Optimizing *Restorative Justice* as an Alternative to Overcoming Corporate Crime in Indonesia

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Abstract

This research aims to analyze how the regulation of corporate criminal liability in Indonesia and the opportunity of restorative justice as an alternative to corporate crime prevention in Indonesia. By using a normative approach this research uses a case approach, statutory approach, philosophical approach and comparative approach, this research explores the regulation of corporate criminal liability in Indonesia and how the challenges of alternative corporate crime resolution through restorative justice as a means of crime prevention. The results of this study The legal framework in Indonesia has not been able to fully address the complexity of corporate criminal liability, both in terms of material and procedural aspects.The retributive approach has proven to not touch the root of the problem. This is where restorative justice offers an alternative with a focus on restoring relations between perpetrators, victims, and the community. However, its application in the corporate context is still limited and not supported by integrated regulations.Meanwhile, countries such as France and Germany have adopted the Victim Offender Mediation (VOM) mechanism as part of their criminal justice system. In France, VOM has a strong legal basis, including the 1993 amendment to the Criminal Procedure Code and institutional support from INAVEM. VOM is implemented at the pre prosecution stage, with the condition that the perpetrator admits guilt and the victim's consent. Judges and prosecutors are given the discretion to drop the case if mediation is successful.VOM there is not only a forum for compromise, but also a tool for restoring participatory and humane justice. With a clear mechanism

and the active role of mediation institutions, this system opens up opportunities for renewal in handling corporate crimes in Indonesia.

Keywords: Restorative Justice; Corporation; Criminal Liability; Victim Offender Mediation

Introduction

Corporations, as legal subjects, now appear as one of the main actors in the landscape of legal violations that have a wide impact—both on the environment, the economy, and the social life of society in general. Unlike individuals, corporations have a complex nature: collective in structure, profit-oriented, and have influence that reaches many sectors. This complexity makes handling corporate crimes in the legal system a challenge in itself. On the other hand, the criminal justice system that has been implemented so far still predominantly prioritizes a retributive approach, namely punishment as a means of deterrence and enforcement of formal justice. Unfortunately, such an approach often does not touch the roots of substantive problems, and often fails to meet the recovery needs of victims and affected communities (Manurung, Anggusti, and Esther 2025).

Corporate crime is a form of criminal offense that involves corporate entities, or legal entities as perpetrators of criminal acts whose impacts are felt by the wider community and the state. In Indonesia, the handling of corporate crime still faces various challenges both in terms of law enforcement, recovery of impacts caused, and juridical weaknesses, namely not having harmonious guidelines between one technical regulation owned by law enforcement officials at both the police and prosecutor's office levels. Corporate crime has a huge social impact, both directly and indirectly at the level of the social environment and has an impact on the country's economy (Intihani, 2022).

The community is often the victim of irresponsible corporate practices for crimes that cause harm, such as in cases of environmental pollution, violations of workers' rights or abuse of authority that affect employees, customers, and *stakeholders.* Corporate crime is a dimension of crime that can be categorized as a dangerous crime and can cause far greater and widespread victims, including

environmental crimes, crimes in the economic sector, energy sources, *money laundry*, banking, consumer fraud, and unfair competition and criminal acts in the tax sector (Yohanes and Yusuf 2024).

Conklin defines that corporate crime is categorized as business crime because it has certain elements that characterize this crime, *an illegal act punishable by a criminal sanction.* Committed by a person or corporation in his legitimate work or in the process of pursuing his business in the field of industry or trade to obtain money or wealth, avoid payment or avoid loss or loss of wealth or obtain business profits or personal gain (Box, 1983).

Corporate actors in committing criminal acts have power, influence, both in political economy and of course law enforcement against large corporations that will affect the economy and the level of professionalism of law enforcement officials, besides that it is still thick with the understanding of the classical school that relies on retaliation alone, corporate criminal responsibility is also faced with a debate on three main issues, namely regarding the position of corporations as *"legal fiction" "ultra virez"* and also the issue of *"mens rea"* (Syahird, 2023).

The handling of corporate crime should always pay attention to the interests of all parties involved, especially the use of the *ultimum remidium* principle which is the main principle of handling corporate crime, because corporate crime requires handling that pays attention to *collateral* consequences for *stake holders* and *innocent shareholders,* or customers / employees who depend on it so that the settlement process will not interfere with corporate activities which are the driving force of the country's economy (Hutauruk, 2013). So that restorative *justice* can be an alternative means of resolving corporate crime must be an optimal / good means in overcoming corporate crime in Indonesia both in overcoming corporate crime in Indonesia.

