



Settlement of Corporate Crime with Restorative Justice Approach

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ABSTRACT

The resolution of corporate criminal offences with a restorative justice approach is an alternative effort in resolving cases involving corporations, which does not only focus on punishment, but also on restoring relationships between the parties involved, as well as efforts to repair the negative impacts caused by the criminal act. In the corporate context, this means that companies involved in criminal offences are not only subject to legal sanctions, but are also required to take social and moral responsibility for the harm caused, both to individuals, society and the environment. This approach has the potential to improve a company's reputation, minimise long-term social impacts, and encourage more ethical and responsible corporate practices. Restorative justice also provides space for companies to make internal improvements, such as reforming policies and procedures that can prevent the recurrence of similar criminal offences in the future. Thus, the resolution of corporate criminal offences through a restorative justice approach not only provides solutions for victims and perpetrators, but also contributes to the development of a more just and sustainable law.

INTRODUCTION

Corporations as legal subjects are now one of the main actors in law violations that have a major impact on the environment, economy, and society in general. As an entity different from individuals, corporations have distinctive characteristics such as collective nature, profit objectives, and their wide influence on various parties. This makes handling corporations in the criminal law system a challenge in itself. In addition, the punishment system tends to adopt a retributive approach that emphasises punishment as a means to create a deterrent effect and uphold justice (Stephen A. Schiller, 1976). However, this approach often fails to address the root of the problem or fulfil the needs of victims and society. In the corporate context, the retributive approach also has limitations, such as the risk of indirect negative impacts on employees and consumers due to severe economic sanctions. The restorative justice approach emerges as an alternative that is more oriented towards restoring the losses suffered by victims, the responsibility of perpetrators, and restoring social relations (Mirza Sahputra, 2022). This approach is more suitable in dealing with corporate crime, because it provides opportunities for solutions that focus on repairs, such as restoring the impact of environmental damage, providing compensation to the injured party, and reforming the company's internal policies to prevent similar violations in the future.

The criminalisation of corporations has increasingly become a concern in the practice of law enforcement in Indonesia, especially in relation to criminal offences involving business entities. Crimes committed by legal entities, such as corporations, often cause large losses that have broad impacts, both in economic, social and environmental aspects. Traditional criminal sanctions that focus on punishment (retributive) are often considered less effective in overcoming this problem because they tend to only focus on punishment without providing remedies to victims or the harmed community. Therefore, a more holistic and inclusive legal approach is needed, one of which is restorative justice. This approach is orientated towards creating a balance between sanctioning the perpetrator and restoring the victim's losses (Hanafi Arif, 2018). This model promotes dialogue and collaboration between perpetrators, victims, and related parties to achieve solutions that are not only fair but also sustainable. In the corporate context, this approach allows business entities to take legal and moral responsibility without compromising the sustainability of their operations. As such, companies can provide compensation or remedy that benefits victims while maintaining broader economic stability.

The corporate crime case is a relevant object of study to evaluate the effectiveness of the application of the restorative justice approach in corporate punishment. As a legal entity facing criminal charges, this case provides an opportunity to compare the traditional retributive legal approach with the restorative approach in resolving legal issues, especially those concerning state losses. Based on the principles in Law No. 40 of 2007 on Limited Liability Companies and Criminal Code Article 359 on Corporate Crime, this study will analyse whether restorative justice can offer a more comprehensive and balanced solution.

The researcher assumes that the restorative approach in corporate crime cases can provide greater benefits than the retributive approach, especially in terms of restoring state and community losses. This research is expected to be a significant contribution to the development of the corporate criminal law system in Indonesia. In addition, the results of this study are also expected to provide input for policy makers in formulating punishment policies that are not only oriented towards punishment, but also recovery. Based on the explanation that has been conveyed, there are also problem formulations in this research, namely "How is the settlement of corporate criminal offences with a restorative justice approach?", and "How are the types of punishment that can be imposed on corporations that commit criminal offences?".

