



Fostering Prisoners of Restorative Corruption Crimes

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Abstract. The accountability of corruption crimes in Indonesia mostly leads to prison sanctions. Placing perpetrators of corruption crimes in prisons is not the best way out in solving corruption. The guidance of corruption convicts in prisons carried out by the state is essentially an embodiment of justice that aims to make lawbreakers aware of their mistakes, able to improve themselves, not repeat bad deeds, be accepted back in society and have a preference effect for other potential lawbreakers. But empirical facts reveal that the coaching that the state does to prisoners of corruption crimes has little contribution to a better life, so it is not optimal to realize the purpose of coaching. Although many people were penalized by numerous new corruption cases, corruption did not show a decline. The majority of the offenders are competent, and corruption crimes differ from conventional crimes in their nature and method of operation. They also involve specific networks and circles, sector collaboration (including the business and tourism sectors), and money laundering and other criminal acts. Therefore, there must be a remarkable and all-encompassing effort made to avoid corruption and the growth of those who commit corruption crimes. The way coaching is now done needs to be changed to include the community as indirect victims of corruption offenses through the application of the restorative justice coaching model. The Criminal Code Bill provides for an alternative criminal system (with social work punishment and monitoring) that takes into account this idea, although Law No. 12 of 1995 on Correctional Services does not. Changes must be made to the corruption crime convicts' community-based, rather than prison-based, training. Guidelines for restorative justice are designed expressly for certain criminal offenses, namely those whose "effect" can still be remedied in order to bring the "damaged" situation back to a state that is similar to how it was before. Corruption crimes should be included in this qualification. Corruption should not be a crime punishable by imprisonment. The effects on victims should be improved by those who commit corruption offences (society). Corruption is a crime that hurts society as well as the nation. The requirements of the community as victims of corruption crimes are frequently not the major focus of the healing process. The method of repairing the situation that has been harmed by corruption is not directly involving the community. The community is the setting where the formation of corrupt criminals must take place. If the development is still given over to the state through prisons, it will have a long-lasting impact on the state, notably for state finances and have an impact on society. In order to optimize asset returns, achieve coaching goals, and ultimately achieve the aims of general national law development, the system of coaching corruption convicts must be improved by regulation and application of restorative justice guidelines.

Keywords: Coaching · Convicts · Corruption · Restorative Justice

1 Introduction

Almost all criminal offenses dealt with by the Indonesian criminal justice system result in the imprisonment of the offenders, including those involving corruption. Different methods have been used in various nations to eradicate corruption. The punishment of corrupt individuals is a necessary step in Indonesia's fight against corruption. In Indonesia, as stated in Law Number 31 of 1999 Jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the standards for eliminating corruption have been created in a way that facilitates attempts to eradicate corruption completely and methodically. The use of prison sentences as a penalty for those who commit corruption offences is one of the methods made to end corruption mentioned in this statute. Imprisonment is once more a *prima donna* option to use, not only against every corruption offence (*tipikor*), but even against a guilty *tipikor* in the case that he has sufficient property to pay the replacement money.

Such a statement demonstrates that Indonesia's anti-corruption efforts continue to adhere to retributive justice in the punishment of corrupt individuals. In the retributive justice perspective, using punishment as payback for a crime that someone has committed is justified. With this approach, the punishment of the perpetrator of corruption is released from any purpose other than retribution because crime is seen here as an immoral and immoral act in society. As a result, the perpetrator of the crime must be punished by imposing a criminal (the guilt or sin of the perpetrator of the crime can only be redeemed by undergoing suffering in the form of a criminal conviction of the perpetrator of corruption).

Retributive justice is viewed as a legal theory that is focused on the past rather than the present, according to Kant and Hegel. Since it is well recognized that the law does not look back but rather forward, it is said that *Lex prospicit, non respicit*. It is clear that the retributive justice strategy is at odds with the principal objective of combating corruption, namely the restoration of assets, and that this is a barrier to efforts to achieve the objectives of punishment (especially the purpose of coaching). The conviction of perpetrators of corruption through the use of imprisonment is actually useless, even if it makes the situation of the perpetrator of the crime worse, it does not have an impact on achieving the goal of punishment.