In Indonesia, various forms of corporate behavior that are detrimental to the interests of society still often occur in everyday life. These phenomena can be found in misleading advertising practices, environmental pollution, exploitation of workers or laborers, tax restitution engineering, and misuse of public funds as reflected in a number of banking cases such as those involving Bank Summa, Bapindo, Bank Arta Prima, and Bank BNI. In addition, there are also cases of the

circulation of food products that endanger public health, such as the circulation of biscuits containing toxic substances and various other examples that reflect the real risk of corporate crime against the public interest (Kusumo, 2005).

the main obstacles in efforts to eradicate criminal acts committed by corporations lies in the weak technical arrangements in the applicable criminal procedure law. Based on the normative authority granted by Article 79 of Law Number 14 of 1985 concerning the Supreme Court, which allows the Supreme Court to establish further arrangements to ensure the smooth implementation of the judicial process if there is a regulatory gap in the laws and regulations, Supreme Court Regulation Number 13 of 2016 was issued as an effort to fill the procedural law void related to the handling of criminal cases with legal subjects Corporation. The Perma is not only a judicial guideline for judges, but can also be used as a reference by law enforcement officials in the process of handling criminal cases involving corporations as perpetrators. Several law enforcement agencies, including the Corruption Eradication Commission, have implemented the provisions in the Perma in law enforcement practices against corporations. Based on this practice, the corporate criminal norms contained in various applicable laws and regulations can be carried out more operationally and effectively (Suhariyanto, 2018).

In addition, there is inconsistency in law enforcement against perpetrators of corruption crimes which is also clearly visible in the handling process. If examined more deeply, the practice of enforcing criminal law against corruption so far shows quite striking symptoms, namely that the majority of perpetrators who are processed by law and tried in corruption courts (tipikor) in various regions of Indonesia are individuals (natuurlijke persoon). It is very rare to find cases where corporations (rechtspersoon), which are also legal subjects according to the Corruption Eradication Law, are brought as parties who are criminally responsible before the court. This reflects a serious gap in the application of the principle of criminal responsibility to legal entities (Kurniawan, 2023).

Perja Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice in Articles 4 and 5 explains that Termination of the prosecution process based on restorative justice must consider several essential

aspects. In practice, the application of the termination of the prosecution is carried out by assessing elements related to the identity of the perpetrator, the nature and category of the crime, the background of the incident, the level of error, and the extent of the impact of the losses caused. Normatively, only certain crimes can be terminated through a restorative approach. The requirements are: the perpetrator has never committed a crime before, the act is punishable by a fine or imprisonment of a maximum of five years, and the losses or evidence that arise do not exceed IDR 2,500,000.00. However, this technical regulation of the prosecutor's office is still very limited if used in complex corporate crimes that have a broad impact on society, the economy, the environment and the state.

The author would like to provide an idea to comprehensively compile the Victim Offender Mediation (VOM) model as applied in France. This model is seen as an alternative approach in criminal law that focuses on restorative justice, namely the restoration of relations between the perpetrator and the victim. Interestingly, this approach is not only suitable for cases between individuals, but can also be considered for application in handling crimes committed by corporations. Efforts to adopt VOM as an official part of the criminal justice system are accommodated in the Indonesian Criminal Procedure Code and are further strengthened by technical regulations from ministries and institutions such as INAVEM in France and Germany.

Research Method

This study employs an normative legal research method, which place legal problems in the frame of a norm study, this research uses a case approach, statutory approach, philosophical approach and comparative approach (Juliardi et al., 2023). This research is prescriptive (should) provide recommendations or orders about what should be done.(Marzuki 2017) This research is sourced from primary legal materials and secondary legal materials, primary legal materials are sources of study derived from legislation and court decisions, while secondary legal materials are materials consisting of books and literature that support primary legal materials.

Results and Discussions

The Regulation of Corporate Criminal Liability

Prosecutors Enter Schools (JMS) is one of the programs implemented by the Prosecutor's Intelligence Section and is programmed directly in schools in the prosecutor's office area (Maeyangsari et al, 2024). Prosecutors Enter School is one of the programs implemented by the Prosecutor's Office Intelligence Section and is programmed directly in schools in the district attorney's office (Maeyangsari et al, 2024). program implemented based on the Decree of the Attorney General of the Republic of Indonesia Number: KEP-184/A/JA/11/2015 to support the national character revolution in Indonesia. The goal of JMS is to provide legal counseling and information to students. JMS focuses on introducing students to the law so that students can avoid actions that constitute violations of the law. Indicators of legal effectiveness mean the achievement of targets or objectives that have been set, namely a measurement where a target has been achieved in accordance with what was planned.

