Published by the decision of the Scientific Council
of Khachatur Abovyan
Armenian State Pedagogical University

Department of Philosophy and Logic
named after Academician Georg Brutian

W I S D O M

1(25), 2023

WISDOM is covered in Clarivate Analytics' Emerging Sources Citation Index service

ASPU Publication

YEREVAN – 2023

DOI: 10.24234/wisdom.v25i1.975

RESTORATIVE JUSTICE-BASED LAW FORMULATION ON CORRUPTION CASE: A PHILOSOPHICAL ANALYTIC

Fahrudin FAHRUDIN [1] | Absori ABSORI [1] | Khudzaifah DIMYATI [1] |
Kelik WARDIONO [1] | Arief BUDIONO [1,*] | Hirwan Jasbir JAAFAR [2]

1 Universitas Muhammadiyah Surakarta, Surakarta, Indonesia

2 Universiti Malaysia Perlis, Perlis, Malaysia

* *Correspondence*
Arief BUDIONO, Pabelan Street, Kartasura, Surakarta, Indonesia
E-mail: ab368@ums.ac.id

Abstract: In Indonesia, corruption has been going on for a long time. It has touched almost all sectors of societal life. So far, there are already efforts to eradicate the act of corruption, though they are working very slowly. There are inadequate legal instruments to eradicate corruption. Thus, to resolve this, the restorative justice philosophy should be applied. The restorative justice approach is not impossible to be applied in punishing corruption perpetrators in Indonesia. The research problem of this paper is: How is the application of restorative justice as an implementation of the ultimum remedium in the effort to recover state financial assets as a method to punish corruption perpetrators? This was normative legal research with philosophical and conceptual approaches. Results show that the application of restorative justice as an implementation of ultimum remedium to return state financial assets to punish corruption perpetrators may be implemented by strengthening norms on returning state losses. This can be carried out by changing the sanction of fines from an additional sanction into a principal sanction. Then, to anticipate perpetrators who cannot repay those losses, the concept of forced labor may be applied to punish corruption perpetrators.

Keywords: state financial losses, asset recovery, corruption, restorative justice, Indonesia.

Introduction

The rife occurrences of corruption, especially those perpetrated by state establishers make society have stigmatic stereotypes. The meaning of the *culpe poena par esto adagium* is far from the essence of legal reformation, which demands law enforcers return to the objective of the law, i.e., bringing justice and happiness to every citizen according to the principle of equality before the law. Demands on the seriousness of the government in handling the crime of corruption in Indonesia have grown stronger than ever, especially after the surfacing of news on some law enforcing apparatus that were suspected of committing despicable actions, namely extortion and

misuse of power (Damanhuri, 2016, pp. 8-9).

Most Indonesians have already understood their rights and obligations. Thus, there are more dynamic demands on the ease and efficiency of services in the public and administrative sectors. Both the central and the regional governments have made efforts to undergo improvements in various sectors. But in practice, the interaction between society and the public service sector of the government still brings about issues. This is due to the unfinished holistic bureaucratic reformation that encompasses the institution, business process, public service, human resource, investment procedure, access to justice, as well as governmental goods and service procurement (Hamzah, 2014, p. 19).

These sectors are still thick with deviances or misuse of power due to a lack of integrity, a career system, and a payroll system that is not based on performance. Apart from that, there is no arrangement for performance management or minimum service standards. This situation is worsened by societal behavior that likes to instantly complete tasks. This is a reality in the public service sector that must be prevented and fixed. Its solutions must be found. If not, it will influence the public perception of corruption crime, seeing that preventive sectors are highly linked to public services that directly touch society and business actors (Hamzah, 2014, p. 19).

A deviation behavior of state establishers that harms society or individuals includes bribery, which is divided into active bribery or giving bribes *(actieve omkoping)* and passive bribery or receiving bribes *(passieve omkoping)*. Other deviation behavior include gratification; extortion in office *(knevelarij, extortion),* and even participating in *leveransir* and partners, while the official concerned is related to the work, either as a budget manager, budget user, budget user authority, or commitment-making official. Even though it does not bring financial or economic losses to the state or society or individuals, these things are deemed as corruption by the law (Surachman, 2020, p. 47).

Corruption has penetrated into sectors in government, even to the heart of high-level powers, such as the arrest of the head of the constitutional court or the minister of state. Corruption in Indonesia is currently being carried out in congregation and not alone, it is carried out systematically. Legislators such as the House of Representatives who were assumed to have good intentions in formulating regulations turned out to be shamelessly committing or being involved in criminal acts of corruption. In this abnormal condition, skepticism towards positive law (rule skepticism) eventually won a place in the hearts of the Indonesian people. Skepticism exists because the public has high expectations in efforts to eradicate corruption but cannot be fulfilled by these positive legal norms (Shidarta, 2013, pp. 93-95).

