

RESOLVING CORRUPTION CASES BY THE POLICE THROUGH A RESTORATIVE JUSTICE APPROACH TO REALIZE LEGAL PURPOSES

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Abstract

The criminal acts of corruption occurring in Indonesia are currently of significant concern. Corruption is not limited to lower-level government employees; it has permeated the highest echelons and decision-making bodies of the Indonesian government. Whether acknowledged or not, corruption severely impacts state finances, the national economy, and impedes overall national development. Consequently, combating corrupt practices must commence at the policymaking level and extend down to the lowest levels of implementation. Since the inception of Law No. 3 of 1971 aimed at eradicating criminal acts of corruption, subsequently amended to Law No. 31 of 1999 and further revised to Law No. 20 of 2001, numerous individuals involved in corruption have been convicted. However, the existing criminal justice approach to law enforcement has proven insufficient in recovering state financial losses and deterring both corrupt individuals and potential offenders. Consequently, it is imperative to explore innovative approaches to law enforcement to effectively address corruption in Indonesia. One promising approach is transitioning from a punitive criminal justice model to a restorative justice framework. Restorative justice not only seeks accountability for wrongdoing but also focuses on repairing the harm caused to victims and communities. Embracing restorative justice principles in combating corruption could offer a more comprehensive and sustainable solution to this pervasive issue in Indonesia.

Keywords: Law Enforcement, Corruption, Restorative Justice.


1. INTRODUCTION

Corruption has become increasingly pervasive in Indonesia, infiltrating all branches of state institutions, including the executive, legislative, and judicial bodies, and extending into the private sector. Even educational institutions, traditionally seen as bastions against corruption, have not been spared from its influence. Consequently, combating corruption has become a paramount focus for the Indonesian government. Efforts to prevent and eradicate corruption have been undertaken by those vested with executive, legislative, and judicial powers, yielding promising results, evident in the growing enthusiasm for anti-corruption initiatives in remote regions of Indonesia.

The international community has long been concerned about corruption in Indonesia. In 2011, Indonesia became one of the initial subjects of study by countries participating in the United Nations Convention Against Corruption (UNCAC). A gap analysis study compared Indonesia's anti-corruption efforts with the clauses of the UNCAC, highlighting the need for immediate adjustments, particularly in legislative and enforcement aspects.[1]

Transparency International (TI), a non-governmental organization dedicated to combating corruption, annually assesses Indonesia's Corruption Perception Index (CPI). In 2018, Indonesia scored 38 out of 100 in the CPI, a one-point increase from 2017, ranking 89th out of 180 countries surveyed. In 2019, Indonesia's CPI improved slightly to 40, ranking 85th globally and fourth among Southeast Asian countries. However, in 2020, Indonesia's CPI declined to 37, ranking 102nd, marking a three-point decrease from the previous year. In 2021, Indonesia's CPI remained at 38, placing 96th out of 180 countries surveyed. However, in 2022, Indonesia's CPI dropped to 34, ranking 110th globally, reflecting a four-point decline from the previous year.[2]

The following is the Indonesian Perception Index table for the last five (5) years:



Year	GPA/CPI	Rank	Information
2018	38/100	89/180	Increase by 1 point
2019	40/100	85/180	Up 2 points
2020	37/100	120/180	Down 3 points
2021	38/100	96/180	Increase by 1 point
2022	34/100	110/180	Down 4 points

Source data: Indonesian Corruption Perception Index 2022 - Transparency International Indonesia

The Indonesian government's commitment to eradicating corruption is evident through various actions, including the apprehension of corrupt individuals by the Indonesian National Police, the Indonesian Attorney General's Office, and the Indonesian Corruption Eradication Commission. In addition to these enforcement efforts, preventive measures have been intensified, encompassing enhancements to legal frameworks concerning corrupt practices. However, equally crucial is the restitution of the state's economy and finances, which have suffered due to corruption, to safeguard the foundational pillars of the economy and foster national prosperity and development across all sectors, aligning with the nation's legal aspirations.