Liability is a major part of the study of criminal law, according to Peter Gilies corporations are considered the same as a human or *person* before the law, and therefore are considered to be able to do something that is done by a human or *person*, their wealth is also recognized, they can carry out legal relations, so they can be held accountable (Gillies, 1990).

Corporate crime can also be categorized as a crime that has an extraordinary impact. The author believes that corporate crime is always carried out systematically and extensively so that it not only harms state finances, but also violates the social and economic rights of society at large. Along with its existence that cannot be separated from human life, corporate crime today has experienced increasing development from year to year, both in terms of the number of cases that occur and the amount of losses it causes. In terms of the quality of the crimes committed, corporate crime is carried out increasingly systematically and its scope or impact is felt in all aspects of people's lives. The author believes that the increase in uncontrolled corporate crime will bring disaster not only to the life of the national economy but also to the life of the nation and state in general.

Widespread and systematic corporate crime is also a violation of the social and economic rights of society, and because of all of that, corporate crime can no longer be classified as an ordinary crime but has become an extraordinary crime (extra ordinary crime). In addition, the author concludes that corporate crimes can be categorized as extraordinary crimes (extra ordinary crimes) which require handling by utilizing extraordinary methods (extra ordinary measures) (Alhakim and Soponyono, 2019).

Corporate crime is an act that poses the greatest danger to human rights; the target of corporate crime is random or indiscriminate, which tends to victimize innocent people; in corporate crime, it is possible to use tools that utilize sophisticated technology; corporate crime is part of the "shadow economy"'; "shadow crimes" or "hidden crimes" are crimes that run invisibly, are very profitable but are also very evil criminal acts; there is a tendency for synergy or even cooperation between one corporate organization and another, both in one country (national) or across national borders (transnational or even international); can endanger national interests, endanger national and international economic interests; corporations often violate human rights, violate labor standards, damage the environment and are closely related to other crimes, such as corruption and money laundering; corporate crime can disrupt the stability of security in society; corporate crime is a crime that threatens social, economic, political, security and world economic life (Sabadina, 2021).

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closely related to other crimes, such as corruption and money laundering; corporate crime can disrupt the stability of security in society; corporate crime is a crime that threatens social, economic, political, security and world economic life (Kristian, 2020)

Corporate crimes can be categorized as criminal acts or business crimes because the main goal of the corporation is to achieve great profits. In order to achieve great profits, corporations tend to move towards business expansion and take actions that are contrary to applicable laws. These unlawful acts can be seen, for example, in carrying out business activities, corporations do not respect the protection of human rights, in carrying out business activities, corporations often carry out forced labor and compulsory labor, in carrying out business activities, corporations often use child labor, in carrying out business activities, corporations often do not respect and do not carry out environmental responsibilities and in carrying out business activities, corporations often commit crimes in the economic sector, for example committing corruption, bribery and extortion. Law enforcement for corporations that commit this business crime is also difficult to do considering that in carrying out their business activities, corporations often divide or delegate authority in determining a business step or policy in order to ensure the effectiveness and efficiency of the corporation's operations (Sibarani and Santiago, 2021).

In line with Muladi's opinion, which says that the acceptance of corporations as bearers of rights and obligations acting in their activities, or known as the doctrine of *university delinquere non potest or societas delinquere non potest*, then through the application of the theory of identification and social functions to corporations is very supportive for corporate responsibility in criminal law, so that it is understood that the criminalization of corporations is no longer in question. Criminal responsibility does not stand alone in addition to the type of act prohibited by law but also relates to the object that can be held accountable, the law must first determine who is considered a subject that can be held accountable in an act that is referred to as a criminal offense and should be punished (Muladi, 2015).

In the criminal law system, there are several theories that can be used to determine the appropriate basis, so that corporations can be held criminally *liable*, namely *liability based on fault).* This theory explains that any legal subject can be held liable if it can first be proven that there is a mistake known as *mens rea* by identifying the mistakes that have been made by the corporation by linking *mens rea* This theory explains that any legal subject can be held liable if it can first be proven that there is a mistake known as *mens rea* by identifying the mistakes that have been made by the corporation by linking *mens rea* of the corporate representatives as *directing mind* or alter ego (Narapati and Indonesia, 2021).

(Kristian, 2016) Kristian explains that if individuals are given the authority to act on behalf of the company and run its business, the *mens rea* element that exists in individuals is considered a *mens rea* element for the company or cooperative so that the cooperative must be responsible for the action in the company as long as he does it within the scope of authority in the affairs of the company's transactions.

