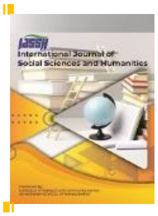

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The Application of Restorative Justice Principles in Handling Corruption Offenses: State Loss Recovery as an Alternative Sentencing Model in Indonesia

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Abstract

Corruption constitutes an extraordinary crime because it causes state financial losses, obstructs national development, and harms public welfare. The handling of corruption offenses in Indonesia still relies heavily on a retributive model that prioritizes imprisonment. This model has not fully optimized state loss recovery. This study analyzes the current handling of corruption offenses and state loss recovery in Indonesia. It also examines the possible use of restorative justice as a limited and complementary sentencing approach. This study uses normative legal research with statutory, conceptual, and comparative approaches. Primary, secondary, and tertiary legal materials are analyzed qualitatively. The findings show that asset recovery in corruption cases remains weak because law enforcement still focuses on imprisonment as the main indicator of success. Restorative justice can support a more effective model by placing state loss recovery as a central objective without eliminating criminal liability. This study proposes the reformulation of Article 4 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. The proposed formulation requires compensation of up to four times the amount of state loss caused by the offender. This concept can strengthen state financial recovery, increase deterrence, and balance legal certainty, justice, and legal utility.

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Introduction

Corruption in Indonesia remains one of the most serious legal problems. It causes substantial state financial losses, obstructs national development, and directly affects public welfare. Corruption does not only remove economic resources from the state. It also lowers the quality of public services, widens social inequality, and weakens public trust in state institutions. From a development perspective, corruption diverts resources that should support education, health, infrastructure, and social welfare programs. These impacts show that corruption produces financial, social, political, and legal consequences. Indonesia Corruption Watch reported that corruption caused approximately IDR 291.5 trillion in state losses during the 2013 to 2023 period. In 2023, state losses from corruption reached approximately IDR 53.36 trillion. One of the largest cases involved forest conversion and caused losses of approximately IDR 41 trillion. These figures show that corruption remains a serious threat to national development (Pusat Edukasi Antikorupsi, 2024). Heywood explains corruption as part of an inequality trap. In that framework, inequality, low public trust, and corruption reinforce one another and produce deeper social injustice (Heywood, 2015). This view confirms that anti-corruption policy must not only punish offenders. It must also recover state losses and repair the social consequences of corruption.

Many studies have discussed anti-corruption policy and restorative justice. Most studies classify corruption as an extraordinary crime that requires strict enforcement and severe punishment to create deterrence. Other studies have begun to explore restorative justice in corruption cases by emphasizing asset recovery and the return of state losses. However, most existing studies remain conceptual. They do not yet offer a clear legal model for applying restorative justice in the Indonesian anti-corruption system. Some studies explain the relationship between restorative justice and state loss recovery, but they do not define its limits, requirements, or procedural safeguards. Existing studies also rarely examine how Article 4 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 can be reformulated. That article states that the return of state losses does not eliminate criminal punishment. This creates a research gap on a model that preserves corruption as an extraordinary crime while optimizing state loss recovery.

This study addresses that gap by analyzing the potential application of restorative justice in corruption offenses with a focus on state loss recovery. Unlike earlier studies that emphasize general concepts, this study formulates an implementation model that can operate within Indonesian positive law. The study has three objectives. First, it analyzes the current handling of corruption offenses and the existing mechanisms for state loss recovery. Second, it examines the compatibility of restorative justice with the goals of anti-corruption law from the perspectives of legal certainty, justice, and legal utility. Third, it formulates a legal policy concept that strengthens asset recovery as a central objective in corruption cases.