Placing perpetrators of corruption crimes in prisons is not the best way out to solve the problem of corruption crimes. Empirical facts show that the current prison facilities and infrastructure are still lacking and have not supported the process of training prisoners, negative perceptions from the public towards law enforcement of corruption crimes, one of which is against the KPK institution (although this assessment cannot be leveled against other institutions), public perceptions of corruption convicts (which are considered not to show any shame, guilt, remorse, staying alert, full of smiles, full of laughter, with their heads upright, in contrast to other criminal offenders), the different treatment received by corruption convicts in prisons (prison officers place the corruptors in one cell alone separate from other inmates with adequate facilities and will in turn

give rise to supply and demand relationships), so that prisons have not been able to accommodate the function of prisons as a forum for fostering corruption convicts.

The development of corruption convicts in prisons carried out by the state today is essentially an embodiment of justice that aims to cause a deterrent effect (deterrent effect), make these lawbreakers realize their mistakes, are able to improve themselves, do not repeat the crimes they have committed, their existence can be accepted again by society when they are free, as well as being a lesson and providing a preference effect for others who would commit the same criminal offence. But empirical facts reveal that the guidance in prisons carried out by the state on prisoners of corruption crimes has very little contribution to a better life, so it cannot maximally realize the goal of punishment and even the goal of eradicating corruption.

The number of corruption offenses is not decreasing; while many are convicted, there are still plenty of people who conduct corruption crimes. The nature and methods of corruption offenses are distinct from those of other types of crimes. In practically all spheres of society, including commerce and tourism, huge, systematic, and organized corruption has been made possible by the current social, economic, and political conditions. Corrupt inmates are those who are intellectually more intelligent than LP officers; as a result, they essentially no longer require supervision or training from LP officers as they are accustomed to being in charge at work.

Based on the reality as stated above, and considering the characteristics of the corruption crime, the application of prison sanctions to corruption crimes has not been appropriately used in overcoming corruption crimes, it is appropriate for the Indonesian government to start conducting a special evaluation of the law enforcement of corruption crimes. The first step that can be taken is the use of prison sanctions to typical perpetrators must have been abandoned, and there must be extraordinary, comprehensive and continuous efforts made to change the countermeasures of corruption crimes and change the guidance of corruption offenders, in order to have an impact on improvements in the future. One of these extraordinary and comprehensive efforts is to change the current concept of coaching into coaching that involves the community as victims of corruption crimes, namely through the use of a coaching system based on the principle of restorative justice.

2 Discussion

2.1 Guidance Based on the Principle of Restorative Justice in Corruption Crimes

According to the United Nations' Handbook on Restorative Justice Programmes, "Restorative judicial is a problem-solving strategy that, in its different forms, engages the victim, the offender, their social networks, justice institutions, and the community." In order to solve crimes involving victims, perpetrators, and elements of society for the creation of justice, restorative justice is a "change of approach to crime" that prioritizes reconciliation or recovery based on the rights, needs of victims, perpetrators, and the environment (community or society) affected by a criminal act. A retributive view of justice and a criminal justice system that was deemed unacceptable to the community's sense of justice led to the development of justice. A fundamental tenet of restorative justice is the recovery of victims who have endured harm as a result of crimes through

victim compensation, promoting peace, engaging offenders in social work, and other accords.

Because it is believed that restorative justice only applies to actual victims (individuals or a group of people) and cannot be applied to crimes whose victims are states or national development interests, it is difficult to educate people about the restorative justice approach to the eradication of corruption. According to Alkostar from the general norm of restorative justice, it is impossible for corruption crimes to be prosecuted through criminal court since victims of corruption crimes affect many people whose socioeconomic status has been damaged by corruptors.

