

## **Restorative Justice Approach as Ultimum Remedium of Corruption Crimes**

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### **Abstract**

Corruption has existed for many years in the world. Therefore, to overcome these problems, researchers need to apply the philosophy of restorative justice. The purpose of this research is to examine the use of a restorative justice system as a final resolution effort in addressing corruption crimes in Indonesia. Therefore, the restorative justice approach is needed as the main solution in resolving corruption crimes in Indonesia. The research methodology used is normative juridical. The results show that restorative justice as an effort to resolve corruption crimes in Indonesia is an approach that emphasizes the restoration of damaged relationships due to corruption crimes by involving all parties involved, including perpetrators, victims, and the community. This research has contributed to the improvement of restorative justice arrangements for unlawful acts of corruption in order to optimize the recovery of state financial losses.

**Keywords:** Crime of corruption; education; prevention; restorative justice; ultimum remedium

### **Introduction**

Since 1998, as part of a comprehensive reform plan focused on eradicating corruption, the issues of collusion and nepotism have taken center stage in law enforcement efforts in Indonesia. Corruption poses a threat to societal well-being and must be addressed by restoring the damages incurred by society due to these illicit activities. (Luna-Pla & Nicolás-Carlock, 2020; Luna-Pla & Nicolás-Carlock, 2020; Rienks, 2023), the impact of corruption is large and negative (Focacci, Kovac, & Spruk, 2023; Chih et al., 2023). Corruption in Indonesia is rampant at various levels of society, including government and the private sector, involving state officials and certain individuals who occupy important positions in private companies. Apart from that, handling corruption

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cases in Indonesia was firmly emphasized, and this focus became the beginning of the formation of the Corruption Eradication Commission (Handayani, 2019).

The Law of the Republic of Indonesia Number 31 of 1999, also known as "UU Tipikor," is a legal framework that aims to eradicate corruption. Until 2023, corruption within the judicial system is anticipated to endure despite its foundations in retributive justice. On the contrary, the United Nations Convention Against Corruption (UNCAC), as enshrined in the Law of the Republic of Indonesia Number 7 of 2006, emphasizes the imperative of collaborative efforts from various sectors, both domestically and internationally, and the return of ill-gotten assets for effectively combating corrupt behaviors (Judge, 2023).

The rising prevalence of corruption, particularly among government officials, further exacerbates the public's disdain for corruption. The statement "Culpe poenacpar esto" does not align with the core principles of judicial reform, which emphasize the need for law enforcement to prioritize justice and the well-being of all individuals. The Indonesian government is facing mounting pressure to effectively eliminate corruption, as there have been numerous reports indicating that certain law enforcement officials may engage in egregious behavior or display a lack of determination in combating corruption in Indonesia (Azis et al., 2022). While a restorative approach can provide a more humane and solution-focused way of dealing with cases of corruption, it is not enough to overcome it completely.

Restorative justice is a legal approach that has been widely used since the 1960s in order to resolve criminal cases (Payne & Welch, 2015), which in principle no longer refers to the use of sanctions in the criminal justice system (Weitekamp & Parmentier, 2016), but rather emphasizes the curative aspect, which also prioritizes the resolution of criminal cases. with the perspective of victims and perpetrators of criminal acts starting to receive high attention so that it can be applied in the mechanism for adjudicating criminal matters in Indonesia. Liebmann provides a concise definition of restorative justice as a legal framework that seeks to repair the well-being of victims, offenders, and affected communities in the aftermath of a crime, while also striving to deter future offenses (Liebmann, 2007).

In the realm of legal progress, particularly regarding the application of restorative justice in addressing criminal cases, internal regulations play a pivotal role in guiding law enforcement personnel. These regulations, embedded within the internal frameworks of law enforcement agencies in Indonesia, encompass various directives. They include Attorney Regulation No. 15 of 2020 on Prosecution Termination through Restorative Justice, Republic of Indonesia State Police Regulation No. 8 of 2021 on Handling Criminal Offenses via Restorative

Justice, and Director General of the General Justice Agency of the Supreme Court Decree No. 1691/DJU/SK/PS.00/12/2020, delineating guidelines for executing Restorative Justice within the precincts of the General Court, thereby shaping the landscape of criminal justice implementation (Handoyo, 2023).

