Corruption Studies (SAKSI), Faculty of Law, Mulawarman University, Samarinda, 75119, East Kalimantan, Indonesia;

² Master of Laws Program, University of Nottingham, Nottingham, NG8 1DW, United Kingdom;

* Corresponding author: llxn1@nottingham.ac.uk

Article	Abstract
<p>Keywords: Corruption; Criminal Act; Restorative Justice.</p> <p>Article History Received: Nov 28, 2022; Reviewed: Nov 29, 2022; Accepted: Apr 11, 2023; Published: Apr 14, 2023;</p>	<p><i>The discourse about combating corruption through restorative justice has produced both positive and negative outcomes. The extraordinary crime of corruption features several distinguishing characteristics distinct from those of general crimes. Even though restorative justice is a method of modernising the way law enforcement is practised, the policy that is used to put it into effect needs to be extremely selective and cautious. This study will investigate the applicability of restorative justice to acts of corruption. The research comprises two research questions. 1) How is the concept of Restorative Justice regulated in Indonesia? 2) How is the analysis of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes on the resolution of corruption through restorative justice? The research employed a normative method that combined a statutory and conceptual approach to problem formulation, indicating that, first, the restorative justice concept is regulated in Indonesia through technical regulations developed by each law enforcement agency, with limited implementation. Second, restorative justice in the settlement of corruption contravenes Article 4 Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and is a step back in efforts to eradicate corruption, as well as inconsistent with the state's obligation to support policies and effective practises in eradicating corruption as regulated by UNCAC.</i></p>



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INTRODUCTION

Corruption is one of the biggest problems faced by developing countries, including Indonesia (Al-Fatih, 2018). Corruption defined as the misuse of public office

for private gains costs every country a large amount of financial, political and social resources every year (Kubbe & Engelbert, 2018). Civil servants contributed to most corruption cases in the first six months of 2021 (Andini et al., 2022). Corruption, among others, is a white-collar crime perpetrated by those in positions of authority in relation to public policy (Gusta Andini, 2021). In addition to the abuse of authority and/or power, corruption continues to manifest itself through conflicts of interest, the trading of influence, and political corruption. Corruption is classified into two major categories, grand corruption and petty corruption, where the former refers to corruption perpetrated by high-level public officials who influence public policy and major decisions in a variety of fields, whereas petty corruption or survival corruption is perpetrated by government employees to meet their daily needs due to inadequate income (Langseth et al., 1997). Nonetheless, if left unchecked, the dangerous nature of petty corruption will manifest further as grand corruption (Rahman & Jenkins, 2019). Grand corruption is so prevalent that it affects the capacity of the state to act and makes it difficult to reform. Article 28D paragraph (1) of the NRI Constitution of 1945 states that "Everyone is entitled to the recognition, guarantee, protection, and certainty of fair law and equal treatment before the law". Unfortunately, the implementation of the article is not in accordance with the theory (Korompot et al., 2021). In Indonesia, corruption continues to be a prevalent crime. In the first six months of 2022, Corruption Eradication Commission (henceforth referred to as KPK) conducted 66 initial investigations, 60 investigations, 71 prosecutions, 59 Eintracht cases, and executed decisions on 51 cases to combat corruption. Out of a total of 61 investigation orders, the KPK has identified 68 individuals as suspects (Komisi Pemberantasan Korupsi, 2022). Corruption, an extraordinary crime, not only leads to financial and economic losses for the state but it is also carried out in an organised and systematic manner involving multiple parties and causing widespread harm to society and the state (Fariduddin et al., 2022). Corruption is widespread and banalized, making the phenomenon the greatest obstacle to development (Kubbe & Engelbert, 2018).

