

Petty Corruption Handling That Unconformity The Elements Of Restorative Justice Approach

Anisah Azzah Zhafirah Rukhus

Universitas 17 Agustus 1945 Surabaya, anisahzhafirah28@gmail.com

Wiwik Afifah

Universitas 17 Agustus 1945 Surabaya, wiwikafifah@untag-sby.ac.id

Muh Jufri Ahmad

Universitas 17 Agustus 1945 Surabaya, djufriahmad@untag-sby.ac.id

Abstract

This research focuses on handling petty corruption which does not meet the elements of using a restorative justice approach. Petty's various corruption crimes have been detrimental to state finances. The limitation on state losses that can be categorized as petty corruption is below 100 million rupiah, while the costs that will be incurred to complete the formal legal process can reach 100 million rupiah or more. An alternative for handling petty corruption cases is by applying a restorative justice approach model to reduce state losses. The research was carried out using normative research methods with a conceptual approach and a statutory approach. The research results show that the restorative justice approach cannot be used as an alternative to resolve petty corruption because corruption regulations require criminal punishment for perpetrators of corruption even though they have repaid state losses. The restorative justice approach is not used in order to provide a deterrent effect for perpetrators of corruption and prevent the recurrence of criminal acts of corruption as well as a precedent for perpetrators who have the potential to commit subsequent criminal acts of corruption. An alternative punishment that can be used is to increase the fines for corruptors, so that the government can cover state losses that occur while case files are being processed in court.

Keywords: petty corruption, restorative justice and punishment

Introduction

The handling of corruption cases is increasing every day. Indonesia is one of the countries in the world that is facing a large increase in the number of corruption cases. The increasing number of corruption cases is a serious problem

that will threaten the country in terms of economic stability. Corruption that occurs in a country will clearly harm all aspects and will hinder the process of sustainable development[1]. Corruption is also called extraordinary crime, so the handling should also use unusual handling.

Corruption is one of the most common crimes committed by government officials. Corruption is also defined as the abuse of one's authority for personal gain. The impact of this corruption will also harm the personal rights of the small community. Therefore, the government should require restitution because corruption has taken away the rights of small communities and even resources that should belong to small communities[2]. Regulations related to handling corruption cases in Indonesia have actually been contained in several laws and regulations that have been made by the government as much as possible as a form of government preventive efforts from corruption cases. Government regulations governing corruption include Law Number 31 of 1999 which has been amended by Law Number 20 of 2001 concerning the Eradication of Corruption, as well as Law Number 15 of 2002 which has been amended by Law Number 25 of 2003 concerning the Crime of Money Laundering. However, if reviewed further, there is no government regulation that is in line with the goal of corruption, namely recovering state assets that have been lost.

The government should optimize the handling of corruption cases with a more professional approach in order to achieve the main goal of eradicating corruption, namely restoring state losses. State losses caused by acts of The crime of *corruption* varies from small scale or commonly referred to as *Petty corruption* to large scale or commonly referred to as *big fish*. *Petty corruption* is an act of *corruption* with a small amount and the perpetrators are officials who are in a government institution because of their needs, so this *corruption* is also known as *corruption by need*[3]. From this understanding, the author takes the limitation of *petty corruption* to corruption on a scale below 100 million.

The concept of corruption that has been used by the government to punish perpetrators of corruption crimes is no longer in line with the main objective of handling corruption in Indonesia. The main goal of eradicating corruption in Indonesia is to restore state finances that have been lost. Meanwhile, when referring to the existing regulatory provisions in Indonesia, the government is still using the concept of retributive justice or the government's focus in efforts to eradicate corruption is still in the form of retaliation against the perpetrators of corruption, not focusing on restoring lost state finances. The main focus in this research is the effort to recover state losses that have been lost in the crime of petty corruption without eliminating the deterrent effect of the perpetrators of corruption. Based on the Circular Letter by the Attorney General for Special Crimes Number: B-1113/F/Fd.1/05/2010 concerning Priorities and Achievements in Handling Corruption Cases explains the priority of handling

