



## Restorative Justice as an Alternative Approach in Combating Corruption Offenses

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### ABSTRACT

Corruption runs rampant in Indonesia, hindering progress, yet restorative justice promises a fair and sustainable solution to address this issue. This research aims to explore the application of restorative justice in tackling corruption in Indonesia. Utilizing a normative legal research method, the study highlights the challenges faced by restorative justice, such as difficulties in identifying victims and disagreements regarding restitution. The findings suggest that strengthening the norms of state restitution as the primary penalty and establishing recovery mechanisms are essential to bolster restorative justice. The conclusion drawn from this research is that implementing restorative justice in corruption cases allows victims to receive direct compensation from perpetrators, enhances accountability, and reduces the burden on the judicial system by resolving cases outside of court. This research is expected to serve as an effective instrument in combating corruption and rebuilding public trust in the justice system.

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## **INTRODUCTION**

The approach of restorative justice in law enforcement has garnered global attention in addressing cases of corruption. This concept emphasizes the recovery of damages, reconciliation, and restoration of relationships between perpetrators, victims, and the community as an alternative to the more traditional retributive approach. While its primary goals are to mitigate the negative impacts of criminal acts, resolve conflicts, and strengthen social justice, its implementation has drawn special focus across various countries worldwide.

Some countries, such as Norway and New Zealand, have successfully integrated restorative justice into their criminal justice systems. They employ mediation and dialogue among perpetrators, victims, and the community to achieve restoration and reconciliation. The success of this implementation is reflected in reduced crime rates, decreased use of punitive measures, and increased trust and harmony within communities. This approach provides opportunities for victims to express their experiences, receive recovery, and feel valued, while encouraging perpetrators to understand the negative impacts of their actions and take necessary steps towards recovery.

However, challenges persist in integrating restorative justice into the criminal justice system, especially in countries like the United States and South Africa. Despite efforts to implement this approach, further research is still needed to evaluate its effectiveness and address potential barriers. In the context of the United States, several states have begun implementing restorative justice in handling corruption cases, particularly concerning restitution and reconciliation between perpetrators and victims. However, the level of adoption and consistent implementation remains a subject of ongoing debate at various levels of government.

Meanwhile, South Africa has also adopted a restorative justice approach in its criminal justice system as an effort to enhance reconciliation and recovery of damages. In other African countries like Rwanda, Uganda, Ghana, and Nigeria, interest in restorative justice mechanisms is growing. Nevertheless, there are criticisms of this system being deemed insensitive to human rights. However, the potential of restorative justice as a more holistic and sustainable solution in combating corrupt criminal activities remains a global concern, with a focus on recovery, reconciliation, and prevention.

The aim of this research is to explore the implementation and challenges of applying the restorative justice approach in law enforcement, particularly in addressing corruption cases globally. By emphasizing the recovery of damages, reconciliation, and restoration of relationships between perpetrators, victims, and the community as an alternative to the more traditional retributive approach, this study aims to understand the effectiveness and emerging barriers in integrating restorative justice into the criminal justice system.

Thus, this research is expected to provide deeper insights into the potential of restorative justice as a more holistic and sustainable solution in combating corrupt criminal activities, with a focus on recovery, reconciliation, and prevention.

## **LITERATURE REVIEW**

### **a. Implementation of Restorative Justice in Corruption Cases in Several Countries**

#### **Norway**

Norway has long been implementing a restorative justice approach in its criminal justice system, including in handling corruption cases. They utilize mediation and dialogue among perpetrators, victims, and the community to achieve restoration and reconciliation. Norway stands as a successful example of restorative justice implementation, as it actively involves victims, perpetrators, and the community in resolving criminal acts. The implementation of restorative justice there includes the creation of a system oriented towards recovery, reconstruction, and reconciliation. This allows victims to express their experiences, receive recovery, and feel valued. Perpetrators are also encouraged to understand the negative impacts of their actions and take necessary steps towards recovery. In Norway, the positive impact of implementing restorative justice can be seen in reduced crime rates, decreased use of punitive measures, and increased trust and harmony within the community. These positive changes occurred after Norway consciously adopted a rehabilitative approach in reforming its criminal justice system. Additionally, efforts are made to uphold the humanity of inmates during incarceration. Inmates have the right to choose, attend school, learn new skills, exercise, see their families, and participate in extracurricular activities. This approach is believed to facilitate reintegration into society. Inmates still feel respected like any other citizens, and they leave prison with skills and self-esteem to become contributing members of society again.

