

Legal Effectiveness of Restorative Justice Criteria Application in Resolving Small-Scale Village Fund Irregularities

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Abstrak

Small-scale Village Fund mismanagement constitutes a distinct legal issue requiring proportional handling between two main options: conventional criminal law or restorative justice mechanisms. This study aims to examine two main issues: first, the legal effectiveness of the application of restorative justice criteria by Law Enforcement Officials (APH) in resolving cases of small-scale Village Fund mismanagement; and second, the ideal boundaries between the jurisdictions of state administration and criminal law in the implementation of restorative justice in Village Fund management. This study uses a combined normative-empirical legal research method by analyzing applicable laws and regulations, court decisions, APH policies, and case resolution practices in the field. The analytical framework is based on Soerjono Soekanto's theory of legal effectiveness and Howard Zehr's theory of restorative justice. The results of the study indicate that the effectiveness of restorative justice implementation remains at a suboptimal level due to the inadequate fulfillment of the four factors of legal effectiveness: substance, structure, culture, and means. Meanwhile, the boundaries between administrative and criminal law cannot be determined solely by the value of state losses, but must comprehensively consider the elements of *mens rea*, the substantive impact on village development, and the intention to restore. This study recommends the formation of joint technical regulations between law enforcement agencies and the development of an operational decision-making matrix in handling cases of Village Fund misappropriation.

Kata Kunci: Restorative Justice, Village Funds, State Administrative Law, Legal Effectiveness, Law Enforcement Officers

INTRODUCTION

Villages are the closest level of government to the community and play a vital role in achieving balanced national development. Through fiscal decentralization policies, the government has granted villages greater authority to manage and address local needs independently, including through the administration of Village Funds allocated from the State Budget (APBN).

Village Funds represent one of the most significant fiscal policy instruments in Indonesia's financial decentralization framework. Following the enactment of Law Number 6 of 2014 on Villages and its implementing regulations, the amount of funding distributed directly to villages has increased substantially over the years. In 2023, the government allocated approximately IDR 70 trillion in Village Funds to 74,961 villages across Indonesia, reflecting the state's commitment to strengthening local governance, community empowerment, and sustainable rural development.¹ The allocation of IDR 70 trillion in Village Funds reflects the government's strong commitment to accelerating development in rural areas while demonstrating a high level of trust in village administrations to manage public finances independently, transparently, and responsibly.

¹ Direktorat Jenderal Perimbangan Keuangan, "Rincian Alokasi Transfer Ke Daerah (TKD) Dalam APBN Tahun Anggaran 2023," Kementerian Keuangan Republik Indonesia, 2022, <https://djpk.kemenkeu.go.id/?p=27451>.

The continuous increase in Village Fund allocations over the years highlights the state's dedication to strengthening village-based development as a key component of national progress. At the same time, however, the growing size of these funds has been accompanied by a higher risk of irregularities in financial management at the village level. Findings from audits and monitoring activities conducted by both internal government supervisory bodies and law enforcement agencies indicate that violations in the management of Village Funds remain a recurring issue. These violations range from administrative errors and non-compliance with procurement procedures to inadequate financial accountability and abuses of authority that may result in losses to public finances. Such issues raise important concerns regarding the effectiveness of oversight mechanisms and the accountability of village officials in managing public resources entrusted to them.²

In law enforcement practice, irregularities involving Village Funds are often viewed primarily through the lens of criminal law, particularly as acts of corruption. However, not every violation in the management of Village Funds necessarily reflects intentional corrupt behavior aimed at obtaining personal gain or benefiting others unlawfully. In many cases, such irregularities arise from limited administrative capacity among village officials, difficulties in understanding frequently changing regulations, weaknesses in financial management systems, and a lack of adequate human resources to handle increasingly complex budgeting and reporting responsibilities. As a result, certain violations may stem more from administrative shortcomings and institutional limitations than from a deliberate intention to commit corruption.³

This situation raises an important question regarding the proportionality of the legal response applied to Village Fund irregularities. The prosecution of corruption cases, regardless of the amount involved, requires substantial resources from law enforcement agencies, consumes considerable time, and often disrupts the continuity of public services in the affected village, particularly when village officials become involved in lengthy legal proceedings.

It is within this context that the concept of restorative justice becomes particularly relevant. As an alternative approach to criminal justice, restorative justice is founded on the principle that the primary objective of resolving a criminal case should not be limited to punishment or retribution. Instead, it seeks to repair the harm caused by the offense, restore relationships among affected parties, and facilitate the reintegration of offenders into the community. In cases involving minor Village Fund irregularities, this approach offers a more balanced and proportionate solution by prioritizing the recovery of state losses, the restoration of public trust, and the preservation of effective village governance without the need for prolonged and costly criminal proceedings.

From a normative perspective, the Indonesian legal system has already provided a foundation for the implementation of restorative justice. Attorney General Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice and National Police Regulation No. 8 of 2021 concerning the Handling of Criminal Offenses Through Restorative Justice are among the most significant regulations that formally recognize and facilitate restorative mechanisms. Nevertheless, both regulations were primarily designed for general criminal offenses rather than corruption crimes, which are governed by a distinct legal framework under Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on the Eradication of Corruption, a statute that operates as a *lex specialis* within Indonesia's criminal justice system.

