

Legal Reform of Criminal Responsibility in Imposing Poverty Sanctions for Perpetrators of Corruption to Restore State Losses

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ABSTRACT

The eradication of corruption is a top priority in efforts to build good governance and transparency in Indonesia. This study explores the implementation of poverty sanctions for corruption offenders as an effective strategy to recover state losses and deter future corruption. It examines the need for legal reform in criminal accountability to ensure fair restitution of state losses and a stronger deterrent effect. By analyzing the current Corruption Law and proposed revisions, the study highlights the potential for strengthening poverty sanction mechanisms in line with principles of justice and human rights. Findings suggest that measures such as asset freezing, prohibition from holding public office, and stringent financial monitoring can significantly contribute to combating corruption. Legal reform is crucial in providing a solid foundation for these efforts, with consistent and transparent implementation of revised regulations being key to success.

Keywords: Corruption Crime; Criminal Accountability; Poverty Sanctions.

INTRODUCTION

With current developments, corruption is one of the dangers threatening the state (Abd Rashid et al., 2023). However, in reality, anti-corruption rhetoric is not potent enough to stop the practices of corruption crime (CHEN et al., 2024). Corruption is a crime deeply rooted in the nation's life in Indonesia, spanning from governance to community representatives and law enforcement apparatus (Azzahra et al., 2024; Rubakha et al., 2023). Corruption in Indonesia itself has led to the perception that this criminal act is a disease that is challenging to eradicate compared to other crimes (Paranata, 2022). In the pre-reform era, corruption was only carried out in the central government area, but after the reform, corruption occurred in all areas, namely the executive, judicial, and legislative branches, both in the central and regional governments (Hanoteau et al., 2021; Szczepaniak et al., 2022). Corruption has even become a mass civilization that brings pride and adrenaline to irresponsible parties (Sánchez-Vidal et al., 2024).

Corruption in Latin is *corruptio-corrumpere*, which means bribery, destruction, or distortion. A corruptor is someone who engages in corrupt acts, someone who embezzles state funds within their corporation or workplace (Jovcheska, 2024; Pérez-Oviedo et al., 2024; Renggong, 2017). Corruption in Indonesia falls under the category of Corruption, Collusion, and Nepotism, commonly known as KKN (Paranata, 2022; Rakhman & Wijayana, 2024). Corruption is an act that causes losses to the state and society because it benefits only a few individuals who commit it (Jiang & Wang, 2024; Liu & Lyu, 2024; Nguyen & Bui, 2022; Sahoo et al., 2023). Law enforcement institutions in Indonesia have sought to prevent and eradicate corruption by imposing penalties such as imprisonment, fines, and restitution, and there has even been discussion about imposing the death penalty (Triatmanto & Bawono, 2023).

In national law, the criminal sanctions for perpetrators of corruption are not lenient, yet they do not seem to deter either (Abatemarco et al., 2024; Jovcheska, 2024). Article 2 of Law Number 20 of 2001 concerning the Eradication of Corruption, also known as the Anti-Corruption Law, states that anyone who unlawfully enriches themselves or others, or a company, causing financial loss to the state or national economy, will be dependent upon detainment forever or at least 4 (four) years and a limit of 20 (twenty) years, and a fine going from basically Rp 200,000,000 to a limit of Rp 1,000,000,000, and in specific conditions, capital punishment might be forced for demonstrations of debasement (Suh, 2023).