Therefore, extraordinary measures should be taken to eradicate corruption. According to the categorization in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, crimes related to corruption have different arrangements than other types of crimes. Therefore, they are classified as special crimes due to their unique legal provisions. Indonesia's commitment to eradicating corruption through UNCAC ratification is outlined in Law 7 of 2006. As a UN Anti-Corruption convention, UNCAC regulates preventive actions countries must take, including developing, implementing, and maintaining an effective anti-corruption policy. On the other hand, Indonesia is now promoting restorative justice as a concept to restore victims and eliminate criminal settlements against offenders. Furthermore, The Attorney General also discussed the process of resolving corruption cases through the Restorative Justice approach, stating

that corruption under Rp. 50 million was not subject to prosecution and could be resolved by returning state finances (Rachel Nanda Catherine, 2022). Nurul Ghufron, Deputy Chairman of the Corruption Eradication Commission (KPK), stated that her organisation was still studying the application of restorative justice in dealing with corruption in Indonesia (Liputan6.com, 2022).

The legal consequences of implementing restorative justice in Indonesia consist of not carrying out criminal law enforcement so that the perpetrators do not receive punishment; in certain circumstances, restorative justice can only be implemented with the consent of the victim. Restorative justice has a narrow scope of application because it can only be used to address a select number of general crimes and crimes involving children under specific circumstances. The role of law enforcement officers is very dominant in the implementation of restorative justice because they are the parties who have the authority to accommodate the parties involved in the restorative justice process. Therefore, can restorative justice potentially be applied in solving corruption crimes that differ in typology from general crimes or crimes, as well as some of the restorative justice principles, particularly those relating to victim determination in order to reach an agreement on settlement and what forms of recovery are available to victims? In addition, the prominent role of law enforcement officials in the implementation of restorative justice has the potential to become a venue for authority abuse, resulting in an increasing variety of corrupt acts. The role of such a large party in criminal acts of corruption is to control the decision-making process or public policy. This occurrence is known as state capture or elite capture. State capture can take many forms, including bribery of the members of the House of Representatives to influence legislation and of state officials to influence public policy (Gray et al., 2004).

Policies aimed at preventing and dealing with criminal acts of corruption should ideally be selective, proportional, and geared toward strengthening the anti-corruption agenda. Policies that contradict the typology of corruption and the preventive measures mandated by the UNCAC should be avoided as a form of state capture. Not only in Indonesia but also in countries such as the Netherlands, the restorative justice social movement has grown substantially over the past decade (Wolthuis, 2022). In addition, in Africa, it is believed that Restorative Justice combined with African traditional principles is effective in combating corruption (Veresha, 2018). Opponents, on the other hand, assert that restorative justice is not legitimate and that it encourages power imbalances because of its emphasis on harmony, rehabilitation, and restoration (Genger, 2018). The agreement to use restorative justice for criminal acts of corruption presents many advantages and drawbacks. Restorative Justice is arguably preferable because it offers comprehensive and practical solutions that could improve the efficiency and effectiveness which corruption cases are dealt with (Safitri, 2022). However, a major flaw of Restorative Justice is that it does not offer a viable strategy to reduce crime and offers few solutions for dealing with serious and repeat offenders (Levrant, Cullen, 2016). There is concern that the settlement involving the

use of restorative justice for criminal acts of corruption will controversially encourage more corruption practices to take place in Indonesia.

Therefore, this research aims to examine how the concept of Restorative Justice is regulated in Indonesia and how the Restorative Justice concept is analysed for the settlement of corruption under Corruption Eradication Law (henceforth referred to as PTPK Law) 20/2001 on amendment 31/1999.

METHOD

This paper employs doctrinal research that focuses on legal rules, concepts, principles, and doctrines (Purwati, 2020) and conceptual and statutory approaches. A conceptual approach aims to answer questions using legal perspectives and doctrines (Ibrahim, 2005), while the latter uses legal sources, such as statutes, as the primary source for research on legal issues (Irwansyah, 2020). The conceptual method is used to analyse the concept of restorative justice. The approach to corruption law through acts focuses on corruption law and prosecutorial regulations, Indonesian police regulations, and other research-related regulations.