Another equally fundamental legal issue concerns the distinction between administrative misconduct and criminal conduct in the management of Village Funds. A key question is determining at what point a violation should be treated as an administrative matter subject to internal supervision

² Dina Ramadhani et al., "TATA KELOLA DANA DESA DALAM MEWUJUDKAN AKUNTABILITAS DAN TRANSPARANSI PEMERINTAHAN DESA," *Jurnal Ilmiah Penelitian Mahasiswa* 4, no. 1 (2026): 43–55, <https://doi.org/https://doi.org/10.61722/jipm.v4i1.1841>.

³ Nurharibnu Wibisono and Herry Purnomo, "MENGUNGKAP FENOMENA PENGAWASAN PUBLIK TERHADAP DANA DESA DI KABUPATEN MADIUN," *Jurnal AKSI: Akuntansi Dan Sistem Informasi* 2, no. 1 (2017): 8–19.

and corrective measures, and when it has escalated into criminal behavior that warrants intervention through the criminal justice system.⁴ In practice, the boundary between these two legal domains is often unclear. This is particularly evident in villages with limited human resource capacity, where deficiencies in budget management skills can be difficult to distinguish from intentionally corrupt conduct. As a result, determining whether a particular act constitutes an administrative violation or a criminal offense frequently presents significant legal and practical challenges.

Several previous studies have examined issues closely related to this topic. One notable example is the research conducted by Sitepu and Piadi, which explored the application of restorative justice in corruption cases. Their study was based on a critique of the traditional retributive justice model, which focuses primarily on punishment, and proposed an alternative approach that places greater emphasis on the recovery of state financial losses. The findings suggest that restorative justice can serve as a viable mechanism for resolving certain corruption cases by prioritizing the restitution of state losses as a means of repairing the harm caused by the offense.⁵

Another relevant study was conducted by Herman and colleagues, who specifically examined the application of restorative justice in corruption cases involving the management of Village Funds. Their research found that, in practice, law enforcement authorities often prioritize the recovery of state financial losses when dealing with Village Fund cases involving relatively small amounts of loss, despite the absence of a clear and explicit legal basis governing such an approach.

The study further highlights a growing tendency among law enforcement institutions to seek practical solutions that emphasize restitution rather than purely punitive measures in minor Village Fund cases. However, its primary focus was on the normative framework and legal formulation of restorative justice. As a result, the research did not comprehensively assess the effectiveness of its implementation in actual law enforcement practices across different regions or evaluate the challenges encountered in applying restorative mechanisms in diverse local contexts.⁶

Furthermore, a study by Muharman Lubis and Mima Artamevia on the role of regulation in village governance shows that various issues of regulatory disharmony and overlapping regulations still exist in the administration of village government. Policy inconsistencies between different levels of government as well as across sectors create legal uncertainty, administrative obstacles, and have the potential to undermine the effectiveness of village governance. The study also highlights that weak regulatory synchronization may give rise to overlapping authority and make it more difficult for village officials to carry out their duties.⁷

Based on these previous studies, it can be observed that research on restorative justice in corruption cases has been widely conducted, including in the context of Village Fund management. However, earlier studies have generally focused on the conceptual aspects of restorative justice, the normative formulation of its implementation, or issues relating to regulatory disharmony in village governance. In contrast, there has been limited research specifically examining the legal effectiveness of the application of restorative justice criteria by law enforcement authorities in resolving small-scale Village Fund irregularities.

Based on the background outlined above, this study formulates two research questions. First, how effective is the application of restorative justice criteria by law enforcement authorities in resolving cases involving small-scale Village Fund irregularities? Second, what constitutes the ideal boundary between administrative law and criminal law in the implementation of restorative justice in Village Fund

⁴ Antonius Galih Prasetyo and Abdul Muis, "Pengelolaan Keuangan Desa Pasca UU No. 6 Tahun 2014 Tentang Desa : Potensi Permasalahan Dan Solusi," *Jurnal Desentralisasi* 13, no. 6 (2015): 16–31.

⁵ Rida Ista Sitepu and Yusona Piadi, "Implementasi Restoratif Justice Dalam Pemidanaan Pelaku Tindak Pidana Korupsi," *Jurnal Recteh: Riset Hukum Dan Hak Asasi Manusia* 1 (2019): 1–8.

⁶ Herman et al., "Restorative Justice Terhadap Tindak Pidana Korupsi Pengelolaan Dana Desa Restorative Justice Against Criminal Acts Of Corruption Village Management," *Halu Oleo Legal Research* 4, no. 2 (2022): 219–30.

⁷ Muharman Lubis and Mima Artamevia, "Mewujudkan Desa Mandiri : Peran Regulasi Otonomi Daerah Dalam Pengelolaan Sumber Daya Lokal," *Locus: Jurnal Konsep Ilmu Hukum* 5, no. 3 (2025): 481–93.

management? These questions are expected to be addressed comprehensively and analytically in order to produce policy recommendations that may contribute to improving the legal framework governing Village Fund management in Indonesia.

METHOD

This study employs normative legal research aimed at analyzing the legal effectiveness of implementing restorative justice in resolving small-scale Village Fund irregularities and formulating an ideal boundary between administrative law and criminal law in Village Fund management. Normative legal research was selected because the focus of the study lies in examining legal norms, legal principles, and concepts related to the resolution of Village Fund irregularities through a restorative justice approach.