It cannot be denied that corruption is a crime. According to Moeljatno (1987) that crime is an act that harms society because it is an act that harms the values that society wants to maintain. This means that corruption is a disgraceful thing in people's lives and norms (p. 82).

Corruption is disgraceful in the eyes of the whole society. The act of corruption is opposed to the norms, habits and social aspects of the community, which means that it is considered reprehensible by society. Acts of corruption do not bring concrete benefits. This last view departs from the theory of teleology which positions good deeds solely from consequences, which means that if they bring benefits then they are considered good (Shidarta, 2006, p. 43).

Corruption does not only happen in Indonesia but also in Malaysia or other countries in the world, both industrial and developing, have also been struck by rampant issues of corruption. In Indonesia, corruption has been going on for a long time. It has touched almost all sectors of societal life. It seems that the corruption in Indonesia has reached what Robert Klitgaard (2005) calls the corruption culture (pp. 82-85). Here, Klitgaard does not mean to say that it is the essence of the culture's existence or that all Indonesians commit corruption thus making it difficult to fight in any way. He means that the conducive situation and permissive behavior of society on the crime of corruption have caused corruptive behavior in society. Klitgaard means that corruption is a culture because it is deemed as a normal thing in daily life, where to speed up an affair, people usually give "facilitation money" or "cigarette money" *(bakshish* system*)*. They may also provide facilities and gifts (Alatas, 2012, p. 36).

Soren Davidsen (2006) stated that:

"...Rather than being an aberration, corruption has been a core norm of Indonesia's political economy for decades…"

"...Corruption, of course, existed before the new order regime; but hierarchical, systemic corruption became one of the central features of the new order political economy..." (p. 25).

Kimberly Ann Elliot (1997) stated that corruption may happen due to systematic political changes that weaken or destroy not only the social and political institutions but also the legal institution (p. 49). Sheldon S. Steinberg and David T. Austern stated that corruption is part of the behavior carried out by government apparatus individuals or other people for different reasons but they have the same goal. It is an unethical action that damages the structure of a good government (Steinberg & Austern, 1990, p. 63).

Because of that, we must take note of Barda Nawawi Arief's (1998) opinion that philosophically, it is not the eradication of the corruption itself that needs to be done, but there needs to be the eradication of "causes and conditions that cause corruption to happen" (pp. 77-78). The eradication of corruption through criminal law enforcement is only a symptomatic eradication. Meanwhile, the eradication of uses and conditions that cause corruption is a causative eradication (Hoefnagels, 1993, p. 85).

So far, there are already efforts to eradicate the act of corruption, though they are working very slowly due to technical factors, conflicts of interest, and governmental politics. At the same time, the process of creating new acts of corruption runs very quickly under ever-complex and systemic methods. In other words, corruption eradication runs like arithmetic series while corruption production runs like geometric series. Therefore, there is an ever-widening gap (Wijayanto & Zachrie, 2009, p. 27).

This gap means that there are many unhandled cases of corruption. Corruptors still undergo their actions as they are aware that the chance to get caught or to be punished is relatively low. As a consequence, corruption slowly spreads to all sectors of life. With the passage of time, a certain tipping point is reached and the Indonesian nation is made aware of the results of a four-decade survey which showed that the Indonesian justice sector is ranked first as the most corrupt country of 14 Asian countries.

Some factors make the justice system in Indonesia have the lowest rank in handling corruption, namely the low morality of law enforcing apparatus, corrupt political culture, society's apathy, the criteria and processes of recruiting law enforcing apparatus that is not very transparent, as well as the state's low political will in eradicating justice mafia.

From the aspect of legal instruments, the efforts to eradicate corruption are still not adequate (Abdurofiq, 2016, p. 63). Thus, to resolve this, the restorative justice philosophy should be applied. The restorative justice approach is not impossible to be applied in punishing corruption perpetrators in Indonesia. The restorative justice principles are actually the Indonesian nation's main pattern in resolving legal issues in its society that should righteously be delved into and implemented in the Indonesian positive laws.

Based on the background described above, the research problem of this paper is: How is the application of restorative justice as an implementation of the *ultimum remedium* in the effort to recover state financial assets as a method to punish corruption perpetrators?