As opposed to Alkostar, Marwan contends that restorative justice can be applied to crimes involving corruption. In contrast to restorative justice in general, crimes involving corruption typically place a high emphasis on the restoration of state losses. Restorative. Restorative justice is translated by Andi Hamzah as restorative justice. According to Eva Achjani Zulva, restorative justice is a way of thinking that responds to the evolution of the criminal justice system by emphasizing the needs of the community and victim involvement, which are perceived as being excluded from the current criminal justice system's working mechanisms. According to Bagir Manan, the concept of restorative justice is a way to resolve criminal acts outside the judicial process (outside of criminal judicial procedure), or at least not entirely following the Criminal Justice Procedure. This is why he disagrees with legal experts who define restorative justice as restorative justice. The concept of punishment is what restorative justice is characterized as, however it is not merely restricted to the requirements of criminal law (formal and material).

The Criminal Code Bill has made provisions for restorative justice, which is related to the development of prisoners. Specifically, social work punishment and supervision punishment have been added as an alternative criminal justice system. Law No. 12 of 1995 Governing Corrections, which governs Indonesia's correctional services, does not, however, formally address correctional models from a restorative justice perspective. The correctional model with a restorative justice perspective here is a model of coaching prisoners, especially prisoners of corruption crimes based on the principle of restorative justice.

In the search for less cumbersome and less ineffective punishment options than incarceration, restorative justice came into being. This approach includes some of the fundamental ideas of restorative justice, such as compensating individuals who suffer losses as a result of illegal activities, giving the offender the chance to participate in situational remediation, and repairing the connection between the offender, the victim, and society. The restorative justice model of counseling inmates, particularly those convicted of corruption offenses, is a methodology for coaching prisoners who include the community as victims of corruption crimes. In this coaching model, the training of corruption convicts is carried out in the community, not in prisons. This coaching model is intended especially for certain criminal acts, namely criminal acts where the "impact" caused by the criminal act can still be corrected so that the situation that has been "damaged" as a result of the criminal act can be returned close to its original state and the crime of corruption is a criminal act that should be included in the qualification.

Against criminal acts with these qualifications, the settlement should not lead to imprisonment. Perpetrators of corruption crimes should be encouraged to correct the

harm they have caused to victims. The crime of corruption not only harms the country, but also harms society. In the crime of corruption, the needs of the community as victims are often not the main concern of the recovery process. The community is not directly involved in the recovery process of the situation that has been damaged as a result of corruption. The place where the development of perpetrators of corruption crimes must be carried out in the community. If the development is still left to the state, with the number of corruption crimes that do not go downhill, and the condition of overcapacity of prisons, the preferential treatment that is often given by prison officials to typical prisoners and others, then this will have a prolonged impact on the state, especially for state finances and have an impact on society. This concept of coaching is in line with the paradigm of punishment which is referred to as restorative justice.

If this way of working or restorative justice mechanism is implemented correctly, it is believed that it will change the behavior of the perpetrator, have an impact on prevention, make the parties aware of the importance of the norms that have been violated, allow recovery to the victim rather than simply providing suffering through criminal sanctions to the perpetrator, because ideally when a crime occurs, the correct mechanism or way of settlement is that it must be carried out to rebuild the right relationship.

2.2 The Underlying Rationale for the Use of Coaching Based on the Principle of Restorative Justice

The 4th and 5th Precepts of Pancasila, the national philosophy of Indonesia, align with restorative justice. Pancasila, the national philosophy of Indonesia, serves as the only fundamental rule in the country's legal system. At UNCAC 2003, the "restorative justice" strategy popularized in the common law nation served as an example. Through Law Number 7 of 2006 concerning Anti-Corruption Ratification, Indonesia ratified the Vienna Convention against Corruption in 2003. As a result, the resolution of corruption crimes had to take the principle of restorative justice into consideration, as well as the model of fostering typical prisoners based on the principle. From the 5th Congress of 1975 in Geneva to the 11th Congress in Bangkok from April 18–25, 2005, the United Nations Congress on Crime Prevention and Criminal Justice recommended that the fight against corruption be pursued with an integral (comprehensive) approach, both preventive, repressive, and educational. This restorative justice-based coaching model for regular prisoners is regarded as an integrative (all-encompassing), preventive, repressive, and instructional strategy.