The approaches used in this study include the statute approach, conceptual approach, and case approach. The statutory approach is employed to examine regulations relating to Village Funds, corruption offenses, public administration, and restorative justice policies. The conceptual approach is used to analyze the concepts of legal effectiveness, restorative justice, and the relationship between administrative law and criminal law. Meanwhile, the case approach is applied to understand the practices that have developed in the resolution of Village Fund irregularities by law enforcement authorities.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. The primary legal materials include Law Number 6 of 2014 on Villages, as amended by Law Number 3 of 2024, Law Number 30 of 2014 on Government Administration, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption, Attorney General Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, as well as various regulations relating to the management of Village Funds.

Secondary legal materials consist of books, academic journals, research findings, and scholarly articles relevant to the topic of this study. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting sources.

The legal materials were collected through library research. Subsequently, all legal materials were analyzed qualitatively using a descriptive-analytical method in order to develop systematic legal arguments regarding the effectiveness of restorative justice and the ideal boundary between administrative law and criminal law in resolving small-scale Village Fund irregularities.

RESULTS AND DISCUSSION

1. The Legal Effectiveness of the Application of Restorative Justice Criteria by Law Enforcement Authorities in Resolving Small-Scale Village Fund Irregularities

The concept of restorative justice emerged as a critique of the conventional criminal justice system, which primarily emphasizes the punishment of offenders through a retributive justice approach. Under the retributive model, the success of law enforcement is measured by the state's ability to impose criminal sanctions on those who commit offenses. In contrast, restorative justice places the restoration of losses, the resolution of conflicts, and the repair of social relationships at the center of the justice process and regards them as the primary objectives of case resolution.⁸

Within the Indonesian legal system, the concept of restorative justice has gained increasing recognition through various policies adopted by law enforcement institutions. The Police, the Prosecutor's Office, and the Supreme Court have incorporated this approach into the resolution of certain cases that meet specific requirements. The enactment of Attorney General Regulation Number 15 of 2020 reflects a shift in paradigm from a punishment-oriented approach toward one that emphasizes restoration and legal utility.

⁸ N Indrajaya, Yasmirah Mandasari Saragih, and Biner Sihotang, "Keadilan Restoratif Sebagai Pergeseran Paradigma Dalam Sistem Peradilan Pidana Indonesia Di Bawah Hukum Pidana Baru," *Juris Studia: Jurnal Kajian Hukum* 7, no. 1 (2026): 42–51.

To assess the effectiveness of restorative justice in addressing small-scale Village Fund irregularities, this study relies on the theory of legal effectiveness developed by Soerjono Soekanto. According to this theory, the effectiveness of law within society is not determined solely by the existence of legal norms. Rather, it is influenced by several interrelated factors that together form an integrated system. These five factors consist of the legal framework itself, law enforcement authorities, supporting facilities or infrastructure, the community, and legal culture.⁹ Therefore, the effectiveness of a legal policy cannot be measured solely from a normative perspective or by the existence of legislation. Rather, it must be assessed based on the extent to which the relevant rules can be implemented, accepted, and achieve their intended objectives in practice.

In the context of the development of Indonesia's justice system, the restorative justice approach has received increasing attention as a mechanism for resolving cases that is not solely focused on punishing offenders, but also emphasizes the restoration of losses, the resolution of conflicts, and the repair of social relationships affected by an unlawful act. This approach is considered strategically valuable because it offers a resolution that is simpler, faster, and more oriented toward legal utility, particularly in cases that do not cause widespread harm and where restoration of the original condition remains possible. Furthermore, restorative justice is regarded as being consistent with the values of deliberation and amicable dispute resolution that have long been embedded in Indonesia's legal culture..¹⁰

Nevertheless, the successful implementation of restorative justice cannot be assumed to occur automatically merely because policies supporting its application are in place. The effectiveness of this approach still depends on the quality of the legal framework governing it, the consistency of law enforcement authorities in applying it, the availability of supporting mechanisms and facilities, the level of public acceptance, and its compatibility with the prevailing legal culture. Therefore, assessing whether restorative justice has been effectively implemented in resolving small-scale Village Fund irregularities requires a comprehensive analysis of the five factors of legal effectiveness as proposed by Soerjono Soekanto. Based on this framework, the following discussion will examine each of these factors in order to evaluate the extent to which restorative justice can serve as a dispute resolution mechanism that fulfills the principles of legal certainty, utility, and justice in the management of Village Funds.¹¹

The first factor is legal substance. An examination of the existing regulatory framework reveals a significant normative gap within Indonesia's positive law system. Attorney General Regulation Number 15 of 2020 and National Police Regulation Number 8 of 2021 do provide a foundation for the restorative approach; however, both regulations explicitly apply only to general criminal offenses. Within the anti-corruption legal regime governed by Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, the principle of mandatory prosecution remains a central element of corruption eradication policy. To date, there is no law or government regulation that expressly recognizes and regulates a restorative justice mechanism specifically for small-scale Village Fund corruption cases. The absence of such a specific legal framework creates legal uncertainty, which constitutes the most fundamental obstacle to the effective implementation of restorative justice in this area.¹²

⁹ Silvia Damayanti et al., "EFEKTIVITAS RESTORATIVE JUSTICE DALAM PENYELESAIAN PERKARA PIDANA DI KANTOR ADVOKAT (STUDI KASUS TINDAK PIDANA PERAMPASAN)," *Jurnal Media Akademik (JMA)* 3, no. 6 (2025): 1–17.

