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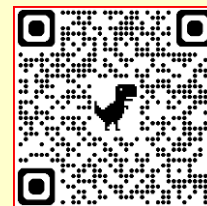
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IMPLEMENTATION OF RESTORATIVE JUSTICE IN HANDLING CRIMINAL ACTS OF CORRUPTION IN INDONESIA

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ABSTRACT

Corruption is an extraordinary crime that causes significant losses to state finances and undermines public trust in the government. To date, the handling of corruption in Indonesia has focused on a repressive approach through criminal punishment of perpetrators. However, this approach has not been fully effective in optimally recovering state losses. The concept of restorative justice emerges as an approach that emphasizes the restoration of losses, the responsibility of perpetrators, and the balance of interests between the state and society. This study aims to analyze the application of restorative justice in handling corruption in Indonesia and the obstacles to its implementation. The research method used is normative legal research with a statutory and conceptual approach. The results indicate that the application of restorative justice in corruption cases still faces various obstacles, primarily because corruption is categorized as a serious crime with far-reaching impacts. Nevertheless, the approach of recovering state losses through asset return and payment of compensation can be a form of implementing restorative justice principles in corruption.

KEY WORDS: Restorative Justice, Corruption, Recovery of State Losses, Criminal Law.

INTRODUCTION

Corruption remains a serious problem facing Indonesia today. Corrupt practices not only result in state financial losses but also undermine the governance system, slow national development, and undermine public trust in the law. Therefore, corruption is categorized as an extraordinary crime requiring special handling. Law enforcement against corruption has so far focused on punishing perpetrators through imprisonment and fines. However, this approach has not fully redressed state losses. In many cases, the state continues to suffer losses even after the perpetrators have been convicted. The concept of restorative justice has developed as an alternative approach within the criminal justice system, emphasizing the restoration of the situation resulting from the crime. Restorative

justice is generally applied to minor crimes, but modern legal developments have begun to open up opportunities for the application of this concept to economic crimes, including corruption, particularly in the aspect of recovering state losses.

The application of restorative justice in corruption cases has been controversial because, on the one hand, this approach can accelerate the recovery of state losses, but on the other hand, there are concerns that it may reduce the deterrent effect on perpetrators of corruption. Therefore, an in-depth study is needed regarding the relevance and limitations of the application of restorative justice in handling corruption in Indonesia. State financial losses incurred must be immediately recovered, both losses caused by administrative matters and criminal acts, in this case corruption. State finances play a vital

role in the implementation of state governance, including governing and providing services to the public. Therefore, any state losses incurred must be resolved promptly to prevent disruption to state activities. Recovering state losses can be achieved through administrative mechanisms, namely through compensation claims against perpetrators, through civil lawsuits, or through criminal mechanisms. Specifically, the settlement of state financial losses through criminal channels involves imposing restitution on those convicted of corruption. For state losses incurred due to corruption, the recovery of state losses has not been optimally implemented. According to Remelan, several factors contribute to the recovery of losses, as outlined by Efi Laila Kholis. According to Remelan, the obstacles to the payment of restitution in the context of resolving state finances are:

1. Corruption cases are uncovered after a long period of time, making it difficult for authorities to trace the money or assets obtained through corruption.
2. Perpetrators of corruption make every effort to spend the proceeds of corruption or use/transfer them in other ways, including using the names of other individuals who are difficult to access legally.
3. Those convicted of corruption are unable to pay the restitution fine.
4. Third parties sue the government over evidence seized to secure restitution.

Corruption cases are difficult to solve, requiring significant resources for certain cases. This results in certain cases where investigation costs exceed the state losses incurred. (Efi Laila Kholis, 2010:15) The existence of these problems has given rise to ideas as an alternative to resolve state financial losses caused by corruption. One of them is to apply the restorative justice paradigm in enforcing corruption criminal law. The restorative justice paradigm will be applied to certain corruption cases with a value of losses that are not too large, namely by stopping the investigation if the corruptor returns the state losses caused by his actions. Considering the importance of state finances for the government to run the government and provide services to the community, state finances must be managed well to prevent leaks caused by corruption, several parties gave rise to ideas to restore state financial losses by applying restorative justice in handling corruption cases. Based on the description, this paper focuses on the problem, namely, How to apply restorative justice in handling corruption in Indonesia, and What are the obstacles to the application of restorative justice to corruption.