In line with Peter Gillies quoted by Dwidja Priyatno(Priyatno 2017) said that the criminal offense and the inner attitude of senior officials are considered the inner attitude of the company itself to form corporate responsibility. The elements of the criminal offense are collected from each act and mens work of its senior officials, within the scope and appropriate situation.

In addition, Djoko Sarwoko explained that in corporate activities in the civil sector, there is the possibility and potential for deviations known as ultra vires so that civil liability can be requested but if there are deviations that have violated the provisions in criminal law. Roeslan Saleh(Roeslan saleh 1982) corporations exercise the authority of corporate transactions “Roeslan Saleh Distinguishes the punishability of the act with the punishability of the person who commits the act, or distinguishes the criminal offense with criminal responsibility arau error in the broadest sense (Daud and Frans, 2024).

The principle of *geen straf zonder schuld* does not absolutely apply. That is, to hold the corporation accountable does not always have to pay attention to the fault of the maker, but it is sufficient to base the adage *res ipsa loquitur* (the facts

have spoken for themselves). Because the reality in society shows that the losses and dangers caused by corporate actions are very large, both physical, economic and *social costs.* In addition, the victims are not only individuals but also the community and the state. Michael J. Allen" in(Muladi and Priyatno 2011)

> "*The corporation will only be liable where the person identified with it was acting within the scope of his office; it will not be liable for acts which he did in his personal capacity".*

Michael J. Allen's opinion is understood that according to the identification theory, to hold the corporation accountable, 2 (two) elements must be fulfilled, namely the existence of a person identified with the corporation and that the person's actions are carried out within the scope of his position. Then related to the imposition of criminal responsibility to the corporation is only possible *(doctrine of vicious* liability or substitute responsibility), and not directly.

Restorative Justice as an Alternative to Corporate Crime Prevention

Restorative justice is an approach that focuses on restoring relationships damaged by a violation of the law by involving victims, perpetrators, and the community in the problem-solving process. In the context of corporate crime, restorative justice offers a more humanist and rehabilitative alternative to *punitive* approaches. The concept of restorative justice in Indonesia is still not relatively familiar, especially in the context of overcoming corporate crime, although there are several regulations that have the "spirit" of *restorative justice* as contained in Law Number 11 of 2012 concerning the juvenile criminal *justice* system where *restorative justice* is used for cases involving children through diversion (Septiyo, Setiyono, and Samara, 2020)

However, the implementation of the restorative justice approach to corporate crime is still constrained by several things. The first is the limited regulations related to corporate crime. Although various laws in Indonesia have recognized corporations as legal subjects that can be held criminally responsible,

the number of criminal cases involving corporations as perpetrators of criminal acts that are submitted to the judicial process is still very limited. This condition is caused by, among other things, the lack of clear procedures and methods for examining corporations as perpetrators of criminal acts, resulting in a gap in criminal procedural law related to handling corporate criminal cases. This gap has an impact on the unpreparedness of law enforcement officers in examining corporations as suspects or defendants. A further consequence of this situation is that efforts to overcome criminal acts committed by corporations are not yet optimal (Mustafiddin, Jaya, and ..., 2023).

Disharmony of procedural provisions also causes a lack of integration in the practice of handling corporate criminal cases, including differences in treatment in technical legal aspects. This shows that the Criminal Procedure Code has not accommodated explicit provisions regarding corporations as parties that can be charged and held criminally responsible, making it difficult for public prosecutors to prepare indictments against corporations. On the other hand, laws and regulations have not provided concrete solutions to these problems (Torodji, 2024).

In order to fill this gap, the Attorney General's Office then issued the Regulation of the Attorney General of the Republic of Indonesia Number: PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects, which regulates the mechanism for criminalizing corporations starting from the investigation stage, prosecution, to the implementation of court decisions. However, the scope of the regulation's validity is internal and only institutionally binding on the ranks of the Attorney General's Office, excluding public prosecutors outside the Attorney General's Office structure, such as the Corruption Eradication Commission. Likewise, the regulation in question is not binding on judges, which in practice can lead to differences in interpretation and application of the law in handling corporate criminal cases. Then at the Supreme Court level, namely in the Supreme Court Regulation (Perma) No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, it has not fully accommodated the restorative mechanism for corporate actors. (Joko and Santrawan, 2022)

then the culture of criminal law enforcement and the substance of criminal law which is still oriented towards the "classical" criminal law, namely corporate responsibility, is faced with a debate on three main issues, related to the position of corporations as "legal fiction", the doctrine of "ultra virez" and the issue of "mens rea". The existence of criminal law with its punitive and retributive approach is a criminal law that is more oriented towards actions (daadstrafrecht), pays less attention to the perpetrators and ignores the victims. This condition is not suitable for corporate crimes, where the purpose of punishment is not only focused on the aspect of deterrence but also repairs the damage (negative impact) of criminal acts committed by corporations (Rawiyakhirty 2022).