LITERATUR REVIEW

Overview of corporate offences

Corporate crime is a regulation created to govern a corporation that commits criminal offences. These offences are usually driven by the desire to maximise profits, increase competitive advantage, or protect corporate interests, often at the expense of legal, ethical, or social standards. The concept of white collar crime, Gottfrdson and Travis Hirchi stated that this crime had two desirable consequences. Firstly, the denial of the theory of that crime can also be committed by the upper class and their immunity to the law. By the upper class and their immunity to the law.

Overview of Restorative Justice

Restorative justice is a method of resolving criminal cases that involves the offender, the victim and the community to reach a solution that is fair to all. It focuses on repairing the harm done to victims, encouraging offenders to take responsibility for their actions, and restoring social relationships disrupted by the offence. The main goals of restorative justice include restoring the victim by addressing the physical, emotional and material damage caused, and encouraging the offender to recognise their guilt and act responsibly.

METHODOLOGY

This study focuses on the concept of punishment against corporations that refer to the principles of restorative justice, while the things examined include legislation, legal theory, and the application of law in practice. The aspects studied as the legal basis of corporate crime in the Indonesian legal system include the concept of restorative in the context of corporate crime, the implementation and effectiveness of the restorative approach in cases involving corporations as perpetrators of criminal offences. The data sources in this study are:

- 1) Primary Data: Primary legal materials are legal sources that have a binding nature and become the main foundation in the legal system. This type of material is generally in the form of regulations or rules issued by institutions that have official authority. This research also uses laws as the basis of research, which include:
 - Kitab Undang-Undang Hukum Pidana

- Law No. 40 Year 2007 on Limited Liability Companies or Regulations Related to Corporate Liability.
 - Law No. 31 Year 1999 on the Eradication of Corruption Crime Jo. Law No. 20 Year 2001
 - Law No. 11 Year 2021 on Concerning the Amendment to Law Number 16 of 2004 Concerning the Prosecutor's Office of the Republic of Indonesia
 - Supreme Court Regulation (PERMA) Number 13 of 2016 concerning Procedures for Handling Criminal Offences by Corporations
- 2) Secondary Data: Secondary legal materials are legal references that serve to provide explanations, analyses, or views on primary legal materials. Although not directly binding, this material plays an important role in analysing and applying the law. This research utilises secondary legal materials in the form of literature, such as books, academic works, online sources, and legal journals.
- 3) Tertiary Legal Materials: Tertiary legal materials are sources that facilitate the search for and understanding of other legal materials, although they do not directly regulate the law. This source is generally informative and useful for finding primary legal materials and secondary legal materials. In this research, the tertiary legal material used is a dictionary.

The method applied in this research is a normative legal approach. This approach is a research method that focuses on literature review by analysing reference materials relevant to the topic under study. This research uses a statute approach, a fact approach, and a case approach. The method used in this research involves legal norms as the main object to answer the legal issues at hand, through the process of identifying legal rules, legal principles, and legal doctrines. The source of legal materials in this research comes from library research, which is research conducted by referring to library materials. With a focus on literature studies, the legal materials used include primary, secondary, and tertiary legal materials, which are used to analyse existing problems. This research uses descriptive data analysis with data collection methods that prioritise the truth, summarise, and describe the results obtained from library sources. The data is combined with applicable laws and regulations as well as various literatures such as books, scientific works, online sources, and legal journals that are relevant to the problems of this research, in order to find solutions and draw conclusions. Data analysis in this research uses a normative legal approach, by examining various literature materials related to corporate punishment based on a restorative approach.

RESULT AND DISCUSSION

Restorative Approach in The Settlement of Corporate Offences

Restorative justice in the perspective of prophetic law actually reflects three fundamental values, namely divine value, human value, and justice value. The value of divinity in this concept is reflected through efforts to build harmonious relationships between victims and perpetrators, where both are positioned equally and get a settlement based on justice. Within the framework

of the value of divinity, the balance of relations between victims and perpetrators is important, with vertical relations that only apply between humans and God, while relations between humans are horizontal and emphasise the importance of harmony. A just resolution is in line with God's nature of being just towards all of His creations. Therefore, by prioritising a fair settlement, restorative justice is not only a method of resolving criminal cases, but also plays a role in maintaining social balance and strengthening harmony in community life.

