



The Urgency of Restorative Justice Approach in the Prosecutorial Authority of Corruption Crimes: A Comparative Criminal Law Perspective

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Abstract

The emergence of restorative justice as a transformative approach to criminal law has reshaped the global discourse on justice, accountability, and reform. In the Indonesian legal context, the prosecutorial authority (*dominus litis*) holds a pivotal role in directing criminal cases, including corruption offenses, which are categorized as extraordinary crimes. This paper analyzes the urgency of implementing a restorative justice (RJ) framework within the prosecutorial function in corruption cases through the lens of comparative criminal law. Employing a normative-judicial and comparative method, this study explores how prosecutorial discretion may integrate restorative principles without compromising deterrence or judicial integrity. The analysis draws from domestic legal developments and comparative insights from the Netherlands and other jurisdictions that have adopted restorative mechanisms within their criminal justice systems. Findings suggest that the incorporation of RJ principles can enhance prosecutorial accountability, improve victim restoration, and align Indonesia's anti-corruption enforcement with the moral and procedural standards of international law.

Keywords: Restorative Justice, Prosecutorial Discretion, Corruption Crimes, Comparative Criminal Law, UNCAC

1. Introduction

Indonesia's integrated criminal justice system continues to face enduring structural and procedural challenges, particularly in addressing the rights and needs of victims. The existing KUHAP primarily secures the procedural rights of suspects, often at the expense of equitable access to justice for victims ^[1]. The development of global legal systems in the twenty-first century has initiated a paradigm shift from purely retributive models of justice toward more restorative and human-centered approaches. Within this context, Restorative Justice (RJ) has emerged as a significant alternative framework emphasizing reconciliation, restitution, and reintegration rather than mere punishment. The evolution of RJ in many jurisdictions demonstrates that legal reform cannot solely rely on punitive mechanisms but must embrace community-based and participatory justice that restores both victims and offenders to a state of balance.

Over the last 15 years or so, penal practices in many Western countries have been characterised by two quite contrasting, even contradictory, trends. On the one hand, most jurisdictions continue to rely on and even expand the use of formal court processes and have dramatically increased the number of offenders subject to sanctions such as imprisonment and supervision in the community: in other words, they continue to rely on conventional processes and practices which are firmly grounded in what many would regard as the failures of the past. On the other hand, some jurisdictions have begun to use very different ways of responding to offending which involve meaningful participation by victims and offenders in the decision-making process, and often produce very different types of sanctions: in other words, they have begun to use restorative processes and practices which

¹ Rakhmi Izharti, Erika Magdalena, Rully Herdita Ramadhani, "The Urgency of Codifying and Unifying Restorative Justice Regulations in Criminal Procedure Code Reform", TLR: 2025 Vol 7 (2).

many would regard as providing promise for the future if not for the present^[2].

The Law of the Republic of Indonesia Number 31 of 1999 on The Eradication of Corruption Crimes as amended by The Law of the Republic of Indonesia Number 20 of 2001 (hereinafter referred to as “Corruption Law”)⁴ provides the legal framework for eradicating corruption focusing on the concept of retributive justice as the philosophical basis for eradicating corruption. On the other hand, the United Nations Convention Against Corruption (UNCAC) which has been ratified by Law of the Republic of Indonesia Number 7 of 2006, generally stipulates that to achieve the efficient and effective prevention and eradication of criminal corruption requires the support of good governance and international cooperation, including the return of assets originating from criminal acts of corruption^[3].

In Indonesia, the application of criminal law has traditionally emphasized retribution, often resulting in lengthy and rigid legal processes that neglect the moral and social dimensions of justice. This has been particularly evident in corruption cases, where procedural rigidity sometimes impedes timely resolution, asset recovery, and moral rehabilitation. The concept of *dominus litis* grants prosecutor’s broad discretion over the direction of criminal cases, making the prosecutorial office a key actor in shaping modern approaches to justice. From a comparative standpoint, the integration of restorative values within prosecutorial frameworks has gained traction in several countries, notably in Europe and the Asia-Pacific region. These reforms illustrate that prosecutorial discretion, if guided by restorative principles, can serve as a bridge between public interest, legal certainty, and social morality. The present study aims to examine the urgency of incorporating restorative justice within Indonesia’s prosecutorial system, especially concerning corruption offenses, through an analysis grounded in comparative criminal law.