Several corruption cases with verdicts considered very lenient and unlikely to deter include: Case Number 29/Pid.Sus-TPK/2021/PNJKT.PST, where former Social Affairs Minister Juliari Batubara was sentenced to 12 years in prison and fined Rp 500,000,000 for corruption amounting to Rp 17,000,000,000 in the Covid-19 social assistance procurement, with no asset seizures or impoverishment. Case Number 130/Pid.Sus/TPK/2017/PN.JKT.PST, where former Speaker of the House of Representatives Setya Novanto was sentenced to 15 years in prison and fined Rp 500,000,000 for corruption amounting to Rp 574,000,000,000 in the e-ID card project, although assets worth Rp 100,000,000,000 were seized, their completeness was questionable. Supreme Court Decision Number 2223K/Pid.Sus/2012, where former Democratic Party politician Muhammad Nazaruddin was sentenced to 4 years and 10 months in prison and fined Rp 1,000,000,000 for corruption amounting to Rp 4,600,000,000 in the Athletes' Village project, with asset seizures made but their value not matching the state's losses. Decision Number 11/Pid/TPK/2013/PT.DKI, where former member of the House of Representatives Angelina Sondakh was sentenced to 10 years in prison and fined Rp 500,000,000 for corruption amounting to Rp 2,500,000,000, with asset seizures made but their value not matching the state's losses.

Due to the prevalence and high number of corruption cases, legal reforms are needed to provide alternative criminal sanctions for corruptors that instill a sense of deterrence and also recover state losses (Danil. Elwi, 2014). Alternative criminal sanctions recommended include impoverishment penalties. The rationale behind imposing impoverishment penalties is that

corruptors do not feel deterred, and the number of corruptors does not decrease. Additionally, other penalties such as imprisonment, fines, and restitution payments have not deterred corruption. Moreover, alternative criminal sanctions can be used because of the many low sentences imposed by judges on corruption perpetrators.

This research aims to explore the need for legal reforms in addressing the increasing and severe cases of corruption, and to evaluate the effectiveness of existing criminal sanctions such as imprisonment, fines, and restitution payments, which are deemed insufficient in deterring corrupt practices. Additionally, the research proposes and assesses the impact of implementing alternative criminal sanctions, specifically impoverishment penalties, which directly target the assets and wealth unlawfully obtained by corrupt individuals. The urgency of impoverishment penalties is highlighted as a response to the lenient sentences often imposed by judges, aiming to strengthen deterrence, recover state losses, and send a strong moral message that corruption will not be tolerated and will face severe consequences. Thus, these penalties are expected to enhance the effectiveness of the judicial system in restoring justice and public trust.

RESEARCH METHODS

This research operates a juridical-normative research method with a legislative approach and a conceptual approach. Legal materials focused on are found in legislation related to corruption, such as the 1945 Constitution, the Anti-Corruption Law, and other implementing regulations. The legislative approach is used to analyze the legal framework governing the impoverishment penalty for perpetrators of corruption, while the conceptual approach is employed to understand the legal concepts underlying the application of this penalty. Data analysis is conducted using deductive logic to draw conclusions and implications from the existing legal framework regarding the impoverishment penalty in efforts to recover state losses due to corruption.

RESULTS AND DISCUSSION

Mechanisms of Criminal Accountability for Perpetrators of Corruption

Corruption is a crime classified as an extraordinary crime or an extraordinary offense. Corruption is a deviant act carried out to obtain personal and family benefits. Corruption leads to the misallocation of resources. The elements of the crime of corruption in Article 2 paragraph (1) of the Anti-Corruption Law (UU Tipikor) encompass self-enrichment, enrichment of others, and enrichment of corporations through illegal means, causing losses to state finances or the national economy. In Article 2 paragraph (2) of the Anti-Corruption Law, certain circumstances are considered aggravating factors for perpetrators of corruption, namely if the crime is committed using funds intended for handling situations of danger, national natural disasters,

tackling the aftermath of widespread social unrest, addressing economic crises, and monetary crises as a means to combat corruption. In Article 1 points (1), (2), and (3) of the Anti-Corruption Law, the subjects of corruption offenses are every individual or legal entity. Corruption is classified into acts that result in financial losses to the state, bribery, embezzlement in office, extortion, fraudulent acts, conflicts of interest in procurement, and gratuities. The elements of corruption offenses include every person, acting unlawfully, engaging in acts of self-enrichment, enrichment of others or corporations, and causing financial losses to the state or the national economy.

