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RESEARCH ARTICLE

Legal Analysis of The Provisions of The Crime of Corruption in The Criminal Code in Terms of The Principle of Proportionality

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ABSTRACT

This paper examines the need for a more proportionate approach to the sentencing of corruption offenses in the Indonesian criminal justice system, focusing on the shortcomings of the current Criminal Code (KUHP) and the application of anti-corruption laws, in particular Paragraph 2 and Paragraph 3 of the Corruption Eradication Law (Tipikor Law). Currently, there is a glaring gap between the seriousness of corruption offenses and the penalties imposed, with sentences often not reflecting the economic and social harm caused. This imbalance results in sentences that are disproportionate to the harm caused to the public interest, undermining the ability of the justice system to deliver appropriate punishment. This study argues for revising sentencing guidelines for corruption offenses, promoting a more balanced assessment between economic loss, social impact, and the offender's role in the crime. The study advocates for sentences that accurately reflect the severity of the offense, ensuring justice for victims. The paper highlights the need for broader reforms, including the application of good governance principles, public sector improvements, and community engagement in fostering an ethical and anti-corruption environment. In addition, the paper also emphasizes the importance of applying the principle of proportionality in court decisions, to ensure that sentences are proportionate to the harm caused. The paper calls for clearer sentencing guidelines and proper application of Paragraph 2 and Paragraph 3 to address serious corruption cases with appropriate sanctions. The paper concludes by providing recommendations to improve Indonesia's legal framework to enhance fairness and honesty in handling corruption cases, which will ultimately strengthen the rule of law and public confidence in the justice system.

INTRODUCTION[1]

The ratification of the Draft Criminal Code (KUHP) into law has sparked polemics due to a number of Paragraphs that are considered problematic. One of the Paragraphs that is considered problematic is the criminal punishment for corruptors that is cut in the Criminal Code. This is a contrast considering that the government has repeatedly warned to stop corruption and celebrate World Anti-Corruption Day (Hakordia) which falls on 9/12/2022. In the new Criminal Code, provisions on corruption are contained in Paragraphs 603-606 of the Criminal Code. A number of Paragraphs in the Corruption Eradication Law will be invalidated if the latest Criminal Code (KUHP) is enacted. This is stated in

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Paragraph 622 paragraph (1) letter l of the latest Criminal Code. 'When this Law comes into force, the provisions in Paragraph 2 paragraph (1), Paragraph 3, Paragraph 5, Paragraph 11, and Paragraph 13 of Law Number 31 of 1999 concerning the Eradication of the Criminal Acts of Corruption as amended by Law Number 20 of 2001 shall be revoked and declared invalid.[2]

The principle of proportionality in human rights law is reflected in Article 2 paragraph (1) of the International Covenant on Civil and Political Rights and Article 2 paragraph (2) of the International Covenant on Economic, Social and Cultural Rights.[3] Both articles emphasize two things. First, when the state makes restrictions, it is necessary and only allowed to take measures that are in accordance with the objectives to be achieved. Second, differential treatment based on certain reasons is not considered discriminatory if it has a rational and objective justification. In addition, there must be a real and rational proportional relationship between the objectives to be achieved and the measures taken and their consequences.

The low criminal penalties for perpetrators of corruption offences (tipikor) in the new Criminal Code raise serious questions regarding the suitability of the punishment with the severity of the impact of corruption on society and the state. Based on the principle of proportionality in criminal law, the punishment must reflect the seriousness of the offence committed, and corruption is theoretically an extraordinary crime that is systemic and widespread, harms state finances and violates the social and economic rights of the community.[4]

However, the reduction of punishment for corruption offenders, as reflected in the new Criminal Code, raises concerns that the government and the DPR have not sufficiently considered the increase in corruption cases and their serious impact. Moreover, based on ICW's Sentencing Trends record throughout 2021, out of 1,282 corruption cases, the average prison sentence is only 3 years and 5 months, which is far from the expectations of the public who want a firm and comprehensive eradication of corruption. This decrease in criminal threats is exacerbated by the existence of Law No. 22 of 2022 concerning Corrections, which makes it easy for convicted corruption cases to get remission and parole without having to pay off additional fines and restitution, and without having to become a justice collaborator, which implicitly reduces the deterrent effect that punishment for corruptors should create.[5] In the context of the principle of proportionality, criminal offences that have a high level of seriousness, such as corruption, should be punished with a heavier punishment in accordance with the level of seriousness of the act and the guilt of the perpetrator. A lighter punishment without taking into account the loss to society and the state caused by corruption will violate this principle. Therefore, a comprehensive evaluation of the formulation of Paragraphs in the new Criminal Code is needed, especially those relating to criminal penalties for corruption, to ensure