The research begins by outlining the theoretical basis of restorative justice, proceeds to explore Indonesia’s evolving legal framework on the subject, and concludes with a comparative evaluation of similar approaches in the Netherlands, emphasizing their relevance to Indonesia’s anti-corruption agenda under the United Nations Convention Against Corruption (UNCAC). Based on your journal title “The Urgency of Restorative Justice Approach in the Prosecutorial Authority of Corruption Crimes: A Comparative Criminal Law Perspective”, here’s a structured research problem formulation suitable for a legal academic journal:

1. How urgent is the application of a restorative justice approach in the authority to prosecute corruption crimes in Indonesia and other countries that are the object of comparative criminal law?
2. What is the role of public prosecutor discretion in implementing restorative justice in corruption case?

2. Methods

This study adopts a normative juridical method as its principal methodological framework, focusing on the

examination of legal norms, doctrines, and statutory provisions governing restorative justice within Indonesia’s criminal procedure. The study is complemented by a limited empirical approach, consisting of interviews with convicted persons, which serves to contextualize and substantiate the normative findings without displacing the primacy of doctrinal analysis. A conceptual and statutory approach is utilised to assess the coherence of restorative justice regulations across institutional frameworks, namely the Indonesian National Police, the Public Prosecutor’s Office, and the judiciary, to evaluate their compatibility with the integrated criminal justice system envisioned under the RKUHAP and the 2023 KUHP. Comparative legal analysis is also applied to draw insights from jurisdictions that have codified restorative mechanism.

3. Literature Review and Theoretical Framework

3.1. Urgency of Applying a Restorative Justice Approach in Prosecutorial Authority for Corruption Crimes

The application of restorative justice to criminal cases is essentially an attempt to resolve these cases by prioritizing the restoration of the state of affairs prior to the occurrence of the crime, eliminating, to the greatest extent possible, the harm inflicted by the criminal offence. This approach has been widely practiced in various countries, not only by indigenous peoples, but also in the context of modern criminal justice systems. The following examples describe practices in various countries related to the restorative justice approach in the settlement of criminal cases, including^[4]:

The Netherlands: According to Article 167 Wetboek van Straffvordering (Dutch Criminal Code), all prosecutors in the Netherlands must decide to prosecute if the prosecution is considered important based on the results of the investigation. However, the prosecutor may stop the prosecution if it is in the public interest to do so. Unlike Indonesia, where the Attorney General has a monopoly in deciding which cases to prosecute, in the Netherlands, the authority to discriminate between which cases to pursue and which to decline belongs to each prosecutor in the prosecution office. In corruption cases in the Netherlands, restorative justice is utilised as a form of settlement^[5].

Indonesia, a state grounded in civil law tradition, has gradually incorporated these restorative elements through legal reform. However, compared to systems in the Netherlands, Canada, and New Zealand, its integration remains partial and fragmented. Consequently, Indonesian legal scholars such as Lilik Mulyadi (2007) and Muladi (1995) have called for reform to establish a holistic framework combining deterrence, reparation, and moral restoration in both general and special crimes, including corruption^[6].

The Application of Restorative Justice to Criminal Cases In principle, a crime is considered to be an act violating the norms established by society, so that the state, as the party representing the aggrieved community, is given the authority to punish criminal perpetrators based on the applicable law.¹⁵ This view favours a retributive justice approach, under which criminal sanctions are intended to deter potential

² Strang, H. and Braithwaite, J., 2017. Restorative justice: Philosophy to practice. Routledge.

