Rethinking Subsidiary in Corruption Cases: Indonesian Experiences

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ABSTRACT

The imposition of additional penalties in the form of restitution in corruption cases in Indonesia continues to reveal significant conceptual and practical weaknesses. A primary issue is the tendency of convicted individuals to opt for subsidiary imprisonment rather than paying restitution, which undermines the effective recovery of state financial losses. Furthermore, inconsistencies in interpretation between prosecutors and judges, weak asset tracing mechanisms, and ambiguities in existing regulations exacerbate the problem. This study examines the legal significance of restitution in corruption cases, identifies the shortcomings in its current implementation, and proposes a *ius constituendum* model to reconstruct the restitution system to enhance substantive justice and improve state financial recovery. The research employs a normative juridical method, combining statutory analysis, doctrinal review, and case studies, complemented by a comparative study of legal frameworks in the United States and the United Kingdom to highlight gaps in Indonesia's asset recovery mechanisms. The findings indicate that first, current regulations fail to provide adequate deterrence; second, there is insufficient alignment between state interests and the rights of convicts; and third, existing mechanisms for asset tracing and execution are ineffective. Accordingly, this study recommends legal reconstruction through strengthening the prosecutorial role in execution, ensuring consistency between prosecution demands and judicial decisions, and incorporating the time value of money in determining restitution amounts.

1. Introduction

The Constitution of the Republic of Indonesia explicitly establishes that Indonesia is a state governed by law and not by arbitrary power, positioning law as a foundational pillar of national governance and social order. Law serves as a regulatory instrument that guides behavior across all aspects of societal interaction with the aim of maintaining public order and achieving justice. The absence of justice, which law seeks to safeguard, can generate social unrest and undermine communal stability. Within criminal law, positivist procedural regulations require

state authorities to act strictly in accordance with legal principles both to prevent unlawful conduct and to ensure accountability for violations.[1]

Rudolf Stammler's concept of law as the transcendental juridical will of humanity highlights the collective dimension of law as a manifestation of shared social consciousness. Supporting this view, Lilik Mulyadi emphasizes that criminal procedural law protects public interests while safeguarding the rights of defendants, promoting equality before the law and proportional, civilized justice.[2] Corruption represents unlawful conduct that harms both individuals and the state, causing substantial financial losses and obstructing constitutional objectives such as citizen welfare. Law Number 31 of 1999, as amended by Law Number 20 of 2001, differentiates between direct corruption offenses, including bribery, embezzlement, extortion, and gratification, and ancillary acts that hinder law enforcement, reflecting the necessity of comprehensive legal accountability for all forms of corrupt behavior.[3]

The additional penalty in the form of replacement money in corruption cases occupies a critical position as it functions to ensure justice and simultaneously restore state financial losses resulting from unlawful acts. Judicial rulings should determine the amount of replacement money proportionally to the actual state losses, ensuring that the imposed sanction serves not only as a punitive measure against the offender but also as a restorative mechanism for state finances. This principle aligns with Law Number 31 of 1999 as amended by Law Number 20 of 2001, which explicitly obligates corruption perpetrators to compensate for state financial losses through the payment of replacement money. Replacement money possesses a dual dimension, functioning both as an additional punishment and as restitution, thereby upholding the integrity of the legal system and safeguarding public interests.[4]

Despite its legal significance, the implementation of replacement money as an additional penalty in Indonesia has encountered challenges, particularly regarding execution effectiveness and compliance by convicts. Prior to the enactment of Supreme Court Regulation Number 5 of 2014, the application of this additional

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[1] Khanindra Ch Das, Mantu Kumar Mahalik and Perry Sadorsky, 'Tax Provision by International Subsidiaries of Indian Extractive Industry Multinationals: Do Environmental Pollution and Corruption Matter?', *Resources Policy*, 80 (2023), 103231 https://doi.org/https://doi.org/10.1016/j.resourpol.2022.103231

[2] Jeoung Yul Lee and others, 'Corruptive Practices, Digitalization, and International Business', *Journal of Business Research*, 181 (2024), 114748 https://doi.org/https://doi.org/10.1016/j.jbusres.2024.114748

[3] Lingfei Weng and others, 'Challenges Faced by Chinese Firms Implementing the "Belt and Road Initiative": Evidence from Three Railway Projects', *Research in Globalization*, 3 (2021), 100074 https://doi.org/https://doi.org/10.1016/j.resglo.2021.100074

[4] Mahrus Ali and others, 'Corruption, Asset Origin and the Criminal Case of Money Laundering in Indonesian Law', *Journal of Money Laundering Control*, 25.2 (2021), 455–66 https://doi.org/https://doi.org/10.1108/JMLC-03-2021-0022

penalty was not fully optimized, as documented by research conducted by the Institute for Legal Studies and Advocacy for Judicial Independence.[5]

Data from Indonesian Corruption Watch illustrate a significant increase in both corruption cases and the associated state financial losses over recent years. In 2016, corruption resulted in approximately IDR 1.47 trillion in state losses across 482 cases involving 1,101 suspects. Of these, 238 cases were directly related to state finances with losses totaling IDR 1 trillion, 33 bribery cases amounted to IDR 32.4 billion, three embezzlement cases caused IDR 2.3 billion in losses, seven extortion cases accounted for IDR 20.5 billion, and two cases involved gratification, while two involved procurement conflicts. The remaining 197 cases had undetermined forms of corruption with losses estimated at IDR 442 billion. The following year, 2017, recorded an increase to 576 corruption cases, with state financial losses reaching approximately IDR 6.5 trillion and 1,298 suspects involved. The trend of rising losses continued, as indicated by Indonesian Corruption Watch data for the first semester of 2018, which estimated the average state financial loss per corruption case at IDR 7.8 billion, compared to IDR 4.2 billion in 2016 and IDR 6.7 billion in 2017. These figures demonstrate the ongoing escalation of state financial losses due to corruption and highlight the urgent need to strengthen the execution and compliance mechanisms for replacement money as a critical element of asset recovery and legal deterrence.

Law Number 31 of 1999 concerning the Eradication of Corruption Crimes defines corruption as an unlawful act committed by an individual to enrich themselves, another person, or a corporation, resulting in financial or economic losses to the state. Article 18 emphasizes that the state's response extends beyond mere eradication, requiring the recovery of losses through an additional penalty in the form of replacement money equivalent to the value of assets obtained from corruption. This provision is further detailed in Supreme Court Regulation Number 5 of 2014, which outlines calculation parameters, the relationship with asset confiscation, and execution procedures including seizure and auction of assets. Notably, the replacement money penalty may still be imposed even if the proceeds of corruption have been transferred to third parties who are not prosecuted.[6]

According to Adami Chazawi, replacement money functions primarily to restore state financial losses, distinguishing it from fines, which are purely punitive. The primary objective of Law Number 31 of 1999, as amended by Law Number 20 of 2001, is to safeguard state finances while ensuring clean and

[5] Julien Hanoteau, Jason Miklian and Ralf Barkemeyer, 'Business and Violent Conflict as a Multidimensional Relationship: The Case of Post-Reformasi Indonesia', *Business Horizons*, 68.4 (2025), 425–38 https://doi.org/https://doi.org/10.1016/j.bushor.2025.02.014