With this context in mind, the author undertakes research to investigate and present findings in this article titled "Resolving Corruption Cases by the Police through a Restorative Justice Approach to Realize Legal Purposes."

Building upon the aforementioned background, the author identifies the central problem to be addressed, namely: What is the most effective process for resolving corruption cases to be undertaken by the National Police in order to achieve legal objectives?

2. METHOD

The author employs a combination of normative juridical research and empirical juridical research methodologies. Secondary data, sourced from literature through library research, forms the basis of the study. This secondary data is complemented by primary data collected through field studies, with a focus on research conducted at the Directorate of Corruption Crimes within the Criminal Investigation Agency of the National Police of the Republic of Indonesia.

3. RESULT AND DISCUSSION

3.1 Definition and causes of corruption

In the Indonesian context, corruption is described in the dictionary as unethical actions such as embezzlement of funds and acceptance of bribes [3]. The term "corruption" originates from Latin "*corruptio*" or "*corruptus*," which translates to "Corruption" in English, "corruption" in French, and "*corruptie*" in Dutch[4]. According to David H. Bayley, corruption entails private individuals offering incentives to government officials in bad faith, typically through bribery, to induce them to breach their duties [5]. Transparency International (TI) further defines corruption as the misuse of public authority by officials in the public sector, including politicians and civil servants, to improperly and unlawfully enrich themselves or associates.[6]

Additionally, Law No. 31 of 1999 on the Eradication of Corruption Crimes, subsequently amended to Law No. 20 of 2001, provides a legal definition of corruption. It encompasses acts such as unlawfully enriching oneself or others, or corporations, to the detriment of state finances or the economy. It also includes the abuse of authority, opportunities, or resources by individuals in positions of power for personal gain, resulting in harm to state finances or the national economy.

Considering the above definitions, individuals subject to corruption charges, as outlined in Article 1 of Law Number 31 of 1999, include: [7]

1. Civil Servants/State Civil Servants; in Article 2 Paragraph (1) of Law no. 43 of 1999, Civil Servants are divided into 3 groups, namely:



- 1.1. Civil Servants;
- 1.2. Members of the Indonesian National Army;
- 1.3. Members of the National Police of the Republic of Indonesia
2. Every person, every person who is the subject of a criminal act of corruption in this Law can be an individual or a corporation;
3. Corporation.

There are several experts who have stated the factors that cause corruption in Indonesia, including:

1. Ilham Gunawan; which says that there are 3 (three) factors that cause corruption, namely:[8]
 - 1) Political factors, related to power or position;
 - 2) Juridical factors, related to law and law enforcement;
 - 3) Cultural factors, related to loyalty between family and state.
2. Syed Hussein Alatas, said that the occurrence of corruption was caused by the following factors:[9]
 - 1) Absence or weakness of leadership in key positions capable of influencing behavior that tames corruption;
 - 2) The weakness of religious and ethical teachings;
 - 3) Colonialism, because a foreign government does not inspire the loyalty and obedience necessary to establish corruption;
 - 4) Lack of education and poverty;
 - 5) There is no harsh punishment;
 - 6) Scarcity of a fertile environment for anti-corruption behavior;
 - 7) Government structure;
 - 8) Radical change, which makes corruption emerge as a transitional disease;
 - 9) The condition of society is conducive to the growth of corruption.
3. Arya Maheka stated the factors that cause corruption, including:[10]
 - 1) Law enforcement is inconsistent;
 - 2) Lack of an anti-corruption environment;
 - 3) Low income of state administrators;
 - 4) Poverty and greed;
 - 5) Culture of giving tribute, compensation for services and gifts;
 - 6) The consequences of being caught are lower than the benefits of corruption;
 - 7) Permissive or permissive culture, does not want to know and considers it normal if there is corruption because it often occurs;
 - 8) Failure of religious and ethical education.
4. Andi Hamzah believes that the factors that cause people to commit corruption in Indonesia are as follows[11] :
 - 1) A small salary, while necessities;
 - 2) Cultural background;
 - 3) Poor management and less effective and efficient control;
 - 4) Modernization.