³ Sharfudin, “Pelaksanaan Politik Hukum Pidana Dalam Penegakan Hukum Pidana Di Indonesia” (2009) 27 Jurnal Hukum Pro Justitia”. [177]

⁴ Faharuddin, R. and Hakim, J., 2023. Restorative Justice for Corruption Cases: The Settlement of Corruption Cases: Is It Possible? Yuridika, 38(1), pp.73-94.

⁵ Hammzah A, ‘Justice Collaborator Atau Saksi Mahkota’ (2013) 6 Pusat Litbang Kejaksaan Agung: Jurnal Bhina Adhiyaksa.[13].

⁶ Wibowo, A., Hartiwiningsih, H. and Sulistyanta, S., 2024, December. “Harmonization of Restorative Justice Regulation in the Legal System in Indonesia. In Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)” (Vol. 869, p. 352). Springer Nature.

criminal offenders. According to Romli Atamasasmita, the justification of the retributive justice approach in punishing the perpetrator can be justified by the following rationales: 16 a. victims, victims' families, and society at large gain satisfaction (more candidly stated, vengeance) from the retribution imposed by criminal sanctions; b. the imposition of criminal sanctions acts as a deterrent to potential perpetrators of criminal acts. The old Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana* or *KUHP*),¹⁷ c [7].

The concept of Restorative Justice (RJ) originates from the recognition that traditional punitive systems often fail to address the human and moral dimensions of crime. Howard Zehr, considered one of the founding figures of modern restorative theory, defines RJ as "a process that involves those affected by wrongdoing in collectively identifying harms, needs, and obligations to heal and make things right." This notion emphasises responsibility, empathy, and the restoration of social harmony rather than retaliation. In a paper titled "Proposing Restorative Justice Models as Alternative Approaches to Addressing Criminal Matters: A Case Study of Judicial Systems in Civil and Common Law Countries," published in 2024 in *Access to Justice in Eastern Europe*, Oanh Thi Cao and Tuan Van Vu proposed four restorative justice (RJ) models as alternatives for handling criminal cases. The four models are:

1. **Victim-Offender Mediation:** A process in which the victim and the accused meet to discuss the impact of the crime and find a joint solution. This model emphasises direct dialogue and relationship restoration.
2. **Community Reparative Boards:** Involve community members in the process of determining consequences for the offender, with the aim of repairing social harm and strengthening community ties.
3. **Family Group Conferencing:** Involves the families of the victim and offender in discussions to determine appropriate restorative measures, with a focus on the role of the family in the justice process.
4. **Circle Sentencing:** Uses a circle format to involve various parties in determining consequences for offenders, with the goal of fostering a sense of shared responsibility and community restoration.

These four models are proposed as an alternative to the traditional criminal justice system, which often focuses solely on punishment. By prioritizing dialogue, community participation, and relationship building, Circle Sentencing aims to reduce recidivism and strengthen social cohesion. However, implementing Circle Sentencing requires adjustments to the prevailing legal system. In countries with a civil law system, such as Indonesia, Circle Sentencing can be integrated through legislation that supports alternative dispute resolution mechanisms. Meanwhile, in countries with a common law system, Circle Sentencing is more easily implemented through prosecutorial or court policies that allow for the transfer of proceedings to Circle Sentencing before trial. Overall, Circle Sentencing offers a more humane and inclusive approach to dealing with criminal offenses, with the ultimate goal of restoration for all affected parties. Within comparative criminal law, restorative approaches

have been recognised as vital instruments of procedural fairness and moral legitimacy, balancing state interests with communal values. In criminal procedure, restorative mechanisms often take the form of diversion, mediation, or restitution agreements that allow offenders to repair harm without full penal prosecution. In many civil law jurisdictions, restorative principles are not designed to replace punitive justice but to complement it — serving as a moderating influence that integrates humanistic and rehabilitative values into the formal justice system. The application of restorative justice (RJ) in corruption cases is increasingly considered urgent due to the limitations of conventional punitive approaches. Traditional prosecution often focuses on punishment and deterrence but may overlook the broader social, economic, and moral harms caused by corruption. RJ provides a complementary mechanism by emphasizing reparation, accountability, and dialogue between the offender, the state, and affected parties. In Indonesia, the urgency is heightened because corruption erodes public trust, disrupts governance, and negatively affects community welfare. Comparative perspectives from countries such as the Netherlands and other civil or common law jurisdictions illustrate that integrating RJ into prosecutorial practice can reduce recidivism, encourage restitution, and foster societal reconciliation. Implementing RJ in corruption cases is not about replacing formal sanctions but about creating a more holistic justice approach that addresses the broader consequences of financial crimes^[8].