[6] Melia Famiola and Siti Adiprigandari Adiwoso, 'Corporate Social Responsibility Diffusion by Multinational Subsidiaries in Indonesia: Organisational Dynamic and Institutional Effect', *Social Responsibility Journal*, 12.1 (2016), 117–29 https://doi.org/https://doi.org/10.1108/SRJ-10-2013-0128

authoritative governance in accordance with the mandate of TAP MPR RI Number XI/MPR/1998. Articles 2 and 3 link corruption crimes directly to state financial losses, underscoring that penalties must include financial restitution in addition to imprisonment.[7] However, Article 18 paragraph (1) letter b limits replacement money to the value of corrupt assets, generating normative ambiguity as restitution may be overshadowed by de facto confiscation, creating tension between punitive and restorative objectives. Divergent prosecutorial interpretations, as reflected in Attorney General Decision Number KEP-518/J.A/11/2001, further exacerbate legal dualism and reduce certainty. Given that previous enforcement measures have recovered only 10 to 15 percent of total state losses, establishing a precise legal framework for replacement money is essential to balance deterrence with effective asset recovery.[8]

Corruption offenses in Indonesia have shown a consistent upward trend over recent years. This pattern is evident from the investigations and prosecutions conducted by the Corruption Eradication Commission (KPK), as summarized in Table 1. It should be noted, however, that the figures for KPK investigations include pending cases carried over from the previous year, with 37 cases (38.9%) in 2014, 49 cases (46.2%) in 2015, 41 cases (29.3%) in 2016, and 61 cases (33.5%) in 2017. Based on the proportion of pending cases from the previous year, on average, 37% of unresolved cases are addressed by KPK in the subsequent year. Among the various types of corruption, bribery remains the most frequently prosecuted offense.[9]

In addition to KPK data, the Criminal Investigation Agency of the Indonesian National Police (Bareskrim Polri), through its Directorate of Corruption Crimes, handled 1,472 cases in 2017, showing an increase from 1,360 cases in 2016. Although the growth rate of cases was only 8%, the recovery of embezzled assets reached 926%.[10] For comparative purposes, a recent study conducted by the Indonesian Corruption Watch (ICW) provides a comprehensive mapping of corruption case enforcement by law enforcement authorities in 2018, which is presented in Table 1. This data highlights not only the trends in case numbers but

[7] Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153 https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11153

[8] Jon S T Quah, 'Combating Police Corruption in Indonesia: Cleansing the Buaya (Crocodile)', *Asian Education and Development Studies*, 9.2 (2020), 129–43 https://doi.org/https://doi.org/10.1108/AEDS-04-2018-0088

[9] Hendi Yogi Prabowo, Jaka Sriyana and Muhammad Syamsudin, 'Forgetting Corruption: Unlearning the Knowledge of Corruption in the Indonesian Public Sector', *Journal of Financial Crime*, 25.1 (2018), 28–56 https://doi.org/https://doi.org/10.1108/JFC-07-2016-0048

[10] Armunanto Hutahaean and Erlyn Indarti, 'Implementation of Investigation by the Indonesian National Police in Eradicating Corruption Crime', *Journal of Money Laundering Control*, 23.1 (2020), 136–54 https://doi.org/https://doi.org/10.1108/JMLC-12-2018-0075

also the evolving effectiveness of asset recovery measures and enforcement mechanisms in the Indonesian anti-corruption framework.

Table 1. Mapping of Corruption Case Enforcement by Law Enforcement Authorities

	Attorney General's Office	Indonesian Police	Corruption Eradication Commission
Number of Cases	235 cases	162 cases	57 cases
Number of Suspects	489 peoples	337 peoples	261 peoples
Value of State Losses	Rp. 4,8 trillion	Rp. 425 billion	Rp. 385 billion
Bribery Value	Rp. 732 million	Rp. 906 million	Rp. 132 million
Extortion Value	Rp. 3,4 billion	Rp. 3,3 billion	Rp. 0
Money Laundering Value	Rp. 0	Rp. 0	Rp. 9,1 billion

Source: Corruption Action Trends 2018.

Based on the data mapping from the International Corruption Watch (ICW), the Attorney General's Office (AGO) emerged as the law enforcement institution handling the highest number of corruption cases in 2018, totaling 235 cases with 489 suspects. These cases involved state financial losses amounting to approximately IDR 4.8 trillion, bribery totaling IDR 732 million, illegal levies of IDR 3.4 billion, and no reported money laundering cases. On average, the AGO managed 20 cases per month with an average financial loss of IDR 20.5 billion per case. In comparison, the Indonesian National Police (Polri) handled 162 cases with 337 suspects, resulting in state losses of IDR 425 billion, bribery of IDR 906 million, illegal levies of IDR 3.3 billion, and no money laundering. Polri averaged 14 corruption cases per month, with state losses of IDR 2.6 billion per case. Meanwhile, the Corruption Eradication Commission (KPK) investigated 57 cases involving 261 suspects, with state losses of IDR 385 billion, bribery amounting to IDR 132 billion, and money laundering totaling IDR 91 billion, averaging five cases per month and IDR 6.6 billion in losses per case.

The enforcement of corruption eradication in Indonesia has been pursued through comprehensive legal instruments, particularly Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, which stipulate not only custodial and monetary penalties but also additional sanctions in the form of restitution to restore state losses.[11] Further legal development includes Law Number 30 of 2002 establishing the KPK as an independent institution with broad investigative, prosecutorial, and adjudicatory authority, and Law Number 46 of 2009 establishing Corruption Courts within the general judiciary. Nevertheless, the implementation of additional fines or restitution continues to face challenges, including discrepancies between prosecutorial demands and judicial decisions, as

[11] Hendi Yogi Prabowo and others, 'De-Normalizing Corruption in the Indonesian Public Sector through Behavioral Re-Engineering', *Journal of Financial Crime*, 24.4 (2017), 552–73 https://doi.org/https://doi.org/10.1108/JFC-10-2015-0057

well as unclear norms regarding subsidiarity mechanisms under Article 18 of the Corruption Law. Internal guidelines, such as the Attorney General's Directives Number 1 of 2019 and Number 7 of 2020, have not provided sufficiently rigid standards, resulting in inconsistent practice and weakened legal certainty.[12]

Previous research has examined various aspects of corruption in Indonesia, providing insights relevant to the topic of subsidiary arrangements in corruption cases. Anastasia Suhartati (2016) developed a conceptual framework illustrating how multinational enterprises (MNEs) manage socio-political risks at the subnational level in Indonesia, emphasizing the importance of active relationships with local actors.[13] Additionally, the study by Mengyue Zhang (2025) analyzed corruption risks in Indonesia's non-renewable energy sector, focusing on a 2019 bribery case in a coal-fired power plant establishment, and discussed implications for energy justice.[14] Furthermore, the experimental research by Saldi Isra et al., provided evidence from Indonesia on the propensities to engage in and punish corrupt behavior, offering insights into the spread of economic corruption. These studies contribute to understanding the complexities of corruption cases in Indonesia and inform the discussion on subsidiary arrangements in such contexts.[15]

The misalignment between prosecutorial demands and judicial rulings, particularly concerning restitution amounts, reduces the effectiveness of asset recovery and reflects coordination gaps among law enforcement actors. Strategically, prosecutors possess advantages due to their proximity to investigations and capacity to gather comprehensive evidence, enabling more precise claims for restitution. Therefore, harmonizing judicial decisions with prosecutorial demands is crucial to maintain consistency, transparency, and legitimacy within the judicial system. A reconstruction of the restitution framework based on principles of justice, balancing legal certainty, protection of defendants' rights, and effectiveness in recovering state losses, is essential. Enhanced synergy between prosecutors and judges will strengthen public trust, improve enforcement efficiency, and ensure that anti-corruption measures uphold substantive justice for all parties involved.