Then the comparison of the restorative justice approach of the French state which has provided legal authority for the resolution of a crime through mediation known as victim offender mediation (VOM). This authority is based on a strong legal basis derived from a combination of several provisions and the results of amendments to Law Number 147/174 of 1945 concerning the Criminal Procedure Code. Previously it was known that in the provisions of Article 12 paragraph one of Law Number 47/174 of 1945, it had indirectly given the right to a panel judge to encourage settlement negotiations at the stage of sentencing the perpetrator of the crime, but considering that this was merely a form of court accountability for the provision of appropriate criminal sanctions through a rehabilitation approach and did not reflect the protection of the rights of the victim who had been harmed, in 1993 the French government amended the provisions on the basis and consideration of providing maximum protection for the rights of victims. Since the amendment to the French Criminal Procedure Code, it is clear that there is a strong legal basis for victims and perpetrators to resolve a criminal case through a mediation approach, which is followed by several provisions regulating the rights of victims to resolve a criminal case through mediation. regulated in government agency decisions, departmental circulars and operational guidelines issued by the National Institute for Victim Assistance and Mediation of the French Criminal Procedure Code, it is clear that there is a strong legal basis for victims and perpetrators to resolve a criminal case through a mediation approach, which is followed by several provisions regulating

the rights of victims to resolve a criminal case through mediation as regulated in government agency decisions, departmental circulars and operational guidelines issued by the National Institute for Victim Assistance and Mediation (INAVEM) (Kristian, 2016)

The role of the VOM institution in the mediation process for resolving a crime is regulated in the French criminal law system. This institution can be applied to both adult and juvenile criminals who aim to resolve a crime through an agreement after the conditions have been met by the perpetrator, namely an admission of guilt, the victim's attitude that supports the possibility of an agreement for the recovery process including determining material compensation, including requiring the VOM to make a report on the results achieved to the public prosecutor as a basis for determining whether to continue the case to the prosecution level or to dismiss the case. Article 41 of the French Criminal Procedure Code states that the mediation process can only be carried out at the pre-prosecution stage or in other words, the mediation is a diversion from the prosecution process. However, whatever the results and impacts of the mediation process, the prosecutor will use his/her discretion to determine a decision on peace or to prosecute if no agreement is reached. The provision of assistance or rehabilitation can be carried out after the consent of the victim through a dialogue with the perpetrator, his/her parents, and the representative bodies that have the authority and responsibility for it.

Germany In the provisions of Article 46a of the Criminal Code, Article 153a of the Criminal Procedure Code in Germany and the Juvenile Justice Act 1953 (Juvenile Justice Act 1953) as amended by the Youth Court Law Amendment Act 1990 (Article 10, Article 15, Article 45, and 47) stipulate the use of mediation institutions as a means of diversion or diversion from prosecution, as well as compensation payments as a sentencing option. justice for juvenile crimes as regulated in Article 45 and Article 47 of the Juvenile Justice Act 1953 and as amended by the Youth Court Law Amendment Act 1990 which stipulates the existence of VOM as a means of diversion. Bannenberg stated Prior to charge (formal accusation) or punishment the public prosecutor and the judge have to consider informal measures. The determination of the efforts of the

alleged perpetrator of the crime to carry out reconciliation is a special reason for the prosecution process not to be continued by the public prosecutor and thus, for the same consideration, the judge can end (to dismiss) the case. Based on Article 10 of the Juvenile Justice Act 1953, the Judge can dismiss the case by ordering a mediation process as part of a learning or education procedure (Kristian, 2020).

This is also reflected in the contents of Article 15 of the same provision, which in principle states that restitution or replacement or an apology can be made without depending on the willingness of the alleged perpetrator of the crime to admit his responsibility (as in the case of Article 45 and Article 47). Such conditions are intended to punish the perpetrator and to clarify that an injustice has occurred, 18) however, in Article 15, the prosecutor also has the right to order the perpetrator to carry out a compulsory reparation order through other forms of compensation for the benefit of the victim. In practice, the sanctions mentioned in Article 10 and Article 15 are very rarely applied (no more than two percent (2%), so that it can be said that the use of the mediation process for diversion purposes is much more common.