In court order No. 2399K/Pid.Sus/2010, the restorative justice strategy was used. The panel of judges in the case decided that the crime of corruption should not be treated permissively regardless of the amount of state losses resulting from it. Instead, criminal convictions that harm the public's sense of justice must be avoided, and judges should apply the law in a way that balances community demands for justice with the spirit and intent of legislators. Given that numerous examples of cases have thus far demonstrated that the prison sentences served by typical inmates are viewed as being out of accord with the requirements of community justice, this judge's statement gave the go-ahead for judges to consider the justice of the community when imposing judgments. A coaching model that is in line with the demands of public justice that must be met is the change in the development of corruption convicts that is proposed to be carried

out in the community instead of in prisons based on the principle of restorative justice. *Justitiae is non est neganda, non differenda* - justice cannot be denied or delayed.

A good legislation must be founded on the benefits-based premise, progressive, clear and well-known to all, consistent in its application, straightforward, and simple to enforce consistently. Changes in the mentoring of criminals accused of corruption, which are proposed to be carried out in the community rather than in prisons based on the principle of restorative justice, are one of the representations of good law because this mentoring model is based on the principle of benefits, progressive, transparent because its application will be known or visible to the general public, as well as rational because it deviates from implications for the overcrowding of prisons. In order to deter corruptive practices or behaviors, coaching based on the restorative justice principle is useful. This model is a high-quality coaching standard that is focused on integrated criminal goals that incorporate aspects of justice, education, and humanity. This training approach is so likely to be used that it is unquestionably consistent with the adagium. *Lex neminem cogit ad impossibilia* means that the law does not compel people to carry out impossibly difficult tasks.

Although it will eventually be necessary for legislation to regulate the development of corruption convicts carried out in the community rather than in prisons based on the principle of restorative justice, its implementation taking into account some of the circumstances as explained in the introduction above does not require waiting for the existence of special legislation on this, although in law enforcement practice up to this point there is still a tendency that all corruption convicts be treated equally. A crucial lesson from UNCAC is the necessity to take into account an economic strategy that centers on estimating the effectiveness and efficiency of law enforcement in the conviction of corrupt individuals. Here, the economic approach is designed to take into account both the efficiency of the criminal sanctions themselves as well as the expenses or burdens that society bears (as a result of the development and application of criminal law). Preamble paragraph 8 states that the convention is "determined to promote and strengthen measures to prevent and combat corruption more efficiently and effectively." In the general provision of Article 1 point a, the purpose of the convention is stated as being "determined to prevent, detect, and deter in a more effective manner." A significant theme in the convention to tackle the eradication of corruption is to eradicate with "more efficiently and effectively" and "in a more effective manner."

In this regard Ted Honderich argues that "a criminal can be referred to as an economical deterrent if it is met with the following conditions: the criminal is earnestly preventing and the criminal does not cause the emergence of circumstances more dangerous or adverse than would have occurred if the criminal had not been imposed; and no other sanction can effectively prevent with less harm or loss."

It can be concluded that the government's strategy for eradicating corruption crimes through Law Number 31 of 1999, which was amended by Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, and through other regulations from the economic side have been successful by considering the total cost of handling typical cases from investigation to prosecution, and state costs for feeding prisoners. In other words, the state actually suffers a second loss as a result of the economic impact of imposing prison sentences on offenders. Legally speaking, it is also regarded as failing

to have a meaningful and uniform deterrent effect on all convicts, and as having equally enhanced the quantity and quality of recidivists.

The use of a coaching model based on the principle of restorative justice, can reduce the socioeconomic burden on the state and law enforcement personnel in providing justice. This model is a combination of aspects of "treatment of offenders" but also has aspects of "treatment of society". In order for this combination to meet expectations, all components of the nation must realize the importance of their respective roles and participation across sectors in supervising typical prisoners during coaching with this model.