[2] Rusito, R., & Suwardi, K. (2019). DEVELOPMENT OF DEATH PENALTY IN INDONESIA IN HUMAN RIGHTS PERSPECTIVE. Ganesha Law Review, 1(2), 38-54. https://doi.org/10.23887/glr.v1i2.53

[3] Aswanto, Wilma Silalahi 2021, Perlindungan, penghormatan, dan pemenuhan hak asasi manusia domestik dan internasional, Depok : Rajawali Pers

[4] Widijowati, D. (2023). The Crime of Corruption Codified in Law Number 1 of 2023. Journal of Law and Sustainable Development, 11(11), e1859. https://doi.org/10.55908/sdgs.v11i11.1859

[5] Ilyas, A., & Jupri. (2018). Justice collaborator: strategi mengungkap tindak pidana korupsi. Genta Publishing. https://scholar.google.com/scholar?cluster=2837878187017368244&hl=en&oi=scholarr#d=gs_cit&t=1730729496053&u=%2Fscholar%3Fq%3Dinfo%3AtPL_5CwrYicJ%3Ascholar.google.com%2F%26output%3Dcite%26scirp%3D0%26scfhb%3D1%26hl%3Den

that the criminal penalties determined are in accordance with the seriousness of the offence and do not conflict with a more effective corruption eradication agenda.[6]

THE REALISATION OF JUSTICE, EXPEDIENCY AND LEGAL CERTAINTY IN THE CRIMINAL CODE THAT REFLECTS THE PRINCIPLE OF PROPORTIONALITY IN SENTENCING FOR CORRUPTION OFFENCES

Corruption is usually committed by individuals who have power in a position, so the crime of corruption is often associated with abuse of power in the context of organised crime. Corruption that occurs in an environment of power is illustrated by the adage conveyed by Lord Acton, namely power tends to corrupt and absolute power corrupts absolutely. Attempts to eradicate corruption through legal codification can be seen from the issuance of regulations such as Military Ruler Regulations No. Prt/PM/03/1957, No. Prt/PM/06/1957, and No. Prt/PM/O11/1957 which attempted to limit corruption and improve the quality of the law. Corruption is defined as 'acts that harm the state's finances and economy' with a distinction between 'criminal acts of corruption' and 'other acts of corruption'. Regulation No. Prt/PEPERPU/013/1958 faced difficulties in proving crimes and offences. In 1960, Government Regulation in Lieu of Law No. 24 (PRP) of 1960 was issued to regulate the investigation, prosecution and examination of corruption offences with clearer formulations regarding active bribery and examination procedures. This regulation was later amended into Law Number 1 Year 1961. In 1968, the President established the Corruption Eradication Team (TPA) which was later replaced by the Commission-4 in 1970. Subsequently, Law No. 3 of 1971 and Law No. 31 of 1999 on the Eradication of the Criminal Act of Corruption were amended to Law No. 20 of 2001 with a reverse proof system to ease the process of proof. Law 28/1999 was also issued to encourage state officials to perform their functions responsibly. While law enforcement is important, strategies that only focus on law enforcement tend to fail in creating an ethical environment that rejects corruption, so public participation is indispensable in the fight against corruption in the public sector.[7]

The Criminal Code (KUHP) reflects the principle of proportionality in sentencing for corruption offences in a structured and justice-oriented manner. The principle of proportionality is one of the main pillars in the criminal law system that aims to ensure that the punishment imposed is proportional to the seriousness and impact of the criminal offence committed. In the Criminal Code, the principle of proportionality is applied through several mechanisms, including the provisions contained in Paragraph 2 and Paragraph 3 of Law No. 31/1999 as amended by Law No. 20/2001 on the Eradication of Corruption. Paragraph 2 of the Law stipulates that corruption offences committed by public officials or people who have great authority are required to receive heavier penalties compared to perpetrators of corruption offences involving private parties or individuals without strategic positions. This reflects the application of the principle of proportionality based on the position and power of the perpetrator.[8]

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[6] Soedirjo, A. T., Santiago, F., & Jaya, S. (2023). Reform of Corruption Criminal Law: a Study of Corruptor Asset Application Law in Indonesia. Journal of Social Research, 2(9), 2942–2954. https://doi.org/10.55324/josr.v2i9.1346

[7] Handaru Arya Ahmad Musyaffar, & Radhitya Pratama. (2023). The Sentencing Effectivity on the Criminal Offense of Corruption Through the Perspective of Indonesian State Administrative Law: A Review. Unizar Law Review, 6(1). https://doi.org/10.36679/ulr.v6i1.22

[8] Dachak, H. (2021). The Principle of Proportionality of Crime and Punishment in International Documents. International Journal of Multicultural and Multireligious Understanding, 8(4), 684. https://doi.org/10.18415/ijmmu.v8i4.2661