¹⁰ Thimoty Dwi Felix Barus and Johannes Mangapul Turnip, "IMPLEMENTASI RESTORATIVE JUSTICE SEBAGAI ALTERNATIF PEMIDANAAN DALAM SISTEM PERADILAN PIDANA UNTUK MENANGANI FENOMENA OVER KAPASITAS DI RUTAN BERDASARKAN TEORI EFEKTIVITAS HUKUM PADA RUMAH TAHANAN NEGARA KELAS I LABUHAN DELI," *Rewang Rencang : Jurnal Hukum Lex Generalis* 6, no. 7 (2025): 1–20.

¹¹ Barus and Turnip.

¹² Muchammad Akmal Al Khasyi, Dudik Djaja Sidarta, and Noenik Soekorini, "KARAKTERISTIK PENYELESAIAN TINDAK PIDANA KORUPSI DANA DESA MELALUI RESTORATIVE JUSTICE," *Court Review: Jurnal Penelitian Hukum* 4, no. 02 (2024): 71–84.

In practice, efforts to apply a restorative approach in Village Fund cases are carried out through several substitute mechanisms. The first mechanism is the asset recovery approach, which focuses on the reimbursement of state financial losses,¹³ Under this mechanism, the case is discontinued or redirected to the administrative process after the offender has fully reimbursed the losses incurred. In prosecutorial practice, this mechanism is commonly recognized as one of the considerations for not proceeding with prosecution based on the principle of opportunity.

The second mechanism is the community-based mediation approach, in which the resolution process is facilitated through village deliberation forums involving the Village Consultative Body (BPD), community leaders, and village officials. In practice, community-based mediation consists of a series of structured stages, beginning with the identification of the offender's assets, followed by deliberations among the parties, the determination of the amount of loss, and periodic monitoring of the agreed repayment of funds. A distinctive feature of this approach is the strategic role played by customary and community leaders, who do not merely act as witnesses but actively assess the offender's commitment to fulfilling his or her obligations. As a result, the resolution process carries not only legal significance but also strong moral legitimacy within the community.

Empirical evidence of the effectiveness of this mechanism can be found in the handling of a Village Fund corruption case in West Halmahera Regency, where, in Decision Number 05/Pid.Sus-TPK/2021/PN Tte, the community-based mediation approach successfully resulted in an agreement requiring the defendant to repay state losses in installments, with the implementation of the agreement being periodically monitored by the West Halmahera District Prosecutor's Office.¹⁴ This success resulted from the adaptation of the restorative approach to local geographical conditions, cultural values, and institutional structures, which emphasize flexibility compared to the rigid nature of conventional criminal justice approaches. Nevertheless, its effectiveness remains dependent on several essential prerequisites that cannot be overlooked, including the integrity of law enforcement authorities, the accuracy of financial audits, active community participation in deliberative forums, and adequate regulatory support. Without these conditions, the community-based mediation mechanism risks being misused as an instrument of impunity by individuals who possess greater political influence or economic resources, rather than serving as a genuine means of restoration.¹⁵

The third mechanism is a purely administrative approach, whereby cases that may legally constitute criminal offenses are resolved solely through the implementation of recommendations issued by the Regional Inspectorate. This approach is based on the Inspectorate's primary function as an internal supervisory body within regional government, which is authorized not only to conduct inspections but also to provide guidance in the administration of village governance.

Within the normative framework, this authority is exercised through a structured supervisory process consisting of several stages, including supervision planning through the establishment of an audit team and the collection of preliminary information, the implementation of supervision through the preparation of an Audit Work Program (Program Kerja Audit/PKA) and Audit Working Papers (Kertas Kerja Audit/KKA), and the reporting stage, which produces an Audit Report (Laporan Hasil Pemeriksaan/LHP) along with recommendations for corrective action that must be complied with by the audited entity. These recommendations serve as the primary instrument of administrative resolution. If

¹³ Septina Andriani Naftali, I Gede Widhiana Suarda, and R.A. Rini Anggraini, "KONSEKUENSI PENGEMBALIAN KERUGIAN KEUANGAN NEGARA MELALUI PENGENAAN GANTI KERUGIAN NEGARA TERHADAP KEPALA DESA DALAM TINDAK PIDANA KORUPSI," *JURNAL RECHTENS* 13, no. 31 (2024): 59–80.

¹⁴ Albert Hama, Hedwig A. Mau, and Mohammad Ismed, "PENGEMBALIAN KERUGIAN KEUANGAN NEGARA MELALUI PENDEKATAN KEADILAN RESTORATIF DALAM PERKARA TINDAK PIDANA KORUPSI DANA DESA DI KABUPATEN HALMAHERA BARAT," *Jurnal Riset Ilmiah* 2, no. 7 (2025): 3276–88.

¹⁵ Hama, Mau, and Ismed.

the responsible party fully complies with all corrective measures and reimburses the losses as determined by the Inspectorate, the case may not be referred for criminal prosecution.¹⁶

The second factor is the legal structure, which encompasses law enforcement institutions and the mechanisms through which they coordinate their activities. The analysis indicates that there is no binding and systematic coordination mechanism among the Police, the Prosecutor's Office, Regional Inspectorates, and the Financial and Development Supervisory Agency (BPKP) in handling cases involving Village Fund irregularities. Each institution operates according to its own internal policies, which are not always aligned with one another.