#### **New Zealand**

New Zealand has adopted restorative justice in handling corruption cases as an effort to repair relationships among perpetrators, victims, and the impacted community. Restorative justice is based on the idea that crime is more than just an offense against the state. Legal violations often also result in losses for individual victims, communities, and the offenders themselves. For a victim, crime can cause emotional, physical, and economic harm. In theory, restorative justice can enhance New Zealand's current retributive approach to criminal justice. The existing system fails to address crime contextually and is unable to resolve its underlying causes. Restorative justice acknowledges these weaknesses and suggests solutions by emphasizing forgiveness and reconciliation. Through community-based victim-offender mediation, restorative justice addresses crime in a relevant context, recognizes the role of the community in preventing crime, heals victims, and rehabilitates offenders. This approach also promotes accountability for offenders by bringing them together and demanding relevant personal reparations. Restorative justice encourages victim recovery through increased involvement in the justice process. Additionally, it can reduce costs by decreasing court usage, redirecting offenders, and lowering the rate of reoffending.

### **United States**

Several states in the United States have begun implementing restorative justice in handling corruption cases, especially concerning restitution and reconciliation between perpetrators and victims. Dissatisfaction with available solutions within the judicial system has opened opportunities for responsive changes after decades of focus on punishment and incarceration. This shift is evidenced by waves of de-carceration policies, rehabilitation programs, and increased focus on reintegration and community corrections. Support for restorative justice is widespread across the United States, and many restorative justice laws are open-ended, meaning they allow for flexible interpretation. Practitioners in the justice system and restorative justice programs should be aware of legal support for restorative justice in their areas and use this support to expand and evaluate initiative practices. Policymakers and advocates for restorative justice can enhance legal knowledge and identify legislative advocacy to help centralize policy resources by expanding and refining restorative justice law directories.

### **South Africa**

South Africa also implements a restorative justice approach in its criminal justice system, including in handling corruption cases, as an effort to strengthen reconciliation and recovery of damages. Restorative justice is a paradigm used in Africa before the arrival of colonizers and must be revived by African countries as it promotes healing and restores relationships among perpetrators, victims, and communities better than the adversarial system in the West. Restorative justice may work better in 21st-century Africa than court processes. Retributive justice systems and cultures tend to make people get into more trouble than out of it. The restorative justice paradigm is highly ideal for Africa as it will reduce dependence on external aid, encourage active participation of local communities, and contribute to the development of dispute or conflict resolution systems in Africa itself. Although support for this varies, some countries openly express their support for customary law as part of the constitutional and normative legal systems. In other countries like Uganda, Ghana, and Nigeria, community interest in restorative justice mechanisms is growing. Criticisms often raised against restorative justice systems in Africa are their alleged insensitivity to human rights, yet African communities have a deep understanding of humanitarian values pre-colonialism.

The application of restorative justice in handling corruption cases worldwide is seen as a more holistic and sustainable solution. By focusing on recovery, reconciliation, and prevention, the implementation of restorative justice is expected to have a positive impact in combating corruption globally.

### **b. The Development of Restorative Justice in Indonesia**

In Indonesia, the development of restorative justice in handling corruption crimes is still limited due to challenges in its implementation. Efforts are needed to improve the criminal justice system and provide faster solutions in handling corruption cases. Criminal law, which regulates criminal matters,

encompasses a legal framework that determines actions subject to criminal sanctions.

Restorative justice relates to efforts to heal the wounds of victims, assist offenders in living lawfully, and repair damage in interpersonal and societal relationships. This concept emphasizes healing aspects and is a trend that has spread widely worldwide. The theory of utilitarianism, introduced by Jeremy Bentham, suggests that the assessment of the goodness or badness of a law should be based on the consequences or impacts of its application. The implementation of restorative justice practices has become a leading trend and widely spread across almost all corners of the world today.