This research uses a normative legal research method with a statute approach and a conceptual approach. The legal sources consist of primary legal materials in the form of laws and regulations; secondary legal materials in the form of books, journals, and research findings related to restorative justice and corruption; and tertiary legal materials in the form of legal dictionaries and encyclopedias. The analysis was conducted qualitatively by examining applicable legal norms and theoretical concepts regarding the application of restorative justice in corruption.

LITERATURE REVIEW

1. State Financial Losses and Their Resolution

State financial losses are the result of criminal acts of corruption, which are one of the elements of corruption as regulated in Articles 2 and 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. It is one of the elements that must be fulfilled in criminal acts of corruption. The Law on the Eradication

of Criminal Acts of Corruption does not define state financial losses, and the definition of state losses is regulated in Law Number 1 of 2004 concerning the State Treasury. This law defines state losses as a real and definite shortage of money, securities, and goods resulting from unlawful acts, whether intentional or negligent. Unlawful acts that result in leakages in state finances continue to change and develop. State financial losses occur not only in the reduction of state assets but also in liabilities and expenditures for which the state is responsible, as well as revenues that should be the state's right. (Theodorus M. Tuanakotta, 2019:15) According to Eddy Mulyadi Soepardi, as quoted by Abdul Latif (Abdul Latif, 2016:383), based on the formulation of state finances as referred to in the Corruption Crime Law, the forms of state losses are as follows:

1. The expenditure of a state/regional resource/asset (can be money or goods) that should not have been spent.
 2. The expenditure of a state/regional resource/asset that is greater than it should have been based on applicable criteria.
 3. The loss of a state/regional resource/asset that should have been received.
 4. The receipt of a state/regional resource/asset that is less than what should have been received (including the receipt of damaged goods or goods of substandard quality).
 5. The emergence of a state/regional obligation that should not have existed.
 6. The emergence of a state/regional obligation that is greater than it should have been.
 7. The emergence of a state/regional right that should be owned/received according to applicable regulations.
 8. The state/regional right received is less than it should be.
- Based on this information, several examples of transactions that can result in state financial losses include unlawful acts in the procurement of goods and/or services, transactions related to accounts receivable, and transactions related to costs and revenues.

State financial losses can occur due to unlawful acts, whether administrative in nature or motivated by malicious intent, with a criminal background, in this case corruption. Restitution of state losses must be resolved immediately. Restitution of state financial losses can be pursued through two channels: non-administrative channels and judicial channels. To resolve state financial losses administratively, the Head of each ministry/institution/head of a regional work unit is authorized to immediately file a claim for compensation upon learning that the relevant agency has suffered losses due to the actions of any party. If state financial losses occur due to corruption, restitution of state financial losses is resolved based on a judge's decision through an additional penalty of restitution. Therefore, law enforcement in corruption cases has two objectives: preventive purposes, in the hope that others will not engage in corruption, and also to redress the resulting state financial losses.

2. Restitution of State Financial Losses Due to Corruption

Restitution of state financial losses due to corruption is an effort to recover state assets or funds lost due to unlawful acts. Under Indonesian law, restitution of state losses is carried out through both criminal and civil proceedings. Criminally, perpetrators of corruption can be subject to additional penalties in the form of payment of compensation as stipulated in the Corruption Eradication Law. If the perpetrator does not pay compensation, then their assets can be confiscated and auctioned by the state. If the assets owned are

insufficient, the perpetrator can be subject to additional imprisonment. In addition to criminal channels, the state can also file a civil lawsuit to demand restitution of state losses. This effort is carried out if there are assets that can still be recovered from the perpetrator or other parties who benefit from the proceeds of corruption. The settlement of state financial losses aims not only to punish the perpetrator, but also to restore the state's financial condition for the benefit of society and national development.

The difficulties in recovering state losses through criminal channels include:

1. Disclosure of corruption cases occurs long after the corruption has occurred, making it difficult to trace the proceeds of corruption.
2. The proceeds of corruption are spent or transferred as quickly as possible by the person convicted of corruption.
3. The money or assets owned by the person convicted of corruption are insufficient to pay the replacement fine.
4. Third-party lawsuits against the money or assets required to pay the replacement fine.

The difficulty in recovering state financial losses is also due to the misinterpretation of the provision of imprisonment in lieu of an additional penalty, the payment of replacement fine. Replacement fines do not have alternative or subsidiary penalties, such as fines, that can be substituted for imprisonment. Instead of imprisonment, the additional penalty, the payment of replacement fine, provides the convict with the option to choose which sentence to serve. If the convict chooses imprisonment, the state financial loss will be irrecoverable.

