



Concept of Restorative Justice in the Crime of Money Laundering which is Detrimental to the State due to Corruption Crimes

Article	Abstract
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INTRODUCTION

Corruption is a problem that cannot be overcome. This expression is a response to the statement that corruption exists in all aspects of human life. To gain profit, acts of corruption in everyday life through giving gifts to get a position or title at work, increasing the price of goods to gain profit, increasing compensation for services to make things easier, and to a higher level, carried out by

workers and state administration officials.¹ The cultural context of Indonesian society contributes to the growth of corruption because people there prefer to tolerate it rather than eradicate it. As we all know, the impact of corruption is very detrimental.² The negative impact of corruption, this crime is classified as an extraordinary crime, because of the unusual character of the crime, an unusual strategy is needed to eradicate corruption, namely by implementing law as the main tool or what is usually called repressive action in taking action against violators for the sake of prevention and community protection.³

According to the Webster Student Dictionary, Corruption is a phrase that comes from the Latin word *corrumpere*. *Corrumpere* can be interpreted as depravity, ugliness, rottenness, bribery, dishonesty, acts deviating from purity, speech that is insulting or slanderous and immoral.⁴ Then the definition of corruption from the Indonesian Dictionary comes from the basic word *corrupt*, which means "likes to accept bribes, rotten, can be bribed (using one's power for personal gain), corrupt", while the definition of corruption is abusing power with the aim of benefiting oneself, such as embezzling money or accepting bribes.⁵ The definition of corruption according to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (*Tipikor Law*), means every person who unlawfully commits an act of enriching himself or another person or a corporation which can detrimental to state finances or the country's economy. that, with any brief understanding of corruption, it can be concluded that corruption is an immoral act, which is detrimental to state finances for oneself or corporations.

Transparency International reported that Indonesia's Corruption Perception Index (*IPK*) decreased by 4 points to 34 in 2022 from 38 in 2021. Indonesia was ranked 110th out of 180 countries in 2022. Indonesia's CPI ranking decreased by 14 points from 2021 which was is ranked 96th 1. Referring to the findings of Transparency International Indonesia, it can be concluded that Indonesia deserves to be categorized as a corrupt country.⁶ In 2023, there will be 161 corruption cases handled by the *KPK*. The largest type of case was bribery or gratification with 85 cases, followed by corruption in the procurement of goods and services with 62 cases. Apart from that, the Corruption Eradication Commission also handled 8 money laundering (*TPPU*) cases.⁷ An example of a corruption case currently occurring is the Mining Business License (*IUP*) of PT Timah Tbk. in Bangka Belitung. The ecological losses caused by this case reached IDR 271 trillion. So it can be said to be the biggest corruption case that has ever occurred in Indonesia.

Wealth obtained from corruption crimes is usually not used by individual or corporate perpetrators directly because of fear or because it is indicated as a money laundering activity. For this reason, the perpetrators usually try to hide the origin of the assets in various ways, including inserting them into the financial system, the methods used are usually by hiding and disguising the origin of the assets with the aim of avoiding tracking efforts by law enforcement officials. usually

¹ Fathul Hamdani, 'Eksistensi Penerapan Hukuman Mati Bagi Koruptor dalam Konteks Hukum di Era Modern' in Achmad Hariri, ed, *Penegakan Korupsi dan Pembaharuan Huk di Indones* (Surabaya: UM Surabaya Publishing, 2021) 56.

² Antonius Sudirman, 'Eksistensi Pidana Minimum Khusus Sebagai Sarana Penanggulangan Tindak Pidana Korupsi' (2015) 44:3 Masal Huk 316-325.

³ Pujiyono, *Tindak Pidana Korupsi* Universitas Terbuka, (2021) [unpublished].

⁴ Eddy OS Hiariej, 'United Nations Convention Against Corruption dalam Sistem Hukum Indonesia' (2019) 31:1 Mimb Huk 112-125.

⁵ Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Bahasa Indonesia* (Jakarta: Departemen Pendidikan Nasional, 2008).

⁶ Nada Naurah, 'Menilik Kasus Pencucian Uang di Indonesia, Ini Statistiknya!', (2023), online: *Good Stats* <<https://goodstats.id/article/menilik-kasus-pencucian-uang-di-indonesia-ini-statistiknya-lonv4>>.

