



# Restorative Treatment Against Corruption Inmates

Gialdah Tapiansari Batubara<sup>(✉)</sup>, Rd Dewi Asri Yustia, and Tia Ludiana

Pasundan University, Bandung, Indonesia  
gialdah.tapiansari@unpas.ac.id

**Abstract.** The eradicating corruption crimes in Indonesia still adheres to retributive justice in sentencing the corruption crime offenders. However, the retributive justice approach is not in line with the primary purpose of eradicating corruption crimes. The retributive justice approach has also been unable to realize the purposes of sentencing and the purposes of treatment. The discussion of this problem is carried out using a qualitative method. This paper aims to identify the urgency of changing the sentencing and the treatment model for the inmates of corruption crimes and analyze the sentencing and the treatment model for the inmates of corruption crimes based on the principles of restorative justice. The corruption crime inmates' treatment in prisons carried out by the state is essentially an embodiment of justice that aims to make a deterrent effect. However, empirical facts show that the imprisonment of corruption crimes as sentencing and the treatment program in prison carried out by the state for the inmates of corruption crimes has been unable to realize the purposes of sentencing and treatment. The punishment of corruption crime offenders based on the principles of restorative justice is punishment in the form of fines and social work. The use of fines must coincide with the use of social work sanctions. The treatment of corrupt crime inmates based on the principles of restorative justice is the inmates' treatment carried out in society, not prisons.

**Keywords:** Treatment · Inmates · Corruption · Restorative Justice

## 1 Introduction

In Indonesia, most crimes resolved by the Criminal Justice System lead to imprisonment, including corruption. The eradication of corruption crimes is carried out in other countries in various ways. Imprisonment to eradicate corruption crimes in Indonesia cannot be avoided. In Indonesia, corruption eradication norms have been designed in such a way as to facilitate comprehensive and systematic efforts to eradicate corruption. One of them stated in Law Number 31 of 1999 Juncto. Law Number 20 of 2001 about the Eradication of Corruption Crimes (Pemberantasan Tidak Pidana Korupsi). One of the corruption eradication efforts found in this Law is the imprisonment of offenders of corruption crimes. Most corruption crimes in Law about the Eradication of Corruption Crimes use imprisonment, even for corruption crime inmates who do not have sufficient property to pay punitive damages. Imprisonment is again the top choice to apply (Undang-Undang Republik Indonesia Nomor 31 Tahun 1999 Tentang Pemberantasan

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Tindak Pidana Korupsi 1999). Such formulation shows that eradicating corruption in Indonesia still adheres to retributive justice in sentencing corruption crime offenders. In the retributive justice approach, sentencing is legitimized as a means of retaliation for a criminal act that someone has committed. In this case, the criminal act is equalized to immoral acts in society. Therefore the offender must be sentenced. By this approach, the sentencing of corruption crime offenders is freed from any purpose other than retaliation. The offender's guilt or sin can only be complied with suffering in the form of imprisonment (Fatic 1995).

Based on Kant and Hegel's opinion, the retributive justice approach is a legal view directed to the past (backward-looking), not the future (Remmelink, 1993). Whereas as it is known that *Lex prospect*, nonrespicit - the Law looks forward, not backward. The retributive justice approach is not in line with the primary purpose of eradicating corruption crimes: the return of assets. The retributive justice approach has also been unable to realize the purposes of sentencing (especially the purpose of treatment). From the explanation above, the Indonesian government should start evaluating law enforcement on corruption crimes. The first action that may be taken is to stop using imprisonment to the corruption crime offenders. There must be exceptional, comprehensive, and continuous efforts to change the handling of corruption crime. One is changing the sentencing and the treatment model for the offender of corruption crimes. A model should be applied for inmates' sentencing and treatment, especially for corruption crime inmates, based on the principles of restorative justice.