The policy in the Indonesian criminal law system that uses a restorative approach is not only a legal requirement that is relevant to the global business climate, but also supports the development of corporations, both domestically and in international cooperation, which requires a change from a completely repressive approach to a restorative approach. In the context of criminal law in Indonesia, the application of a restorative approach is a relatively new concept and is still sectoral. However, this policy is in line with the UN declaration in 2000 which is stated in the Basic Principles on the Use of Restorative Justice Programs in Criminal Matters (Kristian, 2016).

In the declaration, the UN recommended that countries adopt the concept of restorative justice more widely in their criminal justice systems. This is also emphasized in the Vienna Declaration on Crime and Justice: "Meeting the Challenges of the Twenty-first Century" in points 27 and 28 which states: It is expected that each country develops a plan of action at the national, regional and international levels to support victims of crime, such as mediation and restorative

justice mechanisms. The year 2002 was set as a target for countries to review relevant practices, develop services for victims, conduct awareness campaigns on victims' rights, and consider the establishment of a victim fund, as well as implementing a witness protection policy. Countries are encouraged to develop restorative justice policies, procedures and programs that take into account the rights, needs and interests of victims, perpetrators, communities and all stakeholders. Similarly, in the 11th UN Congress on Crime Prevention and Criminal Justice held in Bangkok in 2005, the restorative approach was reaffirmed. In point 32 of the Bangkok Declaration, under the title "Synergy and Response: Strategic Alliances in Crime Prevention and Criminal Justice" (Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice), it is important to support the interests of victims and the rehabilitation of perpetrators by further developing restorative justice policies, procedures and programs (Hutauruk, 2013).

The restorative approach has universally applicable principles inherent in the concept of an approach to resolving criminal acts, among others, the principle of fair settlement *or due procces of law* in the criminal justice system in all countries the suspect is always given the right to know in advance about certain procedural protections When faced with writing or sentencing this process is considered a form of protection to provide a balance for the state's power to detain, prosecute, and execute the sentence of the verdict (Kristiyadi and Setyawan, 2022).

In the restorative resolution process formal limits are always provided for the suspect at any time either after the restorative process so that the suspect's right to a *fair* trial is maintained in the implementation of this mechanism. Because the voluntary rights restoration process can be used as a prelude to a fair settlement, there is a desire to continue to provide protection for suspects in relation to *due process*. As the restoration process requires a prior admission of guilt, this raises the question of the extent to which consent and voluntary waiver can be used as a prelude to a fair settlement.

Equal protection is the second principle of restorative justice which considers that all people should be equal without discriminating on the basis of

economic, political physical or intellectual position. The third principle is proportionality, which is considered to have been fulfilled in the criminal justice process if it creates a sense of redistributive justice (reciprocal balance between *punishment and reward*) (Van Ness and Johnstone, n.d.)

The next principle is the principle known as the presumption of innocence in the Indonesian criminal justice system, which has the burden of proof on the state to prove the guilt of the suspect, from the beginning until the criminal act is committed, he must be considered innocent. Unlike in the restorative stage which requires an admission of guilt, which is part or a condition for continuing the circle stage of completing the restorative process, the suspect's right regarding the presumption of innocence can be compromised by means of the suspect having the right to pro-active Collective and terminating the restoration process and refusing an admission of guilt so as to choose the formal option where guilt must be proven first (Syaufi, 2020).

In addition, in the restorative process must get consulting assistance or the right of legal counsel where the advocate or legal counsel has a very strategic role to build the ability to protect rights, all stages of the restorative informal process, the suspect can be informed through the assistance of legal counsel about his rights and obligations that can be used as a consideration for making decisions. The suspect chooses to participate in the restorative process he/she acts and speaks on his/her own behalf their position allowing teaching on behalf of the participant in all stages or restorative process will destroy many of the expected benefits of the encounter between direct communication and disclosure of feelings and proactive collective decision making (Akbar, 2022).

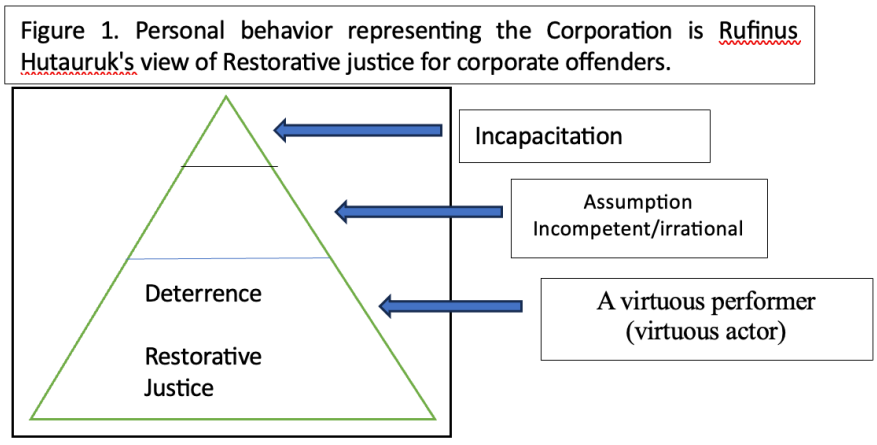
Socio-juridical implications in the process of solving criminal problems through restorative approaches have implications that are particularly related to issues related to rights and responsibilities for individual values. Individual rights are given by expanding the notion of rights that are agreed to be given to the accused in the provisions of a fair process (Emaliawati, Saragih, and ..., 2022).