According to Commissioner General Andrianto, as stated by the Head of the National Police's Criminal Investigation Agency (Kabareskrim), the National Police has employed a restorative justice approach to resolve 15,039 cases between 2021 and March 2022. During the Talkshow event titled "Restorative Justice: New Hope in the Pursuit of Justice," conducted on Tuesday, April 19, 2022, Commissioner General Agus Andrianto stated that this figure experienced a 28.3 percentage point rise compared to the last year 9,199 situations.

Restorative justice is a system of justice that prioritizes the restoration of damages caused by crime by including all individuals affected by the resolution and reconciliation process (Chih et al., 2023). Although the term has traditionally been applied to a wide range of criminal offences (Capus & Bozinova, 2023), including non-violent offences, there is growing interest in exploring its potential application to corruption crimes. Currently, the trend in dealing with corruption often leans towards adopting a punitive stance, focusing on punishing those involved, even in cases deemed minor (Chun, 2021). This could pose a significant risk to the state as the misappropriation of public funds often results in irreversible financial losses (Suh, 2023).

Additionally, it should complement, not replace, existing legal frameworks aimed at preventing and eradicating corruption. Moreover, if the perpetrator is defensive and/or the victim can be re-victimized by the process, Restorative Justice will not be effective (Goldblum, 2020b). Restorative justice is applied to various types of offenses, primarily those without a direct victim, however its overall accessibility is limited. The increase in restorative practices training presents a chance to harmonize workplace cultures with restorative principles (Marder, 2022).

However, keep in mind that restorative justice may not be suitable for all corruption cases, especially cases of high-level or systemic corruption. In cases such as these, traditional legal measures, such as prosecution and imprisonment, may still be necessary to ensure accountability and deterrence. Nevertheless, we contend that the potential for prolonged uncertainty could have been mitigated had there been a more thorough and rigorous examination of the historical development of restorative justice. The use of restorative justice in cases of criminal acts of corruption does not eliminate criminal threats, but always carefully considers the advantages and disadvantages of criminal threats, with the

true aim of healing and preventing problems from getting worse (Pratama & Azyanti, 2022).

Restorative justice offers a contrasting perspective to criminal justice. In criminal justice, crime is seen as breaking the law and the State, whereas in restorative justice, crime is viewed as a breach of individuals and responsibilities, of harm inflicted and endured, of societal conflicts, emphasizing the acknowledgment of individuals and their deeds (Lodi et al., 2022). The Restorative Justice approach can be considered the main remedy for corruption crimes because it offers an approach that focuses on repairing losses, restoring relationships, and reintegrating perpetrators into society. By emphasizing improvement rather than punishment alone, this approach allows active participation from perpetrators, victims and communities in resolving corruption cases. Thus, Restorative Justice not only addresses the immediate consequences of corrupt acts, but also provides opportunities for rehabilitation, building accountability, and preventing similar incidents in the future.

This research critically explains the legal implications of implementing restorative justice to optimize the recovery of state losses from criminal acts of corruption. Rewarding Restorative justice practices has the potential to provide rewards in the form of reinstatement or elimination of criminal responsibility. Depenalization is considered on the basis of rational considerations related to the stability of the national economy, the social impact of increasing corruption sanctions, and the real consequences that could trigger crises in various sectors. Considering the widely recognized significance of the topic, it is now crucial for researchers to take on this gap.

Hence, adopting a restorative justice approach emerges as the primary solution to addressing corruption offenses in Indonesia. By employing this method, it is anticipated that those involved in corrupt activities can redress the state's losses without undergoing formal legal proceedings. The aim of this research is to evaluate the effectiveness of restorative justice as the last resort in combating corruption in Indonesia.

