

Restorative Justice Policy Analysis in Eradicating Corruption

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Abstract. *This study analyzes the application of the principle of restorative justice (RJ) in eradicating corruption in Indonesia, both in the context of current law (ius constitutum) and for the development of future policies (ius constituendum). Through a normative legal approach, this study identifies conflicts of norms and legal principles that hinder the implementation of restorative justice and offers normative solutions to overcome them. The results of the study indicate that the current application of restorative justice is still limited by the retributive legal framework, lack of coordination between institutions, and community resistance. However, restorative justice has the potential to complement the retributive approach by emphasizing the restoration of state losses and social reconciliation. This study recommends a revision of the Corruption Law, the preparation of implementing regulations, and public education to support a more effective implementation of restorative justice.*

Keywords: *Corruption; Constituendum; Restorative.*

1. Introduction

Corruption is a serious problem in Indonesia, causing material losses and undermining public trust in the legal system. Based on Transparency International's Corruption Perception Index, Indonesia ranked 94th out of 180 countries in 2023, indicating a still high level of corruption in the public sector. Corruption hinders sustainable development and damages public morality. To address this, Indonesia has adopted legal policies such as the establishment of the Financial Supervisory Agency (BPK) and the Corruption Eradication Commission (KPK), as well as revising Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

The BPK plays an important role in overseeing the management of state finances, often finding allegations of corruption through routine audits. These findings often lead to budget irregularities and manipulation of financial reports which are then followed up by law enforcement officers. Existing conventional law enforcement, such as investigations by the KPK and the Prosecutor's Office, aims to punish perpetrators through the criminal justice process. Data from 2023 shows that the KPK has handled many corruption cases involving high-ranking officials, showing how serious this problem is in Indonesia.

However, conventional approaches that focus on imprisonment and fines often pay little attention to the recovery of state losses and the social impact of corruption. These sanctions aim to provide a deterrent effect, but do not resolve the problem of state losses or restore public trust in the legal system. Formal and bureaucratic legal processes also slow down the enforcement of justice, making it inflexible in meeting the recovery needs of victims or society.

Master of Law, UNISSULA

The restorative justice approach offers a more comprehensive solution by focusing on restoring social relationships and reconciliation between the perpetrator and the victim. John Braithwaite suggests that this approach is more effective in dealing with corruption because it not only punishes the perpetrator, but also helps rehabilitate the perpetrator and restores public trust. Restorative justice emphasizes reparation of harm and repairing social relationships disrupted by crime.

The implementation of restorative justice in corruption cases in Indonesia faces various challenges, especially related to the conflict of norms in the legal system that emphasizes punishment. Law Number 31 of 1999 and its amendments regulate severe sanctions for perpetrators of corruption, but also mention the return of state losses as a legal consideration. However, the inconsistency between the norms of punishment and recovery creates a dilemma in the implementation of restorative justice. In addition, the lack of specific regulations regarding restorative justice in corruption and the high cost of the mediation process are obstacles to its implementation.

Conflict of principles is a major challenge in the implementation of restorative justice (RJ) in eradicating corruption in Indonesia. The Indonesian criminal law system emphasizes retributive justice that emphasizes appropriate punishment, while RJ focuses on restoring losses, reconciliation, and rehabilitation of perpetrators. The RJ approach better reflects the principle of "equality before the law", which demands equal treatment before the law regardless of the status or position of the perpetrator, although the conventional approach is often criticized for not guaranteeing equality, especially when the perpetrator has power or influence.

However, the implementation of RJ in Indonesia faces several obstacles, including an inadequate legal framework. Law No. 31 of 1999 on the Eradication of Corruption focuses more on criminal prosecution than on recovering losses. This makes the implementation of RJ difficult, especially in cases with small nominal values, which often do not receive priority in the justice system.

In addition, there is public rejection of the RJ approach, which is considered too soft on corruptors. The public often doubts the effectiveness of RJ, especially in cases with small nominal values, because they feel that the recovery of losses is not enough to provide a deterrent effect and justice. Coordination between law enforcement agencies that is not optimal is also an obstacle, because each agency has different authorities and a lack of synergy in handling cases.

However, some countries have successfully implemented RJ with positive results. Countries such as Canada, New Zealand, Australia, Norway, and the United States have adopted this approach successfully through programs such as dispute resolution conferences and justice circles, which not only reduce the rate of reoffending, but also improve the relationship between victims and offenders and reduce the burden on the justice system.