cases that are big fish and prioritize a sense of justice, especially for people who consciously return state losses, especially related to corruption cases that have a relatively small value of financial losses, it is necessary to give consideration not to be followed up because the costs incurred for the purposes of law enforcement against corruption cases with small amounts of state losses and in handling them take more time and costs than the value of state losses arising from the corruption case. This circular letter is sufficient to explain that petty corruption cases, if elevated to court proceedings, will indeed incur more budget than before. However, alternative case resolution. The crime of petty corruption offered by this circular letter, namely restorative justice, will clearly eliminate the deterrent effect for perpetrators of corruption and will make the potential for this crime to recur greater. Departing from this problem, the author made a research entitled "*Petty Corruption Handling That Unconformity The Elements Of Restorative Justice Approach*".

Methodology

This research is a *normative legal research*. This research is a process to find a coherence truth or legal rules, legal principles, and doctrines to answer *legal issues* faced (*know-how*), namely related to petty corruption with a restorative justice *approach* using a *statute approach* and *conceptual approach*.

Results and Discussion

The Character of Corruption as a Special Crime

The crime of corruption is one of the types of special crimes in addition to having certain characteristics that are different from criminal law in general, such as the existence of procedural law deviations and when viewed from the material regulated. Therefore, corruption crimes are directly or indirectly intended to minimize the occurrence of leaks and irregularities in the state's finances and economy[4]. Therefore, the government should increase efforts to prevent corruption crimes, both preventive and repressive efforts, with the intention that the wheels of the economy and development can be carried out properly if corruption crimes can be eradicated. The eradication of corruption will eventually lead to an increase in development and the welfare of society in general.

One of the characteristics of corruption is that corruption is classified as a *crime* that is always correlated with money and power[5]. This is contained in Article 3 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of *Corruption*, which states that Corruption is an act with the aim of benefiting oneself or another person or a corporation, abusing the

authority, opportunity or means available due to position or position that can harm the state or the state economy. From Article 3, it can be concluded that the perpetrators of corruption usually have power, be it political, economic, bureaucratic, legal or other powers. Because they have power, the perpetrators are usually people known to the public[6]. Corruption is also a part or subsystem of organized crime.

Organized crime has a link to organized corruption, where the acceptance of small bribes, which is a less serious offense, can develop into more serious areas, namely crime[7]. Small-scale corruption or what is referred to in this research as petty corruption is what, if not followed up firmly, will develop into organized crime. Organized corruption does not have massive activities used by a single person, but organized corruption is born from the bureaucracy and overturns the existing organizational structure.

Along with the development of petty corruption, which has the potential to become an organized crime that will not only harm state finances but also violate the social and economic rights of the community, it is only natural that corruption is classified as an extraordinary crime. With the benchmark that corruption is an extraordinary crime (extra ordinary crimes) because it is systematic, endemic and has a very wide impact (systematic and widespread) which not only harms state finances but also violates the social and economic rights of the wider community so that its prosecution needs efforts comprehensive extra ordinary measures so that many regulations, institutions and commissions are formed by the government to deal with it[8].

Petty Corruption in the Crime of Corruption

In the Circular Letter by the Attorney General for Special Crimes Number: B-1113/F/Fd.1/05/2010 on Priorities and Achievements described in the background of the research problem. If analyzed further, there are several weaknesses in this circular letter, one of which is that it does not specify the limits of corruption crimes with small losses. Of course, with the typology of the Indonesian territory, it is rather difficult to determine the limits of petty corruption and also the problem is that the binding force of this circular is only on the prosecutor's office and does not bind other judicial institutions. This is the point of study whether it is still necessary to regulate *petty* corruption in a binding legislation as a whole. In the discussion on the limitation of the amount of losses in petty corruption, as reported by several media, the prosecutor's office implicitly proposed a limit of 50 million rupiah, which was discussed together with the KPK and the Police. Meanwhile, the Indonesian National Police through the Head of the National Police Criminal Investigation Agency, Commissioner General Ari Dono Sukmanto, proposed a limit of 100 million rupiah, method. Therefore, the object of study of *petty corruption* in this study is the limit below 100 million.