### **Methodology**

The research employed a normative juridical technique, focusing on library research. Library resources were examined as primary data, classed as secondary data, to conduct the research. The legal normative method is employed due to the nature of research conducted in libraries. through documents will be considered very important in formulating theoretical and conceptual frameworks (Sasmita et al., 2023). The solutions to the issues were obtained through the analysis of library resources, which encompassed primary sources such as

pertinent legislation, as well as secondary sources including court rulings, expert viewpoints, doctrine, and other verifying information.

This research relies on descriptive analysis methods, namely a type of research that describes or explains a condition, situation and legal event that has occurred for further analysis. This method is used so that it can be used as a research object. The authors explained the circumstances, conditions and legal events in Indonesia related to the restorative justice approach as the main remedy for corruption crimes. The research for this article involved conducting a comparative study by examining multiple article references and relevant literature materials related to the article's theme. Additionally, paraphrasing techniques were employed to avoid plagiarism.

The data in this research was validated internally to ensure credibility, trustworthiness, and objectivity. The researchers checked the data, both from transcripts and documents, to ensure there was agreement. If there was disagreement, discussion ensued until the data and themes were agreed upon by the researchers (Hasyim, 2023). Finally, take notes to make it easier for researchers to carry out more in-depth data collection. When reading findings, researchers simultaneously describe, classify, and interpret the data (Iskandar et al., 2023).

### **Discussion**

This study examines the restorative justice approach as an alternative for dealing with corruption charges in Indonesia. Hence, a restorative justice strategy is necessary as the primary solution for corruption crimes. Restorative justice aims to provide corrupt individuals with the chance to make up for their actions by compensating the state for its losses, without undergoing legal prosecution.

### **Restorative justice is the main remedy for corruption crimes in Indonesia**

In the year 2016, the Constitutional Court issued a ruling (Number 25/PUU-XIV/2016) that brought about a change in the categorization of the violation as stated in article 2 paragraph (1) and article 3 of Law Number 20 of 2001, concerning the prevention of corruption. The ruling changed the classification from being based on formal offenses to being based on material offenses. On the other hand, formal offenses are a type of offense that focuses on actions that are prohibited and subject to punishment according to legal provisions.

Article 140 subsection (2) of the Criminal Procedure Code (KUHAP) affirms the discretion of the public prosecutor, represented by the prosecutor, to decide on the transfer of a case to court. Apart from that, the prosecutor also has the right of opportunity, namely the authority to stop the prosecution for legal

purposes so that it is clear in this article that the prosecutor as the public prosecutor has full control over the case delegated to the investigator because the prosecutor has the obligation to prove a criminal act committed by someone. The relevance lies in Prosecutor's Regulation Number 15 of 2020, which addresses the conclusion of prosecutions through a restorative justice framework, also known as Perja 15/2020 (Syaid, 2022).

Restorative Justice was initially coined by Albert Eglash, who defined it as an alternate approach to retributive and rehabilitative justice, focusing on restitution (Walgrave, 2003). Restorative judicial is the intellectual advancement that draws upon the judicial practices of Ancient Arab, Greek, and Roman civilizations to address various issues, including criminal offenses. This phenomenon also arises from discontentment with the rationale behind excluding the warring parties from participating in the resolution of the problem. Restorative Justice originated in Indonesia and is currently flourishing, expanding, and being implemented through customary law. Various populations in Indonesia, such as Papua, Bali, Toraja, Minangkabau, and other indigenous people, continue to follow customary law.

Consequently, in the event of someone committing a criminal conduct, the indigenous community will handle the resolution of the matter internally, without the involvement of state authority (Adhayanto, Oksep; Subuat, 2020). An approach to resolving legal conflicts that places more emphasis on restoring damaged relationships and the participation of all parties involved, rather than conventional punishment. Long-standing local wisdom and customary legal systems, which basically emphasize reconciliation, local justice, and community participation in resolving conflicts (Adi, 2021). The customary law system in Indonesia does have characteristics that are restorative in several aspects. However, the formal implementation of Restorative Justice which is integrated into the legal system generally still requires further development and support from various parties including the government and legal institutions.