In the United States, although RJ in corruption cases is still debated, this approach still offers great potential to complement the existing legal system. This approach provides a more humane alternative in law enforcement and rehabilitation of perpetrators, with an emphasis on reparation of harm and accountability. If implemented wisely, RJ can help Indonesia

Master of Law, UNISSULA

develop a fairer and more inclusive justice system, strengthen public trust in the law, and restore the harm and social relationships damaged by corruption.

From this background, the author feels the need to conduct an in-depth study on the application of restorative justice in the context of corruption in Indonesia. This is driven by the importance of overcoming the conflict of norms and legal principles that often become obstacles in the implementation of this approach. Therefore, the author is interested in conducting a study entitled: "Analysis of Restorative Justice Policy in Eradicating Corruption."

2. Research Methods

This study uses a normative legal research method with a descriptive analytical approach to examine the restorative justice (RJ) policy in eradicating corruption in Indonesia. The focus of the study is on the analysis of relevant laws and regulations, including laws, court decisions, and existing legal doctrines. The data used are secondary, obtained through literature studies from primary, secondary, and tertiary legal materials, such as laws and related literature. The data analysis method involves a qualitative approach by paying attention to the consistency of laws and regulations, legal hierarchy, legal certainty, and laws that live in society.

3. Results and Discussion

3.1. The Principle of Restorative Justice in Current Corruption Cases (*Ius Constitutum*)

The restorative justice approach has developed into an important alternative in the criminal justice system, especially in the context of crimes that have a major impact on society. Restorative justice not only aims to punish the perpetrator, but also to restore losses and repair relationships damaged by crime. In the context of corruption, this approach offers a more comprehensive solution than the retributive paradigm that has dominated the Indonesian legal system.

Restorative justice (RJ) is an alternative approach to law enforcement that focuses on restitution and reconciliation between perpetrators and victims, with the aim of returning state losses and improving relations between the government and society. Unlike the retributive approach that emphasizes punishment, RJ prioritizes dialogue and peaceful conflict resolution, involving active community participation. In the context of corruption in Indonesia, RJ is in line with the objectives of the Corruption Law, especially in terms of returning state losses. However, Article 4 of the Corruption Law emphasizes that restitution does not eliminate criminal penalties, which ensures that perpetrators still face appropriate legal consequences, even though RJ focuses on restitution and reconciliation. The application of RJ in corruption must be carried out carefully, considering the provisions in the Corruption Law that require perpetrators to still be subject to criminal penalties even though they have returned state losses.

Restorative justice (RJ) in Indonesia is very relevant to corruption crimes because it can accelerate the recovery of state losses, in accordance with Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption. RJ allows perpetrators to be held accountable in a more humane manner through the return of misappropriated funds, while encouraging social reconciliation and the restoration of public trust. Although the application of RJ in corruption cases is still rare and has sparked debate, especially regarding technical guidelines, this approach has the potential to reduce the burden of a lengthy legal process. However, the aspect of retributive justice remains important to ensure a deterrent effect and maintain

Master of Law, UNISSULA

public trust in the legal system, with criminal sanctions still being imposed, even though the perpetrators return state losses. The combination of RJ and retributive justice can provide an optimal solution by accelerating the recovery of state finances and providing appropriate sanctions.

The implementation of restorative justice in corruption cases in Indonesia faces significant challenges, including resistance from the public who consider corruption to be an extraordinary crime that requires strict punishment. The lack of a clear legal framework to integrate restorative justice with the Corruption Eradication Law is also an obstacle, risking legal uncertainty and potential abuse by perpetrators. Nevertheless, this approach offers an opportunity to accelerate the recovery of state losses, especially in cases involving infrastructure projects, if accompanied by strict supervision. The public is generally skeptical of restorative justice because they are concerned that perpetrators will not receive appropriate punishment. To overcome this, a mechanism is needed to ensure that restorative justice can be implemented transparently and fairly, without reducing the deterrent effect or public trust in the legal system.