Paragraph 3 of Law No. 31/1999 regulates special arrangements for corruption offences involving large state or public losses. This Paragraph stipulates heavier criminal penalties for cases that have a wide impact and harm the state economy, taking into account the magnitude of the losses incurred. Thus, this provision ensures that the punishment imposed is proportional to the level of loss caused by the act of corruption. In addition, in determining the punishment, the Criminal Code considers various factors that affect the severity of the criminal offence. These include, but are not limited to, the amount of money involved, the position and power of the offender, and the loss suffered by the state or society. By considering these factors, the Criminal Code seeks to ensure that the penalties imposed are not merely a formality, but truly reflect the degree of culpability and impact of the corruption offence. The Criminal Code also provides room for judges to assess cases on an individual basis and determine the appropriate punishment based on the principle of proportionality. This ensures that legal decisions are not rigid or unfair, but in line with fundamental principles of justice. Overall, the application of the principle of proportionality in the Criminal Code for corruption offences aims to achieve balanced and effective justice. In this way, the Criminal Code not only provides appropriate sanctions for perpetrators of corruption offences, but also contributes to broader efforts to prevent and combat corruption in society.

With the enactment of Law Number 31 of 1999 as amended by Law Number 20 of 2001, the eradication of corruption has become a top priority that requires immediate and coordinated action. Given the massive spread of corruption in various sectors, which makes it an extraordinary crime, eradication efforts must be carried out with the same intensity.[9]

The legal embodiment in the Criminal Code (KUHP)[10] reflects the principle of proportionality in sentencing for corruption offences in a structured and justice-oriented manner. The principle of proportionality is a key pillar in the criminal law system that aims to ensure that punishment is proportional to the seriousness and impact of the criminal offence. The regulations underlying the application of this principle in the Criminal Code include several important provisions. Law No. 31/1999 as amended by Law No. 20/2001 on the Eradication of the Criminal Act of Corruption stipulates that corruption offences committed by public officials or persons with great authority should be subject to heavier penalties than other perpetrators (Paragraph 2). This Paragraph reflects the principle of proportionality by considering the position and power of the perpetrator in determining the level of punishment. Paragraph 3 of the Law provides for more severe criminal penalties for corruption offences involving significant losses to the state or society, with criminal penalties designed to be proportional to the magnitude of the losses incurred.

The Criminal Code also contributes to the application of the principle of proportionality through Paragraph 4, which regulates the principle of legality and the principle of proportionality in sentencing. This Paragraph ensures that the punishment is appropriate to the act committed, reflecting the severity of the criminal offence. In addition to these provisions, Law No. 8/2010 on the Prevention and Eradication of Money Laundering (TPPU) also plays an important role. Although it does not directly regulate corruption offences, this law supports the principle of proportionality by providing appropriate criminal penalties for perpetrators of money laundering proceeds of corruption, taking into account the loss caused and the complexity of the crime.

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[9] Waspada, L. I., Muchtar, S., & Ilyas, A. (2021). Upaya Kepolisian Dalam Menanggulangi Tindak Pidana Korupsi. Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan, 6. https://scholar.google.com/scholar?cluster=6706387895207923802&hl=en&oi=scholarr

[10] M. Rheza Prasetya , Nur Azisa ,Amir Ilyas, Obstacles for Law Enforcement Officers Against the Suspect In the Criminal Justice Examination Process, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 25, Issue 1, Series. 7 (January. 2020) 01-05 e-ISSN: 2279-0837, p-ISSN: 2279-0845, https://www.iosrjournals.org/iosr-jhss/papers/Vol.%2025%20Issue1/Series-7/A2501070105.pdf

In practice, the Criminal Code and other relevant regulations take into account various factors in determining criminal penalties, including the amount of money involved, the position of the perpetrator, and the impact of the harm caused. The Criminal Code provides room for judges to assess individual cases and determine the appropriate punishment based on the principle of proportionality, ensuring legal decisions are not rigid or unfair. Overall, the application of the principle of proportionality in the Criminal Code for corruption offences aims to create a fair and effective punishment system. The existing regulations support the prevention and eradication of corruption by ensuring that sentences are proportional to the severity of the offence and its impact on society, thereby strengthening the legal system in the fight against corruption as a whole.