RESULTS AND DISCUSSION

Development of Restorative Justice in Indonesia

The role of pardons in restorative justice remains peripheral because interpersonal forgiveness has been considered a 'gift' that should not be forced on victims in restorative justice (Suzuki & Jenkins, 2022). Restorative justice processes can involve victims, offenders, and community members meeting to discuss the harms caused by offending behaviour (Willis & Hoyle, 2022). Restorative justice is an approach that emphasizes more on conditions necessary to bring about justice and equilibrium for both criminal perpetrators and victims. The earliest historical records document the development of the concept of restorative justice in England during the 1980s, when it was applied to child-related diversion cases (Smith, 2011). Furthermore, other historical records indicate that the concept of restorative justice originated from Greece or Rome, an ancient tradition that evolved into the world's major religions. However, The Fifth United Nations Congress in Vienna in 1975, which centred on reciting restitution loss for victims of crime, is regarded as the beginning of the concept of restorative justice being accepted. Jeff Christian, an international expert on penitentiaries from Canada, stated that restorative justice was practised by many people thousands of years ago, prior to the emergence of modern, formalised law as it exists today (Supeno, 2020).

Restorative justice is a response to criticism of the criminal justice system's implementation of imprisonment, which is deemed ineffective at resolving social conflicts (Junius Fernando, 2020). Criminologist Tony F. Marshall defines restorative justice as a process of problem-solving by interested parties to address the

consequences of past violations with an eye toward the future (Marlina, 2009). Restorative justice practices, as an alternative to the traditional, legalistic model of justice, are increasing in popularity across the United States (Bohmert et al., 2018). In the Indonesian context, restorative justice has not been specifically regulated in law up until this point. However, Law Number 11 of 2002 concerning the Juvenile Criminal Justice System does adopt restorative justice by recognising diversion as a way of solving crimes involving children. As a result, the application of restorative justice for general offences satisfying certain conditions is governed by technical regulations. However, even though restorative justice is considered to have been practised in the settlement of general crimes under certain circumstances, the lack of a legal framework that regulates it has resulted in the emergence of numerous sector-specific technical regulations to enforce it. Consequently, restorative justice is governed by numerous sectoral legal regulations, such as Indonesian Police Regulations, Prosecutor's Regulations, and Supreme Court Regulations.

To comprehend the concept of restorative justice in Indonesia, this discussion will examine the meaning of restorative justice in some of the rules used in Indonesia to implement such a concept. In civil cases, there is an alternative dispute resolution, which is defined as a way to settle a civil dispute out of court. Although not the same, in the scope of criminal law, there are also solutions that emphasize the restoration of the original situation rather than demanding a punishment from the court. The principle of resolving criminal cases is known as the principle of Restorative Justice (Hobson et al., 2022). Restorative Justice was born in Indonesia, where it has thrived, expanded, and been implemented through customary law. Several societies in Indonesia, for instance, Papua Bali, Toraja, Minangkabau, and other traditional communities, still maintain customary law. Therefore, if a person commits a criminal act, the dispute will be solved internally in the indigenous community without involving the state apparatus (Fransisco, 2022).

Before examining the concept of Restorative Justice through a number of technical regulations, it is necessary to briefly examine the Juvenile Criminal Justice System Law as there is no specific legal basis for Restorative Justice in Indonesia. Restorative justice in Law Number 11 of 2012 Concerning Juvenile Criminal Justice System law is known through the diversion process which refers to the transfer of settlement of criminal cases of children outside of the court. It involves the victims, the perpetrators, and the community in working together to find solutions to resolve child cases that have the best impact on the child and are in the child's best interests. The participation of the parties in this diversion process constitutes the core of the restorative justice concept known as re-store or recovery. Instability in society has arisen as a direct consequence of the presence of a criminal incident. In addition, it prevents and avoids the stigmatisation that results from depriving children of their independence as a form of punishment by attempting to resolve child cases outside of court (Braithwaite, 1999). In addition to this, it seeks to instill a sense of responsibility in offenders by making them aware of the damage that they have caused to victims

and the community as a whole (Shazeeda, 2020). However, despite the fact that corruption also results in social instability, is this concept applicable to corruption? This question will be thoroughly addressed in the sections that follow.

1. Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice

According to Police Regulation Number 8 of 2021, restorative justice is the process by which criminal acts are resolved by bringing together perpetrators, victims, perpetrators' families, victims' families, community leaders, religious leaders, traditional leaders, or other stakeholders in order to work toward a peaceful resolution that respects all parties and emphasises the restoration to its original state. Restorative justice in this Police Regulation must satisfy the following requirements, 1) material and formal general requirements. The application of restorative justice must not cause public unrest or rejection and must have no effect on social conflict. Moreover, restorative justice does not have the potential to polarise the nation and is not considered radicalism, separatism, terrorism, or a threat to state security. In addition, restorative justice is inappropriate for recidivism, criminal acts of corruption, and crimes against human life. The formal requirements are the parties' peace, the exclusion of drug cases, and the perpetrators' fulfilment of victims' rights and compensation. In addition, the fulfilment of victims' rights and perpetrators' obligations can take the form of returning goods, compensation, replacing costs incurred as a result of a crime, or repairing any damage caused by a crime. 2) Special requirements are additional, referring to information and electronic transactions, drugs, and traffic violations.

2. Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice

In the Republic of Indonesia's Prosecutor's Regulation Number 15 of 2020, the definition of restorative justice is identical to that of the police institution. The distinction lies in the terms of prosecution termination. Consideration of the victim's and other protected legal interests, avoidance of negative stigma, avoidance of retaliation, response and harmony with society, and decency, and public order underlie the cessation of prosecution for restorative justice. Restorative Justice must be applied to the process of halting prosecution with the following considerations a) Subject, object, category, and criminal threats; The restorative justice approach to resolving cases takes into account the subject, which refers to who committed the crime; the object, which refers to what crime has been committed by the perpetrator; and the victim's losses incurred as a result of the crime; and the level of threat posed by the punishment for the act committed by the offender. b) Background of the crime; the background of the perpetrator in committing a crime is an important indicator for determining the level of disgrace that allows for a restorative justice resolution. c) Disgraceful Level; disgrace is proportional to the actions and public perception of criminal acts perpetrated by offenders, losses or consequences arising from criminal

acts. Losses or consequences arising from criminal acts must be weighed equitably, d) Costs and benefits of case resolution; the administration of criminal justice requires a significant number of financial resources, beginning with the process of inquiry, followed by the investigation, and culminated by the examination in court.

As a result, it is imperative that a situation be avoided in which the costs of litigation are not proportional to the value of the loss. There must be an equilibrium between case-handling and the cases. Restoration is the foundation of restorative justice because it is hoped that restorative justice can restore good relations between offenders, victims/victims' families, and the general public. Victim-suspect reconciliation, and considerations for reconciliation between the perpetrator, the victim/family, and the community are crucial in RJ because reconciliation cannot be achieved between the parties unless the restorative justice process is exercised.

The victim's willingness to cooperate voluntarily in mending fences with the offender is of the utmost significance if the goal of restorative justice is to have any chance of being realised. This is because the concept of restorative justice should not place any additional burden on the victim. Criminal cases can be terminated for legal reasons and prosecuted based on restorative justice if the following conditions are met: the suspect commits a crime for the first time, the crime is punishable only by a fine or imprisonment for no more than 5 years, and the crime is committed with the value of evidence or losses incurred not exceeding IDR 2,500,000.00 (K. A. R. Indonesia, 2020). The requirement for material losses resulting from crimes against people, bodies, lives, and people's independence can be waived (K. A. R. Indonesia, 2020). Furthermore, if a crime is committed out of negligence and punished with under-five-year imprisonment and subject to a fine of no more than IDR 2,500,000, such a crime may be dissolved. Crimes against persons, bodies, lives, and independence cannot be prosecuted on the basis of restorative justice if, according to the Public Prosecutor with the approval of the District Prosecutor's Office or the Head of the District Prosecutor's Office, there are special circumstances (K. R. Indonesia, 2021).

In addition to these prerequisites, the restorative justice approach must fulfil the following conditions (K. A. R. Indonesia, 2020) where recovery has been made by the suspect in the form of returning goods to the victim that resulted from the crime, compensation is made for the victim by reimbursing the victim for costs incurred as a result of the crime committed, and/or damage caused by the crime is repaired, a reconciliation agreement has been reached between the victim and the suspect; and the termination of the prosecution is met with approval by the community.