Meanwhile, there are several criminological theories regarding the causes of corruption as a crime, namely as follows:[12]

- 1) GONE Theory, submitted by Jack Bologne, covers :
 - (1) Greeds (Greed);
 - (2) Opportunities (Chance);
 - (3) Needs (Need);
 - (4) Exposures (Disclosure).
- 2) Theory $N + K = C$, where N (Intention) + K (Opportunity) = C (Criminal);
- 3) Teori $C = M + D - A$ (Corruption/Corruption = Monopoly/Monopoly + Discretion/policy - Accountability/Accountability).[13]



3.2 Restorative justice

Restorative justice, emerging in the 1960s, aimed to address criminal cases with a different approach. This method emphasizes the active involvement of perpetrators, victims, and the community in resolving criminal cases. In contrast to traditional criminal justice, restorative justice offers a unique perspective on understanding and addressing criminal behavior.

From the restorative justice standpoint, a criminal act is viewed similarly to how criminal law perceives it: as an offense against individuals, society, and social relationships. However, in restorative justice, the victim of a criminal act is not seen as the state but as a private individual, thus making it incumbent upon the perpetrator to mend the relationships damaged by their actions. Here, the interests of the victim take precedence, as the perpetrator has infringed upon the rights of the victim.

Restorative justice prioritizes addressing the needs of victims, families, and affected communities while holding perpetrators of criminal acts accountable[14]. Tony Marshall defines restorative justice as a process where all involved parties collaborate to find solutions for addressing the aftermath of a crime and its implications for the future.[15].

This shift from punishment-focused criminal justice to dialogue and mediation is pivotal. Mediation involves the perpetrator, victim, their families, and other relevant parties reaching an agreement, typically in the form of restitution by the perpetrator to compensate the victim for their losses.

Martin Wright defines criminal mediation as a process where the victim and perpetrator communicate, facilitated by a third party either directly or indirectly. This aids the victim in expressing their emotions and needs and enables the perpetrator to acknowledge and take responsibility for their actions.[16]

Across various countries, restorative justice takes on several forms, including mediation between perpetrators and victims, family group meetings, restorative meetings, community justice councils, and restorative circles or systems.[17]

Before the enactment of Republic of Indonesia State Police Regulation Number 8 of 2021 (Parpol No. 8 of 2021) regarding the handling of criminal acts based on restorative justice, there was a lack of regulatory framework governing the implementation of restorative justice at the investigative level. Consequently, law enforcement officers, particularly the police, often faced criticism from the public due to perceived shortcomings in their duties. Notable cases include the defamation case involving Prita Mulyasari in 2008 and the conviction of Minah's grandmother for stealing three cocoa pods in 2009. However, it is important to note that the police cannot solely be held responsible for these incidents. The absence of legal regulations pertaining to restorative justice at the investigative level, coupled with investigators' adherence to normative positivist thinking, contributed to these challenges.

The concept of restorative justice, as defined in Political Party No. 8 of 2021, entails resolving criminal acts by involving various stakeholders, including the perpetrator, victim, their respective families, community leaders, religious figures, traditional leaders, or other relevant parties[18]. Together, they strive to achieve a fair resolution emphasizing peace and the restoration of the original circumstances.

The transition in the investigative model adopted by the police, shifting from a punitive approach to a restorative one aimed at recovery for both perpetrators and victims, represents not only a technical change but also a transformation in investigative culture. Consequently, a period of adjustment is necessary to transition from previous closed investigative processes to more open and inclusive ones. With regard to the implementation of Political Party No. 8 of 2021 concerning the handling of criminal acts based on restorative justice, attention must be given to several conditions, encompassing both general and specific requirements. General conditions include both material and formal prerequisites.