Research Method

This was normative legal research with philosophical and conceptual approaches. Considering that this research stemmed from normative research, most of the data and legal materials used referred to secondary data that encompassed primary legal materials, consisting of various reviews, jurisprudence, and conventions associated with the legal formulation of recovering state assets that experienced losses due to corruption based on the restorative justice (Waluyo, 2011, p. 18). Normative-perspective legal materials were used specially to analyze legal materials concerning the restorative justice-based law formulation of recovering state assets that experienced losses due to corruption. Based on their binding power, they are classified into primary legal materials, secondary legal materials, and tertiary legal materials (Soekanto, 2012, p. 52).

Discussion

The handling of criminal actions, including corruption, currently emphasizes the retributive justice approach. This approach emphasizes criminal sanctions (*primum remidium*) that often fail in preventing or eradicating crimes including

corruption. Much research has proven that there is no correlation between the imposition of severe criminal sanctions with a decrease in crime rates. But on the contrary, it gave birth to new varieties of crime.

The definition of corruption in the 2002 Big Indonesian Dictionary is "misappropriation or embezzlement of state funds (companies and so on) for personal or other people's interests". Meanwhile, the World Bank defines corruption as "the abuse of public office for personal gain". Study of the language of corruption, stated by Andi Hamzah as "corruption comes from the Latin, namely *corrumpere* which is then accepted by many European languages: in English it becomes the word *corruption* or *corrupt*, in French it becomes the word *corruption* while in the Netherlands it is called *corruptive* (*korruptie*). It is from the Dutch language that the word is absorbed into Indonesian to become *corruption* (Hamzah, 2005, p. 59).

Corruption has become a trait that cannot be said to be a good deed from the point of view of the values of the life of the nation and state as a whole everywhere. Corruption has had an impact on the morality of every individual's life, and the action from that is that everyone wants to return to good morality. The emergence of moral awareness to fight corruption begins with moral awareness and human stance towards it. The fact that corruption is recognized as an act that is not good has led to resistance to this corruption.

If the applicable Law on the Criminal Act of Corruption that was amended into the Law on the Change of the Criminal Act of Corruption is profoundly analyzed, the target of the lawmakers is to make the law-enforcing apparatus work optimally to return the losses to the state. The indictment and prosecution apparatus involved in law enforcement against the crime of corruption include the Police Force, Attorney, and the Commission for Corruption Eradication.

These three apparatuses must work under the framework of an integrated criminal justice system, even though there are overlaps in their authorities. The main goal of this law is to return corrupted assets. The criminal justice system that emphasizes the retributive justice approach does not fulfill the goal of the lawmakers as it does not optimally return the financial losses of the state. The Law on the Criminal Act of Corruption that was amended into the Law on the Change of the Criminal Act of Corruption as well contains some stipulations that become obstacles in applying restorative justice. This makes the return of state financial losses suboptimum.

In the journey to eradicate the crime of corruption to return state financial losses, in giving *ratio decidendi* to their decisions, the Judge Assembly already dares to be "out of the box", as judges gave more attention to the interests of achieving justice between perpetrators and victims (restorative justice) (Ferry, 2014, p. 63). The eradication of the crime of corruption in various countries is in essence based on the spirit to save state assets, even though it is carried out by applying various methods. Thus, the law on corruption eradication must be designed so that it can facilitate comprehensive and systematic efforts to eradicate corruption to achieve that goal. The norms on corruption eradication must be formed and arranged with strong and accurate bases in representing that goal, both in terms of its philosophy as well as in terms of the theories used (Suharianto, 2016, p. 18).

For philosophy, the study of law is not just evaluating the texts contained in a legal regulation, but more than that is how the law is implemented properly so that the enforcement of the law runs well. The applicability of good law is the fulfillment of the philosophical aspect, namely what is aspired together and applied in everyday life, then the fulfillment of the social aspect, namely the acceptance of community law, and the last is the existence of a juridical aspect, namely the philosophy of expecting the law to be applied to all (Gusfira & Hafiz, 2021, pp. 147-148).

Looking at philosophy, the core of what is being sought is the eradication of corruption that is effective and achieves the target with the greatest benefit, because what eradication of corruption will be more beneficial if the proceeds from corruption return to the state treasury and benefit the community. In the eradication of corruption, the parties that can carry out the eradication of corruption are all elements of society. It is impossible to eradicate corruption if society is still permissive towards corruption such as giving bribes in the case of speeding tickets, entering campuses, even for selecting government employees. Every member of society must have an understanding that this is a bad trait (Mulyadi, 2007, p. 72).

The current norms on corruption eradication in Indonesia that are stipulated in Law on the Criminal Act of Corruption which was amended into the Law on the Change of the Criminal Act of Corruption and Law No. 8 of 2010 on the Prevention and Eradication of the Crime on Money Laundering (the Law on Money Laundering) have not yet systematically reflected the great goal of corruption eradication, i.e., protecting state assets by making corruption perpetrators return state losses. The Indonesian law on corruption eradication still embraces the retributive justice paradigm in sanctioning corruption perpetrators. Because of that, the sanctioning of corruption perpetrators is separated from all goals except one, i.e., retribution (Firmansyah, 2018, p. 25).