Influenced by the social contract view that rights are always viewed as an aggregate of four Social juridical implications in the process of solving criminal problems through restorative approaches have implications that are particularly

related to issues related to rights and responsibilities for individual values individual rights are given by expanding the notion of rights that are agreed to be given to the accused in the provisions of a fair process. Influenced by the social contract view that rights are always seen as an aggregate of individual personal interests and the state is considered obliged to regulate personal freedom and protect and guarantee these rights, in the process of providing protection through law it needs to be understood that when individual rights are agreed to be guaranteed by law, at the same time there is a reduction in individual rights because the state's power will increase the internet intervenes on behalf of other individuals (Satria, 2018).

The concept of restorative justice is considered important in upholding communal or universal values. Informal processes aid moral development because parties to mediation work to make right out of wrong. The value of the process lies in the resolution of the conflict and the outcome can reveal the moral order among individuals. Limiting the process to what meets narrow legal definitions of unacceptable behavior and relevant facts undermines the ability of the process to provide opportunities for moral clarification of one another.

FIGURE 1. Rufinus Hutauruk's view of Restorative Justice for Corporate Offenders.



Source: Rufinus Hutauruk

This illustrates the possibility of failure in the application of persuasive sanctions that have an impact on the application of sanctions that are in capacity due to the irrational character of the perpetrators or representatives of the company in order to avoid the parties to the dialog settlement of criminal acts by corporations must find a *way out* by selecting competent and responsible parties so that the process of applying these sanctions that are in capacity can be avoided (Ariyani and Mellyana, 2022).

This has happened in the settlement process of the PT Bank Lippo Tbk case and the settlement case of the Indonesian bank liquidity assistance (BLBI) recipient banks conducted by the Indonesian government through the national banking restructuring agency (BPPN) (Gunawan, 2022).

In this case, the imposition of administrative sanctions in the form of fines as in the case settlement process is an alternative choice which is restorative in nature which aims to avoid the imposition of criminal sanctions of imprisonment which is feared to cause distrust of the capital market system and national banking institutions at that time, especially the concern over the decline in public confidence in PT bank Lippo Tbk which resulted in the withdrawal of customer deposits or savings then the sanctions given by Bapepam as the representative of the state shows the role of the state as a victim who agrees with the settlement model and the amount of fines paid by PT bank Lippo Tbk.

The imposition of sanctions on PT bank Lippo is based on a responsive regulation even though the violation of the provisions of the article in law number 8 of 1995 concerning capital markets committed by PT bank Lippo is included in the classification of capital market crimes (miss The imposition of sanctions on PT bank Lippo is based on a responsive regulation even though the violation of the provisions of the article in law number eight of 1995 concerning capital markets committed by PT bank Lippo is included in the classification of capital market crimes *(missleading information)* (Hutauruk, 2013).

The initial action taken by Bapepam at that time did not necessarily choose the sanction of imprisonment as rigidly as stipulated in Article 104 of the Capital Market Law but took persuasive steps as illustrated in the base of the pyramid or understanding of responsive regulation which was followed by the

policy of choosing administrative sanctions so that PT bank Lippo Tbk had made a positive response and by accepting the sanctions imposed which meant that the initial response of PT bank Lippo acknowledged the mistakes it had made which then responded by accepting the sanctions imposed and promising to improve and restore the situation voluntarily, especially to improve the principle of prudence in the future.

Although the actions taken by PT bank Lippo are violations of capital market crimes as stipulated in article 93 which can be subject to prison sanctions as stipulated in article 104 but by looking at the selection of administrative sanctions, we can conclude that the state through Bapepam has resolved the case by making a policy through its discretionary rights and resolving it outside the criminal court in general, the selection of sanctions that are restorative is a policy that can avoid bad judgment from capital market players at that time against the capital market system in Indonesia and at the same time can avoid loss of public confidence in the banking system in Indonesia.