⁷ Cindy Mutia Annur, 'KPK Tangani 161 Kasus Korupsi pada 2023, Gratifikasi Terbanyak', (2024), online: *Kata Data* <<https://databoks.katadata.co.id/datapublish/2024/03/06/kpk-tangani-161-kasus-korupsi-pada-2023-gratifikasi-terbanyak>>.

termed money laundering. The term money laundering has been known since 1930 in the United States, the emergence of this term is closely related to laundry companies. At that time, this crime was carried out by the mafia crime organization through the purchase of clothes laundering companies which were then used by the organization as a place to launder money resulting from illegal activities or proceeds of crime.⁸

The crime of money laundering has long been a concern in parts of the world. Efforts to handle it are carried out nationally, regionally and globally through cooperation between countries. This movement is due to the rise of money laundering, even though not many countries have developed a legal system to combat or define it as a crime.⁹ Money laundering is basically an attempt to process money obtained from crime by a legitimate business so that the money is clean or appears to be halal money. In this way the origin of the money is hidden.¹⁰ Many parties agree that the TPPU Law is more effective in recovering state finances in terms of asset recovery compared to the Corruption Law. The reason is because the TPPU Law uses a new paradigm in handling criminal acts, namely the follow the money approach to detect TPPU and other criminal acts.¹¹

Even though various efforts have been made to reduce the level of corruption in Indonesia, such as the creation of the Corruption Crime Law, the establishment of the Corruption Court, and the formation of "Super Body" institutions such as the Corruption Eradication Commission (*KPK*), corruption in Indonesia is still at a high level. This is proven by the unchanged position of Indonesia as one of the countries with the highest level of corruption calculated by Transparency International (TI). Therefore, cooperation and firm action are needed from various parties to combat this crime. Based on the description above, the author is interested in studying in more depth how restorative justice is implemented in money laundering crimes which cause losses to the State due to criminal acts of corruption in Indonesia?

RESEARCH METHODS

The type of research used in this study is normative legal research, to find legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. Normative legal research is conducted to find solutions to existing legal issues. The results of this study are to provide a prescription for the formulation of the problems raised.

ANALYSIS AND DISCUSSION

Policies Implemented in Handling Corruption and Money Laundering Crime

Indonesia has adopted various regulations and policies to tackle corruption. The regulations and policies implemented in order to overcome corruption in Indonesia are Law number 31 of 1999 concerning the Eradication of Corruption Crimes.

1. The Corruption Law is a law that regulates criminal acts of corruption in Indonesia. This law declares criminal acts of corruption as extraordinary crimes and provides a legal basis for pursuing and punishing perpetrators of corruption.
2. Law Number 28 of 1999 concerning the Administration of a State that is Clean and Free from Corruption, Collusion and Nepotism (*PPNBKKN Law*). This law requires responsible parties

⁸ Tb Imman, *Hukum Pembuktian Pencucian Uang (Money Laundering)* (Bandung: MQS Publishing & AYYCCS Group, 2006).

⁹ Ana Fauzia & Fathul Hamdani, 'Analysis of the Implementation of the Non-Conviction-Based Concept in the Practice of Asset Recovery of Money Laundering Criminal Act in Indonesia from the Perspective of Presumption of Innocence' (2021) 11:1 J Jurisprud 57-67.

¹⁰ Philips Darwin, *Money Laundering "Cara Memahami Dengan Tepat dan Benar Soal Pencucian Uang"* (Jakarta: Sinar Ilmu, 2012).

¹¹ Fithriadi Muslim & Edi Nasution, *Menjerat Koruptor Dengan Undang-Undang Tindak Pidana Pencucian Uang* (Padang, 2011).

in government to carry out their duties without involving acts of corruption, collusion or nepotism. This law forms the legal basis for sound administration and effective governance.

3. Establishment of the Corruption Eradication Commission (*KPK*). Based on Law no. 30 of 2002, the Corruption Eradication Commission was formed. The Corruption Eradication Commission (*KPK*) has the duties of coordination, investigation, investigation, prosecution and supervision.
4. Law Number 13 of 2006 concerning Witness and Victim Protection. Based on this law, the government can provide protection to individuals who report criminal acts of corruption, this is to encourage the public to be more courageous in reporting corruption.
5. Law Number 15 of 2002 concerning the Crime of Money Laundering. This law regulates efforts to prevent and eliminate money laundering related to corrupt funds.