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[12] Dirk Tomsa, 'Local Politics and Corruption in Indonesia's Outer Islands', *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 171.2 (2015), 196–219 https://doi.org/https://doi.org/10.1163/22134379-17101005

[13] Anastasia Suhartati Lukito, 'Building Anti-Corruption Compliance through National Integrity System in Indonesia', *Journal of Financial Crime*, 23.4 (2016), 932–47 https://doi.org/https://doi.org/10.1108/JFC-09-2015-0054

[14] Mengyue Zhang, Siyan Tang and Jinyang Ren, 'The Impact of Anti-Corruption on Migration and Family Welfare', *China Economic Review*, 93 (2025), 102492 https://doi.org/https://doi.org/10.1016/j.chieco.2025.102492

[15] Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', *International Journal of Law, Crime and Justice*, 51 (2017), 72–83 https://doi.org/10.1016/j.ijlcj.2017.07.001

2. Research Method

This study employs a normative or doctrinal legal approach, which emphasizes the examination of statutory regulations, judicial decisions, and relevant legal doctrines. This approach is selected due to the study's objective of conducting an in-depth analysis of the subsidiarity mechanism of restitution in corruption crimes, while also evaluating its effectiveness in restoring state financial losses.[16] In addition, the research incorporates a comparative approach by examining the practice of imposing restitution in Indonesia in relation to the legal systems of the United States and the United Kingdom. Such comparative analysis is intended to provide broader perspectives that serve as the foundation for reconstructing legal provisions that are fairer, more effective, and practically applicable. The research is normative and prescriptive in nature, as it not only describes existing legal norms but also offers recommendations on how these norms should be formulated to achieve the objectives of corruption eradication.[17] The sources of legal materials consist of primary sources, including statutes and court decisions, secondary sources such as academic literature, and tertiary sources, including legal dictionaries and encyclopedias. The analysis is conducted qualitatively through a comprehensive examination of legal texts, judicial considerations, and doctrinal interpretations. Accordingly, this study aims to provide conceptual solutions to the normative ambiguities surrounding the subsidiarity of restitution within Indonesian law, thereby contributing to both theoretical understanding and practical reform of anti-corruption legal frameworks.

3. Results and Discussion

The Concept of Restitution in the Legal Enforcement of Corruption Crimes

The conceptualization of restitution as a form of punishment in corruption offenses is intrinsically linked to the core principles of law, including justice, legal certainty, and utility. Restitution, as an additional penalty, extends beyond a normative instrument within positive law to embody a philosophical dimension encompassing retribution, corrective justice, and the restoration of state losses. From the perspective of legal positivism, as developed by John Austin and H.L.A. Hart, the imposition of restitution follows logically from legal norms, ensuring that all unlawful gains are returned to the state and reinforcing legal certainty.[18]

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[16] Abiodun Raufu, Lucy Tsado and Emmanuel Ben-Edet, 'Cybercrimes: Critical Issues in a Global Context, Anita Lavorgna, Macmillan Educational Limited', *International Journal of Law, Crime and Justice*, 64 (2021), 100454 https://doi.org/https://doi.org/10.1016/j.ijlcj.2020.100454

[17] Eva Ribbers, 'Sentencing Rape: A Comparative Analysis, G. Brown, Hart Publishing, Oxford', *International Journal of Law, Crime and Justice*, 70 (2022), 100534 https://doi.org/10.1016/j.ijlcj.2022.100534

[18] Elías Cisneros and Krisztina Kis-Katos, 'Unintended Environmental Consequences of Anti-Corruption Strategies', *Journal of Environmental Economics and Management*, 128 (2024), 103073 https://doi.org/https://doi.org/10.1016/j.jeem.2024.103073

Legal realism, advanced by Oliver Wendell Holmes and Karl Llewellyn, emphasizes that restitution's effectiveness depends on concrete enforcement, particularly the state's capacity to trace, seize, and confiscate assets consistently. Natural law theorists, including Aristotle, Thomas Aquinas, and John Rawls, view restitution as a mechanism of corrective justice that restores social equilibrium, ensuring that punishment carries both repressive and restorative dimensions.[19] Within the framework of Indonesian law, restitution is regulated under Article 10 of the Criminal Code and Article 18 paragraph (1) of the Corruption Eradication Law, which govern asset confiscation, restitution payments, corporate closures, and revocation of rights. Restitution applies only to assets genuinely obtained and enjoyed by the offender, as emphasized by Komariah Emong Sapardjaja, Budiono Kusumohamidjojo, and Arief Sidharta, balancing legal certainty, proportionality, and fairness, while facilitating effective asset recovery and reinforcing public trust in the law.[20]

Debates surrounding restitution in corruption offenses have generated two primary perspectives: one emphasizing the maximal restoration of state losses and the other prioritizing proportional justice, as advocated by Budiono Kusumohamidjojo. The first perspective argues that all state losses should be recovered regardless of what the defendant actually obtained, aiming to create a strong deterrent effect. However, this approach may compromise justice, as an offender could be required to bear a loss far exceeding the benefits they received. Budiono contends that restitution should only cover the value genuinely enjoyed by the offender, as imposing the total state loss risks substantive injustice.[21]

In practice, proving the exact amount enjoyed requires comprehensive financial investigation, analysis of fund flows, and complex asset tracing. Prosecutors must possess high professional capacity, including the use of digital forensic technology and collaboration with relevant institutions such as the KPK, PPATK, or independent auditors. Judges, when determining sentences, must consider evidence demonstrating the assets actually enjoyed by the offender rather than relying solely on the amount of state loss stated in the indictment, while ensuring fair opportunities for defense. This approach aligns with the principle of legal

[19] Jesse W. Campbell, 'Buying the Honor of Thieves? Performance Pay, Political Patronage, and Corruption', *International Journal of Law, Crime and Justice*, 63 (2020), 100439 https://doi.org/10.1016/j.ijlcj.2020.100439

[20] Chengjing You, 'An Examination of the Theory of Crimes in Common Partly Establishment Standard of Joint Crime under the Factual Crime System', *International Journal of Law, Crime and Justice*, 45 (2016), 152–70 https://doi.org/10.1016/j.ijlcj.2015.12.004

[21] Yan Wu, Yong Yang and Tomasz Mickiewicz, 'Corruption, the Digital Sectors, and the Profitability of Foreign Subsidiaries in Emerging Markets', *Journal of Business Research*, 161 (2023), 113848 https://doi.org/https://doi.org/10.1016/j.jbusres.2023.113848

certainty, emphasizing that law enforcement must act in accordance with positive norms rather than arbitrariness.[22]

The Constitutional Court, through Decision No. 25/PUU-XIV/2016, clarifies that state losses in corruption cases may include both actual and potential losses, provided they can be proven convincingly. This expansion of evidentiary scope presents challenges in balancing effective corruption eradication with the protection of defendants' rights. Law enforcement agencies must exercise specialized capacities in forensic accounting, financial investigation, and asset tracing, while harmonizing methods for calculating state losses to avoid interpretive disparities that could weaken enforcement effectiveness. Accurate, proportional, and just definitions of state loss not only enhance anti-corruption efforts but also protect defendants' rights and strengthen transparent and accountable governance.[23]