This situation is further aggravated by the fact that supervisory functions at the regional government and sub-district levels have not been fully implemented in practice. This is largely due to a lack of awareness regarding the respective duties and responsibilities of the institutions involved, as well as weak cross-sectoral coordination, creating the impression that various oversight and enforcement activities are conducted independently rather than through an integrated system.¹⁷ For example, in its Village Fund supervision policy, the Corruption Eradication Commission (KPK) tends to prioritize preventive measures and the recovery of state losses in cases involving relatively small amounts. In several regions, the Prosecutor's Office has developed practices of discontinuing prosecution in the public interest for similar cases. Meanwhile, in practice, the Police often continue to process cases fully through the criminal justice system even when they meet the criteria for restorative resolution. This structural inconsistency results in uneven legal treatment and gives rise to inequality before the law, which ultimately undermines public trust and reduces the overall effectiveness of efforts to combat Village Fund corruption.¹⁸

The third factor is legal culture, which relates to the values, attitudes, and orientations of legal actors and society. Among some law enforcement authorities, there remains considerable resistance to the application of restorative justice in corruption cases, including those involving relatively small amounts. The view that corruption constitutes an extraordinary crime that should not be treated leniently continues to be highly influential, particularly amid public pressure demanding strict enforcement against corrupt actors. This is consistent with findings indicating that the effectiveness of law enforcement in Village Fund corruption cases continues to face cultural challenges arising from both the limited legal awareness of village officials and the strong retributive orientation among law enforcement authorities. As a result, any approach perceived as "lenient" toward corruption offenders often encounters systemic resistance.¹⁹

At the village community level, expectations regarding the resolution of Village Fund irregularities vary considerably. Some community members demand strict punishment as a form of justice, while others place greater importance on restoring the functioning of village governance and recovering financial losses rather than pursuing lengthy criminal proceedings. This situation is further complicated by the existence of patronage-based practices at the local level, which often normalize administrative irregularities as part of the "ordinary practices" of village administration. As a result, public willingness to report indications of corruption tends to be weakened.²⁰ This diversity of legal-

¹⁶ Mariyam Lakoro, Yosef P Koton, and Herwin Mopangga, "Model Pengawasan Pengelolaan Dana Desa Oleh Inspektorat Kabupaten Bone Bolango," *INNOVATIVE: Journal Of Social Science Research* 3, no. c (2023): 8703–19.

¹⁷ Marten Bunga, Aan Aswari, and Hardianto Djanggih, "Konsepsi Penyelamatan Dana Desa Dari Perbuatan Korupsi Village Refrigeration Conception of Corruption Requirements," *Halu Oleo Law Review* 2, no. 2 (2018): 448–59.

¹⁸ Meyfy Merci Karuh and Tuti Widyaningrum, "PENYELEWENGAN DESA: TINJAUAN TERHADAP KORUPSI DAN UPAYA PENANGGULANGANNYA DI DESA SONGBLEDEG, KABUPATEN WONOGIRI," *IBLAM Law Review* 4, no. 682–692 (2014).

¹⁹ Fayoland Trisna Alfaoundra, "PERTANGGUNGJAWABAN PIDANA DALAM TINDAK PIDANA KORUPSI: ANALISIS KASUS KORUPSI DANA DESA DI KABUPATEN BANYUWANGI," *Jurnal Permasalahan Dan Keadilan (JPK)* 2, no. 2 (2026): 78–89.

²⁰ Alfaoundra.

cultural orientations makes it difficult to establish a common standard for resolving Village Fund irregularities. At the same time, it underscores that legal culture reform is an essential prerequisite for optimizing the implementation of restorative justice in such cases.

The fourth factor is legal facilities and infrastructure. Effective implementation of restorative justice requires adequate institutional support, including trained mediators who understand the complexities of village financial law, reliable mechanisms for verifying the recovery of losses, a system for documenting restorative agreements that can be enforced, and long-term monitoring mechanisms to ensure compliance with agreed obligations. In practice, however, nearly all of these institutional components remain insufficient, particularly in regions where law enforcement capacity is still limited.

These limitations do not exist in isolation. Rather, they are closely linked to deeper structural challenges within law enforcement institutions themselves, including shortages of investigative personnel, limited budgets for case handling, and inadequate facilities and infrastructure to support investigative activities. Such constraints also affect coordination with institutions responsible for calculating state losses, such as the Audit Board of Indonesia (BPK) and the Financial and Development Supervisory Agency (BPKP), whose assessment processes often require a considerable amount of time.²¹

Ironically, the lengthy process of auditing and calculating state financial losses often becomes one of the factors that indirectly encourages law enforcement authorities to seek shortcuts by resolving cases outside formal procedures, but without the support of standardized and accountable restorative mechanisms. The absence of adequate facilities causes restorative mechanisms to be implemented on an ad hoc basis, without clear standards, and leaves them vulnerable to misuse by interested parties. Consequently, rather than achieving genuine restorative justice, such mechanisms risk undermining public confidence in the legal enforcement system.