This study argues that the retributive approach that dominates corruption enforcement has not produced optimal state loss recovery. Imprisonment remains important as a form of criminal accountability and deterrence. However, in many cases, the state does not recover the full amount of loss caused by corruption. Restorative justice can therefore function as a complementary mechanism. It can strengthen anti-corruption enforcement without removing criminal liability. The main argument tested in this study is that state loss recovery must become a central objective in corruption enforcement through stronger asset recovery and the reformulation of Article 4 of the Anti-Corruption Law. This reformulation can require offenders to compensate state losses up to four times the value of the loss. This model treats economic accountability as a core part of sentencing. It also ensures that anti-corruption enforcement targets imprisonment, state financial recovery, public welfare, and the balance between legal certainty, justice, and legal utility. Based on this background, the main problem in this study is that the current handling of corruption offenses remains dominated by retributive punishment and has not optimized state loss recovery. Indonesia needs a legal policy formulation that integrates restorative justice principles to strengthen asset recovery without reducing the extraordinary nature of corruption and without eliminating criminal liability.

Literature Review

The application of restorative justice in corruption cases has attracted increasing attention among legal scholars and practitioners. The development of criminal law no longer focuses solely on retributive justice. It also considers recovery, responsibility, and the restoration of public interests. This development has encouraged studies on the possible use of restorative justice in corruption cases. However, debate continues because Indonesian law treats corruption as an extraordinary crime. Suhariyanto (2016) examines restorative justice in the sentencing of corporations that commit corruption. He argues that restorative justice can optimize the recovery of state losses caused by corporate corruption. The study focuses on corporate criminal liability and the importance of asset return. It shows that punishment that only emphasizes retribution does not always recover state losses effectively. However, the study focuses on corporations as legal subjects. It does not specifically formulate a broader legal model for applying restorative justice in the anti-corruption system.

Sulantoro (2019) studies the application of restorative justice in corruption offenses as a means to save state finances. The study places state financial recovery as a primary goal. It concludes that the recovery of state finances can serve as an important indicator of successful anti-corruption enforcement. However, the study remains normative and conceptual. It does not propose a concrete implementation model, procedural limits, or specific conditions for applying restorative justice in corruption cases. Rambey (2016) discusses the return of state losses in corruption offenses through substitute money and fines. The study emphasizes that state loss recovery constitutes an important goal in handling corruption cases. It explains the instruments already regulated in Indonesian law. However, the study does not examine the development of restorative justice as part of criminal law reform in corruption cases.

The book edited by Supardi, Suparji, and Machmud (2022) also discusses restorative justice in anti-corruption enforcement. The authors explain that anti-corruption policy should not only punish offenders. It should also focus on state loss recovery. They emphasize the need for a new paradigm that balances punishment and recovery. However, the book mainly provides philosophical and theoretical foundations. Further research must formulate a more operational model within the Indonesian legal system. The previous studies share one common point. They all recognize the importance of state loss recovery as part of anti-corruption policy. However, they have three limitations. First, most studies discuss restorative justice at the conceptual level and do not offer a concrete legal formulation. Second, they do not specifically connect restorative justice with the reformulation of Article 4 of the Anti-Corruption Law. Third, they do not provide an implementation model that balances recovery, deterrence, and legal certainty.

This study offers novelty by formulating a restorative justice model that does not eliminate criminal liability. The model strengthens asset recovery through the reformulation of Article 4 of the Anti-Corruption Law. It proposes compensation of state losses up to four times the amount of the loss caused by the offender. This model treats economic accountability as a sentencing tool. It is expected to contribute to the development of anti-corruption criminal law that is more effective, fair, and oriented toward the recovery of state losses.

Methods

This study uses normative legal research. It examines legal norms, principles, theories, and concepts related to the application of restorative justice in corruption offenses. Normative legal research fits this study because the problem focuses on existing law, or ius constitutum, and possible future legal reform, or ius constituendum, in the Indonesian anti-corruption system. The study uses secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the Criminal Code, regulations related to restorative justice, and relevant court decisions. Secondary legal materials include books, journal articles, research reports, and expert opinions. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references.