In the fundamental principles of using restorative justice programs in the criminal context in 2000, the United Nations adopted restorative justice as a guideline for handling criminal acts. According to the UN, restorative justice is "An approach to crime that values the integrity and equality of each individual, advocates understanding, and promotes the creation of social peace through a healing process involving victims, perpetrators, and the community." This concept serves as the basis that is a primary consideration in formulating the principles of using restorative justice. Restorative justice is based on the principle that victims who suffer losses due to criminal acts should receive compensation, while offenders should undergo community service, and other agreements may need to be made. In this concept of restorative justice, the principles of fair law are not only one-sided, impartial, or arbitrary but refer to compliance with applicable laws and consider aspects of equal rights, compensation, and balance in all aspects of life. Investigation and prosecution in cases of alleged corruption crimes can be conducted by various law enforcement institutions, such as the police, prosecutors, and the Komisi Pemberantas Korupsi (KPK).

The police have the authority to conduct investigations and prosecutions in criminal cases, as explained in Article 4 and Article 6 of the Indonesian Code of Criminal Procedure (KUHAP). The Attorney General's Office also has the authority to conduct investigations, in accordance with Article 30 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. The Corruption Eradication Commission (KPK), as a specialized agency focused on combating corruption crimes, has authority regulated in Article 6 letter C of Law Number 30 of 2002 concerning the Corruption Eradication Commission. According to that law, the KPK is empowered to conduct investigations and prosecutions in cases of corruption crimes involving law enforcement officials, state officials, cases that attract public attention, and cases with a minimum state financial loss value of 1 billion.

The KPK also has the authority to take over investigations conducted by the police or investigations and prosecutions carried out by the Attorney General's Office. This authority takeover can occur in situations where corruption crimes are not pursued, the handling process is prolonged, corruption is involved in handling corruption cases, or there is interference from the executive, legislative, and judiciary branches in handling corruption cases. By continuously developing the concept of restorative justice and involving various stakeholders, it is hoped that the handling of corruption cases in Indonesia can

become more effective and sustainable. In the positive legal developments in Indonesia, especially formal law, many changes have been made in the form of additions to regulations regulated by laws outside of the Criminal Procedure Code (Law No. 8 of 1981 concerning the Criminal Procedure Code) and internal regulations of law enforcement agencies serve as guidelines to law enforcement officers in carrying out their authorized duties according to the law.

Although Indonesia has many regulations complementing criminal procedural law, law enforcement issues still receive public attention. In fact, in recent years, public disappointment and dissatisfaction with the application of these laws have increased. Disappointment with the seemingly time-consuming and costly formal judicial process can obstruct justice. The causes of the crisis of confidence in law enforcement agencies reflect the views of the public on law enforcement agencies. In addition, weaknesses in Indonesia's legal system, including the independence of law enforcement agencies in exercising their powers, high levels of corruption in law enforcement, the backwardness of law enforcement resources, and the weakness of management and low levels of accountability in criminal justice procedures, have increased public distrust of Indonesian law. In this situation, the government needs to restore public confidence that law enforcement in Indonesia favors society and can ensure the enforcement of justice, thus eliminating public disappointment with the application of the law by the government and law enforcement agencies. Restorative justice is a legal approach in criminal case resolution that has been prevalent since the 1960s and essentially does not rely on the use of sanctions in the criminal justice system but prioritizes problem resolution.

From the perspective of victims and perpetrators of crimes, criminal cases are increasingly receiving attention because they have the potential to be included in criminal case resolution mechanisms in Indonesia. This is in line with Carl von Savigny's opinion that restorative justice is an evolving legal policy, so society does not only rely on procedures but mainly on the most affected parties, the victims, to ensure they receive justice and resolution to their issues (suffering). In the legal framework, especially regarding the regulation of restorative justice in criminal case resolution, there are several internal regulations that serve as guidelines for law enforcement officers in implementing restorative justice, guidelines for law enforcement officers in Indonesia in internal regulations, Prosecutor Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Indonesian National Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, and Decree of the Director General of the General Courts of the Supreme Court No. 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of Restorative Justice in the Environment of General Courts, which are enforcement rules for restorative justice in the framework of criminal justice application.