Based on data from Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, This law is the main basis for out-of-court dispute resolution in Indonesia, which includes methods such as mediation and deliberation. The Act regulates various alternative dispute resolution mechanisms, including arbitration and mediation. The content of the Law provides an explanation of alternative dispute resolution as a method to resolve disputes without going through formal court proceedings, which includes mediation, conciliation, and arbitration. The Law also states that mediation is a form of dispute resolution that involves a neutral third party (mediator) to facilitate the disputing parties in reaching an agreement (Hamzah, 1988).

This approach does not only focus on punishing the corporation, but rather on recovering the losses arising from the criminal offence. Mediation between the parties involved can result in an agreement that includes several things, such as:

- Reparation or compensation to the affected victims.
- Improvements to the company's internal systems so that the same mistakes are not repeated.
- Preventive measures involving improvements to company policies related to the environment, business ethics, and others.
- Education or training for company managers and staff on social responsibility and legal compliance.

As for the restorative approach, it can be carried out in court as referred to in the Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation in Court, As explained in Article 1 and Article 4 of the law, mediation is a dispute resolution process that involves a neutral third party to help the disputing parties reach an agreement outside of court. Courts are required to recommend mediation to parties involved in civil cases. This mechanism can also be extended to cover companies in cases involving corporate crime.

Mediators therefore play a very important role in the mediation process, especially in disputes involving corporate crime. They act as a neutral party who helps the parties to communicate, resolve conflicts, and find mutually beneficial solutions without having to go to court. The success of mediation relies heavily on the competence of the mediator, the willingness of the disputing parties to cooperate, and the fairness and equality of the process. In cases of corporate crime such as corruption, fraud, environmental offences, and other corporate misconduct, mediators play a very important role to resolve disputes in an amicable manner and avoid protracted legal proceedings. Some of the specific roles of mediators in this context include:

- **Building Bridges between Corporations and Communities:** In the case of a company that has caused environmental damage, a mediator can help the company and the affected community to find a joint solution, including agreeing on compensation or remedial measures required.
- **Improving Internal Company Processes:** Mediators can encourage companies to make improvements to their internal policies and procedures, to prevent the recurrence of similar offences in the future.
- **Compensation for Victims:** In cases where companies have harmed individuals or communities, mediators can play a role in designing appropriate compensation programmes, whether in the form of money, social restoration or environmental rehabilitation.

Types of Penalties that Can Be Imposed on Corporations that Commit Criminal Offences

The first type is Financial Penalty, the one of the most common forms of sanctions imposed on corporations found guilty of committing criminal offences. This fine has the main purpose of providing a deterrent effect to the company and ensuring that the offence committed will have a significant financial impact. Fines also serve as a tool to recover losses arising from corporate actions, be it to individuals, society, or the state, as referring to Law No. 40 of 2007 concerning Limited Liability Companies: Regulates the obligation of corporations to comply with applicable laws and regulations, as well as sanctions that can be imposed on corporations in the event of violations. In the restorative justice approach, fines do not only aim to punish, but also to restore the harm caused by the criminal offence. For example, companies involved in environmental pollution are not only subject to financial fines, but are also required to fund environmental restoration programmes. This is so that the company is not only financially penalised, but also plays a role in addressing the negative impacts caused by the offence (Nur, 2017).

Suspension or revocation of business licences is the second type of sanction that can be imposed on corporations proven to have committed criminal offences. This effort is carried out with the aim of stopping the company's operations as a form of sanction for the legal violations they commit, be it in the form of environmental crimes, corruption, embezzlement, or other violations. Thus, this sanction is also carried out with the aim of providing a deterrent effect for the company and protecting the community and the environment from harmful activities. In the context of the Restorative Justice approach, the main purpose of enacting such provisions is to repair the harm caused by the criminal act, by involving all affected parties or all relevant aspects in a settlement process based on dialogue, responsibility, and restoration. This approach does not only prioritise the punishment of the perpetrator, but also seeks to restore the situation to its original position or even better, if possible. In the context of corporate crime, such as environmental offences or corruption, revocation of business licences or suspension of business licences can be seen as one of the restorative sanctions, especially if the process focuses on restoring the harm caused by the corporation to society or the environment (Raharja Ivan, 2014).