3.2. Role of Public Prosecutor Discretion in Implementing Restorative Justice in Corruption Cases

In the criminal justice system, the role of restorative justice (RJ) is to provide an alternative or complementary approach to traditional punitive measures, focusing on repairing harm, promoting offender accountability, and involving the victim and community in the justice process. Unlike standard prosecution that primarily seeks punishment, RJ emphasises dialogue, reconciliation, and mutually agreed-upon outcomes that address the needs of all parties affected by the crime. A restorative justice process, such as victim-offender mediation, family group conferencing, or community circles, is initiated and facilitated within the bounds of prosecutorial discretion. In practice, this means that the decision to divert a case to an RJ process—rather than pursuing formal charges or a traditional trial—rests with the prosecutor. Prosecutors assess the suitability of a case for RJ, taking into account factors such as the seriousness of the offense, the willingness of the offender to engage, the needs of the victim, and the potential for meaningful resolution.

Therefore, just like a charging decision, referring a case to a restorative justice program is ordinarily a matter of prosecutorial discretion. This discretion allows prosecutors to tailor justice outcomes to the specific circumstances of each case, balancing public interest, legal obligations, and the rehabilitative or restorative potential for both the offender and the community. Properly exercised, this role positions the prosecutor not only as an enforcer of the law but also as a facilitator of justice that is inclusive, reparative, and context-

⁷ The old Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana* or *Wetboek van Strafrecht*) was the penal code enacted under Law Number 1 of 1946 on Penal Code Regulation. At the time, the Government of Republic of Indonesia has ratified the new Indonesia Criminal Code.

⁸ Faharuddin, R. and Hakim, J., 2023. "Restorative Justice for Corruption Cases the Settlement for Corruption Cases: Is It Possible? *Yuridika*, 38(1), pp.73-94.

sensitive ^[9].

Restorative justice (RJ) provides an alternative approach to traditional criminal prosecution by emphasizing the repair of harm, accountability of the offender, and involvement of victims and communities. RJ processes—such as victim-offender mediation, family group conferencing, or community circles—focus on dialogue and reconciliation rather than solely on punishment, aiming to meet the needs of all parties affected by a crime. This review is concerned with restorative justice provision in the countries specified. This simple proposition disguises, however, a key definitional difficulty. As Miller and Blackler (1998; p. 77) point out, the phrase ‘restorative justice’ is used to refer to an “extraordinarily wide and diverse range of formal and informal interventions including ^[10]:

1. victim/offender conferences in criminal justice contexts
2. discretionary problem-solving policing initiatives in disputes between citizens
3. conflict resolution workshops in organisational contexts
4. team building sessions in occupational settings
5. marital advice and counselling services
6. parental guidance and admonishment of their misbehaving children
7. apologising for offensive or otherwise hurtful remarks in institutional and other settings”

Victim/offender conferences in criminal justice contexts
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Referring a case to a restorative justice program, like making a charging decision, is ordinarily a matter of prosecutorial discretion. Prosecutors assess whether a case is suitable for RJ based on factors such as offense severity, offender willingness, and victim needs. Exercising this discretion allows prosecutors to tailor justice outcomes that are inclusive, reparative, and sensitive to the specific context, positioning them not only as enforcers of the law but also as facilitators of meaningful justice.