The data in this study come from primary, secondary, and tertiary legal materials obtained through library research. This study does not use respondents or informants because it is normative legal research. The sources are selected purposively based on their relevance to the object of research. Primary legal materials are selected because they have binding force and provide the legal basis for analyzing anti-corruption policy and restorative justice. Secondary legal materials are selected from academic works that discuss sentencing theory, restorative justice, asset recovery, and criminal law policy in corruption cases. The study also uses relevant court decisions to analyze legal practice related to the return of state losses. Data selection considers the authority of the source, the currency of information, and its relevance to the research objectives.

The study collects data through library research. This technique obtains legal materials related to the research object by reviewing legal documents, academic literature, journal articles, previous studies, legislation, and court decisions. The process begins with the inventory of primary legal materials governing corruption offenses and restorative justice. It then reviews secondary legal materials discussing justice theory, sentencing theory, restorative justice, and state loss recovery. After collecting the materials, the study classifies them by theme and substance to support systematic analysis. Documentation is also used to identify legal policies and judicial practices relevant to the research object.

The data are analyzed qualitatively through a descriptive-analytical method. The analysis involves inventory, classification, interpretation, and systematization of legal materials. At the inventory stage, the study identifies and groups relevant legal materials based on type and authority. At the classification stage, the materials are arranged according to the research problems, namely corruption enforcement, state loss recovery, and restorative justice. The study then interprets statutory provisions, legal doctrine, and court decisions to identify their meaning and relevance. The results are analyzed systematically through statutory, conceptual, and comparative approaches. This analysis produces a legal formulation that explains the possibility of using restorative justice in corruption offenses to support state loss recovery without eliminating criminal liability.

Results and Discussions

1. Handling of Corruption Offenses and State Loss Recovery in Indonesia

Corruption has a broad impact on the life of the Indonesian state. It causes state financial losses, damages governance, obstructs national development, and reduces public trust in state institutions. For this reason, corruption is categorized as an extraordinary crime that requires special legal instruments. Indonesia regulates corruption through Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. Law enforcement against corruption involves the Police, the Prosecutor's Office, and the Corruption Eradication Commission according to their respective authorities. The enforcement process includes investigation, prosecution, trial, and execution of court decisions. Although Indonesia has multiple legal instruments, the handling of corruption offenses still relies heavily on a retributive approach. This approach prioritizes imprisonment as the main form of punishment. It rests on the assumption that corruption is a serious offense and that offenders must receive severe punishment to create deterrence. This tendency appears in law enforcement practice and court decisions that place imprisonment as the main instrument of anti-corruption enforcement.

The retributive approach has not fully achieved the objectives of anti-corruption enforcement. One important indicator is the gap between the amount of state losses caused by corruption and the amount of assets recovered by the state. In many corruption cases, the state succeeds in punishing offenders but fails to recover the full value of losses. This condition shows that successful punishment does not always mean successful recovery. Normatively, the Anti-Corruption Law has regulated several instruments for state loss recovery. These instruments include substitute money, asset seizure, confiscation of criminal proceeds, and civil lawsuits against corruption offenders. However, their implementation faces serious obstacles. Corruption assets are often transferred to other parties, hidden through money laundering, or placed abroad. These conditions complicate asset tracing and recovery (Supardi, Suparji, & Machmud, 2022, p. 164).

Article 4 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 states that the return of state losses does not eliminate criminal punishment for corruption offenders. This provision shows that Indonesian law still places punishment as the main instrument in anti-corruption enforcement. As a result, state loss recovery often functions as an additional instrument rather than a central legal objective. From the perspective of Gustav Radbruch's legal purpose theory, this condition shows an incomplete balance between legal certainty, justice, and legal utility. Legal certainty may be achieved through punishment. However, legal utility in the form of state loss recovery has not been fully realized (La Ode et al., n.d.). Therefore, Indonesia needs an approach that can integrate punishment and recovery more effectively.