In corruption offenses, determining state losses involves not only material aspects but also the mental state, or *mens rea*, of the perpetrator. Unlawful acts may be committed intentionally, encompassing direct intent, certainty of consequence, or awareness of the potential occurrence of state losses. Additionally, acts may occur due to negligence, either gross negligence or slight negligence.[24] Proving the mental state is inherently challenging because of its abstract nature, requiring prosecutors to rely on indirect evidence such as documents, witness testimony, and the defendant's conduct. The distinction between intent and negligence directly affects the severity of the imposed sanctions. Three primary elements of state loss, namely real and certain, resulting from unlawful acts, and intentional or negligent, must be proven beyond a reasonable doubt. These elements often generate debates due to case complexity and evidentiary challenges.[25]

Within the framework of good governance, the mechanism of restitution, known in Indonesia, embodies accountability and transparency while serving as a tool to recover state assets. Restitution not only produces a deterrent effect but

[22] Khanindra Ch. Das and Mantu Kumar Mahalik, 'International Subsidiary Performance of Indian Multinationals in the Extractive Sector: The Role of Institutional Quality, Corruption and Investment Regime', *Resources Policy*, 67 (2020), 101664 https://doi.org/https://doi.org/10.1016/j.resourpol.2020.101664

[23] Muhammad Tahir and others, 'Corruption, National Culture, Law and Dividend Repatriation Policy', *Journal of Multinational Financial Management*, 57–58 (2020), 100658 https://doi.org/https://doi.org/10.1016/j.mulfin.2020.100658

[24] Hyoungjin Lee and Chris Changwha Chung, 'Who Is to Blame? The Effects of Conflict Actors on Foreign Subsidiary Exit', *Journal of Business Research*, 201 (2025), 115684 https://doi.org/https://doi.org/10.1016/j.jbusres.2025.115684

[25] Young Hoon An, 'Navigating Liabilities of Foreignness in Weak and Challenging Institutional Environments: Strategies of Established Multinational Enterprise Subsidiaries in Cameroon', *International Business Review*, 34.6 (2025), 102505 https://doi.org/https://doi.org/10.1016/j.ibusrev.2025.102505

also ensures that corruption does not yield financial benefits. Legal supremacy requires that the imposition of restitution must be fair, consistent, and transparent, irrespective of the perpetrator's position or social status. Corruption generates severe consequences, including the waste and inefficiency of state budgets, making restitution a critical instrument for both financial recovery and the enforcement of accountability principles. The return of illicitly obtained funds strengthens budgetary efficiency and reflects restorative justice by compensating the state and society, while simultaneously enacting retributive justice through financial penalties proportionate to the offense.[26]

The effectiveness of this mechanism depends on the quality of governance, the independence of law enforcement institutions, and the professionalism of officials who must exhibit integrity, technical competence, and immunity from political interference. Inter-agency coordination, involving the Corruption Eradication Commission, the Attorney General's Office, the Police, the Financial Transaction Reports and Analysis Center, and the Ministry of Finance, is essential to ensure optimal seizure and management of assets, supported by transparency in reporting, auditing, and public oversight. From a legal positivist perspective, restitution functions as a primary norm obliging perpetrators to return illicit gains, reinforced by secondary rules governing enforcement sanctions. Legal certainty demands clearly defined concepts of illegal profits, objective calculation methods, and consistent and transparent enforcement procedures. Consequently, the synergy between restitution and good governance contributes to clean, accountable, and public-interest-oriented administration.[27]

Restitution in corruption offenses serves as a legal instrument designed to impose significant financial consequences on perpetrators while recovering state losses. Obligations to pay restitution, which may equal or even exceed the assets obtained from corruption, render corrupt acts increasingly unprofitable for both public officials and private parties involved in bribery. The effectiveness of restitution relies on legal certainty, speed and consistency of enforcement, and transparency in calculation and execution, as systemic weaknesses or uncertainty can diminish its deterrent effect.[28]

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[26] Benjamin K Sovacool, Bojana Novaković and Alexander A Dunlap, 'Sex for Solar? Examining Patterns of Public and Private Sector Corruption within the Booming California Solar Energy Market', *Energy Strategy Reviews*, 59 (2025), 101727 https://doi.org/https://doi.org/10.1016/j.esr.2025.101727

[27] Jongpil Park and Woojin Yoon, 'A Foreign Subsidiary's Largest Shareholder, Entry Mode, and Divestitures: The Moderating Role of Foreign Investment Inducement Policies', *European Research on Management and Business Economics*, 28.3 (2022), 100197 https://doi.org/https://doi.org/10.1016/j.iedeen.2022.100197

[28] John Fan Zhang and Jacky Yuk-chow So, 'The Effect of Corruption Exposure on the ESG Performance of Multinational Firms11We Greatly Appreciate the Valuable Feedback from the Editor Hui Guo. John Fan Zhang Is an Assistant Professor and Jacky Yuk-Chow So Is the Chair

From a progressive legal perspective, optimizing restitution emphasizes that the law serves humanity, requiring rational, proportional, and substantively just application. Socioeconomic factors, legal culture, and the integrity of officials further influence the instrument's efficacy, while anti-corruption education, public campaigns, and exemplary leadership enhance collective awareness. The fraud triangle theory illustrates that restitution reduces opportunities and rationalizations for corruption by creating tangible financial pressure. Thus, restitution functions not only as a mechanism of restorative and retributive justice but also as a sustainable preventive strategy against corruption and as a means to strengthen a culture of legal integrity.[29]

Restitution possesses a dual dimension. It facilitates the recovery of state assets and symbolizes resistance to corrupt practices. This instrument enforces financial accountability proportionate to the offense and restores public funds intended for development, social services, and public welfare. Its rigorous and consistent application enhances public confidence in the legal system and prevents the normalization of corrupt behavior, despite practical challenges such as asset tracing difficulties, prolonged legal proceedings, or politicization of cases involving influential figures. Beyond its retributive and restorative functions, restitution also promotes distributive justice when recovered funds are transparently allocated to public programs. Therefore, its implementation must adhere to principles of transparency, accountability, and strict oversight to prevent misuse. While procedural certainty remains central in legal positivism, integrating moral values and substantive justice is necessary to ensure restitution effectively combats corruption and strengthens state legitimacy.[30]

The phenomenon of convicted corruptors preferring substitute imprisonment over paying restitution highlights structural weaknesses in Indonesia's criminal sanctions system for corruption. Restitution is intended to recover state financial losses and impose significant financial deterrence, yet in practice, this mechanism often fails. Many corruption cases show that perpetrators opt for relatively short additional prison terms instead of losing far greater asset values. This rational choice is driven by the absence of statutory minimums for substitute imprisonment under Article 18 of the Corruption Eradication Law, granting judges discretion to impose light additional penalties disproportionate to state losses. Consequently, state asset recovery is hindered, and the public suffers

Professor, Both Authors Are A', *Pacific-Basin Finance Journal*, 86 (2024), 102433 https://doi.org/https://doi.org/10.1016/j.pacfin.2024.102433