Prosecutorial discretion plays a pivotal role in integrating restorative justice into the criminal justice system, particularly in corruption cases. Prosecutors have the authority to decide whether to pursue formal charges, divert cases to RJ programs, or propose alternative resolutions such as restitution agreements, mediation, or community service. This discretion allows prosecutors to evaluate the suitability of RJ based on factors such as the severity of the offense, the willingness of the offender to participate, and the potential for meaningful redress to affected parties. In practice, this means that effective RJ implementation depends on the ability of prosecutors to balance legal standards, public interest, and restorative outcomes. Comparative studies show that jurisdictions with flexible prosecutorial discretion are better able to adopt RJ mechanisms, resulting in more

nuanced, context-sensitive approaches to corruption cases.

This paper examines the role of restorative justice in reforming contemporary criminal law systems through a comparative analysis of implementation across different jurisdictions. Restorative justice, emphasizing healing, accountability, and community involvement over punishment, has emerged as a significant alternative to traditional retributive approaches ^[11].

Institutionalization of Restorative Justice Mechanisms (2018–2021). A comprehensive institutional shift began in 2018, when the Indonesian National Police issued Circular No. 8 of 2018 on the Application of Restorative Justice in Criminal Case Settlement. This was followed by the Prosecutor’s Regulation No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice, which formalized prosecutorial authority to halt proceedings if restitution, reconciliation, and public interest considerations were satisfied.

The introduction of restorative justice, a progressively favoured in 2020, the Supreme Court of Indonesia further strengthened the framework by issuing Decree No. 1691/DJU/SK/PS.00/12/2020, establishing procedural guidelines for restorative settlement at the judicial level. A year later, the National Police Regulation No. 8 of 2021 provided technical implementation standards, ensuring consistency across law enforcement agencies.

However, these instruments remain limited to general criminal offenses (ordinary crimes). Their scope excludes extraordinary crimes, including corruption, terrorism, and narcotics. Despite these limitations, the coordinated policy framework between the Police, the Prosecutor’s Office, and the Judiciary demonstrates a growing institutional awareness of restorative principles as tools for legal reform and public trust-building. Prosecutorial discretion (*dominus litis*) constitutes a critical aspect of modern criminal justice, granting prosecutors the authority to determine whether to pursue, suspend, or terminate a case. In Indonesia, this discretion is enshrined in Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP) and reaffirmed in Law No. 11 of 2023 on the Prosecutor’s Office. However, the practical application of such discretion remains predominantly retributive, with limited space for restorative alternatives ^[12].

According to Soedarto (2011), the prosecutorial role represents the embodiment of state authority in enforcing criminal law. Yet, without restorative guidance, prosecutorial discretion risks perpetuating procedural formalism and public distrust. Restorative justice, when integrated into prosecutorial practice, reorients the prosecutor’s function from an instrument of punishment to a facilitator of moral and social reconciliation. The United Nations Convention Against Corruption (UNCAC) also provides a global normative framework emphasizing the importance of flexibility, cooperation, and recovery of assets as part of comprehensive anti-corruption measures. From a comparative perspective, this suggests that prosecutorial discretion under RJ principles may enhance the moral legitimacy and efficiency of anti-corruption enforcement.

⁹ Green, B.A. and Bazelon, L., 2019. “Restorative justice from prosecutors’ perspective. *Fordham L. Rev.*, 88, p.2287.

¹⁰ Richards, K.M., 2006. *Rewriting history: Towards a genealogy of Restorative justice* (Doctorial dissertation, University of Western Sydney (Australia)).

¹¹ Mutneija, A.M.D.A., 2025. “Restorative Justice and Its Role in Reforming Criminal Law: A Comparative Analysis. *International Journal of Humanities & Legal Research*”, pp.47-62.

¹² Wibowo, A., Hartwiningsih, H. and Sulistyanta, S., 2024, December. Harmonization of Restorative Justice Regulation in the Legal System in Indonesia. In *Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024)* (Vol. 869, p. 352). Springer Nature.