Even though the above regulations exist, there are still several main problems in the enforcement of corruption laws identified by the National Legal Development Agency (*BPHN*), namely:

1. Incompatibility of regulations, because several regulations in the United Nations Convention against Corruption (UNCAC) have not been regulated in the Corruption Law.
2. Low Return on Assets, namely the rate of return on assets resulting from criminal acts of corruption is still low.
3. Difficulties in Handling *TPPU*, in handling money laundering criminal cases there are still obstacles.
4. Prevention is not optimal, meaning that the Corruption Law does not yet regulate prevention in detail, including the whistle-blowing system and *LHKPN* reporting (State Officials' Wealth Report).¹²

Relationship Between Corruption Crimes and Money Laundering Crimes

The crime of corruption and the crime of money laundering have a very close relationship. This can clearly be seen in Article 2 paragraph (1) of Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering. The formulation of the offense in the *TPPU* Law and proof of predicate criminal acts are regulated in Article 3, Article 4 and Article 5. From the formulation of the articles above it appears that the crime of money laundering has special characteristics that are different from other criminal acts, namely that the crime The crime of money laundering is a follow-up crime, while the proceeds of crimes that are processed through money laundering are referred to as core crimes or predicate crimes. So if you look at the chronology of the actions, it is impossible for money laundering to occur without a predicate crime (no money laundering without core crimes) occurring first.¹³

Predicate crimes are crimes whose results are carried out or processed by money laundering, which in the *TPPU* Law is regulated in Article 2, which consists of 26 types of crimes and adds all crimes that carry a sentence of 4 years or more. Apart from that, it is also necessary to understand that money laundering is a follow-up crime, the occurrence of which is very dependent on the existence of the original crime, although each of the two is qualified as a separate crime so therefore

¹² Humas BPHN, 'Tindak Pidana Pencucian Uang Jadi Tantangan Penegakan Hukum Tindak Pidana Korupsi di Indonesia', (2023), online: *Badan Pembina Huk Nas* <<https://bphn.go.id/publikasi/berita/2023051601591781/tindak-pidana-pencucian-uang-jadi-tantangan-penegakan-hukum-tindak-pidana-korupsi-di-indonesia>>.

¹³ Yenti Ginarsih, *Tindak Pidana Pencucian Uang: Dalam Teori dan Praktek* (Mahupiki and University of Sebelas Maret, 2013).

it is best to examine it simultaneously and created in one file with a cumulative arrangement.¹⁴ This understanding will have direct implications for proof, namely that each crime, both predicate crime and follow-up crime, must be proven because it refers to the necessity of cumulative charges, namely that they must be combined in a *concursum realist* approach. The necessity of combining charges also appears in the provisions of Article 74 and Article 75 of the TPPU Law.¹⁵ From the provisions of the article above, the crime of corruption is one of the types of predicate crimes related to the crime of money laundering. A predicate crime is a criminal act that triggers the source of a money laundering crime.¹⁶

Crimes Application of Restorative Justice in the Crime of Money Laundering which is detrimental to the State due to Corruption Crimes

The aim of criminal acts of corruption in Indonesia is to recover state financial losses for the benefit of the people and predict various problems in various fields. Optimizing the recovery of state financial losses is also the basis for formulating punishment for perpetrators of corruption, but in its implementation there are obstacles in the form of substance, structure and culture in efforts to recover state financial losses through punishing perpetrators of corruption.¹⁷

According to Braithwaite, Umbreit and Richardson restorative justice as a philosophy, a process, an idea, a theory and an intervention. Restorative justice is justice that emphasizes repairing losses caused or related to criminal acts by involving all parties (stakeholders). Meanwhile, Dignan put forward the definition of restorative justice as Restorative Justice is a valued 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 to the perpetrator on the one hand and the victim on the other hand as one unit to find remedial solutions.¹⁸

Restorative justice is a form of criminal responsibility that is oriented towards returning losses and returning things to the way they were before the criminal act occurred. This concept is an idea that must be instilled in law enforcers, especially corruption crimes. Welgrave stated that the theory of restorative justice is any action that is oriented towards upholding justice by repairing losses resulting from criminal acts. When related to the return of assets in criminal acts of corruption, the series of actions of tracing, freezing, confiscation, confiscation and finally the stage of returning corrupted state assets is in line with the concept of restorative justice which prioritizes repairing and returning losses caused by criminal acts.