The material requirements are:

- 1) Does not cause unrest and/or rejection from the community;
- 2) Does not impact social conflict;



- 3) Not potentially dividing the nation;
- 4) Not radicalism and separatism;
- 5) Not a repeat offender of a criminal act based on a court decision, and
- 6) Not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption and a criminal act against people's lives.

The formal requirements that must be met are:

- 1) Peace from both parties, except for drug crimes, this peace is proven by the existence of a peace agreement letter signed by the parties.
- 2) Fulfillment of the rights of victims and the responsibilities of perpetrators, as evidenced by the existence of a statement letter in accordance with the agreement signed by the victim, except for drug crimes. Fulfillment of this right can take the form of returning goods, compensating for losses, replacing costs incurred as a result of criminal acts and compensating for damage caused as a result of criminal acts.

Meanwhile, special conditions are additional requirements for criminal acts:

- 1) Electronic information and transactions;
- 2) Drugs, and
- 3) Traffic

3.3 Law enforcement to realize legal objectives

The prevalence of corruption in Indonesia poses a significant challenge for the government. Corruption isn't confined to lower-level officials; even high-ranking ministerial figures engage in corrupt practices as if it were commonplace. This pervasive corruption isn't merely driven by the necessity to meet basic needs; rather, it often stems from a quest for personal prestige and ambition, driven by desires for material wealth and elevated social status.

The Indonesian government has been relentless in its efforts to combat corruption, striving to enhance the existing legal framework. According to Lawrence M. Friedman, every legal system comprises three subsystems: legal substance, legal structure, and legal culture[19]. These subsystems are frequently analyzed to understand the factors influencing law enforcement. The author elaborates on these subsystems as follows:

3.3.1 Legal Substance

Legal substance refers to the rules, norms, and behavioral patterns within the legal system. It also encompasses the decisions or rules (legislation) formulated within the system.[20] Legislation, as part of legal substance, is created by state institutions for specific purposes, often termed as legal policy.

Legislation governing corruption in Indonesia dates back to January 1, 1918, with the enactment of the Criminal Code[21]. The author will further detail the legislation regulating corrupt acts in Indonesia as follows:

- 1) The Criminal Code (KUHP), the articles that regulate corruption offenses which are office offenses are contained in Article 423 of the Criminal Code and Article 425 of the Criminal Code, while corruption offenses that are related to office offenses are regulated in Article 209 and Article 210 (people who bribe government employees/ active bribery.^[22];
- 2) Regulations on eradicating corruption from the central war authorities;
- 3) Law Number 24 (PRP) of 1960 concerning Investigation, Prosecution and Examination of Corruption Crimes
- 4) Law Number 3 of 1971 concerning Eradication of Corruption Crimes
- 5) Law Number 31 of 1999 concerning Eradication of Corruption Crimes
- 6) Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.



3.3.2 Legal Structure

Talking about legal structures, we are talking about law enforcement officials (Law Enforcement Officer) and law enforcement agencies, the following is the author's discussion:

1) Law enforcement officers(Law Enforcement Officer)

Law enforcement officers in the criminal justice system(criminal justice system) consist of police, prosecutors, judges and correctional institutions, where the implementation of their duties and authority is carried out in synergy so as to create an integrated system(integrated criminal justice system). The human resources directly involved in the law enforcement process are law enforcement officers(law enforcement officers). In this case, the author only focuses on discussing the performance of the Police sub-system as an element directly involved in the law enforcement process in the field of investigation and investigation. In the integrated criminal justice system, the police are at the forefront in conducting inquiries and investigations.

2) Law enforcement agencies

In eradicating criminal acts of corruption in Indonesia, there are several law enforcement agencies that are directly involved in the law enforcement process in cases of criminal acts of corruption, namely:

- 1) National Police of the Republic of Indonesia (Polri);
- 2) Attorney General's Office;
- 3) Corruption Eradication Commission (KPK);
- 4) Judicial institutions;
- 5) Center for Financial Transaction Reports and Analysis (PPATK);
- 6) Financial Audit Agency (BPK);
- 7) Financial and Development Supervisory Agency (BPKP);
- 8) RI Ombudsman.