The legal basis for the application of restorative justice in corruption crimes in Indonesia includes:

- A. Law Number 15 of 2022 concerning Corruption Crimes (Corruption Law):

1. Article 28 paragraph (3) of the Corruption Law provides opportunities for case resolution outside the judicial process, including through restorative justice.
  2. Article 42 paragraph (2) of the Corruption Law regulates the return of state financial losses as one of the conditions for termination of prosecution.
- B. Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Granting Rights and Rehabilitation to Corruption Convicts. This regulation governs the requirements and mechanisms for granting rights and rehabilitation to corruption convicts, including those who have fulfilled their obligations through restorative justice.
- C. Circular Letter of the Supreme Court Number 4 of 2023 concerning the Implementation of Restorative Justice in Handling Corruption Cases. This circular letter provides guidance for law enforcement officials in implementing restorative justice in corruption cases.

The Corruption Eradication Commission (KPK), as a specialized agency focused on combating corruption crimes, has authority regulated in Article 6 letter C of Law Number 30 of 2002 concerning the Corruption Eradication Commission. According to Article 11 of the law, the KPK has the authority to conduct investigations and prosecutions in cases of corruption crimes involving law enforcement officials, state officials, cases that attract public attention, and cases with a minimum state financial loss value of 1 billion. The KPK also has the authority to take over investigations conducted by the police or investigations and prosecutions carried out by the Attorney General's Office. This authority takeover can occur in situations where corruption crimes are not pursued, the handling process is prolonged, corruption is involved in handling corruption cases, or there is interference from the executive, legislative, and judiciary branches in handling corruption cases.

## **METHODOLOGY**

This research employs the normative legal research method, also known as library research or document study. According to Soerjono Soekanto and Sri Mamudji, normative legal research is conducted by examining literature materials (secondary data) to address legal issues under study. This research utilizes legal materials or secondary data such as legislation, court decisions, textbooks, research findings in journals and magazines, legal theories, scholars' opinions, legal dictionaries, and legal encyclopedias. To gather information from various aspects regarding the legal issue under study, this research adopts the statutory approach and conceptual approach. The technique used to collect legal materials is the document study technique, which is then inventoried and classified according to each formulation of the problem. Data or legal material analysis is conducted using the qualitative analysis method, involving interpretation of the processed legal materials to provide argumentation for the research findings.

## **RESEARCH RESULT AND DISCUSSION**

According to John Rawls, law enforcement is an effort to achieve three main elements: justice, certainty, and the utility of the law. This is also explained by Gustav Radbruch, who states that law enforcement is an effort to realize justice based on conscience.

Criminal law enforcement is a form of governmental service in the legal field carried out by law enforcement institutions to ensure the practical functioning of criminal legal norms as guidelines for behavior among legal subjects in society and the state. According to Lawrence M. Friedman, there are three indicators that determine the success of law enforcement in society, namely: legal substance, legal structure, and criminal law enforcement, which ideally seem not to be reflected in the enforcement of corrupt criminal acts.

The reality of increasing corruption crimes in Indonesia indicates that the law enforcement carried out by law enforcement institutions against corrupt actors is not optimal. The stages of the law enforcement process for corruption crimes are actually no different from other crimes, starting from the investigation process, prosecution, trial, and execution of court decisions. The Criminal Procedure Code has regulated the tasks of each law enforcement institution in enforcing criminal law against corruption.

In the context of corruption crimes, it seems that philosophies and theories of punishment influenced by the retributive justice approach are no longer relevant to the overarching goal of combating corruption in Indonesia, which focuses on protecting state assets or wealth. The legal interest to be protected is the state's finances. It has recently been revealed that several convicted corrupt individuals who have caused significant financial losses to the state have actually enjoyed their sentencing process. In fact, their presence in the penal system damages the morale of law enforcement officers, which in turn triggers new criminal acts. Convicted individuals in corruption cases even use their ill-gotten gains to bribe prison officials to obtain luxurious facilities during their sentence.

The principles of retributive justice, which prioritize the punishment of criminals for corrupt acts rather than focusing on the recovery from the crime's consequences, are evident in Indonesia's anti-corruption norms. These norms state that the return of state financial losses does not absolve individuals of their criminal liability for corruption. Furthermore, Article 4 of Law No. 31/1999, as amended by Law No. 20/2001 on the Eradication of Corruption Crimes, affirms that the return of state financial losses or national economy recovery does not negate the criminal liability of corruption perpetrators as defined in Articles 2 and 3 of the law. This indicates that Indonesian corruption law still views the wrongdoing or sin of criminals as only redeemable through suffering.