## **2 Method**

The discussion of this problem is carried out using a qualitative method. This paper aims to identify the urgency of changing the sentencing and treatment model for inmates of corruption crimes and analyze the sentencing and treatment model for the inmates of corruption crimes based on the principles of restorative justice. The process of data collection is carried out through a literature study. The primary references from Pancasila and Law Number 31 of 1999 Juncto Law Number 20 of 2001 About the Eradication of Corruption Crimes (*Pemberantasan Tidak Pidana Korupsi*) are collected and then used for analysis.

## **3 Result and Discussion**

### **3.1 The Urgency of Changing the Sentencing and Treatment Model for the Inmates of Corruption Crimes**

In Indonesia, most crimes resolved by the Criminal Justice System lead to imprisonment, including corruption. Most corruption crimes in Law about the Eradication of Corruption Crimes use imprisonment. The corruption crime offenders' sentencing through imprisonment has not shown advantages for eradicating corruption crime. Even if imprisonment makes the offender's situation worse, it does not impact achieving the sentencing purpose. Therefore, imprisoning corruption crime offenders is not the best way to eradicate corruption.

Empirical facts show that overcrowding, prison facilities, and infrastructure currently does not support the inmates' treatment program process (2021). Empirical facts show negative perceptions from the public towards law enforcement of corruption crimes, one of which is towards Komisi Pemberantasan Korupsi (Kamil 2022). However, this assessment cannot be equalized against other institutions). Empirical facts show that public perception of corruption crime inmates considered that they do not show any shame, guilt, or regret. On the contrary, they remain happy, full of smiles and laughter, with their heads upright in contrast to other criminal offenders. Empirical facts show the different treatment received by corruption crime inmates in prisons where the corruptors are placed in one cell alone, separate from other inmates with good facilities and the emergence of supply and demand relationships). So, prisons are considered unable to accommodate the function of prisons as a place for corruption crime inmates' treatment (Hariadi 2016).

The corruption crime inmates' treatment in prisons carried out by the state is essentially an embodiment of justice that aims to make a deterrent effect. So that these offenders realize their mistakes, be able to improve themselves, and stop doing the crimes they have committed. Later they can be accepted back by society when they are free, as well as being a lesson and providing a preventive effect for others who will commit the same criminal act. However, empirical facts show that the treatment program in prison carried out by the state for the inmates of corruption crimes has a small contribution to a better life. So it cannot realize the purpose of sentencing and even eradicating corruption.

The imprisonment of corruption crimes is not in line with the primary purpose of eradicating corruption crimes: the return of assets. The imprisonment of corruption crimes has also been unable to realize the purposes of sentencing (especially the purpose of treatment).

The imprisonment of corruption crimes does not impact reducing corruption crimes cases (Indonesia Corruption Watch 2021). Corruption crimes' character and modus operandi are different from other conventional crimes (Indonesia Corruption Watch 2021). These crimes involve specific networks and certain circles (Indonesia Corruption Watch, 2021) (Rahman, Fathur; Baidhowi, Achmad; & Sembiring, 2018), followed by other criminal acts, including money laundering (Kasi Penerangan Hukum, 2022) and business crimes. The current social, economic, and political conditions have given room for massive, systematic, and structured corruption crimes in many sectors of life (Indonesia Corruption Watch, 2021). Corruption crimes can involve sector collaboration, including business and tourism (Tanjung, 2018).

Most corruption crime offenders are competent people. According to a study, corrupt crime offenders have some excellence against the wardens. The inmates of corruption crime are people who have intellectual intelligence above the wardens. They no longer need guidance or training from the wardens because they have competency (Indonesia Corruption Watch 2021) (Hariadi 2016) (YUSTIA, Rd. Dewi Asri; BATUBARA, Gialdah Tapiansari; LUDIANA 2021). The application of imprisonment for corruption crimes has been ineffectively used in eradicating corruption crimes. The economic impact of imprisonment for corruption crime offenders puts the country in a position of losing money for the second time.

### 3.2 The Sentencing and Treatment Model for the Inmates of Corruption Crimes, Based on the Principles of Restorative Justice

As explained in the introduction section, the Indonesian government should start evaluating law enforcement on corruption crimes. The first action that may be taken is to stop using imprisonment to the corruption crime offenders. There must be exceptional, comprehensive, and continuous efforts to change the handling of corruption crime. One is changing the sentencing and the treatment model for the offender of corruption crimes. A model should be applied for inmates' sentencing and treatment, especially for corruption crime inmates, based on the principles of restorative justice.