Restorative justice in the law for eradicating corruption has been implemented in Indonesia, which is contained in the Letter of the Chief of Police No. Pol. B / 3022 / parties involved. Apart from that, it can also be seen in the Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated 18 May 2010, one of the points in its contents is an instruction to all High Prosecutors' Offices which contains an appeal that in cases of alleged crimes

¹⁴ Enni Roesnajanti, 'Penerapan Azas Pembalikan Beban Pembuktian Tindak Pidana Pencucian Uang (Studi Putusan Mahkamah Agung RI No. 1454 K/Pid.Sus/2011 dan Putusan Pengadilan Negeri Lamongan No.262/Pid.Sus/2017/PN LMG)' (2020) 4:2 Lex J Kaji Huk dan Keadilan 211-233.

¹⁵ Yusron Ashalirrohman, 'Asset Forfeiture for the Offense of Illicit Enrichment: Between Eradication and Deterrence' (2024) 8:1 Lex J Kaji Huk dan Keadilan 1-12.

¹⁶ *Ikhtisar Ketentuan Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*, by Muhammad Yusuf (Jakarta, 2011).

¹⁷ Budi Suhariyanto, 'Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi demi Optimalisasi Pengembalian Kerugian Keuangan Negara' (2016) 5:3 J Rechts Vinding Media Pembn Huk Nas 421-438.

¹⁸ Nurul Putri Awaliah Nasution, Jubair & Abdul Wahid, 'The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System' (2022) 1:5 Eur J Law Polit Sci 32-41.

corruption crime, people who are aware that they have repaid the State's losses need to be considered not to be followed up based on the principle of restorative justice.

To perfect the concept of restorative justice in criminal acts of corruption, the Deputy Attorney General's Circular Letter was again carried out by the Indonesian Prosecutor's Office with the issuance of SE Jampidsus Number: B765/F/Fd.1/04/2018 on April 20 2018 concerning Technical Instructions for Handling Phase Corruption Crime Cases Investigation, which is basically an investigation, is not only limited to finding incidents of criminal acts of corruption in the form of acts against the law, but also efforts must be made to find out the amount of state financial losses.

The following are several considerations used to apply the concept of restorative justice in criminal acts of corruption, consisting of:

1. With the exclusion of the prosecution of corruption cases with a loss value of Rp. 100,000,000 and below, then law enforcement officials (especially prosecutors) can concentrate more on handling large corruption cases;
2. The costs incurred in handling corruption cases are not commensurate with the value of state losses;
3. The fundamental principles of UNCAC 2003 basically prioritize returning state financial losses (asset recovery), not retaliation against perpetrators.

The definition of restorative justice in the punishment of criminal acts of corruption does not completely eliminate criminal acts, but rather prioritizes the provision of sanctions that focus on crime as a solution to resolve criminal acts of corruption in the form of recovery. Settlement of corruption cases through restorative justice remains in accordance with Standard Operating Procedures (SOP) where the handling of criminal acts starting from the time period and others refers to the Republic of Indonesia Attorney General's Regulation Number: PERJA-039/A/JA/10/2010.

This treatment includes:

1. Data collection and information materials are collected as part of the investigation process.
2. In this process, it must also be determined that the amount of state financial losses is determined solely by good calculations, in coordination with the Internal Supervisory Apparatus (APIP)/BPK/BPKP/Public Accountant.
3. If the parties involved have returned state finances, this must be shown through proof of deposit to the State/regional/village/pekon treasury, taking into account the previously determined limits.
4. Exposure activities are carried out to determine attitudes and here the role of leadership, in this case namely the Attorney General of the Republic of Indonesia/Head of the High Prosecutor's Office/Head of the District Prosecutor's Office/Head of the District Prosecutor's Office is very much needed because it is not regulated by law but is only a form of discretion.

The restorative justice system does not apply to all types of corruption, because the corruption that can be resolved is corruption cases that do not fall within the criminal limits and categories and laws listed previously, namely Republic of Indonesia Law Number 20 of 2001 concerning amendments to Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, taking into account the value of losses and the form of the corruption crime, namely under Rp. 300,000,000,- (three hundred million rupiah).¹⁹

According to Didik Endro Purwoleksono, the concept of implementing restorative justice in the form of returning all proceeds from criminal acts of corruption can be carried out before an investigation is carried out, during an investigation, during an investigation and during examination before a trial. If all the proceeds from a criminal act of corruption are returned by the suspect or

¹⁹ BD Sri Marsita & Sri Humana, *Penyelesaian Perkara Tindak Pidana korupsi Yang Nilai Kerugian Keuangan Negeranya Kecil* (Depok: Raja Grafindo Persada, 2015).

defendant, in essence it can be used as a factor that eliminates the unlawful nature of criminal law, namely criminal acts of corruption, so that the suspect or defendant does not need to be punished.²⁰ There are 3 (three) elements or conditions that cause the loss of the unlawful nature of a criminal act of corruption, namely that the suspect or defendant does not benefit, the state does not suffer harm and the community is served.