Corruption is very difficult to prove because officials who commit acts of corruption are very good at destroying evidence or creating situations where no traces of their actions are left behind. To overcome these problems, Bertens (2004, p. 2) suggests that the burden of proof should be reversed. If an official or former official has substantial wealth that cannot be accounted for based on income or legitimate business ventures and he is suspected of receiving bribes while carrying out his duties, this can already be considered as sufficient evidence to show his guilt.

Historically there has been great tolerance for white-collar crimes, especially corruption, when compared to crimes in general, especially crimes on the streets such as robbing, killing, stealing, and so on. In fact, from a legal point of view, some forms of white-collar crime fall into the category of civil law or administrative offenses only, and are not criminal acts (Miller et al., 2005, p. 231),

Punishment for perpetrators of white-collar crimes is an interesting subject of discussion among philosophers. This perhaps stems from a philosophical issue regarding corruption itself, moreover the stigma that views corruption not as a crime but rather as an administrative, procedural violation. There are three theoretical approaches to punishment for perpetrators of white-collar crimes, namely: the theory of retributive punishment (compensation), the theory of deterrence punishment (prevention), and the theory of rehabilitation.

Further, the retributive justice principles that emphasizes the physical imprisonment of corruption perpetrators rather than recovering the impacts of that crime shows that the Indonesian norms on corruption eradication state that the return of state financial assets does not eradicate one's sanctions as perpetrators of corruption crime. Article 4 of the Law on the Criminal Act of Corruption which was amended into the Law on the Change of the Criminal Act of Corruption states that the return of state financial assets or state economy does not eradicate the punishment of corrupt criminal perpetrators as aforementioned in Article 2 and Article 3 of the Law on the Criminal Act of Corruption that was amended into the Law on the Change of the Criminal Act of Corruption. This shows that the Indonesian law on corruption still perceives that the wrongdoing or sins of criminal perpetrators may only be compensated by suffering. Thus, as stated by Kant and Hegel, the legal perspective is directed to the past (backwards-looking), rather than the future which is a characteristic of the retributive justice theory.

Meanwhile, the view of deterrence pays more attention to future actions of perpetrators of corruption. Controversy has developed whether punishment can be used as an effort to deter criminals in the future. There are those who argue that harsh punishment can create a deterrent effect and enable the perpetrator not to repeat his crime. However, like the idea of retributivist theory, relying only on one aspect of punishment raises doubts about whether it will succeed in overcoming corruption crimes.

Even though imprisonment has no function at all and even though it makes the situation of criminal perpetrators worse, such a paradigm of corruption eradication still views the crime of corruption as a single standing event where there is a wrongdoing that must be given accountability and that with mere physical imprisonment of perpetrators, that issue of crime can be resolved (Remmelink, 1993, p. 600).

The existence of Article 4 of the Law on the Criminal Act of Corruption which was amended into the Law on the Change of the Criminal Act of Corruption is inspirited by the retributive justice paradigm surely shows that corruption eradication in Indonesia does not direct to the main focus, which is saving the state finance. Moreover, in several cases, it has been shown that the fines in the formulation of articles in the Law on

Corruption Eradication are already not equal to the losses experienced by the state due to the event of corruption. On the other hand, the formulation of some articles in that law prioritizes sanctions in the form of imprisonment and fines that are no longer relevant to the current development of international law.

Rather than snatching the freedom of corruption perpetrators by imprisoning them, the state should focus on recovering the lost state assets due to corruption. Apart from that, the state also needs to think about ways to make corruptors work in sectors they are experts on. Then, the profits from that work are confiscated by the state for a certain period. Apart from recovering the losses due to criminal actions, the advantage of this concept is that it can also manifest other aims of sanctioning, i.e., giving a deterrent effect and fixing the perpetrators' behavior.

The deterrent to acts of corruption is mostly according to the public considering that corruption is an extraordinary crime that has a broad impact on the lives of many people. Of course, acts of corruption have consequences or sanctions that are also extraordinary. Some countries even apply the death penalty to people who commit acts of corruption. Several other countries disagreed with the consideration that humans are noble creatures who should not take other human rights to life (Bramanto, 2020, pp. 80-81).