The fifth factor is society as the subject governed by law. The highly diverse social conditions of village communities, including differences in educational attainment, legal awareness, and the capacity to participate meaningfully in restorative processes, significantly influence the effectiveness of their implementation. In villages with strong social capital and well-established traditions of deliberation, community-based mechanisms have a greater likelihood of success. Empirical experience in Batangsaren Village, Tulungagung Regency, demonstrates that when community members possess adequate legal awareness and the willingness to organize themselves, active public participation can become an effective oversight mechanism and may even encourage formal legal proceedings that were initially slow to progress toward the prosecution stage.²²

Conversely, in villages marked by social conflict and significant power imbalances between village officials and community members, a restorative approach implemented without adequate oversight may instead perpetuate injustice. From a structural perspective, community participation is often constrained by information asymmetry, low levels of legal literacy, and patronage-based practices that discourage residents from reporting irregularities due to fear of local authorities and power structures.²³ Under such circumstances, some community members may even face intimidation, social pressure, and stigmatization from parties who perceive transparency efforts as a threat to their interests. These risks can only be effectively mitigated if the state provides genuine legal protection, rather than merely formal guarantees, for citizens who participate in public oversight and accountability processes.

Based on a comprehensive analysis of the five factors of legal effectiveness discussed above, it can be concluded that the implementation of restorative justice by law enforcement authorities in addressing small-scale Village Fund irregularities remains suboptimal. None of the five factors

²¹ Ruly Lamusu, Dian Ekawaty Ismail, and Lusiana M Tijow, "MODEL PENEGAKAN HUKUM TERHADAP TINDAK PIDANA KORUPSI DANA DESA," *Philosophia Law Review* 1, no. 1 (2021): 22–38.

²² Izmi Wardhah and Dyah Retna Prabaningrum, "Partisipasi Masyarakat Akar Rumput Mendukung Supremasi Hukum Atas Dugaan Korupsi Dana Desa Batangsaren Tulungagung," *Nomos : Jurnal Penelitian Ilmu Hukum* 5, no. 4 (2025): 773–86.

²³ Wardhah and Prabaningrum.

identified by Soerjono Soekanto have been fulfilled simultaneously and adequately. The existing legal framework contains fundamental normative gaps; law enforcement institutions lack effective coordination; legal culture continues to be dominated by a retributive orientation; supporting facilities and infrastructure remain limited; and the diverse conditions of local communities do not yet fully support consistent implementation. As a result, restorative justice is applied in a sporadic and inconsistent manner and remains heavily dependent on the discretion of individual law enforcement authorities rather than functioning as a standardized and systemic policy.

The most apparent inconsistency concerns the determination of thresholds for state financial losses. This study finds that the thresholds applied by law enforcement authorities vary significantly across regions and lack a clear and binding normative basis. Such variation not only reflects policy inconsistency but also raises potential constitutional concerns regarding the principle of equality before the law, as guaranteed by Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Individuals responsible for irregularities involving the same amount of loss may face substantially different legal consequences depending solely on the jurisdiction in which their cases are handled.

To address these issues, this study argues for the adoption of a joint technical regulation developed and enacted collaboratively by the National Police, the Attorney General's Office, and the Corruption Eradication Commission (KPK), with the involvement of the Financial and Development Supervisory Agency (BPKP) and the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration as institutional partners in the drafting process. Such a regulation should ideally establish cumulative restorative justice criteria consisting of: (1) state financial losses not exceeding 5% of the total Village Fund allocation received by the village in a single fiscal year, or a maximum of IDR 50 million, whichever amount is lower; (2) the absence of disproportionate personal enrichment; (3) no prior criminal conviction for a similar offense; (4) full restitution of state losses that has been duly verified; and (5) approval from the village community through the Village Consultative Body (BPD) or a village deliberation forum. These criteria should be cumulative in nature, meaning that all requirements must be satisfied before restorative justice may be applied.

2. The Ideal Boundary Between Administrative Law and Criminal Law in the Implementation of Restorative Justice in Village Fund Management

From a theoretical perspective, administrative law and criminal law serve different functions. Administrative law is primarily intended to improve and regulate the administration of government, whereas criminal law functions as a measure of last resort (*ultimum remedium*) to address conduct that genuinely involves serious wrongdoing or culpability.²⁴ In the management of Village Funds, however, the boundary between these two areas of law is often blurred. As a result, administrative errors that should be addressed through supervisory and corrective mechanisms frequently end up being processed through the criminal justice system.

The question of where exactly the boundary lies between administrative law and criminal law in the context of Village Fund management represents one of the most complex legal issues currently facing Indonesia's legal system. This issue is multidimensional in nature, encompassing legal theory regarding the nature and function of each branch of law, legislative concerns relating to both existing and ideal normative frameworks, and practical considerations regarding how law enforcement authorities actually apply these boundaries in day-to-day case handling.

From a theoretical perspective, administrative law and criminal law operate on fundamentally different logics and paradigms. Administrative law is grounded in the paradigm of corrective justice, whose primary objective is to restore disruptions in the administration of public governance. When a government body or public official acts beyond its authority (*ultra vires*) or violates applicable administrative procedures, administrative law provides a range of corrective instruments, including

²⁴ Muhammad Fazry, "Persinggungan Hukum Administrasi Negara Dengan Hukum Pidana SCIENTIA : Journal of Multi Disciplinary Sciences," *SCIENTIA : Journal of Multi Disciplinary Sciences* 02, no. 1 (2023): 28–42.

administrative sanctions, restitution obligations, the annulment of administrative decisions, or removal from office.²⁵ This paradigm is based on the assumption that administrative violations are, by their nature, errors that can and should be corrected rather than punished.