3.3.3 Legal culture

Legal culture[23], within the context of law enforcement, focuses on the philosophical and societal values that underpin legal attitudes and behaviors. This encompasses the awareness of legal norms, social attitudes, behavioral patterns, and the level of legal knowledge within a society. The influence of legal culture significantly shapes law enforcement efforts, as society views law enforcement as synonymous with the law itself. Failures in law enforcement are often attributed to the patterns and behaviors of law enforcement agencies, perceived as a reflection of the legal structure. Therefore, there is a critical need for legal development initiatives to foster a robust legal culture within society.[24]

The cultivation of legal culture involves raising public awareness of legal principles. Consequently, the state, through its administrators, must continually engage in activities such as legal education, counseling, and exemplary law enforcement to instill a culture of lawfulness and respect for legal norms among the populace. Over time, this leads to a societal shift where breaking the law is no longer considered normal or acceptable behavior.

The three legal systems—legal substance, legal structure, and legal culture—are interconnected and operate in unison to achieve legal objectives. Effective law enforcement hinges on a comprehensive understanding and integration of these systems. Bagir Manan asserts that successful law enforcement is characterized by fairness, justice, and the provision of protection and benefits for all seeking justice.

Law enforcement serves as the mechanism for translating legal ideals into practical reality. It involves monitoring and addressing both existing violations of the law (injustice in progress) and potential unlawful acts (injustice in potential)[25]. Law enforcers, typically comprising police officers and prosecutors, play a pivotal role in this process.[26]

Law enforcement intersects with the legislative process, where the formulation of lawmakers' intentions is manifested in legal regulations. These regulations, in turn, shape the manner in which law enforcement is conducted. Ultimately, the effectiveness of law enforcement is gauged by the



extent to which moral values embedded within the law are upheld and implemented by law enforcement officials within the criminal justice system.[27]

Similarly, in cases of corruption, law enforcement officials—here, focusing on the discussion of the National Police of the Republic of Indonesia—must embody and uphold the moral principles enshrined in the law. In doing so, they must also remain cognizant of and strive to achieve the overarching legal objectives.

Gustav Radbruch, a German legal philosopher, stated that there are three (3) basic ideas of law which are then interpreted as the goals of law, namely Justice, Benefit and Legal Certainty.^[28] Ideally, law enforcement carried out by the National Police against perpetrators of criminal acts of corruption must be able to realize these three (3) legal objectives. It is recognized that it is very difficult to realize these three legal objectives simultaneously. Sometimes justice often clashes with expediency and legal certainty, and vice versa. However, in the condition that you have to make a choice between these three legal objectives, the main choice that takes precedence is justice.

The police as the main gate in the criminal justice system have a role as investigators and investigators of all criminal acts, including criminal acts of corruption. The role of the police, in this case the National Police as investigators, is stated in Law number 8 of 1981 concerning criminal procedural law, in Article 4 Paragraph (1) it is stated that an Investigator is every State Police Officer of the Republic of Indonesia. Meanwhile, the role of the National Police as investigators is explained in Article 6 Paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law which reads, Investigators are (a) Republic of Indonesia State Police Officer; (b) Certain Civil Servant Officials who are given special authority by law.

The authority of the National Police as investigators is to search for and collect evidence, seek information, make arrests, detain and also stop investigations, of course in accordance with the methods regulated in the Criminal Procedure Code (KUHP). The investigator's authority is confirmed in Law no. 8 of 1981 concerning KUHP article 7 paragraph (1), namely:

- a. Receiving a report or complaint from someone regarding a criminal act;
- b. Take the first action at the scene of the incident;
- c. Ordering a suspect to stop and checking the suspect's personal identification;
- d. Carrying out arrests, detention, searches and confiscations;
- e. Carrying out inspection and confiscation of letters;
- f. Taking fingerprints and photographing a person;
- g. Summoning people to be heard and examined as suspects or witnesses;
- h. Bring in the necessary expert persons in connection with the examination of the matter;
- i. Holding an end to the investigation;
- j. Conducting other actions according to the responsible law.