Addressing the issue of approaches to combating corruption in Indonesia requires referring to international legal concepts that allow each country to resolve corruption cases through restorative justice, particularly in asset recovery as a means of restoring financial losses due to corruption crimes. The restorative justice approach indicated by international law emphasizes focusing on the return of state losses by corrupt individuals rather than depriving them of their freedom through imprisonment. Qualitatively, the negative impact of corruption

includes reducing public sector revenue and increasing government spending on the public sector. On another level, corruption also contributes to a significant fiscal deficit, increasing inequality of opportunity for individuals in certain positions to benefit from government activities at the expense borne by society.

The failure of retributive theories oriented towards retaliation and neo-classical theories oriented towards equality of criminal sanctions and actions to meet the sense of justice in society has prompted the emergence of thoughts to apply restorative justice in the concept of punishment in general, especially in punishing corruption perpetrators. This perspective sees restorative justice, which emphasizes repairing the harm caused or related to the crime, as a concept consistent with the goal of combating corruption in Indonesia, as has been done in several other countries.

In general, the concept of justice embraced in the criminal justice system is classified into two: retributive justice and restorative justice. There are several differences between these two concepts in viewing the fundamental principles of criminal law, both formal and substantive, including the administration of criminal justice, especially the position of crime victims. From the perspective of retributive justice, crime is a violation of public order. Therefore, the administration of justice emphasizes exclusive accountability by the state (monopolizing prosecution and enforcement). On the other hand, from the perspective of restorative justice, besides viewing crime as a violation of criminal law, it also sees crime as a conflict between individuals that causes harm to the victim, society, and the perpetrator themselves.

The historical aspect of the formation of the Anti-Corruption Law, its main target is to recover state financial losses. To achieve this goal, corruption crimes with small loss values are not appropriately resolved through retributive justice approaches, considering the financial burden imposed by the state is greater than the value of losses arising from corruption crimes.

Therefore, law enforcement agencies are expected to identify specific corruption cases deemed detrimental to state finances to be resolved through out-of-court settlement, by calculating the ratio of operational handling costs to the value of state financial losses. Out-of-court settlement is a concept of restorative justice.

The application of restorative justice to corruption crimes is not the same as restorative justice applied to general crimes, where resolution involves victims, perpetrators, and society. For corruption cases, the focus is primarily on the return of state financial losses.

The issue of applying restorative justice to the resolution of corruption crimes arises as a reaction to the failure of retributive justice, which forms the legal basis for combating corruption crimes and the sentencing of corrupt individuals that does not align with the main objectives of the Anti-Corruption Law in Indonesia.

So far, the return of state financial losses has only been an additional penalty that can also be replaced with imprisonment. Thus, the main goal of returning state financial losses cannot be maximally achieved.

There are several reasons for the failure of retributive justice in corruption cases in Indonesia. First, attempts to combat crime using criminal law institutions and physical punishment are classical approaches in criminal law. Second, many negative aspects arise, such as dehumanization, imprisonment, and stigmatization. Third, law enforcement agencies and state budgets need to focus on physical punishment of criminals rather than on recovery from the crimes committed.

In the context of corruption crimes, the legal interest to be protected is the state's finances. Additionally, perpetrators of corruption crimes are often not individuals but corporations. In this context, the sentencing of corporate corruption perpetrators within the paradigm of retributive justice is clearly irrelevant. In fact, there are several obstacles in protecting state finances corrupted by corporations. The punishment of corporations as perpetrators of corruption crimes, in terms of substance, structure, and legal culture, no longer aligns with the concept of retributive justice. The application of restorative justice in case resolution. The restorative approach is actually suitable for addressing corruption crimes that cause minor losses.