3. The Concept of Restorative Justice in the Criminal Justice System

Restorative justice is an approach within the criminal justice system that emphasizes reparations for the consequences of criminal acts, for both victims, perpetrators, and the community. This concept differs from the conventional criminal justice system, which focuses more on punishing the perpetrator (retributive justice). In restorative justice, case resolution involves all parties to achieve a fair and balanced resolution. The concept of restorative justice emerged because the traditional criminal justice system was deemed incapable of fully providing a sense of justice to victims or restoring social relationships damaged by criminal acts. Therefore, this approach aims to create peace, accountability for perpetrators, and reparation for the losses incurred.

Within the criminal justice system, restorative justice has several key principles, namely:

1. Reparation of Harms. The primary focus is on repairing the losses or impacts resulting from the crime, both material and non-material.
2. Participation of the Parties. Case resolution involves the perpetrator, victim, family, and community to find a joint solution.
3. Responsibility of the Perpetrator: Perpetrators are encouraged to admit their mistakes and take responsibility for correcting the consequences of their actions.
4. Deliberation and Peace: Resolution is achieved through dialogue and mutual agreement to achieve peace.
5. Restoration of Social Relations: The ultimate goal is to restore social relations and create harmony in society.

In Indonesia, the application of restorative justice has begun to develop through various law enforcement policies, such as the

Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020, the Republic of Indonesia National Police Regulation Number 8 of 2021, and several Supreme Court policies regarding the resolution of minor cases. Restorative justice is generally applied to minor crimes, children in conflict with the law, and certain cases that do not have a significant impact on society. However, modern legal developments have begun to explore the possibility of applying this concept to certain crimes, including corruption, particularly in the aspect of recovering state losses. Thus, restorative justice aims not only to punish the perpetrator but also to create a more humane justice through restoration of the situation and peaceful conflict resolution.

4. Application of Restorative Justice in Corruption

In corruption, the principle of restorative justice can be seen through efforts to recover state losses. The return of assets obtained from corruption and the payment of compensation are forms of restitution that align with the goals of restorative justice.

Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption regulates the payment of compensation as an additional penalty for perpetrators of corruption. This provision demonstrates that the Indonesian legal system recognizes the concept of recovery of state losses.

However, the return of state losses does not eliminate criminal penalties for perpetrators of corruption. This is emphasized in Article 4 of the Corruption Eradication Law, which states that the return of state losses does not eliminate the criminal penalties for perpetrators of corruption. The application of restorative justice in corruption is more appropriate as a complementary mechanism for the recovery of state assets, rather than as a reason to completely stop prosecution. Thus, the goal of punishment is still achieved while providing benefits in the form of state financial recovery.

Statutory provisions stipulate that any state losses caused by unlawful acts or negligence must be immediately resolved. For state financial losses caused by corruption, restitution does not eliminate the perpetrator's criminal liability. Restitution of state financial losses due to corruption occurs during the disclosure of the corruption case itself, starting from the investigation stage, the inquiry stage, and the court hearing. The costs incurred by the government for investigating corruption cases are quite draining the state's finances. In fact, in certain cases, the value of state financial losses caused by corruption is less than the state funds spent to cover the costs of the investigation until the verdict is issued. Cases that are difficult to uncover will require even greater costs. For example, if a case requires expert testimony, if the investigator requests expert testimony, the costs will be greater. This is done to strengthen the investigation by inviting experts who are more knowledgeable about the problem. The suspect and his legal counsel will present experts to refute the investigator's arguments. The investigator ultimately invites experts to strengthen the evidence. Based on the aforementioned considerations, several law enforcement officials have come up with ideas and breakthroughs in handling corruption cases. One example is that law enforcement officials are considering halting prosecution in corruption cases if the perpetrators return the corrupted state funds. According to the Deputy Attorney General for Special Crimes at the Indonesian Attorney General's Office, M. Adi Toegarisman, halting prosecution in corruption cases is possible if, during the investigation stage, the suspects return the funds that have resulted in state losses. One consideration is the comparison of the costs of investigating corruption cases and the amount of state losses. The Head of the Criminal Investigation Agency (Kabareskrim) of the Indonesian National Police, Commissioner

General Ari Dono Sukmanto, added that not all corruption cases result in significant losses to the state. Meanwhile, the budget required to handle corruption cases will increase as the case progresses to the prosecution and trial stages. Therefore, investigations are better for cases with significant state losses. However, the state will still punish corrupt state officials in the form of social sanctions. The idea expressed by law enforcement officials regarding the suspension of corruption cases involving a certain amount of state financial loss if the corruptor returns the corrupted state funds demonstrates that restorative justice can be applied in corruption cases. The restorative justice paradigm. (Kuat Puji Prayitno, 2012, 409)