There are restrictions placed on the implementation of Regulation Number 15 of 2020 issued by the Prosecutor General of the Republic of Indonesia. Certain cases are not taken into consideration, including those involving crimes against state security, crimes that are punishable by a minimum criminal threat, crimes involving narcotics and the environment, and criminal acts committed by corporations.

3. The Decree of The Director- General of The Supreme Court of The Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning

Guidelines Implementation of Restorative Justice in Indonesian General Courts

The Implementation of Restorative Justice in Indonesian General Courts (Based on The Decree of The Director- General of The Supreme Court of The Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020) is applied in the resolution of cases, including those involving minor offences, women in conflict with the law, children, and narcotics. First, misdemeanours refer to offences carrying criminal penalties in accordance with the provisions of Articles 364, 373, 379, 384, 407, and Article 482, and having a loss value that does not exceed Rp. 2,500,000.00 (two million five hundred thousand rupiahs); second, they refer to the case of children, as previously described in Law Number 11 of 2012 Concerning Juvenile Criminal Justice System law; third, a restorative justice approach to resolving cases involving women in legal conflict. In cases involving women with status as perpetrators before the law, the judge is obligated to consider legal facts with a restorative justice approach, as well as in the judge's decision to explore legal values that grow in society to achieve a sense of justice, guarantee gender equality, and take into account any potential losses experienced by the victim for the victim's recovery, and in narcotics cases, restorative justice is only applied to addicts, abusers, victims of abusers, narcotics addiction, and one-day users.

Table 1. The following table provides simplified explanations of the various rules:

Regulation	Criteria
Police Regulation Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice	<ul style="list-style-type: none"> - not a source of public unrest or rejection - not able to cause a rift in the country - Not radicalism and separatism - Not a recidivism - Not a crime of terrorism, a crime against state security, a crime of corruption, and a crime against people's lives
Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice	<ul style="list-style-type: none"> - First-time criminal offender - Infractions only punishable by fines or a maximum of five years in prison - Loss value under IDR 2.5 million - Not a crime against state security, the dignity of the president and vice president, other countries, leaders and deputies of other countries, public order, or decency - Not a criminal offence carrying a minimum punishment

	<ul style="list-style-type: none"> - not an environmental crime - not a crime committed by a corporation
The Decree of The Director- General of The Supreme Court of The Republic of Indonesia Number 1691/DJU/SK/PS.00/12 /2020 concerning Guidelines Implementation of Restorative Justice in Indonesian General Courts	<ul style="list-style-type: none"> - Crime with a loss value of IDR 2.5 million in criminal acts Articles 364, 373, 379, 384, 407, and 482 of the Criminal Code - Narcotics are only applied to addicts, abusers, victims of abusers, narcotics dependence, and one-day users

Source: author(s), 2022

Considering each of the described legal rules, restorative justice is generally interpreted as a process of reconciliation between victims and perpetrators, prioritising the recovery of victims. Other factors that are also significant in relation to the resolution of cases through restorative justice include the victim's agreement to the outcome of the case through the use of restorative justice. Furthermore, the fact that not only victims but also community leaders are involved in settlements through restorative justice, as in Law Number 11 of 2012 Concerning Juvenile Criminal Justice System law, demonstrates that restorative justice must be interpreted as a method of settling cases outside of court to achieve justice that is geared toward restoring the conditions of perpetrators and victims. Thus, it is anticipated that efforts to reintegrate perpetrators into society will result in a harmonious relationship, as the relationship between victims and perpetrators is aligned.

Restorative justice is the concept where in solving criminal law matters, all related parties shall be involved (Fatahillah Akbar, 2021). The ideal purpose of restorative justice is not only to restore the victim but also to raise the perpetrator's awareness and shame in order to generate empathy for the victim. Restorative justice seeks to bring those that have created harm together with the aggrieved parties and often stands in contrast to retributive and punitive approaches to justice that centre the state in response to crime and harm (Suzuki & Jenkins, 2022). Therefore, the perpetrator compensates for the victim's losses and voluntarily carries out the punishment, resulting in the victim's forgiveness, which is anticipated to affect social harmony and reintegration positively. If it is related to Article 54 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code implying that punishment must