The criminal justice system that has so far been applied in cases of corruption in Indonesia is retributive justice. But what is expected is restorative justice, which is a process where all involved parties in a certain crime come together to resolve the issue of how to handle the impacts in the future. This is because, in the perspective of restorative justice, criminal actions violate human rights and hurt interpersonal relationships. The application of restorative justice certainly depends on what legal system is applied in a state. One cannot force the application of restorative justice if the legal system does not allow it. Thus, it can be said that the restorative justice principle is a choice in designing a legal system of a state. Even if a state does not embrace it, it is not impossible to apply restorative justice principles to achieve legal justice, legal certainty, and legal benefit (Sukardi, 2012, p. 16).

Concerning the sanctioning system, there are legal bases for the imposition of sanctions for people who violated the law. The first is the law violation. It is a *condition sine qua non* (a condition that must exist). The second is that what can be punished is law violations that cannot be abolished using other methods. These sanctions must be a last resort *(ultimum remedium).* Indeed, there are objections to every criminal threat. Anyone with common sense will understand it without further explanation. But it does not mean that threats of sanctions will be nullified. Even so, there must be a consideration for the benefits and losses in the threats of sanctions so that they can truly become efforts of recovery. It must also be made sure that this "disease" does not become worse (Rusianto, 2015, p. 35).

Andi Hamzah is of the opinion which states that not all complicated issues in society should be bestowed to the criminal law to find its solution. It is better for other legal sectors to resolve it beforehand *(ultimum remedium)* if the criminal law is only perceived as a special sanction law, i.e., only imprisonment (as criminal law does not only encompass imprisonment). The term *remedium* must not only be viewed as a facility to recover legal violations that occurred or as compensation for losses. But it must be viewed as a facility to appease the chaos that happened in society. This is because if law violations are left alone, they may breed arbitrary actions. Because of that, the use of criminal law must be a last resort (*ultimum remedium*) as its use must be limited (Hamzah, 2014, p. 26).

The concept of restorative justice in sanctioning perpetrators of corruption crimes does not eradicate criminal sanctions. But it emphasizes the imposition of sanctions that prioritize efforts to recover the impacts of a crime. According to Law on the Criminal Act of Corruption that was amended into the Law on the Change of the Criminal Act of Corruption, corruption is a criminal action that brings great losses to the state's finance and economy. It hinders national development and growth that require high efficiency.

It is further stated in the consideration of that law that corruption crime is deemed as a violation of the socio-economic rights of the wider society. Thus, corruption is categorized as a crime that requires extraordinary methods of eradication. Because of that, the regulation of compensatory money and fines as sanctions are an effort to return the state's financial losses. All laws on corruption in Indonesia have actually

regulated the issue of compensatory money as sanctions (Prayitno, 2020, p. 47).

Law on the Criminal Act of Corruption that was amended into the Law on the Change of the Criminal Act of Corruption regulates the issue of compensatory money as sanctions. Article 18 clause (1) letter b of this law states that all corruption perpetrators may be imposed with additional sanctions where they must pay compensation money with the same amount as the corrupted wealth. There is a small development in this law, where the stipulations on compensatory money are already quite strict. If the money is not repaid within the period of one month, the perpetrator may immediately be executed by sanctioning him to imprisonment. This sanction of imprisonment has been determined in the judicial decision, where its length cannot exceed the maximum threat of imprisonment of the principal sanction.

Even so, the restorative justice concept has not fully been implemented in that regulation. Law on the Criminal Act of Corruption that was amended into the Law on the Change of the Criminal Act of Corruption regulates that in a decided-upon case, there is already a limit for payment which is a month. If the perpetrator fails to pay the compensatory money, his wealth can be confiscated by the attorney. Then, the confiscated wealth can be auctioned to cover the compensatory money whose amount is according to the verdict of the court that has permanent binding power. If the perpetrator does not have enough wealth to pay the compensatory money, he will be sanctioned with imprisonment with a length that cannot exceed the principal sanction of imprisonment. This norm shows that the return of state assets is only an additional sanction rather than a principal one. Thus, in cases where the perpetrator cannot return these state losses, the solution is sanctioning him to additional imprisonment apart from obligating him to serve his principal punishment.

In the restorative justice approach, the return of state assets should be considered to become a principal sanction. This is because if the recovery of state assets remains as an additional sanction, there is a chance for judges to decide on a subsidiary sanction or subsidiary imprisonment if the perpetrators fail to return the losses. From the perspective of restorative justice, if the perpetrators cannot return those losses even though all of their wealth has been auctioned away, rather than imprisoning them, it is better for the state to empower the corrupt perpetrators by making them undergo forced labor according to their expertise. This is because, in essence, corruptors are people with good skills. The profits from this forced labor will be confiscated by the state to cover the state losses that the perpetrators cannot repay.