Several experts such as Braithwaite, Umbreit, and Richardson define restorative justice as a philosophy, a process, an idea, a theory, and an intervention. Restorative justice is a justice system that emphasizes reparation for harm caused or related to criminal acts by involving all parties (stakeholders). Dignan defines restorative justice as Restorative Justice is a value-based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community. Restorative justice is an alternative resolution of criminal cases by prioritizing an integrated approach of the perpetrator on one side and the victim on the other side as a whole to find a solution for improvement. Restorative justice is essentially a philosophy or basic guideline in the peace process outside the courts with the aim of the parties involved in a criminal case, in this case the perpetrator and the victim of the crime, to find the best solution that is agreed upon and agreed upon by the parties. Restorative justice is an approach taken in order to seek justice by focusing on the victim and the perpetrator, as well as the community involved. It does not focus on abstract legal principles or principles that punish the perpetrator. The restorative justice approach focuses more on creating balanced justice for both the perpetrator and the victim in a fair and wise manner.

Therefore, it can be said that restorative justice contains basic principles including:

- a. Striving for peace outside the courts by the perpetrator of the crime with the victim of the crime.
- b. Providing the perpetrator of the crime with the opportunity to take responsibility for their wrongdoing by compensating for the losses caused by the crime.
- c. Resolving criminal legal issues that arise between the perpetrator and the victim of the crime if an agreement and compromise is reached between the parties.

Based on the explanation above, if the restorative justice paradigm is applied in handling corruption cases, the handling of corruption cases will adhere to the principle of *ultimum remedium*. The principle of *ultimum remedium* means placing criminal law as the ultimate weapon or last legal mechanism used to resolve legal problems. Modderman, as outlined by Eddy O.S. Hiariej, explains that the state is obliged to take action against a violation of the law or injustice that cannot be adequately addressed by other legal means. Thus, criminal law is and will always be viewed as the *ultimum remedium*. (Eddy O.S. Hiariej, 2016:32). Muladi added that criminal law can also be called a mercenary law that will only be used when absolutely necessary and other laws cannot be used (Iza Fadri, 2006:157).

Namun demikian, Undang-Undang Tindak Pidana Korupsi telah mengatur bahwa penegakkan hukum pidana untuk perkara tindak pidana korupsi tidak menganut prinsip *ultimum remedium* atau lebih

mengedepankan prinsip *optimum remedium*. Dalam penanganan kasus korupsi, aparat penegak hukum dalam hal ini akan mengedepankan pelaksanaan pembuktian untuk membuktikan terpenuhinya unsur-unsur tindak pidana korupsi, namun jika bukti yang diperoleh oleh penyidik tidak cukup akan tetapi kerugian keuangan negara telah terjadi, maka Jaksa Pengacara Negara dapat mengajukan gugatan keperdataan. Begitu pula jika pengadilan memutus bebas tersangka tindak pidana korupsi, hal tidak menghapuskan hak untuk menuntut kerugian terhadap keuangan negara.

5. Obstacles to the Implementation of Restorative Justice in Corruption

The implementation of restorative justice in corruption still faces various obstacles, both in legal aspects, theory, and law enforcement practice. This is because corruption is a crime that has a broad impact on the state and society. Several obstacles to the application of restorative justice in corruption include:

These obstacles include the following:

1. Corruption as an Extraordinary Crime

Corruption is categorized as an extraordinary crime due to its significant impact on the state economy, national development, and public welfare. Therefore, corruption handling emphasizes firm action and providing a deterrent effect through severe penalties. This situation often leads to the application of restorative justice being considered inappropriate because it is considered too lenient towards perpetrators of corruption.

2. Absence of Individual Victims

In the concept of restorative justice, there is usually a direct relationship between the perpetrator and the victim to achieve peace and healing. However, in corruption, the victims are not just specific individuals but also the state and society at large. As a result, it is difficult to determine who will directly represent the victim in the restorative justice process.

3. Concerns about the Loss of Deterrent Effect

One of the main goals of eradicating corruption is to create a deterrent effect for both perpetrators and the public, preventing them from engaging in corruption. If restorative justice is widely implemented, concerns arise that perpetrators will simply reimburse the state for losses without serving commensurate punishment. This could undermine anti-corruption efforts.