According to a legitimate viewpoint, the punishments for culprits of defilement are serious. Article 2 of the Counter Debasement Regulation expresses that any individual who unlawfully improves themselves, others, or partnerships to the drawback of state funds or the public economy will be rebuffed with life detainment or at least 4 (four) years and a limit of 20 (twenty) long stretches of detainment, as well as a base fine of IDR 200,000,000.00 (200,000,000 Indonesian Rupiah) and a most extreme fine of IDR 1,000,000,000.00 (one billion Indonesian Rupiah). Moreover, under specific circumstances, capital punishment might be forced for demonstrations of debasement as specified in passage (1).

Based on the Anti-Corruption Law, perpetrators of corruption can be divided into three categories:

1. Civil servants, including civil servants and individuals receiving salaries or wages from state or regional finances, from corporations receiving financial assistance from the state or region, or other corporations using capital or facilities from the state or society;
2. Corporations, which include organized entities, both legal and non-legal entities;
3. Every person, whether individually or through corporations.

The legal basis for combating corruption in Indonesia is based on several regulations, including Law Number 20 of 2001 concerning the Eradication of Corruption Crimes (Anti-Corruption Law). The Anti-Corruption Law is the main legal framework governing corruption crimes in Indonesia. This law provides a definition of corruption crimes, establishes sanctions for perpetrators, and regulates the procedures for handling corruption cases by law enforcement agencies. In addition, Indonesia has also ratified the United Nations Convention against Corruption (UNCAC). UNCAC is an international legal instrument designed to promote international cooperation in combating corruption. By ratifying UNCAC, Indonesia is committed to implementing international standards in combating corruption, including preventive measures, law enforcement, and international cooperation. Both of these legal instruments are important foundations in the efforts to combat corruption in Indonesia. They provide a strong legal basis for the government and law enforcement agencies to take preventive action, enforce the law, and recover assets acquired from corruption crimes.

Corruption crimes involve several elements that are specifically defined in Indonesian law. The element of state financial loss refers to the economic impact resulting from corrupt acts, where the state finances or the national economy suffers losses due to the manipulation or misuse of public funds by irresponsible parties. Bribery involves the giving or receiving of gifts, money, or other benefits in exchange for gaining certain advantages or facilities from others, especially public officials. This practice violates ethics and integrity and undermines public trust in institutions and governmental processes.

Next, the element of embezzlement in office refers to the actions of officials who unlawfully use the power or authority they possess to enrich themselves or others, often by misusing funds or assets under their management. Extortion involves the use of threats or violence to force others to provide something, whether money or other benefits. Extortion in the context of corruption often occurs when someone requests or receives a bribe with certain threats or pressures. Furthermore, the crime of money laundering involves efforts to conceal or legitimize illegally obtained funds, including from corrupt activities, by changing or transferring them through a series of financial transactions to make them appear as the proceeds of legitimate activities.

The forms of criminal accountability for perpetrators of corruption can include various types of sanctions established by the law. One common type of sanction is imprisonment, where corrupt individuals are sentenced to incarceration in correctional facilities for a specified period according to the severity of the crimes committed. The purpose of imprisonment is to uphold justice and deterrence, aiming to prevent perpetrators from repeating illegal actions. Additionally, fines are also a common form of criminal sanction imposed on corrupt individuals. These fines are typically set at a specific amount to be paid by the perpetrators to the state or the aggrieved party as compensation for the losses caused by the corrupt actions.

In addition to the primary punishment, there are also supplementary penalties that can be imposed on corrupt individuals. One common supplementary punishment is asset forfeiture, where assets obtained illegally from corrupt activities can be seized by the state as a means of recovering state finances. Furthermore, the revocation of political rights can also be imposed on corrupt individuals, meaning they lose the right to stand as candidates or vote in general elections. The obligation to pay restitution is also a supplementary penalty commonly applied to compensate for the financial losses caused by the corrupt actions, both to the state and the aggrieved parties. All these forms of sanctions aim to provide preventive, punitive, and restorative effects in the fight against corruption and the restoration of justice.