[29] Lamia Chourou, Ashrafee T Hossain and Anand Jha, 'US Political Corruption and Quarterly Conference Calls', *Journal of Banking & Finance*, 161 (2024), 107108 https://doi.org/https://doi.org/10.1016/j.jbankfin.2024.107108

[30] Paul Demeré, Jeffrey Gramlich and Yoonsoo Nam, 'Do U.S. Multinationals Use Income Shifting to Facilitate and Hide Corruption?', *Journal of Accounting and Public Policy*, 46 (2024), 107213 https://doi.org/https://doi.org/10.1016/j.jaccpubpol.2024.107213

because public assets intended for development remain unrecovered. The lack of clear rules on pre-trial asset seizure further complicates recovery efforts, adversely affecting legal legitimacy, as the public perceives the criminal system as failing to enforce substantive justice while allowing perpetrators to evade financial accountability.[31]

Legal reform is thus urgent, including amendments establishing minimum substitute imprisonment standards and strengthening asset recovery mechanisms by maximizing seizure instruments without awaiting final judgment. Comparative experiences from the United States and the United Kingdom indicate that asset recovery effectiveness depends on regulatory clarity, judicial courage, and institutional capacity to trace and seize illicit proceeds. Accordingly, restitution should function not merely as procedural formality but as a tangible instrument for financial recovery and public interest protection. Progressive legal approaches that prioritize human and societal interests must guide the design of corruption sanctions, ensuring restitution becomes a genuine symbol of justice, recovery, and resolute opposition to corrupt practices.[32]

The Role of Restitution in Corruption Crimes Indonesia

The implementation of restitution in corruption cases represents a form of law enforcement aimed not only at creating a deterrent effect but also at restoring state financial losses. However, its practical execution frequently encounters obstacles arising from substantive legal provisions, law enforcement officers, available infrastructure, societal conditions, and cultural factors. [33] The regulation of restitution in corruption offenses is not a novel concept in the Indonesian legal system. Since the enactment of Government Regulation in Lieu of Law Number 24 of 1960, provisions on restitution have been formulated and subsequently continued in Law Number 3 of 1971, Law Number 31 of 1999, and Law Number 20 of 2001. Article 16 of Government Regulation in Lieu of Law Number 24 of 1960 stipulates that perpetrators of corruption may be subject to imprisonment, fines, confiscation of assets derived from corruption, and potentially required to pay restitution equal to the value of assets obtained from corrupt acts. This formulation indicates that restitution is facultative, as reflected by the use of the

[31] Haicheng Guo, Sibo Liu and Chaoqun Zhan, 'Corruption Culture of Multinationals: Evidence from China', *Journal of Economic Behavior & Organization*, 234 (2025), 107012 https://doi.org/https://doi.org/10.1016/j.jebo.2025.107012

[32] Shoeb Mohammad, Jie Yang and Irfan Butt, 'Does Corruption Have a Sanding or Greasing Impact on Innovation? Reconciling the Contrasting Perspectives through a Systematic Literature Review', *Research Policy*, 53.7 (2024), 105036 https://doi.org/https://doi.org/10.1016/j.respol.2024.105036

[33] Ahmed A Sarhan, Mohamed H Elmagrhi and Emad M Elkhashen, 'Corruption Prevention Practices and Tax Avoidance: The Moderating Effect of Corporate Board Characteristics', *Journal of International Accounting, Auditing and Taxation*, 55 (2024), 100615 https://doi.org/https://doi.org/10.1016/j.intaccaudtax.2024.100615

term "may," granting judges the authority to impose or refrain from imposing this sanction.[34]

Moreover, the provision establishes that the amount of restitution must not exceed the assets acquired through the criminal act, with calculations dependent on audits conducted by official institutions such as the Supreme Audit Board. In practice, this provision is linked to the principle of subsidiarity, which allows for substitute imprisonment when the convicted individual is unable to pay restitution. This principle is designed to balance legal certainty with the effectiveness of state loss recovery.[35] Nevertheless, the implementation of the subsidiarity principle in restitution often generates serious problems. The primary obstacle lies in ineffective execution, as many convicts claim to lack assets despite having previously transferred or concealed illicit gains prior to sentencing. This situation frequently leads judges to impose substitute imprisonment of relatively short duration, which is disproportionate to the state losses incurred. Weaknesses in the mechanisms for tracing, freezing, and seizing assets from the investigation stage further undermine the effectiveness of restitution enforcement. Discrepancies in loss calculations among auditing institutions, prosecutors, and judges also create legal uncertainty, often resulting in restitution amounts in court decisions that are lower than prosecutorial demands.[36]

Judicial discretion in considering the financial capacity of convicts or partial recovery further weakens efforts to restore state assets. Consequently, although the law has provided for restitution for decades, current regulations still lack clear and consistent mechanisms for implementation. This situation indicates that various policies, including Supreme Court Circular Number 4 of 1988, have yet to provide effective solutions for addressing the recovery of state losses resulting from corruption.[37] The role of law enforcement officers and legal structure constitutes a critical element in determining the effectiveness of law enforcement, particularly in the implementation of restitution in corruption cases. According to Lawrence M. Friedman, a legal system comprises three interconnected components: legal substance, legal structure, and legal culture. The legal structure, in this context, encompasses criminal justice institutions, including the police, the

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[34] Min Luo, Xiaopeng Deng and Na Zhang, 'Understanding the Critical Inducers of International Contractors' Corruption', *KSCE Journal of Civil Engineering*, 27.9 (2023), 3659–73 https://doi.org/https://doi.org/10.1007/s12205-023-2160-z

[35] Alvedi Sabani, Mohamed H. Farah and Dian Retno Sari Dewi, 'Indonesia in the Spotlight: Combating Corruption through ICT Enabled Governance', *Procedia Computer Science*, 161 (2019), 324–32 https://doi.org/10.1016/j.procs.2019.11.130

[36] Abdul Rehman and others, 'Corruption's Impact on Non-Performing Loans of Banks in Emerging Markets: Empirical Insights', *Research in Globalization*, 9 (2024), 100241 https://doi.org/https://doi.org/10.1016/j.resglo.2024.100241

[37] Jiwon Suh, 'Human Rights and Corruption in Settling the Accounts of the Past', *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 179.1 (2023), 61–89 https://doi.org/https://doi.org/10.1163/22134379-bja10049

prosecution, the judiciary, and correctional facilities. These subsystems collectively form an integrated criminal justice system that functions collaboratively to address criminal offenses. In corruption cases, the prosecution occupies a strategic position, acting both as the dominus litis controlling case proceedings and as the executor of court decisions. Consequently, the successful implementation of restitution heavily depends on the commitment, integrity, and institutional capacity of the prosecution in executing judicial rulings, including managing the process of recovering state losses resulting from corruption.[38]

The execution of restitution frequently encounters obstacles rooted in structural weaknesses. Divergent perceptions between prosecutors and judges regarding the amount of restitution, limitations in legal instruments for asset tracing and seizure, and internal administrative deficiencies within the prosecution often hinder the effectiveness of judicial enforcement. Moreover, manipulation or abuse of authority can occur during the reception and deposition of restitution payments, as evidenced by previous technical and administrative weaknesses in regulations. To address these challenges, Law Number 11 of 2021 grants the prosecution new authority to conduct asset tracing, seizure, and restitution.[39] This expansion of powers aims to strengthen the prosecution's central role in state asset recovery while upholding transparency, accountability, and the rule of law. Structural improvements within the prosecution's administrative system and cross-institutional coordination are therefore essential to ensure the effective application of restitution under the subsidiarity principle as part of a national anti-corruption strategy.[40]