The existence of this circular raises many questions regarding law enforcement for corruption that is of small value and does not cause financial losses to the State. This circular letter builds the perception that law enforcement prioritizes prosecuting corruption with large amounts of State financial losses, so that law enforcement officials view *petty corruption* as a waste of time and money for the State[9].

So far, corruption crimes that have a loss value below 100 million are still widely tolerated by various parties rather than eradicating them. Even though corruption crimes that have a small loss value are still included in the crime of corruption in crimes that can touch various interests concerning human rights, state ideology, economy, state finances, national morals and so on which are evil behaviors that tend to be difficult to overcome if not immediately eradicated[10].

Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of the Crime of Corruption in the preamble has considered that corruption has been widespread. This means that it is not only detrimental to the state but has also violated the social and economic rights of the community at large so that corruption needs to be classified as a crime whose eradication must be carried out in an extraordinary manner even though the corruption committed has a value of state losses below 100 million, it is still said to be a special crime because it has the same characteristics as corruption in general. As stated in Article 3 of Law No. 20 of 2001 on the Amendment to Law No. 31 of 1999 on the Eradication of Corruption, the perpetrator of corruption is usually always someone who has the authority, opportunity, means, position or position that has the potential to be misused as a way of petty corruption. This means that the perpetrators of corruption are clearly not low-level people who deserve the mercy of being released. However, the government should take a firm stance to stop this *petty corruption* case so that it does not happen again and again in the future.

Requirements for a *Restorative Justice* Approach in Resolving *Petty Corruption*

Restorative justice is one of the appropriate approaches to overcome various settlements in criminal offenses using this method. Restorative justice approach in solving criminal cases or commonly referred to as penal is considered as a new method. In fact, the patterns used are mostly rooted in the local wisdom values of primitive society.[11]

The mechanism of criminal procedure and justice that focuses on punishment is changed into a process of dialogue and mediation to create an agreement on a fairer and more balanced settlement of criminal cases for victims and perpetrators. Meanwhile, according to Jusup Jacobus Setyabudhi, victims of corruption consist of two types. First, direct victims, namely victims who are expressly determined in Law No.31 of 1999 concerning the Crime of Corruption, namely the State. And the second indirect victim consists of indirect victims in sich, namely the community or the

people because the loss of state finances or the state economy will indirectly harm the interests of the community or the people. Second, the victims of the news about the allegation that someone has committed an act of corruption, namely the person being reported, the public, and the journalist who reported it[12].

From this statement, it can be concluded that the main victim of the perpetrators of corruption crimes is the community itself. Therefore, referring to the opinion of Willis & Hoyle above that the *restorative justice* process must bring together the perpetrators and victims involved, it will be impossible if *petty corruption*, which is the object of study of this research, is resolved through a *restorative justice* approach model. Because to determine the people who are victims in *petty corruption*, further analysis must be carried out so that the government can know the people involved in petty corruption and the people who are not involved. It is clear that it will take more time and money for the government to conduct further studies in order to determine the people who deserve to be called victims of *petty corruption*. Therefore, this is clearly inefficient to do because instead of recovering state finances that have been lost, it will actually increase state losses even more later.

However, along with the development of positive legal regulations in Indonesia, the government has regulated this *restorative justice* approach model specifically in several crimes that can be resolved with *restorative justice*. In the Appendix to the Decree of the Director General of the General Courts Agency Number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 concerning Guidelines for the Application of Restorative Justice in the General Courts Environment, several types of cases that can be resolved through Restorative Justice mechanisms are described:

1. Types of Minor Criminal Cases
2. Types of Juvenile Offenses
3. Types of Women Against the Law Cases
4. Type of Narcotics Case.