The development of this concept in the law on corruption eradication may restore the state losses that were stolen through corruption. On the other hand, with this sanctioning concept, there are many benefits in the aim to punish a perpetrator of a crime. With the non-negotiable obligation to return the compensatory money, a perpetrator will work under the mercy of the state to produce money to recover the losses that occurred due to his actions.

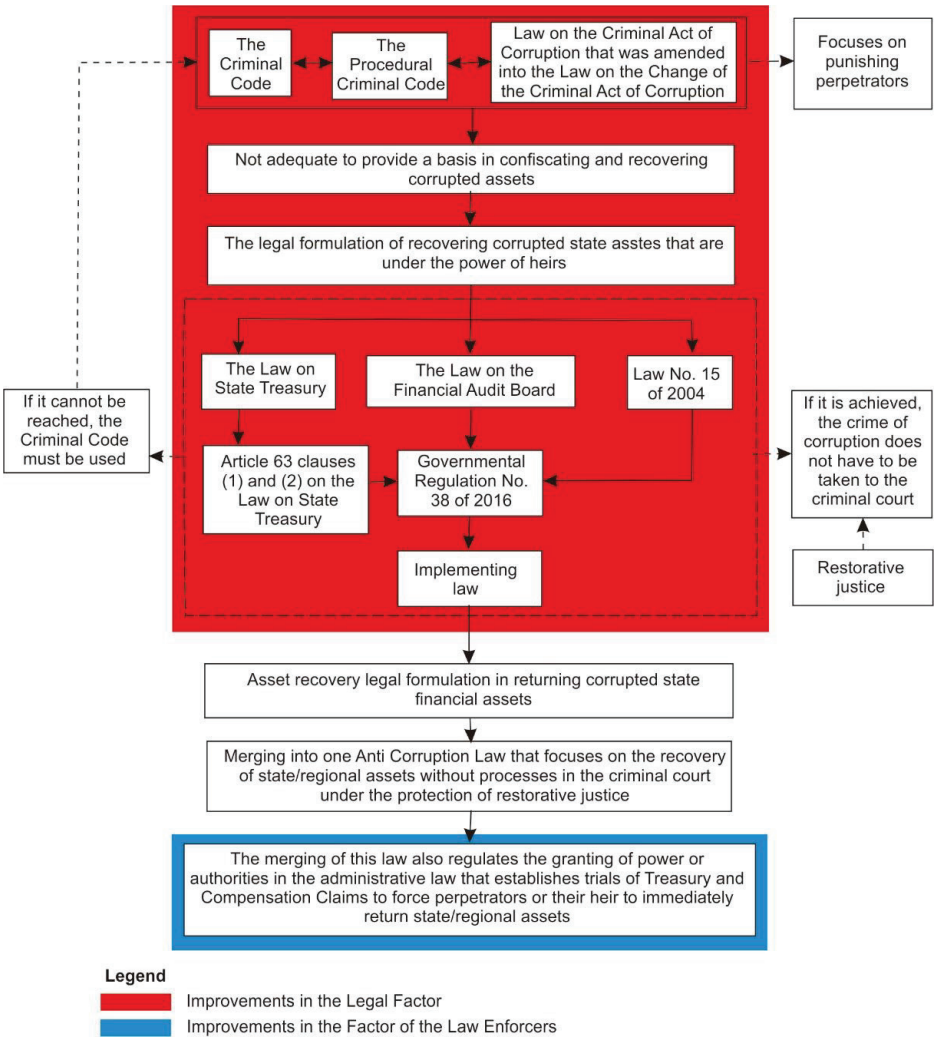

Figure 1. Asset Recovery Legal Formulation as Part of the Solution.

Based on these weaknesses, in the future, there need to be regulations at the level of the law that combines the legal regulations in handling corruption such as the omnibus law concept by eliminating its weaknesses as stated above. The focus must be the return of state assets rather than punishing or sanctioning perpetrators under the protection of restorative justice. This law also regulates the granting of power or authority to law enforcers in the administrative law by establishing trials of Treasury and Compensation Claims to force perpetrators or their heirs to immediately recover the state/regional losses. The formulation of a holistic and integrated Anti-Corruption Law that focuses on recovering state assets is hoped to minimize corruption and increase the recovery of state financial assets due to corruption.

Based on the fundamental change in society's perspective on an action that is prohibited or threatened with punishment, as well as how the criminal law works as a solution to that situation, the law is no longer a mere system of norms and logic or a system of behaviour. But the law must be viewed as a value system. Thus, legal practitioners may explain the direction, goal, and philosophical, sociological, and juridical reasons behind the formation of a norm or a law. Just by perceiving the law as a system of value, legal practitioners may make accurate and wise legal actions in managing all social events in society. The only philosophical foundation in Indonesian law is Pancasila (the Five Principles) which is the philosophy of the Indonesian nation's life (Yunus et al., 2019, p. 52).