The punishment of corruption crime offenders based on the principles of restorative justice is punishment in the form of fines and social work. The fines must remain the primary sanction in corruption crimes. Social work sanctions have not been accommodated in Law Number 31 of 1999 Juncto. Law Number 20 of 2001 about the Eradication of Corruption Crimes (*Pemberantasan Tidak Pidana Korupsi*). In the future must be one of the primary sanctions in addition to fines sanction. The use of fines must coincide with the use of social work sanctions.

In this sentencing model, inmates' treatment for corruption crimes is carried out in society, not prisons. Corruption is detrimental not only to the state but also to society. Therefore, the treatment model for the corruption crime inmates must involve society as the crime victims. This treatment model is for the corruption crime inmates' treatment based on the principles of restorative justice. The treatment of corruption crime inmates can be carried out following the local wisdom of each region. For example, suppose corruption crime inmates corrupt the tourism grant budget for tourism development in Bali. In that case, the inmates will do the treatment in society by doing social work, not in prisons. The social work done by the inmates as the treatment is required to accommodate local wisdom that applies in Bali.

The ideal of Indonesian Law is none other than Pancasila: Indonesian people's life philosophy. Restorative justice is in line with the philosophy of the Indonesian nation: Pancasila (Zumhana 2015). Indigenous peoples in Indonesia have used the fundamental principles of restorative justice in law enforcement. As explained by Ter Haar, *adat delict* are any disturbance from one party to the harmony of society. Disturbance from a party or a group of people, tangible or intangible, to the balance of society causes a reaction. Due to this reaction, harmony must be recovered (Hadikusuma, 1992). Corruption crimes are any disturbance from one party to the harmony of society. So the treatment of corruption crime is carried out in society, not in prisons. Corruption is detrimental not only to the state but also to society. Society's needs as victims of corruption crime are often not the primary concern of the recovery process. Society is not directly involved in the process of fixing conditions that have been damaged by corruption crime.

Indeed, it cannot be guaranteed that this treatment model will be effective, but at least if we know that the old treatment model has many negative aspects. Therefore, it should be replaced with this new treatment model, which is more transparent because it is directly monitored and implemented in society. Furthermore, the changes in the treatment model are carried out to have an impact on improvements in the future.

## 4 Conclusion

Empirical facts show that overcapacity in prisons, prison facilities, and infrastructure currently; the different treatment received by corruption crime inmates in prisons; the corruptors are placed in one cell alone, separate from other inmates with good facilities and the emergence of supply and demand relationships; the inmates of corruption crime are people who have intellectual intelligence above the wardens; the economic impact of imprisonment for corruption crime offenders puts the country in a position of losing money for the second time; public perception of corruption crime inmates considered that they do not show any shame, guilt, or regret. The corruption crime inmates' treatment in prisons carried out by the state is essentially an embodiment of justice that aims to make a deterrent effect. However, empirical facts show that the imprisonment of corruption crimes as sentencing and the treatment program in prison carried out by the state for the inmates of corruption crimes has been unable to realize the purposes of sentencing and treatment.

The punishment of corruption crime offenders based on the principles of restorative justice is punishment in the form of fines and social work. The fines must remain the primary sanction in corruption crimes. The use of fines must coincide with the use of social work sanctions. The treatment of corruption crime inmates based on the principles of restorative justice is the inmates' treatment for corruption crimes carried out in society, not prisons. Corruption is detrimental not only to the state but also to society. Society's needs as victims of corruption crime are often not the primary concern of the recovery process. Society is not directly involved in the process of fixing conditions that have been damaged by corruption crime. Corruption crimes are disturbances from one party to the harmony of society. So the treatment of corrupt crime inmates should be carried out in society, not prisons. This treatment model for the corruption crime inmates is the corruption crime inmates' treatment that involves society as the corruption crime's victims.

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