The third sanction, which is the Return or Seizure of Assets in Corporate Crime Cases. Return or confiscation of assets is one form of sanction that can be imposed on corporations involved in criminal offences, such as corruption, fraud, environmental pollution, or other offences. Asset forfeiture or return aims to ensure that corporations are held accountable for their illegal actions by returning or confiscating assets obtained through such illegal activities. This process is also often part of restorative justice, as it helps to restore the harm caused to victims or communities. In the restorative justice approach, asset forfeiture or return is not simply a form of punishment, but rather a measure that aims to restore the state of affairs that has been disrupted by the commission of a crime. This approach focuses on repairing the relationship between the perpetrator and the victim, with the ultimate goal of repairing the harm caused. In the case of corporations, confiscation or return of assets is not only a form of punishment for the company, but also to ensure that victims or affected communities are compensated or benefit in the recovery process. Asset forfeiture or return also forces companies to take responsibility for the impact of their criminal behaviour. This creates a broader form of accountability, not only by paying fines, but also by taking concrete steps to repair the damage that has been caused. Companies are required to not only pay for offences committed, but also ensure that they restore the state of affairs damaged by their actions. This responsibility includes more in-depth remediation efforts in social, environmental and economic aspects. Thus, confiscation or return of assets in the context of restorative justice aims to restore the situation, not just punish the perpetrator, but ensure that the action repairs the existing damage and provides more holistic justice for all affected parties.

The fourth sanction is Subsidiary Punishment: Combination of Sanctions in Corporate Crime Settlement, Subsidiary punishment refers to sanctions that can be imposed as an alternative or additional if the main punishment cannot be implemented or if the perpetrator cannot fulfil the obligations of the specified punishment. In the context of corporate crime, the application of subsidiary punishment aims to ensure that the sanctions imposed remain effective and provide maximum impact, even though the main punishment such as fines or suspension of business licences cannot be fully fulfilled. Restorative justice approaches in corporate criminal offence resolution often involve the use of subsidiarity penalties to ensure that restoration and repair of relationships between offenders and victims can be achieved. In addition, the combination of sanctions applied aims to restore the social and economic harm caused by the corporation's unlawful actions (Ilyas & Sufyan, 2023).

The importance of the application of subsidiary punishment is also reflected in the Restorative Justice Principle, which not only focuses on punishment to the offender, but also on efforts to restore the disturbed state. Therefore, by combining different types of sanctions, justice can be achieved not only through financial penalties but also through social, environmental, and economic reparation efforts.

The influence of the updated Criminal Code on resolving corporate crimes through a restorative justice framework

Since the enactment of Indonesia's new Criminal Code, on 2 January 2026 as explicitly regulated by issuing Law No.1 of 2023 which replaces the old Criminal Code. accommodates restorative justice for corporations in Articles 56, which provide space for case resolution without necessarily leading to imprisonment or large fines. The article provides an out-of-court settlement option (diversion), especially if it is possible to recover losses suffered by victims, as well as settlement efforts that focus on dialogue between the perpetrator (corporation), victim, and community. The regulation of corporate criminal offences as regulated in Articles 46 to 50 address corporations as entities that can be held accountable under criminal law. Article 46(1) specifies that corporations bear criminal liability if offences are committed by individuals with roles or authority within the corporate framework, acting either on the corporation's behalf or for its benefit. Meanwhile, Article 50(1) The corporation is given leniency for the criminal offence committed the reasons for justification and excuse reasons in criminal law can be submitted by the management, order giver, control holder, and/or beneficial owner of the corporation. If the reason is directly related to the criminal offence charged, the corporation can also use it as a basis for exemption from criminal liability. Justification removes the unlawful nature of an act, while excuse removes the offender's guilt even though the act remains unlawful. The application of this principle in corporate criminal offences aims to ensure justice by assessing the relationship between the actions and responsibilities of the perpetrator or corporation as a whole.