The application of restitution as a subsidiary punishment represents a crucial legal instrument, particularly in corruption cases that cause significant state financial losses. This instrument serves not only a retributive function to punish perpetrators but also a restorative function to recover state finances.[41] Despite its importance, the enforcement of restitution faces multiple challenges that affect its effectiveness, originating from legal, institutional, and social factors. The law enforcement is not merely the application of statutory provisions but is also influenced by regulations, law enforcement personnel, facilities, society, and legal

[38] Attila Gáspár and others, 'Corruption and Extremism', *Journal of Development Economics*, 2025, 103526 https://doi.org/https://doi.org/10.1016/j.jdeveco.2025.103526

[39] Julien Hanoteau, Gandhi Pawitan and Virginie Vial, 'Does Social Capital Reduce Entrepreneurs' Petty Corruption? Evidence across Indonesian Regions', *Papers in Regional Science*, 100.3 (2021), 651–71 https://doi.org/https://doi.org/10.1111/pirs.12588

[40] Corina Joseph and others, 'A Comparative Study of Anti-Corruption Practice Disclosure among Malaysian and Indonesian Corporate Social Responsibility (CSR) Best Practice Companies', *Journal of Cleaner Production*, 112 (2016), 2896–2906 https://doi.org/https://doi.org/10.1016/j.jclepro.2015.10.091

[41] Sabrina O Sihombing, 'Youth Perceptions toward Corruption and Integrity: Indonesian Context', *Kasetsart Journal of Social Sciences*, 39.2 (2018), 299–304 https://doi.org/https://doi.org/10.1016/j.kjss.2018.03.004

culture. The failure of any of these factors impedes the success of law enforcement. This perspective aligns with Friedman's theory, which posits that legal substance, structure, and culture are integral and interrelated, and that the effectiveness of law enforcement can only be achieved when these three components function harmoniously and in balance.[42]

In practice, the implementation of restitution encounters complex challenges. The legal provisions governing the recovery of state losses through restitution are often considered inadequate, particularly concerning asset tracing, seizure, and confiscation. These weaknesses are exacerbated by judicial decisions that lack detailed instructions and fail to provide certainty regarding execution procedures, resulting in inconsistent interpretations in practice. Structural deficiencies further impede effective enforcement.[43] Law enforcement personnel, particularly within the prosecution responsible for execution, often face administrative and technical obstacles that hinder optimal restitution implementation. Abdul Rahman Saleh identifies three primary factors contributing to the failure of restitution enforcement: weaknesses in legislation, incomplete judicial decisions, and underdeveloped prosecutorial administration. These deficiencies in both legal substance and structure ultimately undermine the effectiveness of law enforcement.[44]

Beyond legal substance and structure, legal culture also plays a significant role in supporting the effective implementation of restitution. The low level of legal awareness among both offenders and society often obstructs state loss recovery. Many corruption perpetrators attempt to evade restitution obligations by concealing, transferring, or obscuring the origin of illicit assets. Public legal awareness also remains limited, resulting in minimal participation in monitoring or promoting the execution of restitution. Furthermore, law enforcement tends to prioritize imprisonment over the recovery of state assets, creating an imbalance between the retributive and restorative objectives of criminal law.[45] The effective implementation of restitution requires comprehensive reconstruction across legal substance, structure, and culture. Reformulating legislation, strengthening law enforcement institutions, and enhancing public legal awareness are essential

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[42] Blane D Lewis and Adrianus Hendrawan, 'The Impact of Majority Coalitions on Local Government Spending, Service Delivery, and Corruption in Indonesia', *European Journal of Political Economy*, 58 (2019), 178–91 https://doi.org/https://doi.org/10.1016/j.ejpoleco.2018.11.002

[43] Virginie Vial and Julien Hanoteau, 'Corruption, Manufacturing Plant Growth, and the Asian Paradox: Indonesian Evidence', *World Development*, 38.5 (2010), 693–705 https://doi.org/https://doi.org/10.1016/j.worlddev.2009.11.022

[44] Qianbin Feng and others, 'Anti-Corruption Campaign and Capacity Utilization of State-Owned Enterprises: Evidence from China's Central Committee Inspection', *Economic Analysis and Policy*, 80 (2023), 319–46 https://doi.org/10.1016/j.eap.2023.08.010

[45] Boge Triatmanto and Suryaning Bawono, 'The Interplay of Corruption, Human Capital, and Unemployment in Indonesia_ Implications for Economic Development', *Journal of Economic Criminology*, 2.September (2023), 100031 https://doi.org/10.1016/j.jeconc.2023.100031

prerequisites for ensuring that restitution functions effectively, fairly, and practically within Indonesia's anti-corruption framework. The effectiveness of restitution under the subsidiarity principle not only measures the success of law enforcement but also reflects the state's commitment to safeguarding public finances and achieving clean and equitable governance.[46]

Rethinking Subsidiarity in Indonesian Corruption Case Enforcement Experiences

The concept of *ius constituendum* in Indonesian law functions as a normative projection of the legal ideals envisioned for the future, addressing evolving social, economic, and political challenges, including corruption eradication. Within this framework, law is understood as adaptive rather than static, responding to contemporary societal needs. A central concern necessitating *ius constituendum* is the mechanism for recovering state losses caused by corruption. Although the Indonesian Law on the Eradication of Corruption Crimes regulates restitution as an additional penalty, its implementation remains suboptimal due to factors such as limited technical capacity among law enforcement to trace hidden assets, diversion of corrupt proceeds to third parties, and the absence of a specific statutory framework for asset forfeiture under Article 18. [47]

Juridical and sociological challenges further hinder effectiveness: the vague definition of "restitution," lack of joint liability principles, inability of convicts to pay, concealment of assets, family disputes over seized property, and weak coordination between the Attorney General's Office and the Financial Transaction Reports and Analysis Center exacerbate recovery failures. ICW data indicate that only a fraction of state losses has been recovered. Consequently, the reformulation of asset forfeiture regulations through *ius constituendum* is urgent, emphasizing comprehensive, explicit, and progressive legal frameworks, non-conviction-based mechanisms, integration of Audit Board reports in restitution determination, and detailed execution procedures. Such reforms aim not merely at punishment but at achieving substantial recovery of state finances, enhancing anti-corruption effectiveness, economic stability, public welfare, and trust in the legal system.[48]

The legal foundation for supplementary sanctions in the form of restitution in corruption cases is established under Article 18 of the Law on the Eradication of Corruption Crimes and reinforced by Supreme Court Regulation Number 5 of 2014, which provides technical guidance for judges in determining replacement prison sentences when convicts are unable to pay restitution while preventing

[46] Tao Wu and others, 'Rethinking Corruption in International Business: An Empirical Review', *Journal of World Business*, 58.2 (2023), 104 https://doi.org/10.1016/j.jwb.2022.101410
[47] Anisah Alfada, 'The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model', *Heliyon*, 5.10 (2019), e02649 https://doi.org/10.1016/j.heliyon.2019.e02649
[48] Simon Butt, *Corruption and Law in Indonesia* (Routledge, 2017) https://doi.org/10.4324/9780203584729

disproportionate punishment.[49] Substantively, restitution is limited to the value of assets obtained from the corrupt act, including assets transferred to third parties who are not prosecuted or proven culpable, reflecting the principle of restitutio in integrum aimed at restoring the state's financial position without exceeding the convict's capacity. Nevertheless, judicial interpretation remains necessary regarding proof of asset value, third-party involvement, and correspondence with state losses.[50]