In contrast, criminal law operates under the paradigm of retributive justice, which seeks to impose proportionate punishment for wrongful conduct while also providing a deterrent effect for potential future offenders. When the state classifies a particular act as a criminal offense, it declares that the conduct in question is not merely an administrative violation but an act that infringes upon the fundamental values of society and therefore deserves collective condemnation through criminal sanctions.²⁶ It is this difference in paradigms that should serve as the starting point for defining the boundary between these two legal domains in the context of Village Fund management.

Under Indonesian positive law, the boundary between the administrative and criminal spheres in the management of Village Funds is normatively regulated through several legal instruments that, unfortunately, are not always harmonious. Law Number 6 of 2014 on Villages and Government Regulation Number 43 of 2014, along with its amendments, provide detailed rules regarding accountability and administrative supervision mechanisms for village financial management. Meanwhile, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 stipulates that any unlawful act causing losses to state finances or the national economy may be categorized as a corruption offense. The broad definition of “state finances” contained in Article 1 paragraph (1) of Law Number 17 of 2003 on State Finance, which encompasses all state rights and obligations, including Village Funds, technically allows any irregularity involving Village Funds to be classified as a corruption offense, regardless of the amount of loss incurred.

This normative condition creates what may be described as a “criminalization trap,” namely the tendency to criminalize every administrative irregularity in Village Fund management without considering the degree of seriousness of the conduct or its social context. In several of its decisions, the Supreme Court has attempted to provide a more nuanced interpretation by emphasizing that not every administrative error resulting in state financial losses automatically fulfills the element of “unlawfulness,” which constitutes one of the key elements of a corruption offense. However, this judicial interpretation has not yet been followed by adequate normative clarification at the level of legislation.²⁷

This study identifies several indicators that may be applied cumulatively to determine whether an irregularity in Village Fund management has exceeded the boundaries of administrative law and entered the realm of criminal law.²⁸ The first indicator is the degree of mens rea. Irregularities that occur solely due to a lack of technical or administrative knowledge, limited human resource capacity, or procedural errors without any intention to unlawfully enrich oneself or another party do not, in principle, satisfy the subjective element of a corruption offense. Conversely, irregularities carried out through prior planning, involving document fabrication or data manipulation, demonstrate a strong element of intent and are therefore more appropriately classified as criminal offenses.

The second indicator is the substantive impact on public services and village development. Irregularities that do not result in actual harm to the village community, in the sense that the relevant programs and activities are still implemented despite financial management deficiencies, are more

²⁵ Andin Sofyanoor, “Peran Hukum Administrasi Negara Dalam Pemberantasan Korupsi Di Indonesia,” *SIBATIK Journal: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 2 (2022): 21–30.

²⁶ Firman Adi Chandra, “Efektifitas Hukum Pidana Dalam Pemberantasan Korupsi,” *Jurnal Serambi Hukum* 17, no. 01 (2024): 142–57.

²⁷ Nopriawan Mahriadi et al., “KORUPSI DANA DESA PROBLEMATIKA OTONOMI DESA DALAM UNDANG UNDANG NOMOR 6 TAHUN 2014 TENTANG DESA,” *PUBLIK: Jurnal Manajemen Sumber Daya Manusia, Administrasi Dan Pelayanan Publik* VIII, no. 2 (2021): 324–36.

²⁸ Afista Nur Khasanah and Ichwan Marisan, “Pengaruh Penggunaan Alokasi Dana Desa (ADD), Akuntabilitas Dan Transparansi Pengelolaan Keuangan Desa Terhadap Kesejahteraan Masyarakat (Studi Pada Desa Jambu Kecamatan Mlonggo Kabupaten Jepara),” *Jurnal Rekognisi Akuntansi* 6, no. 1 (2022): 32–48.

appropriately addressed through administrative mechanisms. In contrast, irregularities that cause village development programs to be abandoned, disrupt public services, or deprive the community of the benefits to which it is entitled indicate a more serious degree of harm and warrant a stronger legal response.

The third indicator is the proportional value of state financial losses. The absolute amount of state loss cannot serve as the sole benchmark, given the significant variation in the fiscal capacity of villages across Indonesia. For example, a loss of IDR 30 million in a village receiving IDR 300 million in Village Funds (10% of the total budget) has a substantially different impact from the same loss in a village receiving IDR 1.5 billion in Village Funds (only 2% of the total budget). Therefore, the value of the loss should be assessed in proportion to the total budget managed rather than solely on the basis of its absolute amount.

The fourth indicator is the response and recovery efforts undertaken after the violation. An individual who voluntarily and promptly acknowledges the mistake, takes proactive measures to restore the losses incurred, and cooperates with supervisory mechanisms demonstrates characteristics that are fundamentally different from those of an individual who conceals the misconduct, refuses to cooperate, or even attempts to evade responsibility. Genuine good faith constitutes an important indication that the conduct is administrative rather than criminal in terms of its moral character.²⁹

The fifth indicator is the history of violations and the pattern of conduct. An irregularity that constitutes a first-time and isolated incident is qualitatively different from one that forms part of a recurring, organized, or broader pattern of misconduct. Repeated irregularities that demonstrate recidivism or systematic misconduct reflect characteristics that are much closer to the criminal sphere, even where the amount of loss associated with each individual incident may be relatively small.