Then the settlement of the government's burden on the case of bank Indonesia liquidity assistance (BLBI) arising from miss management by bank Indonesia and the BLBI recipient banks, which has existed since 1998 through various efforts made by the government at that time y aini which has existed since 1998 through various efforts made by the government at that time, namely the concept of a master settlement agreement aquisition Agreement or (MSAA), *master of refinancing and note agreement* (MRNA), deed of debt recognition, state receivables committee besides that through the Frankfurt agreement where the distribution of BLBI by bank Indonesia as the blender of the last resort is inseparable from the monetary crisis that hit the world which affected the economic crisis in Indonesia at that time where the decline in the rupiah exchange rate against the dollar. To overcome this, bank Indonesia made a monetary policy to resolve the multi-dimensional crisis in overcoming the monetary crisis and saving the business continuity of banks that had difficulty maintaining the stability of national payments against disturbances arising from the gap between the recipient and withdrawal of banking funds.

These two cases illustrate to us that as far as the experience that occurred related to corporate crime involving banking activities, repressive law enforcement efforts were not prioritized at that time, but optimized other alternative efforts outside the court with consideration of the state of the country, economic stability, and the conditions that hit Indonesia at that time. this is one of the good precedents for *restorative justice* in overcoming corporate crime in Indonesia. However, until now the implementation of alternative corporate crime settlement has not been found in various practices and cases that exist to date, this is one of the challenges in the future for our legal system, especially criminal law, to provide flexibility for *out-of-court* settlement (Pujiyono and Sutanti, 2019).

A retributive approach that focuses more on the perpetrators of criminal acts has proven to be ineffective in dealing with ineffective and corporations this is because criminal law focuses on overcoming work (symptom rather than the cause or root causes (causa of crime and often ignores the role of victims as the party that has an impact where not many corporations are held accountable for the criminal acts they commit the main cause is the weakness of the formulation of the law both in terms of material criminal law and in terms of law enforcement in a social sociological manner. This problem arises because of concerns about the impact on society such as consumers of business labor and state revenues.

Conclusion

Corporate crime has developed into an extraordinary form of criminality that has a massive impact on social, economic, political, security, and even human rights aspects. This crime is carried out systematically and transnationally, involving sophisticated technology and ignoring environmental, labor, and consumer protection norms. However, the legal framework in Indonesia, both materially and formally, has not been fully able to answer the complexity of corporate criminal responsibility, especially in establishing consistent and accommodating technical procedures. The application of the theories of identification, strict liability, vicarious liability, and functional perpetrators has

become the basis for criminalizing corporations, but the dominant retributive approach has proven inadequate to respond to the root of the problems caused. In this context, restorative justice offers a more transformative alternative approach by emphasizing the restoration of relations between perpetrators, victims, and society. Although in Indonesia this concept has begun to grow in the juvenile justice system, its implementation in corporate criminal cases is still partial and limited, mainly because there is no harmonization of integrated legal norms and mechanisms.

Comparisons with countries such as France and Germany show that restorative justice, such as through mediation mechanisms between perpetrators and victims, has become a formal instrument in their legal systems. These countries provide a clear and operational legal basis for the restorative process even at the pre-prosecution stage, by placing the principles of admitting guilt, compensation, and active participation of the parties as the basis for resolving cases. France and Germany provide strong legal recognition to the mechanism for resolving criminal acts through a mediation approach, known as Victim Offender Mediation (VOM). This mechanism is a breakthrough in the criminal justice system that aims to prioritize the restoration of social relations between perpetrators and victims, not just punishment. VOM in France is not only rooted in formal norms in the Criminal Procedure Code amended in 1993, but is also strengthened by operational provisions such as ministerial circulars and institutional decisions such as INAVEM. Article 41 of the French Criminal Procedure Code emphasizes that VOM can be implemented at the pre-prosecution stage as a form of diversion from the formal legal process. Judges and prosecutors are given discretionary authority to suggest or stop the criminal process if the results of the mediation are considered sufficient, with the main requirement being an admission of guilt from the perpetrator and the consent of the victim. The VOM institution acts as a facilitator of dialogue, a determinant of compensation, and a reporter of mediation results to the prosecuting authority. This function makes VOM not just a forum for compromise, but an instrument for restoring justice that is reparative and participatory. This process restores the victim's autonomy and encourages the perpetrator's moral

accountability, while preserving the legal rights of all parties. Indonesia's experience in resolving corporate cases such as PT Bank Lippo Tbk and BLBI also provides a positive precedent for the application of a restorative approach. Through administrative policies and out-of-court settlements, the state demonstrates its role as both a victim and a healing actor, although it does not explicitly use the label "restorative justice".

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Competing Interest

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