3.3. Comparative Perspectives on Restorative Justice

Restorative justice (RJ) is an approach to criminal justice that emphasises repairing the harm caused by criminal behaviour rather than solely punishing the offender. Its core principles include:

1. **Repairing harm:** Focus on restoring relationships and addressing the needs of victims, offenders, and communities.
2. **Inclusivity:** Involvement of all affected parties—victims, offenders, families, and community members—in the justice process.
3. **Accountability and dialogue:** Offenders are encouraged to take responsibility, while victims are given a voice. Comparative Approaches Across Jurisdictions Comparative perspectives examine how RJ is implemented differently around the world:
4. **Nordic countries (e.g., Norway, Sweden):** Strong emphasis on rehabilitation, mediation, and community involvement. RJ is integrated into formal legal processes alongside traditional courts.
5. **Anglo-American systems (e.g., Canada, New Zealand):** Use of formal restorative programs such as family group conferences and victim-offender mediation. Emphasis on procedural safeguards and voluntary participation.
6. **Asian contexts (e.g., Indonesia, Japan):** RJ often intertwined with cultural values such as communal harmony and moral responsibility. Implementation may be more informal and community-based.
7. **African systems:** Incorporate traditional justice mechanisms (e.g., Gacaca courts in Rwanda) to resolve conflicts and rebuild community cohesion.

Comparative criminal law scholars have long emphasised that the effectiveness of restorative systems depends on their legal culture, institutional adaptability, and public trust. Countries such as the Netherlands, the United Kingdom, and Canada have successfully embedded restorative mechanisms within their prosecutorial frameworks, supported by statutory reforms and community-based initiatives^[13].

The Dutch experience, in particular, illustrates a balanced coexistence between formal prosecution and restorative mediation. Through penal mediation (*strafrechtelijke mediation*), prosecutors may divert cases toward dialogue-based settlement before indictment, ensuring accountability and restitution without excessive penalization. Such comparative insight underscores the potential of Indonesia's prosecutorial reform to evolve from retributive rigidity to restorative harmony, aligning national values with global justice norms.

4. Conclusion

This study demonstrates that Indonesia's current restorative justice framework is characterised by significant regulatory fragmentation, with separate sectoral rules issued by the police, prosecution, and judiciary applying divergent eligibility criteria, procedural mechanisms, and legal effects. Such inconsistencies undermine legal certainty, create unequal access to restorative mechanisms, and erode public

trust in the criminal justice system. The application of a restorative justice (RJ) approach to prosecuting corruption crimes is increasingly considered urgent in various legal systems, including Indonesia. This approach offers a more holistic and rehabilitative alternative to traditional punitive approaches, focusing on restitution of state losses, accountability of perpetrators, and restoration of public trust. For example, a study by Isiaka (2025) shows that RJ can increase transparency and accountability in handling corruption cases, especially in countries with weak judicial systems.

However, the implementation of Restorative Justice (RJ) in prosecuting corruption cases faces significant challenges, including normative barriers and legal culture. In Indonesia, for example, Restorative Justice (RJ) in corruption cases has not been explicitly accommodated in the law, creating legal uncertainty and the potential for abuse of discretion by law enforcement officials. Furthermore, there are concerns that Restorative Justice (RJ) could be used for political purposes, such as selective release or avoiding harsher sanctions.

Therefore, profound legal reform is needed, including amendments to the Corruption Eradication Law, so that Restorative Justice can be implemented legally and effectively. It is also crucial to build a national consensus on the values of restorative justice and ensure that Restorative Justice (RJ) does not diminish anti-corruption efforts, but rather strengthens them by emphasizing recovery and rehabilitation. Thus, Restorative Justice (RJ) can be an effective instrument in realizing substantive justice and improving the criminal justice system in Indonesia¹⁴.

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¹³ Cao, O.T. and Van Vu, T., 2024. "Proposing Restorative Justice Models as Alternative Approaches to Addressing Criminal Matters: A Case Study of Judicial Systems in Civil and Common Law Countries". *Access to Justice in Eastern Europe*, p.93.

¹⁴ Isiaka OA. Examining The Effectiveness Of Restorative Justice As An Alternative Approach To Traditional Punitive Measures In Handling Corruption Cases. *African Journal Of Law, Political Research And Administration*. 2025;8(1):102-110. ISSN: 2689-5102.

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