The model for the application of Restorative Justice in the case mentioned in number 2 letter A related to the application of approaches that can be resolved with *restorative justice* is a minor criminal case with criminal threats as stipulated in articles 364, 373, 379, 384, 407 and article 482 of the Criminal Code with a loss value of not more than Rp 2,500,000 (two million five hundred thousand rupiah). So with the entry into force of this article, if we refer to the limitation of *petty corruption*, which is the object of this research, which is not more than 50,000,000, it means that the settlement of *petty corruption* with *restorative justice* cannot meet the requirements of this article because the limitation of losses allowed to use restorative justice settlements in this article is only under 2,500,000, not under 50,000,000.

Alternative Settlement of *Petty Corruption* in the Focus of Returning State Losses

The purpose of eradicating corruption in Indonesia can be seen in the weighing points of letters a and b of Law No. 31 of 1999 concerning Eradication of Corruption (Corruption Eradication Law) which states that the eradication of corruption is carried out to restore the State's finances and economy. One of the ways to restore the state's finances and economy is by recovering state financial losses as stated in Article 4 Jo. Article 18 (1) letter b of Law No. 31 of 1999 Jo. Law No. 20 of 2001. However, in the provisions of Article 4 of the Anti-Corruption Eradication Law which states that the return of State financial losses or the State economy does not eliminate the criminalization of the perpetrators of criminal acts as referred to in Article 2 and Article 3 of the Anti-Corruption Eradication Law. This means that even though the perpetrator of the crime of corruption has returned the state finances that have been corrupted before the court decision is handed down, the legal process continues because the criminal act has occurred (*voltooid*).

If the government wants to eradicate corruption in line with the weighing points of letters a and b of Law No. 31 of 1999 concerning the Eradication of Corruption, the government should increase fines related to the settlement of petty corruption instead of restorative justice, which has not been regulated in Indonesian regulations. With the increase in fines in petty corruption cases, the government does not need to worry about the costs in the investigation process which will later come out more. Increasing the punishment model. Fines in petty corruption can be used to cover state losses as well as to pay for the process of the petty corruption file being tried in court[13]. Government regulations governing corruption include Law Number 31 of 1999, which has been amended by Law Number 20 of 2001 concerning the Eradication of Corruption, and Law Number 15 of 2002, which has been amended by Law Number 25 of 2003 concerning the Crime of Money Laundering. However, until now there have been no regulations governing efforts to recover state losses that have been lost as a result of *petty corruption* that can suppress state losses from increasing.

In the above laws *and* regulations, there is no regulation that regulates that corruption crimes with small losses can be applied to the *restorative justice* approach model. Article 603 of the Criminal Code states that "Every person who unlawfully enriches himself, another person, or a corporation to the detriment of state finances or the state economy, shall be punished with life imprisonment or a minimum of 2 years and a maximum of 20 years." From this article, it can be concluded that everyone who commits corruption is subject to punishment in the form of fines and criminal proceedings regardless of the size or size of the state losses that have been calculated.

The fines that will be imposed on perpetrators of corruption crimes also vary in amount based on the amount of state losses arising from the corruption cases that have been committed. This is regulated in Article 12 of Law Number 20 of 2001 concerning Corruption (Anti-Corruption Law) which regulates the punishment for

civil servants or state officials who receive gratuities will be subject to life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years or a fine of at least IDR 200 million and a maximum of IDR 1 billion. This fine will be applied based on the calculation of state losses that have been made by the perpetrators of corruption. This is regulated in such a way because the state losses caused by corruption crimes vary in value. Starting from a small scale or what is commonly referred to as *Petty corruption* to a large scale or what is commonly referred to as *big fish*.

By looking at the current regulatory provisions, the provision of a punishment model in the form of *retributive justice* is the main choice because only this punishment can create a sense of deterrent effect on the *perpetrators* of corruption. *The* sense of deterrent effect that will arise in *retributive justice* will function for the perpetrators so as not to repeat or prevent perpetrators of corruption crimes who have the potential to repeat themselves in the future if the perpetrators are not given punishment in the form of punishment, only required to return existing state losses. The shortcomings of the *retributive justice* approach model have not been able to recover the losses and suffering experienced by victims. Even though the perpetrator has been found guilty and sentenced, the victim's condition cannot return to normal.