Implementation faces both juridical and practical challenges, including limited technical guidance, difficulties in tracing assets transferred abroad, and divergent judicial approaches that sometimes result in lower replacement prison sentences, prompting convicts to opt for imprisonment over repayment. Calculation of state losses also generates debate, as courts may rely on alternative institutions rather than the Audit Board, creating legal uncertainty. Theoretically, supplementary restitution emphasizes that anti-corruption measures serve not only punitive purposes but also the restoration of state finances. High-profile cases, such as the e-KTP corruption case with IDR 2.3 trillion in restitution, demonstrate its potential as an asset recovery tool; however, effectiveness relies on regulatory synchronization, inter-agency coordination, and proportional enforcement. Consequently, supplementary restitution must be continuously strengthened normatively and institutionally to achieve the dual objectives of restoring state finances and upholding justice.[51]

One fundamental problem in enforcing corruption law in Indonesia lies in the inconsistent application of supplementary restitution. Normative provisions, as stipulated in Article 18 of Law Number 31 of 1999 on the Eradication of Corruption Crimes as amended by Law Number 20 of 2001, mandate that restitution be imposed in an amount equal to the assets obtained from corruption, with subsidiary imprisonment applied if the convict fails to comply. In judicial practice, judges frequently modify restitution amounts, either through reductions or judicial considerations that do not fully align with legal certainty and the principle of state loss recovery. This phenomenon undermines the effectiveness of asset recovery, as convicts often prefer to serve a relatively shorter subsidiary prison term rather than pay larger restitution amounts.[52]

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[49] Hendi Yogi Prabowo, 'To Be Corrupt or Not to Be Corrupt', *Journal of Money Laundering Control*, 17.3 (2014), 306–26 https://doi.org/10.1108/JMLC-11-2013-0045

[50] Nils Bubandt, 'Sorcery, Corruption, and the Dangers of Democracy in Indonesia', *Journal of the Royal Anthropological Institute*, 12.2 (2006), 413–31 https://doi.org/10.1111/j.1467-9655.2006.00298.x

[51] Irsan Hardi and others, 'Decrypting the Relationship Between Corruption and Human Development: Evidence from Indonesia', *Ekonomikalia Journal of Economics*, 1.1 (2023), 1–9 https://doi.org/10.60084/eje.v1i1.22

[52] Taufiqurrohman Syahuri, Gazalba Saleh and Mayang Abrilianti, 'The Role of the Corruption Eradication Commission Supervisory Board within the Indonesian Constitutional Structure', *Cogent Social Sciences*, 8.1 (2022) https://doi.org/10.1080/23311886.2022.2035913

Although Constitutional Court Decision Number 42P/HUM/2016 reinforces the position of restitution within the Indonesian criminal justice system, technical implementation at the trial level still leaves room for inconsistency. A concrete example can be found in the Banda Aceh District Court Decision Number xxx/Pid.Sus-TPK/2023/PN Bna, in which the defendant received a six-year prison sentence and a fine of IDR 300 million, along with restitution of over IDR 7 billion, subject to a three-year replacement prison term if unpaid within one month. Such decisions illustrate that subsidiary imprisonment often becomes the preferred option for convicts, thereby hindering optimal recovery of state assets.[53]

Moreover, determining which convict bears the obligation to pay restitution presents additional challenges. Judges assess the extent to which each defendant has benefited from the proceeds of corruption, resulting in different restitution obligations among convicts. The greater the amount enjoyed, the higher the restitution obligation. Some rulings have even imposed a nil restitution value on defendants who are proven not to have benefited from state losses. Article 4 of the Corruption Law affirms that the restitution of state losses does not eliminate the criminal penalty; thus, even if the convict restores the losses, the sentencing process continues.[54] This demonstrates that the Indonesian legal approach still emphasizes the punitive aspect of sentencing over the restitutive dimension, which prioritizes state asset recovery. The concept of *ius constituendum* should guide legal reform to ensure that restitution amounts are proportionate to actual state losses without undue judicial reductions lacking a clear legal basis. Consequently, the regulation of supplementary restitution should be understood not only as a punitive instrument but also as a means to restore state finances effectively and justly.[55]

Compared to legal systems in other countries, Indonesia's approach to asset recovery reveals fundamental differences. In the United States, asset forfeiture is regulated under 18 U.S.C. §§ 981 and 982 and the RICO Act, allowing the state to seize assets through both criminal and civil proceedings. Even under non-conviction-based forfeiture, assets may be confiscated prior to a guilty verdict if strong evidence demonstrates that the wealth was illicitly obtained.[56] The

[53] *Corruption* (Elsevier, 1978) https://doi.org/10.1016/C2009-0-22067-8

[54] Kim-Kwang Raymond Choo, 'Cryptocurrency and Virtual Currency: Corruption and Money Laundering/Terrorism Financing Risks?', in *Handbook of Digital Currency* (Elsevier, 2024), pp. 259–90 https://doi.org/10.1016/B978-0-323-98973-2.00012-5

[55] Thomas Li-Ping Tang, Toto Sutarso, and others, 'Behavioral Economics and Monetary Wisdom: The Enron Effect—Love of Money, Corporate Ethical Values, Corruption Perceptions Index (CPI), and Dishonesty across 31 Geopolitical Entities', in *Monetary Wisdom* (Elsevier, 2024), pp. 193–213 https://doi.org/10.1016/B978-0-443-15453-9.00019-X

[56] Thomas Li-Ping Tang, Zhen Li, and others, 'Behavioral Economics and Monetary Wisdom: A Cross-Level Analysis of Monetary Aspiration, Pay (Dis)Satisfaction, Risk Perception, and Corruption in 32 Nations', in *Monetary Wisdom* (Elsevier, 2024), pp. 215–37 https://doi.org/10.1016/B978-0-443-15453-9.00004-8

calculation of losses in this system also incorporates interest and the time value of money, making asset recovery more comprehensive. In contrast, the United Kingdom, through the Proceeds of Crime Act 2002, provides mechanisms for confiscation orders and civil recovery, enabling the state to seize assets from both offenders and third parties while applying default sentences without eliminating restitution obligations. Both jurisdictions demonstrate a proactive, aggressive, and flexible orientation in ensuring full asset recovery, contrasting with Indonesia, where prison sentences often serve as a substitute for unpaid restitution. Therefore, reforming Indonesia's legal system requires the adoption of progressive international principles to achieve more effective, consistent, and substantively just asset recovery in corruption cases.[57]

A fundamental challenge in enforcing corruption law is the inconsistent application of supplementary restitution. In judicial practice, judges frequently modify restitution amounts by reducing the value of state losses to be recovered. Such decisions are often influenced by subjective considerations, such as the convict's economic condition or humanitarian factors, which ultimately conflict with the primary objective of corruption sentencing, namely full recovery of state assets.[58] This inconsistency creates legal uncertainty and undermines the effectiveness of anti-corruption enforcement. Within the framework of *ius constituendum*, legal reform must establish that restitution amounts correspond precisely to the actual losses incurred by the state, prohibiting judges from reducing the sum without a valid legal basis. Regulatory clarity is therefore essential to ensure that restitution functions as a genuine instrument of state asset recovery rather than a negotiable additional punishment.[59]