Law enforcement agencies in Indonesia, such as the Corruption Eradication Commission (KPK), the Prosecutor's Office, and the Police, play crucial roles in combating corruption. The KPK, as an independent institution, has the primary task of conducting investigations, prosecutions, and indictments against acts of corruption involving public officials or private entities engaged in

giving or receiving bribes. The KPK also has the authority to prevent corruption by monitoring institutions prone to corruption, providing policy recommendations, and collaborating with other agencies in combating corruption.

The Prosecutor's Office, as the public prosecuting authority, is responsible for prosecuting corrupt individuals in court. The Prosecutor's Office can also conduct investigations and prosecutions of corrupt acts, although, in practice, it often collaborates with the KPK in handling complex corruption cases involving high-ranking public officials. Meanwhile, the Police have an initial role in combating corruption by conducting investigations and collecting evidence of alleged corrupt acts. The Police can also arrest corrupt individuals and facilitate the investigation process conducted by the KPK or the Prosecutor's Office.

Weaknesses in the Legal System Regarding the Process of Restitution of State Losses from Corruption

There are weaknesses in the legal system for combating corruption where the restitution of state finances is often not executed properly. Prison sentences and fines are not sanctions that can effectively deter perpetrators of corruption and facilitate the return of state financial losses. The Corruption Eradication Law (UU Tipikor) is the primary legal basis for combating corruption in Indonesia. However, several weaknesses in this regulation can hinder the effectiveness of law enforcement and the recovery of state assets that have been damaged due to corruption. One weakness in the Corruption Eradication Law is the provision regarding the restitution of state losses, which is considered vague and open to interpretation. This makes the process of recovering state losses ineffective and often time-consuming and provides loopholes for corrupt individuals to evade their financial responsibilities. Additionally, the suboptimal asset forfeiture mechanism also poses a challenge in law enforcement against corruption cases. The complex asset forfeiture process, often hindered by various administrative and legal reasons, impedes efforts to recover assets acquired illegally by corrupt individuals.

The lack of deterrent effects from prison sentences and fines is another problem in law enforcement against corruption. Low sentences or fines that do not correspond to the losses caused by corrupt acts often fail to deter corrupt individuals. Weak and inadequate judicial decisions regarding sentences and the restitution of state financial losses also pose issues in law enforcement against corruption. Weak and insufficient verdicts can undermine public trust in the judicial system and send the wrong signals to corrupt individuals.

One of the weaknesses in law enforcement related to corruption is inconsistent and suboptimal practices in proving the flow of corrupt funds. The inquiry and investigation process often experiences obstacles in collecting evidence that is strong enough to prove the flow of corrupt funds from the perpetrator of the crime to the various parties involved. This can be caused by a lack of coordination between law enforcement agencies, technical limitations, and the complexity of corruption cases involving extensive networks.

Apart from that, tracking and confiscating corruptors' assets is also a serious challenge in law enforcement against corruption. Even though there is an asset confiscation mechanism, this process often does not run optimally due to a lack of technical support, weaknesses in regulations, as well as administrative and legal obstacles. As a result, most of the assets obtained illegally by perpetrators of corruption are still difficult to trace and confiscate by the authorities. Then the problem of following up on court decisions regarding the return of state losses is also a problem often faced in law enforcement against corruption. Even though court decisions have stipulated the obligation to return state losses to perpetrators of corruption, the implementation process is often hampered by various obstacles, such as a lack of human and financial resources, as well as a lack of coordination between relevant institutions.

Thus, there is a need for legal reform regarding criminal liability with impoverishment sanctions for perpetrators of corruption, which becomes a necessity in efforts to impose a stronger deterrent effect and ensure justice for society. Impoverishment sanctions, such as total confiscation of illegally obtained assets and actual repayment of state losses, can be a more effective deterrent in preventing and combating corruption. Moreover, these sanctions also send a strong signal that corrupt actions will not be tolerated and will have serious consequences for the finances and reputation of the perpetrators. Therefore, this legal reform can be a progressive step in strengthening law enforcement and building a fairer and more transparent legal system.