Law no. 20 of 2001 aims to combat and recoup financial losses incurred by the state due to acts of corruption. The notion of restorative justice, when applied to criminal acts of corruption, does not seek to abolish consequences imposed on the wrongdoer. Instead, it places emphasis on providing suitable punishments that focus on selecting the consequences of the crime (Maya, 2018), specifically focusing on the reimbursement of state funds, Law no. 20 of 2001 aims to rectify financial deficits suffered by the state. Its primary goal is for authorities to uncover corrupt practices detrimental to state finances, seeking to address them via extrajudicial means. This entails evaluating the expenses linked to prosecuting cases against the magnitude of financial damages endured by the state.

Ultimately, restorative justice prioritizes resolving interpersonal conflicts over linking offenders with authorities. This approach, recognized globally, aims to address wrongdoing by repairing harm, rebuilding relationships, and facilitating the reintegration of offenders into society. It responds to the shortcomings of punitive measures, which often prioritize retribution over rehabilitation (Nurcahyo, 2021).

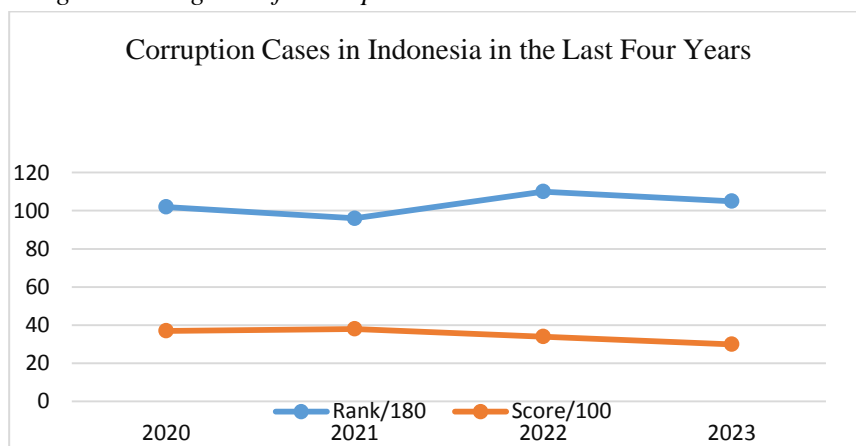
Restorative justice in cases of corruption involves the restitution of unlawfully obtained assets and profits. This procedure begins with investigations and continues through court proceedings, where fines may serve as a deterrent. If restitution is unfeasible, punitive measures remain a final recourse.

**Restorative justice as the main remedy for corruption crimes to recover state financial losses**

Corruption cases in Indonesia often have detrimental impacts on society, including wasting public resources, inequality in the distribution of wealth, and undermining trust in the government and state institutions. This is a big challenge in the fight against corruption, and efforts to overcome this problem must continue to be pursued with determination and consistency. By strengthening the legal system, improving supervision, and building a strong culture of integrity, Indonesia can accelerate steps towards a cleaner, fairer, and more integrity society.

Data obtained from the Transparency International page shows that for the last 4 (four) years, Indonesia's position has always been down in the ranking of the most corrupt countries. (Sinaga, Pardamean, 2020).

*Figure 1. Diagram of Corruption Cases in Indonesia*



This figure increasingly makes the public full of stigmatizing stereotypes regarding reporting on corruption, which assumes that all government officials are perpetrators. Instead of expecting a legal process that returns to the objectives of

the law, today's society is more concerned with giving appropriate sanctions or punishment to perpetrators of corruption by changing the meaning of "*Culpa Poena par Esto*". Efforts to prevent and suppress corruption continue to be carried out in Indonesia through institutions such as the Corruption Eradication Commission (Indonesian is called KPK), but big challenges remain in eradicating corruption completely.

The inadequacy of retributive theory, which seeks revenge, and neo-classical theory, which aims for equal criminal and action sanctions, in satisfying society's concept of justice has prompted the exploration of restorative justice as an alternative approach. The notion of punishment, particularly in relation to individuals who commit illegal acts of corruption. This perspective regards the restorative justice strategy, which prioritizes the restoration of damages resulting from or connected to criminal activities, as a notion that aligns with the objective of eliminating corruption in Indonesia, as has been implemented in various other nations (Fransisco, 2022).