Restorative justice (RJ) has been successfully implemented in several countries, such as Canada, Norway, and New Zealand, which integrate this approach into their legal systems to reduce crime rates and focus on restitution. In Indonesia, RJ is implemented in cases of minor offenses and juvenile crimes, where mediation and restitution are the main steps. However, the implementation of RJ in corruption cases faces major challenges, especially when the case involves major losses to the state. Restorative justice here focuses on the return of misused funds and reconciliation between perpetrators, victims, and the community, although its implementation requires a clear legal framework and support from various parties to prevent abuse.

The application of RJ in corruption cases also faces a dilemma in the Indonesian legal system that combines retributive and restorative approaches. The Corruption Eradication Law provides severe penalties for deterrent effects, but also provides room for the recovery of losses. The inconsistency of these norms causes conflict in law enforcement and legal uncertainty, which impacts the effectiveness of loss recovery. Therefore, a revision of the law is needed to integrate the RJ principle into the criminal law system, by establishing clear guidelines on the criteria and procedures for its application, as well as a monitoring mechanism to ensure this approach is not misused, thus achieving a holistic goal in eradicating corruption.

The conflict between retributive and substantive legal principles in the Indonesian criminal system reflects different approaches to justice. The retributive principle emphasizes punishment as a response to a crime, while the substantive principle focuses on restoring losses and reconciliation between perpetrators and victims. In the context of corruption, the retributive principle often fails to restore state losses, such as in the case of the Hambalang project, where despite being followed by severe punishments for perpetrators, the lost state funds have not been fully recovered. Conversely, the substantive principle, although it attempts to repair losses, is not always effective in creating a deterrent effect. Integrating these two principles, with a clear legal framework and strict monitoring mechanisms, can create more holistic justice and increase the effectiveness of corruption eradication in Indonesia.

Master of Law, UNISSULA

The conflict of norms and legal principles in eradicating corruption in Indonesia has a significant impact on law enforcement, creating legal uncertainty, prolonging the legal process, and reducing the effectiveness of state loss recovery. The inconsistency between the retributive approach, which emphasizes punishment, and the restorative approach, which focuses on loss recovery, creates a dilemma for law enforcement agencies in determining the right action. As a result, the legal process takes longer and state losses are not fully recovered. In addition, this uncertainty also reduces public trust in the legal system, which further worsens the perception of the integrity of law enforcement agencies.

Existing policies in eradicating corruption, such as the Corruption Eradication Law and other related regulations, focus more on imposing strict and severe sanctions on perpetrators of corruption, while the restorative justice (RJ) approach that emphasizes loss recovery and reconciliation has not been fully implemented in corruption crimes. Overlapping policies and the lack of regulatory harmonization have limited the application of RJ in corruption cases. Although there is potential support from existing policies, such as the principle of state loss recovery, the main obstacle remains the unpopularity of RJ in society, which prefers severe punishment as a deterrent. Therefore, steps are needed to harmonize regulations and improve coordination between institutions to realize a more effective application of RJ in eradicating corruption.

3.2. Restorative Justice Principles for Future Corruption Crimes (*Ius Constituendum*)

From the perspective of *ius constituendum*, the implementation of restorative justice (RJ) in the Indonesian criminal law system, especially in corruption cases, requires legal reform to create a clear legal basis and support its implementation. This includes revising the Corruption Law to explicitly include the principle of RJ, regulating case criteria, mechanisms for returning state losses, and reconciliation procedures between perpetrators and the community. Although RJ has been recognized in several regulations, such as the SPPA Law, its application in corruption still requires further development so that it is not misused. Clear regulations, strict supervision, and support from law enforcement are essential to ensure that RJ can be implemented effectively, fairly, and without softening sentences, while accelerating case resolution and increasing the efficiency of recovering state losses.

The first step in overcoming the conflict of norms in the application of restorative justice in corruption cases in Indonesia is the revision of Law Number 31 of 1999 concerning the Eradication of Corruption. This revision aims to integrate the principles of restorative justice, by establishing criteria for eligible cases, clear implementation procedures, and monitoring mechanisms involving independent institutions such as the Corruption Eradication Commission and the Ombudsman to ensure transparency and accountability. This is expected to provide legal certainty, efficiency of the legal process, and more effective recovery of state losses.