In the *ius constituendum* framework, several fundamental principles should guide restitution. First, restitution must align with the actual state losses, preventing convicts from reducing their obligations based on subjective reasons. Second, the role of judges should be limited to verifying legal facts, while the determination of state losses should be the responsibility of official auditing bodies such as the Supreme Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP). Third, the prosecution, as the executor of the verdict, must ensure that the restitution amount in the court's decision matches audit results and cannot be reduced during execution. Fourth, regulations

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[57] Andrew Proctor, 'Petty Corruption in Developing Countries', in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 327–33 https://doi.org/10.1016/B978-0-08-101109-6.00022-8

[58] Marie dela Rama, 'Corruption, Corporate Governance, and Building Institutions in the Asia-Pacific * *The Author Wishes to Thank Andrew Proctor for His Comments on This Chapter.', in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 93–108 https://doi.org/10.1016/B978-0-08-101109-6.00007-1

[59] Marie dela Rama and Chris Rowley, 'Future Directions for Research into Corruption and Anticorruption Practice', in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 369–77 https://doi.org/10.1016/B978-0-08-101109-6.00025-3

should affirm the absolute nature of restitution to prevent divergent interpretations at the trial level. This reconstruction is necessary because current judicial practice still shows rulings that reduce restitution amounts compared to total state losses. Such practices weaken deterrent effects, allow convicts to retain part of the illicit gains, and deprive the state of full recovery. Consequently, in a future legal system, every rupiah lost to corruption must be recovered through restitution without exception.[60]

Furthermore, *ius constituendum* must emphasize the establishment of a more effective execution mechanism. If a convict is unable to pay restitution in cash, the state must prioritize the seizure and auction of assets, whether derived from corrupt activities or the personal property of the offender. All seized assets must be fully applied to cover state losses until the total amount is recovered. Should auction proceeds be insufficient, the state must have additional asset-tracing mechanisms, including international cooperation to track assets abroad.[61] Moreover, new regulations should grant broader authority to the Attorney General's Office, the Corruption Eradication Commission, and state audit institutions to integrate the offender's financial data digitally.[62] Through digital monitoring, a convict's assets can be tracked in real time, preventing the concealment or diversion of property to evade restitution obligations. Such a transparent system not only ensures effective recovery of state losses but also strengthens public oversight of judicial enforcement. The reinforcement of execution mechanisms must be complemented by stringent additional sanctions for non-cooperative offenders, such as sentence extensions, progressive fines for delayed payment, or restrictions on economic activities until restitution obligations are fully met.[63]

The legal reconstruction of subsidiary restitution must also be grounded in justice theory and legal system theory. From a retributive justice perspective, every corruption offender must bear full responsibility by returning the total state loss as a concrete form of accountability. Within a restorative justice framework, restitution functions as a mechanism to restore state losses and reclaim public rights over misappropriated development funds. From the distributive justice perspective, recovery ensures the restoration of collective societal rights, enabling

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[60] Duane Windsor, 'The Role of Multinationals in Corruption in the Asia-Pacific Region', in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 57–70 https://doi.org/10.1016/B978-0-08-101109-6.00004-6

[61] Tristan Canare, 'The Effect of Corruption on Foreign Direct Investment Inflows', in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 35–55 https://doi.org/10.1016/B978-0-08-101109-6.00003-4

[62] Naresh Khatri, Shaista E. Khilji and Bahaudin Mujtaba, 'Anatomy of Corruption in South Asia', in *Globalization, Change and Learning in South Asia* (Elsevier, 2013), pp. 63–81 https://doi.org/10.1016/B978-0-85709-464-3.50004-0

[63] Antonio Argandoña, 'Private and Public Corruption', in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 71–79 https://doi.org/10.1016/B978-0-08-101109-6.00005-8

public funds to be used again for the common welfare.[64] From the standpoint of Lawrence M. Friedman's legal system theory, such reform requires alignment among legal substance, legal structure, and legal culture. The legal substance must establish rigid provisions regarding the calculation, freezing, and seizure of assets. The legal structure, in the form of law enforcement institutions, must be strengthened through improved coordination and expanded authority.[65] Meanwhile, legal culture must be cultivated to support the restoration of state losses as an integral component of anti-corruption efforts. By integrating these three dimensions, the legal system can ensure that restitution is not merely a normative provision but becomes truly effective in practice. Ultimately, a reconstructed *ius constituendum* emphasizing the absolute value of restitution, enhanced execution mechanisms, and digital asset monitoring will establish legal certainty, maximize the effectiveness of state loss recovery, and increase public trust in the judiciary as part of a comprehensive anti-corruption strategy.[66]

4. Conclusion

Based on the discussion, several conclusions can be drawn. First, the imposition of restitution in corruption cases holds fundamental significance as a legal instrument designed to recover state financial losses and eliminate illicit gains obtained by offenders. Restitution is not merely an additional penalty but represents a concrete application of the asset recovery principle, aimed at ensuring that criminal acts do not provide benefits to the perpetrator. Consequently, this concept plays a critical role in safeguarding state interests while simultaneously providing a deterrent effect against corruption. Second, the practical implementation of restitution continues to face significant challenges that undermine the effectiveness of state loss recovery. A primary obstacle is the tendency of offenders to opt for a subsidiary prison sentence, which is relatively short, instead of fulfilling obligations to repay substantial amounts of state losses. Furthermore, execution processes are often hindered because assets derived from corruption are frequently transferred, disguised, or placed in instruments that are difficult to trace, thereby complicating seizure and auction procedures for law enforcement authorities. Third, the inherent problems within Article 18 of the Indonesian Corruption Eradication Law, as *ius constitutum*, indicate that the existing legal framework remains inadequate, lacks clarity, and tends to produce inconsistencies in its application. Therefore, a legal reform or *ius constituendum* is

[64] Andreas Ufen, 'Political Finance and Corruption in Southeast Asia', in *The Changing Face of Corruption in the Asia Pacific* (Elsevier, 2017), pp. 23–33 https://doi.org/10.1016/B978-0-08-101109-6.00002-2

[65] Christa Brunnschweiler and others, 'When Petroleum Revenue Transparency Policy Meets Citizen Engagement Reality: Survey Evidence from Indonesia', *Ecological Economics*, 230 (2025), 108529 https://doi.org/10.1016/j.ecolecon.2025.108529

[66] William Maxey and others, 'Discrepancy between Policy and Practice: A Case Study on Hegemony within an Indonesian Juvenile Correctional Center (LPKA)', *Children and Youth Services Review*, 177 (2025), 108469 https://doi.org/10.1016/j.childyouth.2025.108469

required to establish a clearer, firmer, and more consistent framework that ensures legal certainty while strengthening mechanisms for asset recovery. Such reform should focus on enhancing regulations related to asset tracing, seizure, forfeiture, and restitution to the state, including provisions that consider the time value of money or interest components. This approach is considered more rational because state losses encompass not only the nominal amount embezzled but also the foregone economic benefits that could have been utilized for national development over a given period. Consequently, the imposition of restitution will become more effective, efficient, and equitable, achieving the primary objectives of anti-corruption efforts that are not only punitive but also emphasize comprehensive recovery of state losses.

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