Article 4 of the Corruption Law emphasizes that the restitution of state financial losses or the state economy does not absolve perpetrators of criminal acts from punishment, as outlined in Articles 2 and 3. This provision specifically addresses corrupt activities leading to state financial losses. It clarifies that even if a perpetrator, as defined in Articles 2 and 3, compensates for the damages as required, they are still subject to punishment. Essentially, restitution serves only as a mitigating factor in sentencing, while the legal proceedings against corrupt individuals persist.

It should be remembered that the basic idea for establishing legal norms emerged when the Corruption Law was initiated, when Indonesia was going through a transition phase after the overthrow of Soeharto from 32 years of authoritarian rule. The general steps taken are to strengthen law enforcement tools in all sectors to ensure better legal certainty, avoid variations in legal interpretation, and safeguard people's economic and social rights (Pujiyono, 2016). In the context of article 4, this objective also involves providing a deterrent effect against individuals who commit criminal acts of corruption. Even though the state's financial losses had been recovered (Blázquez & Moro-Egido, 2023).

An application of law that prioritizes balanced considerations so that not all criminal acts end in prison. For this reason, a law enforcement mechanism is needed that is based on restorative justice for the community. Therefore, a restorative approach will be employed by the Prosecutor's Office, which is among the law enforcement entities tasked with addressing corruption cases, enabling authorities to give precedence to either the rehabilitation of victims or the resolution of cases involving offenders. This initiative is rooted in the Attorney



General's Office's issuance of Prosecutor's Regulations Number 15 of 2020 regarding the Termination of Prosecution Based on Restorative Justice. The prosecution of corruption cases can be terminated on condition that the state financial losses are returned to the state.

The concept of retributive justice diverges from the primary goal of combating corruption in Indonesia, which is centered on removing hindrances to the recovery of state assets depleted by corrupt practices. Presently, legal emphasis is placed on safeguarding state finances as imperative assets. Restorative justice principles underscore their alignment with corruption cases, particularly in prioritizing the reimbursement of state losses.

The concept of restorative justice presents itself as a viable solution worth exploring in addressing instances of corruption and recuperating financial losses incurred by the state (Sasmitha et al., 2023). Restorative justice focuses on healing and reconciliation, paying attention to the impact on victims, perpetrators, and society as a whole. While Purweloksono suggests that restorative justice, involving the return of all proceeds of corruption, can be implemented at different points, including prior to the investigation, throughout the investigation, and during trial proceedings (Purwoleksono, 2016).

Returning all ill-gotten gains at this juncture can eradicate any mens rea or malicious intent associated with the offender, hence, if the wrongdoer surrenders all unlawfully acquired proceeds (Erman, 2023), During the inquiry phase, authorities have the opportunity to utilize the guidelines stipulated in Article 2 of Prosecutor's Regulations Number 15 of 2020, which delineate the conditions for implementing the restorative justice approach. These conditions are anchored in the ideals of fairness, societal welfare, equitable response, reserve of punitive measures, and considerations of efficacy, straightforwardness, and economical viability. One implication of these criteria is that certain cases may be resolved without the necessity of advancing them to subsequent investigations. Consequently, in accordance with this article, there exist multiple avenues through which restorative justice can be employed in addressing instances of corruption:

Table 1. The utilization of restorative justice in Article 2 of Prosecutor's Regulations Number 15 of 2020.

<b>Restorative justice approach</b>	<b>Action</b>
<b>Financial Recovery:</b>	<b>Loss</b> The restorative justice process involves requiring corrupt individuals to actively engage in reparation or reimbursement for the financial damages resulting from their dishonest actions.