2. Restorative Justice as a Complementary Sentencing Approach

Restorative justice refers to a criminal justice approach that emphasizes recovery from harm, offender responsibility, and the involvement of affected parties. Scholars such as Braithwaite, Umbreit, and Richardson define restorative justice as a philosophy, process, idea, theory, and intervention that focuses on repairing the harm caused by crime (Prayitno, 2012). Dignan also describes restorative justice as a value-based approach to wrongdoing and conflict. It balances the interests of those harmed, those who caused harm, and the affected community (Husain, 2023). Restorative justice becomes an alternative in criminal case resolution because it emphasizes integration between offenders and victims to find a fair solution. It focuses less on abstract punishment and more on responsibility, restoration, and the interests of affected parties. In general, restorative justice contains three basic principles. First, it seeks peace outside the court between offender and victim. Second, it gives offenders an opportunity to accept responsibility and repair the harm caused by the offense. Third, it resolves criminal law problems when the relevant parties reach agreement (Rado & Badillah, 2019; Syahrin, 2018).

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If restorative justice is applied to corruption offenses, it must follow a different design from restorative justice in ordinary crimes. In corruption cases, the harmed party is not only a specific individual. The harmed parties include the state and the public. Therefore, the main form of restoration must be state financial recovery through asset return and compensation for state losses. Restorative justice in corruption cases cannot mean the removal of criminal responsibility. Corruption remains an extraordinary crime. Offenders must still be held accountable through criminal law. Restorative justice should function only as a complementary mechanism that strengthens anti-corruption objectives, especially state loss recovery. This position differs from the ultimum remedium principle. Modderman, as discussed in Indonesian criminal law literature, views criminal law as a last resort when other legal instruments cannot resolve the harm or injustice. In the Indonesian anti-corruption context, however, criminal law operates closer to optimum remedium because corruption requires firm criminal enforcement (Amalia, Fajrina, Asmarani, Sihombing, & Nuraeni, 2024; Danil, 2021). For that reason, restorative justice should not replace criminal law. It should strengthen criminal enforcement by making asset recovery a decisive part of sentencing.

Philosophically, this approach aligns with modern sentencing theory. Sentencing should not only pursue retaliation. It should also pursue restoration, prevention, and public benefit. When the state recovers assets lost through corruption, law enforcement creates a more direct benefit for society. The success of anti-corruption enforcement should therefore be measured not only by the number of offenders imprisoned but also by the amount of state loss recovered. In practice, restorative justice can operate through mechanisms that preserve the extraordinary nature of corruption. Offenders still undergo legal proceedings and remain criminally liable. However, the return of state losses receives central consideration in prosecution and sentencing. This approach allows the state to achieve greater public benefit than a model that focuses only on imprisonment.

Restorative justice in corruption cases also relates to international asset recovery policy. The United Nations Convention Against Corruption places asset recovery as a fundamental principle of anti-corruption law. Strengthening asset recovery through a restorative justice approach therefore aligns with international legal development and the needs of the Indonesian legal system (United Nations Convention Against Corruption, 2003).

3. Reformulation of Legal Policy on State Loss Recovery Through Restorative Justice

The application of restorative justice in corruption offenses requires a clear legal policy reformulation. Without clear rules, the approach may create legal uncertainty or open opportunities for misuse of authority. Any reformulation must preserve the principle that corruption is an extraordinary crime and that it requires firm enforcement. One possible reformulation involves Article 4 of Law Number 31 of 1999 as amended by Law Number 20 of 2001. The provision can be directed to give greater legal space for state loss recovery without eliminating criminal responsibility. In this model, the return of state losses does not become a mere additional factor. It becomes an essential part of the corruption sentencing system. This study proposes compensation of state losses up to four times the value of the loss caused by the offender. The proposal rests on the view that corruption losses are not limited to the administrative amount recorded in a state audit. Corruption also causes social losses, economic losses, and lost development opportunities that should have benefited society. Multiple compensation therefore reflects broader public harm.