In addition, the preparation of implementing regulations is also needed to bridge the provisions of the law and practices in the field. These regulations will regulate key elements such as case criteria, mediation processes, the role of law enforcement agencies, and monitoring and evaluation mechanisms. Synergy between law enforcement agencies is essential to ensure the effective implementation of restorative justice, and the involvement of civil society is an important element in ensuring justice and meeting the needs of victims

Master of Law, UNISSULA

and the community. With these steps, it is hoped that the Indonesian legal system will be fairer, more transparent, and more efficient in handling corruption cases.

Community involvement is a key element in the implementation of restorative justice in corruption cases in Indonesia. The community acts as an independent monitor, providing transparency, accountability, and legitimacy in the legal process, and serves as an "indirect victim" who feels the impact of corruption. An important step in involving the community is through public education, discussion forums, and consultations, which aim to increase understanding and reduce resistance to this approach. Civil society organizations also act as mediators and facilitators in the mediation process. Despite challenges such as low legal literacy and potential abuse, community involvement provides significant benefits in increasing trust in the legal system, ensuring the recovery of state losses, and creating transparent and accountable management.

Independent supervision is a key element in the implementation of restorative justice, especially in corruption cases, to ensure that the legal process is fair, transparent, and accountable. Independent institutions such as the Supreme Audit Agency (BPK) and the Ombudsman of the Republic of Indonesia play an important role in verifying the return of state losses, ensuring that the management of recovered public funds is carried out optimally, and overseeing that the restorative process does not violate the principles of justice. Supervision is carried out through a multi-stage mechanism, from pre-mediation to post-mediation, to create transparency at every stage. Despite facing challenges such as limited resources and coordination between institutions, independent supervision provides benefits in preventing abuse of the system, increasing public trust, and ensuring outcomes that provide real benefits to the state and society.

Developing training for law enforcers in the implementation of restorative justice (RJ) is essential to ensure its successful implementation in the Indonesian criminal justice system. This training aims to change the retributive paradigm to be more inclusive, which does not only focus on punishing the perpetrator, but also on restoring harm and social reconciliation. Training for law enforcers should include international and local case studies, simulations of restorative processes, and an understanding of the legal framework for restorative justice. In addition, legal education and training institutions can play an important role in organizing training that is tailored to local needs. Despite challenges such as budget constraints and resistance to change, comprehensive training can improve law enforcers' understanding, reduce practical errors, and encourage innovation in the Indonesian legal system.

In the context of implementing restorative justice in corruption crimes in Indonesia, policies and regulations need to ensure that the principles of justice and equality before the law are maintained. Although RJ aims for restoration and reconciliation, it is important to remember that the return of state losses does not eliminate criminal penalties. Therefore, RJ can be an effective tool in recovering losses and eradicating corruption, as long as it is implemented carefully and takes into account constitutional principles that protect the basic rights of individuals. An informed and structured approach, as well as clear regulations, are needed to ensure that the implementation of RJ does not conflict with the principles of justice and equality before the law, and maintains the integrity of the Indonesian legal system.

4. Conclusion

This study found that restorative justice (RJ) has the potential to complement the retributive approach in eradicating corruption in Indonesia. As an approach that focuses on restoring state losses, reconciliation, and substantive justice, RJ can be an effective instrument to address the weaknesses of the legal system that tends to only emphasize punishing perpetrators. However, its implementation must be carried out by still referring to the provisions of Law Number 31 of 1999 concerning the Eradication of Corruption (UU Tipikor) and Law Number 20 of 2001. RJ in this context is not intended to replace criminal penalties, but as a complement that provides opportunities for perpetrators who show good faith to return state losses.

In the normative legal analysis, there is a conflict of norms and legal principles that need to be resolved before RJ can be optimally integrated into the criminal law system. The retributive approach that is oriented towards punishment often conflicts with the principle of RJ which emphasizes the restoration of losses and reconciliation. Therefore, normative steps are needed that include a revision of the Corruption Law to create a balance between punishment of perpetrators and restoration of losses. In addition, transparent supervision is very important to ensure that RJ is not misused by perpetrators of corruption to avoid appropriate punishment.

Thus, the implementation of RJ in eradicating corruption must be carried out carefully and based on the principles of justice, transparency, and accountability. This implementation must be supported by regulatory revisions, detailed implementing regulations, and special training for law enforcers to improve understanding of RJ. If implemented properly, RJ can be an important component of the corruption eradication strategy in Indonesia, providing substantive justice for the community and supporting the recovery of state losses more effectively.

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