In line with the Ratification of the United Na-

tions Convention against Corruption with the Law on UNCAC, the international criminal law has been updated by adopting the following restorative approaches:

a. Statuta Roma which has recently been approved creates an International Criminal Court that contains several restorative stipulations, including the formation of a unit of victims and witnesses, giving authority to the Court for the hearing process, and considering the personal interests of victims when applicable. It contains a mandate that determines principles concerning restitution, the recovery of losses, and other efforts of reparation for the victim, and a mandate to determine a trust fund to give benefits to the victims and their families.
b. The United Nations Convention Against Corruption (UNCAC) in 2003 adopted restorative justice as regulated in one of its articles, namely Article 37 on cooperation with law-enforcing authorities.

From some referential materials issued by the United Nations and the Council of Europe as explained above, it can be seen that the aspect of recovery, rather than the prosecution or imprisoning processes, is prioritized. Recovery must be defined as the return of victims' rights through compensation by perpetrators and giving the perpetrators their right to be reaccepted in society. This process is carried out through an open, honest, just, balanced, holistic, and binding agreement that can create a deterrent effect without prosecution or imprisoning processes. The restorative approach has recovery and prevention effects. This approach may be carried out through a quick and cheap process, to decrease the piling of criminal cases in the general court.

Conclusion

Based on the discussion above, it can be concluded that the application of restorative justice as an implementation of *ultimum remedium* to return state financial assets to punish corruption perpetrators may be implemented by strengthening norms on returning state losses. This can be carried out by changing the sanction of fines from an additional sanction into a principal sanction. Then, to anticipate perpetrators who cannot repay those losses, the concept of forced labor may be applied to punish corruption perpetrators. With this concept, it is hoped that corruption perpetrators who generally live comfortably will feel scared. Thus, they become willing to pay the fines as a way of returning state assets. The retributive justice paradigm that became a legal basis for eradicating the crime of corruption is not relevant to the main goal of the law on corruption eradication in Indonesia. The spirit to restore state assets must be based on the restorative justice paradigm that orients towards recovering the impacts of corruption, rather than focusing on imprisoning its perpetrators.

References

Abdurofiq, A. (2016). *Politik Hukum Ratifikasi Konvensi PBB Anti Korupsi di Indonesia* (Legal Politics of the ratification of the united nations convention on anti-corruption in Indonesia, in Indonesian). *Jurnal Cita Hukum*, *4*(2), 187-209. doi: 10.15408/jch.v4i2.4099.

Alatas, S. H. (2012). *Sosiologi Korupsi, Sebuah Penjelajahan Demon Data Kontemporer* (Sociology of corruption, a journey to contemporary data, in Indonesian). Jakarta: LP3ES.

Arief, B. N. (1998). *Strategi Kebijakan Nasional dalam Pemberantasan Korupsi di Indonesia dan Analisis terhadap Undang-Undang Nomor 3 Tahun 1971* (National policy strategy in eradicating corruption in Indonesia and analysis on law No. 3 of 1971, in Indonesian). Jakarta: Kencana.

Bertens, K. (2004). *Sketsa Sketsa Moral* (Moral sketch, in Indonesian). Yogyakarta: Kanisius

Bramanto, R. Y. (2020). Perspektif filsafat hukum terhadap sanksi tindak pidana korupsi. *Morality: Jurnal Ilmu Hukum*, *6*(1), 80-81

Damanhuri, D. S. (2016). *Korupsi, Reformasi Birokrasi dan Masa Depan Ekonomi Indonesia* (Corruption bureaucratic reformation, and the future of Indonesia's economy, in Indonesian). Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia.

Davidsen, S. (2006). *Curbing corruption in In-*

donesia 2004 - 2006 a survey of national policies and approaches. Washington, D.C.: United States-Indonesia Society.

Elliot, K. A. (1997). *Corruption and the global economy*. Washington: Institute for International Economics.

Ferry, H. (2014). *Kerugian Keuangan Negara dalam Tindak Pidana Korupsi* (State financial losses in the crime of corruption, in Indonesian). Yogyakarta: Thafa Media.

Firmansyah. (2018). Implementasi Restorative Justice dalam Pemidanaan Pelaku Tindak Pidana Korupsi (The implementation of restorative justice in sanctioning perpetrators of corruption crime, in Indonesian). *Jurnal Dinamika Hukum*, *2*(6), 14-25.