Seeing the magnitude of the Polri's authority mentioned above, it is appropriate that in carrying out law enforcement the Polri must be able to realize legal objectives, including in enforcing the law in cases of criminal acts of corruption. So it can no longer be avoided, the resolution of criminal cases of corruption by the National Police must be carried out through the application of a restorative justice approach or restorative justice. Even though in Police Regulation (Perpol) no. 8 of 2021 in article 5 letter f, regulates material requirements, namely: (f). Not a criminal act of terrorism, a criminal act against state security, a criminal act of corruption and a criminal act against people's lives.

The application of a restorative justice approach to cases of criminal acts of corruption aims to minimize state financial losses that occur due to corruption and maximize recovery of state financial losses. The principles of restorative justice in cases of criminal acts of corruption are the same as the principles of restorative justice in general, where there must be restoration to the situation before the corruption occurred. In this case, if the alleged perpetrator of corruption during the investigation process has returned all state financial losses resulting from the corruption he committed, then the investigation into the criminal corruption case that is being investigated can be stopped.

Based on data obtained by the author from Bareskrim Polri, it can be seen that law enforcement carried out by the Police in cases of criminal acts of corruption through a criminal approach is not able to maximize the rescue or recovery of state financial losses from perpetrators of corruption. Even punishments carried out by the National Police are unable to provide a deterrent effect on perpetrators of corruption. We can see that acts of corruption are increasingly widespread from year to year.

Below is presented data for the last five (5) years of disclosure of cases of criminal acts of corruption committed by the National Police of the Republic of Indonesia, as follows:

No.	Year	Crime total	Crime clearance	State financial losses	Saved state finances	Return of state finances	Amount suspect
1	2018	1472	1003	3.838.011.465.356	3.001.293.930.627	3.001.293.930.627	1003
2	2019	1503	819	1.822.795.307.968	474.818.938.292	474.818.938.292	819
3	2020	1441	625	2.164.481.613.683	356.773.150.085	356.773.150.085	625
4	2021	1034	603	2.146.599.209.043	439.538.998.163	439.538.998.163	603
5	2022	1381	596	5.344.638.602.949	1.197.319.539.814	1.197.319.539.814	596

Data source: Directorate of Corruption and Crime, Bareskrim Polri

Reading the data that the author presented above, it is clear that there is a decrease in the resolution of corruption cases handled by the National Police in 2022. In the table above, it can be seen that in 2022 there will be 2,381 corruption cases, and 596 cases have been processed with a total of 596 suspects person. Meanwhile, state financial losses in 2022 are very large compared to previous years, namely IDR 5.344.638.602.949, however, the state finances that can be saved are only IDR 1.197.319.539.814.

It can be seen from this data that the state finances that can be saved by law enforcement through the criminal approach used by the National Police are not commensurate with the state financial losses that occur due to acts of corruption. Not to mention the very large amount of state money used by National Police investigators in uncovering cases of criminal acts of corruption, namely to uncover one (1) corruption case, the budget is IDR. 208,000,000 per corruption case.

4. CONCLUSION

Corruption is an extraordinary crime, demanding equally extraordinary measures for its eradication. However, despite concerted efforts, corrupt practices persist, with even high-ranking officials in the Indonesian state administration being implicated. The very institutions tasked with combating corruption find themselves ensnared in its web. Despite stringent enforcement by bodies such as the Corruption Eradication Committee, the Police, and the Prosecutor's Office, corruption continues to plague society unabated. Even harsh penalties fail to deter corrupt individuals from engaging in illicit activities. Confronted with this stark reality, the author contends that a paradigm shift is imperative in addressing corruption cases handled by the police to achieve desired legal objectives. This shift entails adopting a restorative justice approach, which diverges from conventional concepts of law enforcement. Under this approach, perpetrators of corruption are compelled to reimburse all state financial losses incurred, serving as restitution in lieu of punitive measures.



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