consider several factors, including the motive and purpose of committing a criminal offence, the effect of the criminal offence on the victim, forgiveness from the victim, and the value of law and justice that exists in society, it is difficult in corruption crimes to determine some of these factors due to the fact that the victim in corruption crimes is the state with the wider community. The return of state funds also contradicts Article 4 of the Corruption Crime Law, which states that the return of state funds does not terminate criminal proceedings. In addition, corruption crimes that apply restorative justice and eliminate criminal proceedings are not consistent with the general purpose of punishment outlined in Article 51 of the Criminal Code 1/2023, which is to deter the commission of criminal acts by enforcing legal standards for the protection of society. Instead, the focus of the government's attention should be on how to socialize the convicted offender by guiding and mentoring them to become good and useful people, as is referred to in Article 51 Letter b. This is because, up until now, the existing pattern of correctional development has not been specifically designed to provide guidance to those committing acts of corruption.

Furthermore, not a single nation has instituted restorative justice for corrupt criminal acts. This stands to reason, given that UNCAC signatories' reluctance to endorse restorative justice as a means of dispute resolution runs counter to the very spirit of combating corruption. The Crime and Courts Act of 2013 has been the legislation that has brought restorative justice into effect in the United Kingdom. Since April 2014, the courts have had the authority to postpone sentencing to provide victims of adult offenders with the opportunity to participate in a restorative justice practice (Willis & Hoyle, 2022). Restorative justice is also endorsed by a variety of legislations, including The Code of Practice for Victims of Crime 2020, the Code of Practice for Conditional Cautions – Adults, the Code of Practice for Youth Conditional Caution, the Director's Guidance on Adult Conditional Cautioning, the Director's Guidance on Youth Conditional Cautioning, and the Cautioning and Diversion Act (Crown Prosecution Service, 2019). However, prior to that, the restorative justice in the United Kingdom was primarily a community-led, "bottom-up" initiative, with no regulations supporting it except in the case of juveniles (Gavrielides & Artinopoulou, 2013). According to Davey, a 1974 Canadian victim-offender reconciliation program brought restorative justice to the United Kingdom (Davey, 2005).

In the United Kingdom, there are numerous restorative justice process types in use, consisting of (Prosecution Service, 2022) (1) direct or indirect restorative justice processes to facilitate victim-offender dialogue; (2) Community conferencing; (3) Referral Order panels; and (4) mediation. In recent years, restorative justice services have expanded throughout England and Wales. A Police and Crime Commissioner (PCC) is an elected official who oversees each of the country's 43 regional police forces (D. Marder, 2019). Similar to England and Wales, the Scottish Government adopted an "Action Plan for Restorative Justice" in 2019. The Action Plan mandates that by

2023, Restorative Justice services will be widely accessible throughout Scotland (Hoyle et al., 2021). In Ireland, restorative justice cases typically involved assault, property crimes, neighbourhood and family disputes, and at-risk youth (Tickell & Akester, 2004). According to the Parole Board, restorative justice is potentially capable of committing any crime in which the victim is readily identifiable (Government, 2021). In corruption cases, however, the victims are numerous and cannot be identified specifically. Therefore, in the United Kingdom, restorative justice has not been applied as a settlement for corruption cases. The involvement of a real victim is absolutely necessary for restorative justice's application. However, such a low level of participation has been a challenge in the UK ever since the first three years of the initiative in restorative cautioning that was implemented by the Thames Valley Police (Hoyle & Rosenblatt, 2016). The need for victims and other socially vulnerable groups to actively participate in the judicial processes is the primary impetus behind the restorative approach. This aspect of the restorative approach, which is also referred to as its "ingenuity," is regarded as its greatest advantage, and its "power/dominance unassailable" values and ideals provide a means to "resist the usurpation of authority" (Gavrielides & Artinopoulou, 2013). As a result, the lack of a specific and identifiable victim makes such an approach in corruption cases impossible.