<b>Offender Rehabilitation:</b>	Apart from financial recovery, restorative justice aims to rehabilitate perpetrators of corruption.
<b>Participation of Related Parties:</b>	Restorative justice involves active participation from all parties involved, including the perpetrator, victim, and community. By involving them in the conflict resolution process, it can create a better understanding of the consequences of corruption and provide space for responsibility and healing.
<b>Mediation and Relationship Building:</b>	The mediation process in restorative justice can help build relationships between perpetrators and victims. This includes an apology, admission of wrongdoing, and a commitment to avoid future acts of corruption.
<b>Education and Prevention:</b>	Through restorative justice, education and prevention programs can be integrated to ensure a better understanding of the impacts of corruption and how to avoid it in the future.

Although the concept of restorative justice has the potential to make a positive contribution in tackling corruption crimes, its implementation must be considered carefully. Literatures suggest that restorative justice (RJ) ideas typically entail a paradigm shift in how offenses or crimes are perceived. Crimes are viewed as breaches of individuals, relationships, and the community, rather than only infractions of laws or the state. RJ believes that these transgressions impose responsibilities, with the most significant being to recognize and rectify the damage. This is done face to face (Goldblum, 2020a).

Claiming to adopt a restorative approach to their job, a statement that is more challenging to verify or clarify. In addition to specialized restorative justice programs, there are limited specific human resources allocated for restorative work. Building a culture centered on restoration depends on factors beyond mere resource availability. Professionals should be taught to utilize specific restorative skills and practices wherever feasible (Marder, 2022).

Imposing criminal punishments such as imprisonment is the ultimate solution in criminal law to influence human behavior (Ortner, Juan, 2016), particularly offenders, and create psychological pressure to deter others from committing crimes. The concept of *ultimum remedium*, which underpins Indonesian criminal law, underscores the notion that resorting to criminal sanctions should be the last resort in upholding the law, highlighting its pivotal role as a fundamental tenet. The state's implementation of law enforcement must

align with moral principles and be an integral part of the legal system (Firdaus et al., 2020).

Corruption can be buried in specific supply chain connections, giving rise to a corruption triangle (Silvestre et al, 2018; Marder, 2022). RJ aims to tackle the damage inflicted on every individual affected by environmental violations (Hamilton, 2021). The RJ scholarship ought to transcend its focus solely on individual methodologies and delve into the intricate social dynamics linking the broader socio-legal landscape to the smaller-scale restorative interactions (Yuan, 2018). Some controversies and challenges may arise, and policies must take into account security and fairness in the context of applicable laws. In the context of corruption crimes, it is important to ensure that there is a balance between recovery of losses and law enforcement to ensure proper accountability (Rienks, 2023).

### **Conclusion**

Restorative Justice presents a comprehensive and rehabilitative approach to tackling corruption offenses, aiming to recover state financial losses by ensuring the full restitution of all gains acquired by the perpetrators. Restorative justice may not be suitable for all corruption cases. Severe corruption crimes may necessitate a blend of restorative and punitive strategies. Restorative justice's successful implementation relies on backing from law enforcement agencies, the court system, and public awareness. Utilizing restorative justice principles in addressing instances of corruption yields positive outcomes for the government. This approach alleviates the fiscal responsibility of the state in managing and supporting incarcerated or convicted individuals involved in corrupt activities, such as covering their sustenance needs. Moreover, distinct criteria are established throughout the investigation, prosecution, and application of restorative justice to identify corrupt acts eligible for restitution, thereby ensuring legal clarity for offenders. Restorative justice used as the primary solution for corruption crimes in Indonesia offers various advantages, including recovering financial losses, rehabilitating offenders, involving relevant parties, facilitating mediation and building relationships, and providing education and prevention.

Indonesia urgently needs to implement reforms in its criminal law system, particularly concerning the seizure of assets acquired through corrupt practices. These reforms should align with advancements in criminology and international laws addressing corruption-related crimes. Although the concept of restorative justice can provide an attractive alternative in dealing with corruption crimes, it should be noted that its application may not always be appropriate to every case and requires careful consideration and the application of restorative justice must

take into account the Indonesian legal and cultural context, and can be selectively integrated with conventional legal approaches to ensure that recovery and prevention objectives remain met.

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