Gusfira, H., & Hafiz, A. (2021). *Peranan Hukum dalam Perspektif Filsafat Terhadap Pemberantasan Korupsi* (Legal role and philosophy perspective to corruption eradication, in Indonesian). *Maqasidi: Jurnal Syariah dan Hukum, 1*(2), 147-148

Hamzah, A. (2005). *Pemberantasan Korupsi: Hukum Pidana Nasional dan Internasional* (Corruption eradication: National and international criminal law, in Indonesian). Jakarta: Raja Grafindo Persada

Hamzah, A. (2014). *Korupsi di Indonesia Masalah dan Pemecahannya* (Corruption in Indonesia: Issues and solutions, in Indonesian). Jakarta: Gramedia Pustaka Utama.

Hoefnagels, G. P. (1993). *The other side of criminology*. Holland: Cluwer Deventer.

Klitgaard, R. (2005). *Membasmi Korupsi* (Eradicating corruption, in Indonesian). Jakarta: Yayasan Obor Indonesia.

Miller, S., Roberts, P., & Spence, E. (2005). *Corruption and anti corruption: An applied philosophical approach*. New Jersey: Pearson Education.

Moeljatno, M. (1987). *Azas-Azas hukum pidana (Foundation of Criminal Law)*. Jakarta: Bina Aksara

Mulyadi, L. (2007). *Tindak Pidana Korupsi Di Indonesia: Normatif, Teoritis, Praktik dan Masalahnya* (Corruption crime in indonesia: Normative, theory, praksis and problems, in Indonesian). Bandung: Alumni

Prayitno, K. P. (2020). *Aplikasi Konsep Restorative Justice dalam Peradilan Tindak Pidana Korupsi di Indonesia* (Analysis of the restorative justice concept in the trials of corruption crime in Indonesia, in Indonesian). Yogyakarta: Genta Publishing.

Remmelink, J. (1993). *Hukum Pidana, Komentar Atas Pasal-Pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia* (The Criminal Code, comments on important articles in the Dutch Criminal Code and its equivalent in the Indonesian Criminal Code, in Indonesian). Jakarta: PT. Gramedia Pustaka Utama.

Rusianto, A. (2015). *Tindak Pidana & Pertanggungjawaban Pidana: Tinjauan Kritis Melalui Konsistensi Antara Asas, Teori dan Penerapannya* (Criminal action and criminal liability: A critical review through the consistency between principles, theories, and its application, in Indonesian). Jakarta: Kencana.

Shidarta, S. (2006). *Moralitas Profesi Hukum* (Morality of legal profession, in Indonesian). Bandung: Refika Aditama

Shidarta, S. (2013). *Konsep Malum in Se dan Malum Prohibitum Dalam Filosofi Pemberantasan Korupsi* (The concept of Malum in Se and Malum Prohibitum in corruption eradication philosophy, in Indonesian). *Masalah Masalah Hukum, 42*(1), 88-96.

Soekanto, S. (2012). *Pengantar Penelitian Hukum* (Introduction to legal research, in Indonesian). Jakarta: Universitas Indonesia Press.

Steinberg, S. S., & Austern, D. T. (1990). *Government, ethics and managers*. Washington: Praeger.

Suharianto, B. (2016). Restorative Justice dalam Pemidanaan Korporasi Pelaku Korupsi demi Optimalisasi Pengembalian Kerugian Keuangan Negara (Restorative justice in corporate sanctioning of corruption perpetrators to optimize the return of state financial losses, in Indonesian). *Jurnal Ilmu Hukum*, *5*(3), 421-

438.

Sukardi. (2012). Perspektif Hukum Refleksif terhadap Konsep Restorative Justice dalam Pembaharuan Hukum Pidana (The perspective of reflexive justice in the renewal of the criminal law, in Indonesian). *Jurnal Ilmu Hukum Amma-na Gappa*, *20*(2), 15-34.

Surachman, E. (2020). *Kendala Penanganan Korupsi, Kolusi dan Nepotisme (KKN) Sebuah Pergulatan Teori dan Makna* (Obstacles in handling corruption, collusion, and nepotism: a fight between theory and meaning, in Indonesian). Bandung: PT. Citra Aditya Bakti.

Waluyo, B. (2011). *Penelitian Hukum Dalam Praktik* (Legal research in practice, in Indonesian). Jakarta: Penerbit Sinar Grafika.

Wijayanto, & Zachrie, R. (2009). *Korupsi Mengorupsi Indonesia* (Corruption corrupts indonesia, in Indonesian). Jakarta: Gramedia Pustaka Utama.

Yunus, N. R., Anggraeni, R. D., & Reski, A. (2019). The application of legal policy theory and its relationship with rechtsidee theory to realize welfare state. *Jurnal Adalah: Buletin Hukum Dan Keadilan*, *3*(1), 1-6.