The substance of restorative justice that has been included in the new Criminal Code Law, when viewed from the perspective of prophetic law, is actually a progressive step in strengthening the criminal justice system based on the values of divinity, humanity, and justice. Within the framework of divine value, which is the basis of prophetic law, the purpose of punishment as stipulated in Article 51 of the new Criminal Code Law, which emphasises the rehabilitation of convicts, is actually very relevant to the divine value that teaches the concept of *taubatan nasuha*. This concept implies that the All-Forgiving God provides an opportunity for every individual, including those who have committed great mistakes, to repent and change for the better. This reflects the belief that every human being, despite their previous bad behaviour, has the potential to return to the right path, thanks to God's mercy. In addition, from the perspective of the human dimension, the affirmation in Article 52 of the new Criminal Code, which states that punishment must not degrade human dignity, provides clear direction that the judicial process must respect human dignity as an invaluable thing. This shows the orientation of the justice system that prioritises respect for the dignity of each individual, which is seen as a gift from God Almighty. Thus, the law does not only function as a tool to punish, but also to respect and restore human dignity, in accordance with the principles of divinity and humanity contained in prophetic law.

With this regulation, the new Criminal Code provides space for corporations to resolve minor criminal offences with a restorative justice approach as regulated in Article 56.

Article 56 paragraph 1 explains that Judges, in imposing punishment, must consider restorative justice with the aim of restoring the balance between the perpetrator, victim, and society. Article 56 of the New Criminal Code 2023 integrates the principle of restorative justice in sentencing by considering the interests of the victim, the community, acknowledgement of the perpetrator's guilt, and the perpetrator's remorse for his actions. This approach aims to restore social balance by emphasising dialogue between the perpetrator, the victim, and the community, and encouraging the perpetrator to take direct responsibility for the harm caused. Thus, the new Criminal Code provides space for corporations to impose penalties that not only serve as retribution, but also as a means of restoring social relations and peacefully resolving conflicts.

CONCLUSION

The restorative justice approach to resolving corporate offences provides a comprehensive and balanced alternative to traditional punitive systems. Unlike retributive justice, which primarily focuses on punishment, restorative justice centres on repairing the harm caused by the corporate crime and rebuilding relationships between the offending corporation, the victims, and the broader community. This model seeks to address the underlying damage caused by offences such as environmental harm, fraud, and corruption, with the goal of ensuring that the offenders take responsibility for their actions and work towards rectifying the wrongs they have committed. Key restorative elements, including mediation, reparations, and organisational reform, play a vital role in achieving justice that extends beyond mere penalties. Mediation serves as an essential tool, where neutral third parties facilitate dialogue between corporations and victims to reach mutually beneficial agreements. Reparations, which often include financial compensation or funding for environmental restoration, ensure that the affected parties are directly benefited from the justice process. Additionally, restorative justice calls for corporate responsibility through policy reforms aimed at preventing future misconduct.

The diverse range of penalties available, such as financial penalties, suspension or revocation of business licences, asset seizure, and subsidiary sanctions, reflects the flexible and restorative nature of this approach. Rather than merely punishing the corporation, these sanctions work to restore the harmed state of affairs, whether in terms of financial restitution, social or environmental rehabilitation, or organisational change. The integration of subsidiary punishments ensures that, even if primary sanctions like fines or licence suspensions are not fully implemented, the company remains accountable, and the restorative process continues.

In essence, restorative justice in the context of corporate crime fosters a deeper sense of accountability, not only by penalising companies but by encouraging them to take active steps towards repairing the damage they have caused. This approach offers a more sustainable and equitable form of justice, focusing on long-term recovery, societal reintegration, and corporate reform. By incorporating restorative principles into corporate criminal law, it is possible to

achieve a fairer, more inclusive form of justice that benefits all stakeholders – from the affected communities and individuals to the corporations themselves.

ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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