Conclusion

The goal of eradicating corruption offenses is to recover the state losses that have been lost. Including the crime of petty corruption, the main focus of eradication is the recovery of state losses. However, if petty corruption is brought to trial, it will incur a larger budget. Therefore, the prosecutor's office suggested a restorative justice approach for petty corruption. However, Restorative Justice if applied continuously to perpetrators of corruption will eliminate the deterrent effect. The effort that should be taken is to increase the fines for perpetrators of corruption to restore the state losses that have been lost while still not eliminating the criminal penalties.

Acknowledgments

The authors would like to thank the institutions that have contributed to the writing of this journal. Thanks to Universitas 17 Agustus 1945 Surabaya for the support provided. The authors also appreciate the Faculty of Law of Universitas 17 Agustus 1945 Surabaya for providing funding for this research. The authors would like to thanks to each author in the sources used in the writing of this journal, who

have made valuable contributions through their research and findings.

I would like to thank Mrs. Wiwik Afifah, S.Pi., S.H., M.H., as the Head of the S1 Study Program of the Faculty of Law, Universitas 17 Agustus 1945 Surabaya, for providing information and support during the research process.

Finally, the authors would like to thank all the participants of the International Conference of Innovation and Community Engagement - ICoICE for participating and providing valuable input in the discussions related to this topic. Without the support of all parties, the writing of this journal would not have been possible.

References

- [1] Jon Vrushy, "*Global Corruption Barometer Asia 2020 Indonesia*", Jakarta: Transparency International Indonesia. 2020, pp. 7
https://riset.ti.or.id/wp-content/uploads/2020/12/Report-GCB-Indonesia-Final_web.pdf
- [2] Ury Ayu Masitoh, et al, "*An Analytical Study of Article 35 of UNCAC: Providing Restitution for Victims of Corruption Crimes*" South Tapanuli Institute of Education: Journal of Education and Development, Vol. 9 No. 3, 2021, pp. 183, <https://media.neliti.com/media/publications/562220-kajian-analisis-pasal-35-uncac-gift-59fc92ae.pdf>
- [3] I Made Agus et al, "*Settlement of Corruption with Small Losses*", Indramayu: Adab, 2023
- [4] Lilik Mulyadi, "*Corruption in Indonesia (Normative, Theoretical, Practice and Problems)*", PT. Alumni, Bandung, 2007, p. 2. 2.
- [5] Rohim, *Modus Operandi of Corruption*, Pena Multi Media. Jakarta. 2008. Page. 3.
- [6] Yudi Kristiana. *Investigation Techniques and Corruption Criminal Investigation*. Thafa Media, Yogyakarta.2018. Page. 1.
- [7] Edlin H. M. Mandak, "*Government Efforts in the Process of Proof of Corruption*", Journal of Legal Sciences, Sam Ratulangi University, Vol. IX/No. 1/Jan-Mar/2020.
- [8] Ifrani, "*Corruption Crime as an Extraordinary Crime*", Junral Ilmu Hukum, Universitas Lambung Mangkurat/Vol. IX/No. 3/December/2017
- [9] Anggi Dewinta Chairani, "*Efforts to Eradicate Petty Corruption or Illegal Collection in Public Services*", Journal of Legal Sciences, Vol. 4, No. 2, Faculty of Law, Mpu Tantular University, Jakarta: 2020,
- [10] Evi Hartati, *Corruption Crime*. Sinar Grafika. Jakarta. 2009. Page. 2.
- [11] Andi Eva Kurniaty, *Restorative Justice in the Juvenile Justice System*, (Makaassr: Kretakupa Print Makassar, 2018), p
- [12] Asriana Issa Sofia, *Independent Research, Communities as Victims as well as Perpetrators in Corruption in the Public Service*

Sector,

Paramadina University, Jakarta: 2020

[13] Siti Nurhaliman, *Elimination of Corruption Crimes through the Return of State Losses*, Vol. 1, No. 11, Center for Constitutional Studies and National Legislation, Faculty of Sharia and Law, UIN Hidayatullah Jakarta, 2017.