The Restorative Justice Concept According to the Settlement of Corruption under PTPK Law 20/2001 Amendment 31/1999: An Analysis

The primary functions of criminal law are prevention and repression. The preventive task is to discourage everyone from committing a crime, while the repressive task is to rehabilitate criminals so they can rejoin society (reintegration). Material actions that are considered criminal acts, both crimes and violations, will be punished because criminal law itself serves to maintain public order, with the special function of protecting the legal interests of individuals, the state, and society. Corruption is a messy social practice, full of grey areas, making it difficult to study and root out using laws alone. While many in India (and elsewhere) accept corruption as a truism, they do not agree on its spatial borders, its "systemic" nature, or its beginning and end. While some see it as a state disease that seeps into society, others view it as a wider cultural malaise that gets reflected in state institutions (Sharma, 2018). Therefore, there is no single corruption offence that restorative justice can resolve.

Corruption is a criminal act that results in a loss to state finances, which come from the community. Consequently, any act that harms the community or diminishes its rights can be punished. The conventional approach to criminal law holds that criminal punishment should serve to deter future criminal behaviour and to safeguard the public interest (MacUlan & Gil Gil, 2020), while the contemporary school of thought contends that the primary function of punishment is to maintain social order and serve as a deterrent against criminal activity. This includes acting as both a general and a specific deterrent. General prevention aims to stop other people with the same

authority, position, and opportunity from committing a crime, while special prevention aims to stop the perpetrator from repeating his actions and allow him to be reintegrated into society. This explains why most countries are on the side of enshrining certain types of corruption-related offences in the legislation. Thus, shaping corruption prevention strategies is a recent problem, as they will help to articulate some universal recommendations on combating corruption both at international and national levels (Veresha, 2018). KPK is here to eradicate corruption, take measures to prevent corruption and monitor the administration of government officials/ institutions (Falah Parama & Al-Fatih, 2021).

The punishment for criminal acts of corruption is governed by Law Number 20 of 2001, Amendments to Law Number 31 of 1999, Eradication of Corruption Crimes. In addition to punishing the perpetrators, the goal of eradicating corruption today is to restore state financial losses caused by the perpetrators in the near future (Fatah & Jaya, Nyoman Serikat Putra Juliani, 2017). Acts against the law and Abuse of authority in criminal acts of corruption are regulated in Article 2 and Article 3 law No. 31 1999 as amended to Law Number 20 of 2001 concerning the Eradication of Corruption (Gunawan & Syahrin, 2019). The implementation of sentencing through correctional institutions is frequently viewed as a burden on the state budget and precedes the desire to address corruption crimes through restorative justice (Siburian & Wijaya, 2022). Integral and systemic anti-corruption measures, both repressive and preventive, must be synchronised, given that a mere repressive measure in dealing with the characteristics and dimensions of corruption has yet to be proven effective (Narindrani, 2020).

The notion of corruption has emerged as a prominent topic against the backdrop of e-government (Khan et al., 2021). Corruption is a phenomenon probably as old as mankind itself. The negative and sometimes even devastating effects it has on most areas of society and the economy are far-reaching and have been widely described by numerous researchers (Němec et al., 2021). As far as the economic impacts are concerned, the consequences related to the investment impact, capital accumulation, labour force and relevant economic growth are of particular importance (Syaid, 2022). Corruption is a crime with distinctive attributes due to the fact that it is a moral problem; thus, corruption is referred to as a moral disease. Robert Klitgaard's CDMA theory reveals that corruption can only occur if someone has authority and can monopolise an unaccountable or transparent policy (Klitgaard, 2015). Additionally, according to Jack Bologne, another theory known as the GONE Theory asserts that corruption occurs due to greed, opportunity, needs, and disclosure (Manan, 2020). At this point, it appears that the perpetrators of corruption are individuals with intellectual abilities and positions, and thus the level of reprehensible behaviour cannot be compared to general crimes that can be addressed through restorative justice.