If the perpetrator of a criminal act of corruption has returned all the proceeds of the criminal act of corruption along with all the profits obtained from the proceeds of the criminal act of corruption by the perpetrator, then basically the perpetrator does not benefit, the state does not suffer financial losses and the public can be served by returning all the proceeds of the criminal act of corruption along with all the benefits. The purpose of the community being served is that the state can build facilities that are useful for the wider community by returning all the proceeds of corruption along with all the profits. Through this concept, there is a change from follow the suspect to follow the money and follow the assets.

The concept of restorative justice through UNCAC can be applied in Indonesia for several reasons, namely:

1. Referring to UNCAC, corruption is an international crime. This means that the universal principle in criminal law applies that every country is obliged to prosecute and punish perpetrators of international crimes.
2. Ratification of UNCAC by the Indonesian Government is of course based on careful considerations that the contents of the convention are appropriate to the situation and conditions of a country that is actively eradicating corruption.
3. The ratification of UNCAC is valid as a self-executing treaty. This means that it can immediately be implemented as positive law.
4. Ratification of an international convention is subject to the general principle of international law, namely *pacta sunt servanda*, which means that the agreement made by the parties is binding like law. According to Oppenheim, as quoted by Anthony Aust, the principle of *pacta sunt servanda* includes the principles of justice and good faith to implement the contents of an agreement or convention that has been ratified.
5. In the context of the relationship between international criminal law and national criminal law, international criminal law functions as a complement to national criminal law, if the rules contained in ratified international conventions have not been regulated in national law.
6. Based on the principles of international criminal law, namely the principle of *civitas maxima*, it firmly states that there is only one universal legal system that is adhered to by all nations in the world and must be respected and implemented.

Corruption as an international crime is the substance of international criminal law in relation to the understanding of monism and dualism, international criminal law focuses more on the understanding of monism that international law and national law are a unified legal system in the form of rules that bind individuals and countries. or other entities that are not states.

Another reason the concept of restorative justice can be applied in Indonesia is:

1. Based on the 2011 national working meeting held by the Supreme Court, it resulted in an important decision which could later become jurisprudence in the Supreme Court's decision, which was based on Decision No. 1600 K/Pid/2009 concerning considerations of restorative justice. In principle, this jurisprudence can be said to be the birthplace of restorative justice, because according to the Supreme Court, one of the aims of criminal law is to restore the balance that occurs due to criminal acts. One of the objectives of "Restoring balance" in criminal acts of corruption is to restore state financial losses for the benefit of the general public and anticipate crises in various areas of state development.

²⁰ Didik Endro Purwoleksono, *Hukum Pidana*, 1st ed (Surabaya: Airlangga University Press, 2016).

2. Based on the ratification of UNCAC in Law No. 7 of 2006. The ratification of UNCAC by the Indonesian Government is of course based on careful considerations that the contents of the convention are in accordance with the situation and conditions of a country that is actively eradicating corruption.
3. Restorative justice can be applied in Indonesia due to the Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated 18 May 2010 and the Letter of the National Police Chief No. Pol. B/3022/XII/2009/sdeops concerning the concept of Alternative Dispute Resolution (ADR).²¹

CONCLUSION

Based on the discussion above, it can be concluded that Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes still applies retributive justice. In Indonesia, the concept of restorative justice can be applied as long as it does not conflict with previous regulations. Regulations related to the application of restorative justice can be seen in the Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated 18 May 2010 and the Letter of the Chief of Police No. Pol. B/3022/XII/2009 concerning the concept of Alternative Dispute Resolution (ADR). The concept of restorative justice in punishing perpetrators of criminal acts of corruption can be implemented by strengthening norms for returning state losses from being an additional crime to being a basic crime. To anticipate that the perpetrator will not be able to pay the loss, the concept of forced labor can be applied instead of having to imprison the perpetrator of money laundering who causes state losses due to corruption.

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²¹ Helena Hestaria, Made Sugi Hartono & Muhamad Jodi Setianto, 'Tinjauan Yuridis Penerapan Prinsip Restorative Justice Terhadap Tindak Pidana Korupsi Dalam Rangka Penyelamatan Keuangan Negara' (2022) 5:3J Komunitas Yust 112-128.

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