Continuing to use prison sanctions on convicts with prison conditions as described in the introduction above, law enforcement against corruption crimes that should aim to eradicate corruption will have the potential to give birth to or stimulate the occurrence of new corrupt practices or corruptive behaviors. Barda Nawawi Arief said that the strategy in the eradication of corruption, not in the eradication of corruption itself but the eradication of "kausa and the conditions that cause corruption to occur", the eradication of corruption through the enforcement of criminal law is only a symptomatic eradication, while the eradication of causation and conditions that give rise to corruption is a causative eradication.

The use of the criminal model based on the principle of restorative justice will not alter the repressive actions taken by law enforcement personnel, namely processing corruption crimes that have been identified in accordance with legal provisions swiftly, precisely, and with a high degree of certainty from the process of investigation, prosecution, to the examination process at trial or verdict by a judge while still paying attention to the suspect's or defendant's human rights. However, if repressive measures are chosen, restorative justice is offered in his conviction. This coaching model based on the principle of restorative justice offers not to use prison sanctions and switches to the use of social work in the community and is supervised by the community, and law enforcement elements ranging from the prosecutor's office, the KPK and prisons. Supervision in the application of this coaching model involves the Prosecutor's Office because the prosecutor's office is an institution that by law is given the authority, one of which is to carry out executions.

To assess the shortcomings of the retributive Justice system as it has historically existed and is currently being used, restorative justice must be applied. The implementation of restorative justice is focused on resolving criminal cases that aren't just about expelling offenders but also about compensating victims of criminal activities. An attempt at expulsion is useless if the offender refuses to cooperate, shows no remorse, feels no sorrow, doesn't feel guilty, and tries to cover up or get rid of evidence of the corruption's effects. Restorative justice sentencing is the right step to anticipate the situation if the thoughts or actions of corruption criminals (especially individuals) arise who prefer to be sentenced to prison rather than having to return state financial losses because if calculated it could be the benefit of hidden assets from corruption will become the fulcrum of the perpetrator's life when he comes out of prison including the calculation of the livelihood of family or colleagues or can used for example to open a business if the proceeds of corruption are managed and developed while the perpetrator is serving a prison sentence.

Of course, this idea will not be able to run optimally if it is not supported by a joint commitment to eradicate corruption, the high political will of the State in eradicating corruption, and the high morality of all components of society. If non-prison sanctions are effectively and proportionately considered more effective according to law enforcement and judges then the use of prison sanctions may be considered for setting aside. Such a settlement process is a restorative Justice approach. This coaching model, which is founded on the restorative justice principle, aims to harmonize several parts of the nature, framework, and legal culture surrounding the fight against corruption as well as the laws themselves (at least Law No. 31 of 1999 Jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes with the principles in the UNCAC, which have actually been ratified by Law No. 7 of 2006), and the facts of law enforcement against corruption crimes during this time, the phenomenon of prison overcrowding, the public's perception of corruption, the development of today's national and state life, the goal of eradicating corruption and the purpose of punishment so that restorative justice can be applied. It is intended that through a coaching model based on the idea of restorative justice, ordinary convicts will become conscious of their shame, regret their mistakes, and grasp how to become real people.

3 Conclusion

1. Coaching based on the principle of restorative justice in corruption crimes is a coaching model that adopts several fundamental concepts found in restorative justice, including recovery for those who suffer losses as a result of criminal acts, the perpetrator has the opportunity to be involved in restoring the situation, and restoring the relationship between the perpetrator, victim, and society. The community is a victim of corruption offenses in this coaching style. With this coaching model, prisoners of corruption crimes, are not placed in prisons or do not undergo a coaching period in prisons. Coaching is carried out in the community in the form of social work. Supervision and assessment during the coaching period are carried out openly by the entire community and law enforcement elements. The community is involved in the coaching process because the community is an indirect victim of corruption crimes.
2. The philosophical foundations, namely the 4th and 5th Pancasila Sila, the juridical foundation of all corruption eradication laws, the Correctional Law, the Criminal Code Bill, and international conventions, the sociological basis of empirical facts of law enforcement of corruption crimes, harmonization of aspects of substance, structure and legal culture of eradicating corruption are the basis of thinking that underlies the use of guidance based on the principle of restorative justice for corruption convicts.