Corruption crimes merit punishments that include not only physical punishment but also returning stolen state funds. State finances are an important

matter that must be recovered when there is an actual loss in a criminal act of corruption. However, Article 4 of the Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes stipulates that returning state financial losses or the state's economy does not absolve the perpetrator of the crime from punishment in accordance with Articles 2 and 3. If referring to the Attorney General's Circular Letter of the Junior Attorney General's Office for Special Crimes Number: B-113/F/Fd.1/05/2010, which instructs all High Prosecutors' Offices in matters of handling minor acts of corruption in which suspects return the lost value to the state, Restorative Justice is applied. In addition, the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice cannot always be implemented uniformly and instead generates legal uncertainty. Although in theory police involvement in restorative justice may lead to more restorative policing, the role and culture of policing, which necessitates hasty judgements about people, is likely to clash with restorative principles (Syaid, 2022).

Sandi Ersya Arasid's research on the implementation of Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice by the prosecutor's office reveals disparities in the settlement of several corruption cases whose nominal amounts correspond to those mandated by Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice to be resolved through restorative justice (Arrasid, 2020). Such a difference suggests that a nominal loss of state finances is not the only reason underlying restorative justice, which affects law enforcement officials in the process of implementing it; rather, the level of disgrace that has been caused by the actions that have been committed should also be taken into consideration. Furthermore, one of the external constraints of using the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice is that the offender cannot pay back the state's revenue. There is currently no clear rule stating that corruption cases resolved under the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice can be prosecuted because its implementation is highly dependent on the part of law enforcement. Therefore, the use of restorative justice carries such weight with law enforcement officials that it must be applied with extreme caution and restricted to a select number of crimes (Kusumo & Afandi, 2020).

The application of restorative justice to corruption offences should return to the fundamental principles of restorative justice. The government should provide clear and certain offence formulation of corruption. (Al-Fatih, 2021). According to *The Handbook on Restorative Justice Programs*, restorative justice is an approach to problem-solving that involves the victim, the offender, their social networks, justice agencies, and the community in various forms (Nations, 2006). It further explains that Restorative justice programmes are founded on the fundamental principle implying

that criminal behaviour not only goes against the law, but it also causes harm to victims and the community as a whole (Nations, 2020). Restorative justice is an approach that emphasises conditions for creating justice and restoring balance for both offenders and victims. Moreover, the development of restorative justice has occurred concurrently with a number of other reforms and innovations in the field of criminal justice, including: the impact of the victims' rights movement; and efforts to bolster the part that victims play in the process of criminal prosecution (UNODC, 2019). However, in the case of criminal acts involving corruption, restorative justice should not be interpreted as absolving the perpetrators of the crime from further legal responsibility simply because the funds have been returned to the state. This is because one of the fundamental tenets of restorative justice is that the offender is expected to voluntarily serve out the entirety of their sentence. As stated by Kurnia, Indonesia Corruption Watch (ICW) researcher, restorative justice cannot be used in dealing with corruption cases because it benefits the corruptors (Tsa Tsia, 2022).

Another reason why restorative justice is inappropriate for corruption cases is the immense number of victims involved. As previously explained, restorative justice is a set of principles for resolving conflicts and restoring balance in the relationships between the offender, victim, and community. In addition, it was clarified that all forms of restorative justice involve a victim-centered process designed to assist offenders in repairing the harm they have caused and finding assistance for their problems (Snyder, 2008). In other words, restorative justice provides an alternative vision of criminal justice that places victims' interests at the center (UNODC, 2019). The restorative justice process requires victim-offender communication either directly or indirectly (Policing, 2022). Therefore, it is critical to identify the identifiable victims before implementing such a process as what has been applied in the UK. However, if we consider the case of corruption, it appears impossible as the victims of corruption are huge and are difficult to identify.

CONCLUSION

In Indonesia, Restorative Justice is grounded in the technical regulations created by each law enforcement agency, and its implementation is limited. The resolution of corruption through Restorative Justice conflicts with Article 4 of Law No. 20 of 2001 Concerning Amendments to Law No. 31 of 1999 Concerning the Eradication of Corruption Crimes, which may result in legal uncertainty. In addition, there is no formulation of the type of victim recovery that is related to the larger community when it comes to corruption. Although the perpetrator may be able to recover some of the State's financial losses, the dangerousness of the corruption crime that has been committed and then resolved through restorative justice reduces the perpetrator's deterrent effect and does not activate the general preventative measures that should serve as part of the purpose of punitive action.

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