Legal Reform on Criminal Liability with Impoverishment Sanctions for Perpetrators of Corruption as a Process of State Loss Recovery

Currently, the legal system in combating corruption still has several weaknesses and deficiencies that need to be addressed promptly. One of the main issues is the injustice and ineffectiveness of existing sanctions in returning state losses caused by corrupt acts. The existing court rulings often do not impose adequate sanctions or fail to proportionally recover state financial losses with the actual amount that has been harmed. Thus, the potential gains obtained with existing criminal sanctions do not effectively deter perpetrators of corrupt acts.

So, there is an urgent need to reform the law to create a stronger deterrent effect and ensure fairer recovery of state financial losses. Reforming the existing law could provide recommendations for increasing stricter criminal sanctions, including impoverishment sanctions which confiscate all assets obtained illegally by perpetrators of criminal acts of corruption. In addition, a more efficient and transparent mechanism is needed in the process of recovering state financial losses, including the establishment of more efficient criminal sanctions to manage and recover state financial losses with impoverishment sanctions.

Impoverishment sanctions can create a stronger deterrent effect and ensure a fairer recovery of state financial losses. Impoverishment sanctions can confiscate all assets illegally needed by the perpetrator of corruption. The concept of impoverishment sanctions is one of the strategies in eradicating corruption which aims to provide sanctions that are commensurate with

the level of losses incurred as a result of criminal acts of corruption and provide a strong deterrent effect to perpetrators of criminal acts of corruption. Impoverishment sanctions aim to reduce or eliminate personal profits obtained by perpetrators of corruption illegally, as well as to provide fair recovery for the state or society that has been harmed by acts of corruption. The forms of impoverishment sanctions can vary, starting from confiscation of assets obtained illegally by perpetrators of corruption, including property, vehicles, and other valuables. Apart from that, the sanction for impoverishment can also be in the form of a large fine, the amount of which is commensurate with the magnitude of the losses caused by the act of corruption. The obligation to pay compensation is also a form of impoverishment sanction, where the perpetrators of corruption are required to compensate the state or society for losses as a result of their actions. It includes a prohibition on holding public office can be a sanction for impoverishment, which aims to prevent perpetrators of corruption from repeating acts of corruption in the future and to send a signal that corruption will not be tolerated in the public sphere.

Implementing impoverishment sanctions in eradicating corruption requires clear mechanisms and procedures as well as the involvement of various law enforcement agencies. These mechanisms and procedures include the stages of inquiry, investigation, trial, and implementation of court decisions. Law enforcement agencies, such as the Corruption Eradication Commission (KPK), the prosecutor's office, and the police, have different roles and authorities in implementing impoverishment sanctions. The Corruption Eradication Committee (KPK) has the authority to carry out inquiries and investigations into corruption cases, while the prosecutor's office is responsible for prosecution in court and implementing court decisions. Meanwhile, the police play a role in collecting evidence and arresting perpetrators of corruption.

Legal reform in providing criminal sanctions for impoverishment is an important step in increasing the effectiveness of eradicating corruption in Indonesia. It requires revisions or changes to the existing Corruption Crime Law (UU Tipikor), or even the formation of new implementing regulations that are more detailed and firmer in regulating poverty sanctions. Revisions to the Corruption Law can be conducted by strengthening the provisions relating to impoverishment sanctions, such as adding articles that specifically regulate the mechanism for implementing these sanctions, including implementation procedures, limitations, and considerations that must be taken into account when imposing these sanctions.

CONCLUSION

Legal reform in criminal liability with the implementation of impoverishment sanctions for perpetrators of corruption is an important step in efforts to recover state losses due to corruption. With stricter and more effective impoverishment sanctions, corrupt actors will face more severe consequences for their actions, thus providing a stronger deterrent effect and

preventing the recurrence of corruption in the future. The legal reform can also ensure that the recovery of state losses is done fairly and proportionally, by confiscating assets obtained illegally and obliging corrupt actors to compensate for the losses incurred.

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