The implementation mechanism can proceed through five stages. First, an independent audit determines the amount of state loss. Second, law enforcement authorities conduct provisional seizure of the offender's assets to secure recovery. Third, the offender receives an opportunity to return the state loss and pay additional compensation. Fourth, the return and compensation become factors in prosecution and sentencing. Fifth, if the offender fails to fulfill the obligation, the criminal process continues with heavier sanctions. This model does not protect corruption offenders from punishment. It creates a balance between punishment and recovery. Through multiple compensation, offenders face serious economic consequences. In some cases, this economic consequence can create stronger deterrence than imprisonment alone. From the perspective of justice, the model also gives more concrete benefits to society. Recovered state assets can return to public programs, development financing, and public services. Therefore, restorative justice in corruption cases can operate as a form of criminal law reform that responds to public needs and modern legal development.

Based on this analysis, restorative justice has a limited but important place in Indonesian anti-corruption law. It can be developed as a complementary mechanism that strengthens state loss recovery without eliminating criminal liability. A legal policy reformulation that strengthens asset recovery can improve anti-corruption effectiveness, protect state finances, and balance legal certainty, justice, and legal utility.

Conclusion

This study shows that the handling of corruption offenses in Indonesia still relies on a retributive approach that prioritizes imprisonment. State loss recovery has not received optimal attention. Although Indonesian law already provides instruments such as asset recovery and substitute money, implementation faces several obstacles. The amount recovered by the state often does not match the total loss caused by corruption. The main finding of this study is that restorative justice can be applied in a limited way as a complementary mechanism in corruption cases. It can place state loss recovery as a central objective without eliminating criminal responsibility. This study formulates a conceptual model through the reformulation of Article 4 of Law Number 31 of 1999 as amended by Law Number 20 of 2001. The model requires compensation of state losses up to four times the value of the loss caused by the offender. This finding offers a new perspective that anti-corruption success should be measured not only by imprisonment but also by effective state financial recovery for public welfare and national development.

This study also shows that Gustav Radbruch's legal purpose theory can analyze the problem effectively. The theory emphasizes the balance between legal certainty, justice, and legal utility. It explains why corruption sentencing should not only pursue legal certainty through punishment. It must also pursue utility through state loss recovery and justice for society as the harmed party. Restorative justice is relevant because it explains the importance of recovery as a part of law enforcement. The normative legal method with statutory, conceptual, and comparative approaches also answers the research problem. It enables analysis of applicable norms, legal doctrine, and policy development in anti-corruption law.

This study has several limitations. First, it is a normative legal study that focuses on legislation, theory, and legal concepts. It does not include empirical data on the views of law enforcement officers, judges, or the public regarding restorative justice in corruption cases. Second, it does not directly test the effectiveness of multiple compensation in law enforcement practice. Third, it does not examine in detail the technical aspects of implementation, supervision, and the risk of misuse. Future research should use empirical methods and involve law enforcement institutions and other relevant agencies. Further studies should also design more detailed regulations on requirements, limits, supervision mechanisms, and success indicators for restorative justice in corruption cases.

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The government and lawmakers should consider reformulating Article 4 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 by integrating restorative justice principles that focus on state loss recovery without eliminating criminal responsibility. Law enforcement agencies should also strengthen asset recovery through more effective tracing, seizure, and confiscation of corruption proceeds. Academics and researchers should conduct empirical and comparative studies to test the effectiveness of restorative justice in corruption cases. These studies can support legal policy that is more adaptive, fair, and beneficial for state financial recovery and public welfare.

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Place any acknowledgment here. For example, This work was supported by the Research Fund provided by xxxxxxxxxx. Avoid identifying any of the authors prior to the review. Replace instances where the name of authors appear with ‘author’. I am / We are grateful to two anonymous reviewers for their valuable comments on the earlier version of this paper.

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