Bibliography

1. E.M. Clarke, E.A. Emerson, Design and synthesis of synchronization skeletons using branching time temporal logic, in: D. Kozen (Eds.), Workshop on Logics of Programs, Lecture Notes in Computer Science, vol. 131, Springer, Berlin, Heidelberg, 1981, pp. 52–71. <https://doi.org/10.1007/BFb0025774>
2. J.P. Queille, J. Sifakis, Specification and verification of concurrent systems in CESAR, in: M. Dezani-Ciancaglini and U. Montanari (Eds.), Proceedings of the 5th International Symposium on Programming, Lecture Notes in Computer Science, vol. 137, Springer, Berlin, Heidelberg, 1982, pp. 337–351. https://doi.org/10.1007/3-540-11494-7_22
3. C. Baier, J-P. Katoen, Principles of Model Checking, MIT Press, 2008.
4. M. Kwiatkowska, G. Norman, D. Parker, Stochastic model checking, in: M. Bernardo, J. Hillston (Eds.), Proceedings of the Formal Methods for the Design of Computer, Communication and Software Systems: Performance Evaluation (SFM), Springer, Berlin, Heidelberg, 2007, pp. 220–270. https://doi.org/10.1007/978-3-540-72522-0_6
5. V. Forejt, M. Kwiatkowska, G. Norman, D. Parker, Automated verification techniques for probabilistic systems, in: M. Bernardo, V. Issarny (Eds.), Proceedings of the Formal Methods for Eternal Networked Software Systems (SFM), Springer, Berlin, Heidelberg, 2011, pp. 53–113. https://doi.org/10.1007/978-3-642-21455-4_3
6. G.D. Penna, B. Intrigila, I. Melatti, E. Tronci, M.V. Zilli, Bounded probabilistic model checking with the muralpha verifier, in: A.J. Hu, A.K. Martin (Eds.), Proceedings of the Formal Methods in Computer-Aided Design, Springer, Berlin, Heidelberg, 2004, pp. 214–229. https://doi.org/10.1007/978-3-540-30494-4_16
7. E. Clarke, O. Grumberg, S. Jha, et al., Counterexample-guided abstraction refinement, in: E.A. Emerson, A.P. Sistla (Eds.), Computer Aided Verification, Springer, Berlin, Heidelberg, 2000, pp. 154–169. https://doi.org/10.1007/10722167_15
8. H. Barringer, R. Kuiper, A. Pnueli, Now you may compose temporal logic specifications, in: Proceedings of the Sixteenth Annual ACM Symposium on the Theory of Computing (STOC), ACM, 1984, pp. 51–63. <https://doi.org/10.1145/800057.808665>
9. A. Pnueli, In transition from global to modular temporal reasoning about programs, in: K.R. Apt (Ed.), Logics and Models of Concurrent Systems, Springer, Berlin, Heidelberg, 1984, pp. 123–144. https://doi.org/10.1007/978-3-642-82453-1_5
10. B. Meyer, Applying “Design by Contract”, Computer 25(10) (1992) 40–51. <https://doi.org/10.1109/2.161279>
11. S. Bensalem, M. Bogza, A. Legay, T.H. Nguyen, J. Sifakis, R. Yan, Incremental component-based construction and verification using invariants, in: Proceedings of the Conference on Formal Methods in Computer Aided Design (FMCAD), IEEE Press, Piscataway, NJ, 2010, pp. 257–256.
12. H. Barringer, C.S. Pasareanu, D. Giannakopoulou, Proof rules for automated compositional verification through learning, in Proc. of the 2nd International Workshop on Specification and Verification of Component Based Systems, 2003.
13. M.G. Bobaru, C.S. Pasareanu, D. Giannakopoulou, Automated assume-guarantee reasoning by abstraction refinement, in: A. Gupta, S. Malik (Eds.), Proceedings of the Computer Aided Verification, Springer, Berlin, Heidelberg, 2008, pp. 135–148. https://doi.org/10.1007/978-3-540-70545-1_14

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