This is to save a considerable amount of state budget because we know that the enforcement of laws against corruption crimes, from the investigation stage to court verdicts, takes a long time, thus clearly indicating that non-criminal resolution of corruption cases incurs substantial costs. The implementation of restorative justice means the state will not bear the financial burden of processing and sustaining corrupt individuals who are detained or sentenced. In the context of law enforcement, whether for perpetrators of corruption crimes resulting in large or small financial losses to the state, there is no difference in terms of financing. The cost incurred in handling corruption crimes with small losses is equivalent to that of handling corruption crimes with significant losses. Based on this explanation, it is necessary to establish limitations on corruption cases based on the magnitude of their losses to determine which cases proceed to trial and which are resolved through restorative justice. This is to prevent the expenditure on handling such corruption cases from exceeding the losses incurred by the state.

According to this research, the ideal law enforcement efforts against corruption crimes can be achieved through two justice approaches. Restorative justice is applied to cases of corruption causing minor losses, while retributive justice is applied to cases causing significant financial losses to the state. Furthermore, considering various factors, the restorative justice approach in law enforcement for corruption crimes with minor losses aligns with the principles of simple, swift, and cost-effective justice. This is because the resolution process of corruption cases with restorative justice is simpler, faster, and less costly compared to the retributive justice approach.

## **CONCLUSIONS AND RECOMMENDATIONS**

The enforcement of criminal law against perpetrators of corruption (corruption crimes) in Indonesia is an imperative that cannot be ignored. Every corruption case, whether it has significant or minor impacts, must go through a

judicial process resulting in a conviction verdict. The restorative justice approach in handling these corruption cases primarily focuses on resolving cases with minor losses, which can be achieved through the return of state losses, imposition of fines, or implementation of community service. However, to make this approach effective, clear regulations governing the concept of restorative justice in resolving corruption cases are needed.

The application of restorative justice in handling corruption cases aims not only to recover state losses due to corruption but also to strengthen the *ultimum remedium* principle, which emphasizes simple, swift, and cost-effective case resolution. Thus, it is hoped that justice with certainty will be achieved and provide tangible benefits to the Indonesian society. However, to minimize the risk of corruption in handling cases with a restorative justice approach, strict supervision between law enforcement agencies and the publication of information about its implementation are necessary.

Furthermore, efforts for standardization and harmonization of rules in resolving criminal cases based on Restorative Justice are necessary to ensure that various law enforcement agencies can effectively collaborate in processing these cases. However, despite the reflection of Restorative Justice concepts in the values of Pancasila and being considered a better alternative to the retributive justice approach, its implementation has not been fully realized in existing regulations. Therefore, concrete steps need to be taken to strengthen the implementation and sustainability of this approach in law enforcement in Indonesia.

The suggestion from this research is that efforts to address criminal activities are a crucial part of protecting society. Although the government has taken various measures, including repressive actions, to combat corruption, the view that repressive actions alone are sufficient to address corruption still prevails in society. However, currently, social, economic, and political conditions have created an environment where corruption can occur widely and systematically in various sectors of life. Therefore, I believe that law enforcement efforts with a restorative justice approach and supervision among law enforcement agencies within an integrated criminal justice system should not be based solely on sectoral arrangements at the Police or Prosecutor's Office levels. The absolute authority of each law enforcement agency to stop investigations, prosecutions, or proceedings with a restorative justice approach may lead to potential abuses of power, referring to violations of Article 12 letter e of Law No. 31 of 1999 regarding the Eradication of Corruption Crimes, where law enforcement officials can exert psychological pressure both in determining the cessation or continuation of criminal cases and in the judicial process itself.

## **ADVANCED RESEARCH**

The limitation of this study is that it only provides a general overview and lacks in-depth analysis of the implementation of restorative justice approaches in handling minor corruption cases. To address this limitation, further research can be conducted with a more specific focus on the implementation of restorative justice approaches in smaller-scale corruption cases, including a thorough

analysis of state loss recovery, imposition of fines, and the implementation of community service for perpetrators. Additionally, the research can broaden its scope by identifying in more detail the mechanisms of supervision among law enforcement agencies within the integrated criminal justice system and proposing concrete solutions to enhance its effectiveness. Furthermore, further research can delve deeper into practical constraints in implementing regulatory recommendations and legal procedures, and provide more detailed and realistic implementation strategies. By conducting comprehensive and in-depth further research in these three aspects, it is hoped that a more significant contribution can be made to the efforts to combat corruption and achieve more effective law enforcement in Indonesia.

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