Based on these five indicators, this study formulates a decision-making framework that may be used by law enforcement authorities as guidance in determining the most appropriate forum for resolving Village Fund irregularities. The framework classifies such cases into three principal categories.

Category A consists of pure administrative irregularities, namely irregularities characterized by low or absent *mens rea*, proportionally minor financial losses, no substantive impact on public services, the existence of good faith and restitution of losses, and a first-time occurrence. Cases within this category should ideally be resolved entirely within the realm of administrative law through Inspectorate supervision mechanisms, without requiring the involvement of criminal law enforcement authorities.

Category B consists of mixed irregularities, namely cases that satisfy some, but not all, of the administrative criteria. This category represents the gray area in which restorative justice is most needed. Resolution should be pursued through restorative mechanisms involving all relevant stakeholders, with the recovery of losses serving as a mandatory condition and with strict post-resolution monitoring. Where the restorative process is successfully completed in accordance with the applicable requirements, criminal proceedings may be discontinued based on the principle of opportunity or through policies concerning the termination of investigation or prosecution jointly adopted by the relevant law enforcement authorities.

Category C consists of corruption offenses, namely irregularities involving clear and provable *mens rea*, actual harm to the village community, proportionally significant financial losses, the absence of genuine efforts to provide restitution, and/or conduct forming part of a recurring or organized pattern. For cases falling within this category, the full application of criminal law is required without exception, regardless of the absolute monetary value involved.

The establishment of the ideal boundary described above requires a number of significant regulatory reforms.³⁰ First, a joint regulation among law enforcement authorities should be issued to explicitly operationalize the above framework within investigation and prosecution procedures. Second, amendments to, or the addition of provisions within, the Village Law are necessary to expressly

²⁹ Khasanah and Marisan.

³⁰ Erika Novalia Sani, "KONSEPSI RESTORATIVE JUSTICE DALAM PERKARA TINDAK PIDANA KORUPSI DANA DESA" (Universitas Lampung, 2024).

recognize administrative and restorative resolution mechanisms for small-scale Village Fund irregularities, thereby reducing reliance solely on the discretion of law enforcement authorities, which is inherently susceptible to inconsistency. Third, the role and capacity of Regional Inspectorates should be strengthened as the primary institutions responsible for handling Category A cases and certain Category B cases, so that not every irregularity is automatically referred to criminal law enforcement authorities. Fourth, a permanent coordination body or forum should be established to serve as a link between law enforcement authorities, the Financial and Development Supervisory Agency (BPKP), Regional Inspectorates, and representatives of village communities, with a specific mandate to collectively and consistently handle and monitor borderline cases.

KESIMPULAN

Two principal findings emerge from the foregoing discussion. First, with regard to the legal effectiveness of implementing restorative justice in addressing small-scale Village Fund irregularities. Based on an analysis using Soerjono Soekanto's theory of legal effectiveness, the application of restorative justice in this context remains suboptimal. This condition is reflected in the inadequate fulfillment of the five factors that determine legal effectiveness, namely legal substance, legal structure, legal facilities and infrastructure, legal culture, and societal conditions. The absence of regulations specifically governing the application of restorative justice to Village Fund irregularities, coupled with differing interpretations and practices among law enforcement authorities, has resulted in inconsistent implementation. Consequently, case resolution often depends on the discretion and policy preferences of individual law enforcement authorities, creating the potential for legal uncertainty and unequal treatment of cases with similar characteristics.

Second, concerning the ideal boundary between administrative law and criminal law in the implementation of restorative justice within Village Fund management. The distinction between these two legal regimes cannot appropriately be determined solely on the basis of the nominal value of state financial losses. Assessing the nature of a violation requires a more comprehensive evaluation that cumulatively considers five key indicators: the degree of *mens rea* or criminal intent, the substantive impact on village public services, the proportionality of the state financial loss, the offender's willingness to undertake post-violation recovery measures, and the history and pattern of the conduct involved. Based on the combination of these indicators, Village Fund irregularities may be classified into three categories: pure administrative irregularities (Category A), transitional or borderline cases that may be resolved through restorative mechanisms (Category B), and full corruption offenses requiring criminal law enforcement (Category C). This classification offers a more operational, measurable, and proportionate framework than the dichotomous approach that has traditionally categorized all Village Fund irregularities as either administrative or criminal matters.

In light of these findings, several strategic measures should be considered for future policy development. The National Police, the Attorney General's Office, and the Corruption Eradication Commission should formulate a joint regulation specifically governing the application of restorative justice to Village Fund irregularities, including operational and binding criteria as well as decision-making matrices. In addition, the regulatory framework governing village financial management should be strengthened through amendments that explicitly recognize administrative-restorative resolution mechanisms for irregularities falling within Category A and Category B. Strengthening the institutional capacity of Regional Inspectorates is also essential so that their supervisory and guidance functions can operate effectively as the primary line of response to irregularities before they enter the criminal justice process. Furthermore, a coordination forum involving law enforcement authorities, the Financial and Development Supervisory Agency (BPKP), Regional Inspectorates, and representatives of village communities should be established as a permanent mechanism for handling cases that fall within the gray area between administrative violations and criminal offenses. Through such a mechanism, case handling is expected to become more consistent, transparent, and accountable.

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