4. Absence of Specific Legal Regulations

To date, there are no specific regulations explicitly governing the application of restorative justice in corruption crimes. Existing regulations, such as the Prosecutor's Office Regulation and the Police Regulation on restorative justice, generally only apply to minor crimes. This lack of regulation creates legal uncertainty in its application to corruption cases.

5. Potential for Abuse of Authority

The application of restorative justice in corruption cases also has the potential to be abused by certain parties to protect perpetrators. If not strictly monitored, the restorative justice mechanism could become a negotiation tool that is detrimental to the interests of the state and society.

6. Difficulty in Fully Recovering State Losses

In practice, not all corruptors are able to recover all the state losses they have incurred. Many assets obtained from corruption have been

diverted, hidden, or laundered through various means. This presents an obstacle to the implementation of the principle of restoration, the primary goal of restorative justice.

7. Low Public Trust

The public generally demands harsh penalties for corruptors. If corruption cases are resolved through a restorative approach, the public may perceive that law enforcement is not being carried out firmly and fairly. This situation can erode public trust in law enforcement agencies.

Given these obstacles, the application of restorative justice in corruption crimes must be carried out carefully and with limited limitations, primarily focusing on recovering state losses without eliminating the perpetrator's criminal responsibility.

CONCLUSION

The application of restorative justice in handling corruption in Indonesia can essentially be implemented in terms of recovering state losses through asset return and payment of compensation. However, this approach cannot completely replace the criminal process, as corruption is an extraordinary crime with widespread impacts on society and the state.

The main obstacles to implementing restorative justice in corruption include the nature of corruption as an extraordinary crime, the absence of individual victims, concerns about the lack of a deterrent effect, and the absence of specific regulations governing its implementation mechanisms.

REFERENCES

1. Andi Hamzah. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*. Jakarta: RajaGrafindo Persada, 2015.
2. Fadri, Iza, *Tinjauan Kritis Terhadap Konsep Perubahan RUU Tindak Pidana Pencucian Uang*, *Jurnal Legislasi Indonesia*, Volume 3 Nomor 3, 2006, hal. 157.
3. Hiariej, Eddy O.S., *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, 2016.
4. Kholis, Efi Laila, *Pembayaran Uang Pengganti Dalam Perkara Korupsi*, Jakarta: Solusi Publising, 2010.
5. Mamudji, Sri, *Metode Penelitian dan Penulisan Hukum*, Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005
6. Muladi dan Barda Nawawi Arief. *Teori-Teori dan Kebijakan Pidana*. Bandung: Alumni, 2010.
7. Marzuki, Peter Mahmud, *Penelitian Hukum Edisi Revisi*, Jakarta: Prenadamedia, 2005
8. Prayitno, Kuat Puji, *Restorative Justice untuk Peradilan di Indonesia (Perspektif Yuridis Filosofis dalam Penegakan Hukum In Concreto)*, Purwokerto: *Jurnal Dinamika Hukum* Vol. 12 No. 3 September 2017.
9. Romli dan Kodrat, *Analisis Ekonomi Mikro tentang Hukum Pidana Indonesia*, Jakarta: Kencana, 2016.
10. Shavell, Steven, *Foundations of Economic Analysis of Law*, Cambridge, Ma: The Belknap Press Of Harvard University Press, 2004.
11. Soekanto, Soerjono et al., *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: PT. Rajagrafindo Persada, 2007.
12. Soekanto, Soerjono, *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia, 2006.

13. Tuanakotta, Theodorus M., *Menghitung Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi*, Jakarta: Salemba Empat, 2009.
14. Tony F. Marshall. *Restorative Justice: An Overview*. London: Home Office Research Development and Statistics Directorate, 1999.
15. Wibisana, Andri Gunawan, *Tentang Ekor yang Tak Lagi Beracun: Kritik Konseptual atas Sanksi Administratif dalam Hukum Lingkungan di Indonesia*, *Jurnal Hukum Lingkungan Indonesia*, Vol. 6, No. 1, 2019
16. Republik Indonesia, Undang-Undang Nomor 31 Tahun 1999 tentang *Pemberantasan Tindak Pidana Korupsi*.
17. Republik Indonesia, Undang-Undang Nomor 20 Tahun 2001 tentang Perubahan atas Undang-Undang Nomor 31 Tahun 1999 tentang *Pemberantasan Tindak Pidana Korupsi*.
18. Republik Indonesia, Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang *Penghentian Penuntutan Berdasarkan Keadilan Restoratif*.