With the enactment of Law No. 31/1999 as amended by Law No. 20/2001, the eradication of corruption is a top priority that requires immediate and coordinated action. Given the massive spread of corruption in various sectors, which makes it an extraordinary crime, eradication efforts must be carried out with the same intensity. All law enforcement agencies, including the police, prosecutors, KPK, and corruption courts at various levels, must work tirelessly to eradicate corruption to its roots in Indonesia. In this context, corruption judges are expected to perform their duties independently, accountably and professionally. They must make every effort to receive, examine and decide cases as fairly as possible, in accordance with the mandate of the law. Judges, as God's representatives on earth, must impose punishment by taking into account the principle of justice, which is stated in the irah-irah of the verdict: 'For the sake of justice based on God Almighty.[11]

In dealing with corruption offences, Indonesia uses a legal framework that integrates the Criminal Code (KUHP) and Law No. 31/1999 on the Eradication of Corruption which has been amended by Law No. 20/2001. Paragraph 10 of the Criminal Code places fines as one of the main types of punishment, but it is often considered less effective than freedom punishment, such as imprisonment, in the context of corruption. The crime of corruption encompasses various types of offences, such as bribery, extortion, abuse of power, embezzlement, and improper conduct committed by public officials or individuals with power to obtain illegal personal gain. Sanctions set for perpetrators of corruption include imprisonment, fines, and additional penalties such as deprivation of the right to hold public office. The legal process involves investigation by the Corruption Eradication Commission (KPK) or other law enforcement officials, followed by prosecution and trial in the Corruption Court. Corruption prevention and eradication efforts also involve education, system reform, supervision, auditing, as well as the active role of the community and media to support transparency and accountability.

In the Criminal Code (KUHP), the principle of proportionality in sentencing for corruption offences reflects the application of three main aspects: justice, expediency, and legal certainty, which form the foundation of the criminal justice system to ensure that sentences imposed not only comply with regulations, but also reflect fundamental principles of social justice.

Justice as the first aspect of the principle of proportionality is regulated in Paragraph 10 of the Criminal Code, which states that the punishment must be commensurate with the severity of the criminal offence committed. This principle emphasises that the punishment imposed should be proportionate to the degree of culpability and the impact of the corruption offence. In the case of corruption offences, which often involve abuse of power and embezzlement of public funds, the punishment imposed should reflect the severity of the harm caused and the impact on society at large. For example, if a person is convicted of corruption with a significant loss, the punishment should reflect the extent of the loss and the consequences for public trust. In addition, Paragraph 35 of the Criminal Code also stipulates that judges must consider aggravating and mitigating factors in

[11] Suherman, H. (2023). Criminal Law Policy in Tackling Corruption Crimes in Indonesia Through the Death Penalty is Linked to the Principle of Justice. KnE Social Sciences. https://doi.org/10.18502/kss.v8i18.14319

sentencing, such as criminal intent, the offender's position in the government structure, as well as other relevant factors, including guilty pleas or co-operation with law enforcement. Beneficence is the second aspect of the principle of proportionality and relates to the purpose of punishment to provide deterrence and rehabilitation to the offender.[12]

Paragraph 14 of the Criminal Code stipulates that the purpose of criminal punishment is to prevent future criminal offences and provide a deterrent effect. By imposing heavy penalties, the legal system seeks to provide a strong deterrent effect for perpetrators of corruption crimes as well as for the general public, so that no one feels encouraged to commit similar crimes. In this case, the punishment does not only aim to punish the perpetrator, but also to prevent the recurrence of criminal offences in the future. Paragraph 18 of the Criminal Code also emphasises the importance of offender rehabilitation for reintegration into society. In addition, special laws on corruption offences often include provisions on restitution to the state as part of the sentence, which provides additional benefits to society and redresses the harm caused by the criminal offence. Legal certainty is the third aspect reflected in the principle of proportionality, and this is achieved through Paragraph 8 of the Criminal Code, which states that everyone involved in a criminal offence must be tried under the applicable law. Legal certainty means that the punishment must have clear standards and the judicial process must be conducted in a consistent and transparent manner, as stipulated in Paragraph 7 of the KUHP. A transparent and fair legal process ensures that all perpetrators of corruption offences are treated to the same standard, reducing uncertainty and discrimination in sentencing. Legal certainty also relates to the application of clear guidelines regarding the type and duration of penalties that can be imposed, thus avoiding arbitrariness in court decisions.

While the Criminal Code provides the basic principles of fairness, expediency, and legal certainty, the specific application to corruption offences is often regulated in separate laws. For example, Law No. 31/1999 on the Eradication of Corruption, which was later amended by Law No. 20/2001, sets out specific provisions on the types of corruption offences, penalties, and sanctions applicable. The principle of proportionality in sentencing remains an important cornerstone in assessing the fairness and effectiveness of punishment, both in the context of the Criminal Code and special laws, to ensure that the criminal justice system functions fairly, usefully and consistently.[13]

RATIO AND CONSIDERATION IN THE FORMULATION OF CORRUPTION PROVISIONS IN THE CRIMINAL CODE (KUHP)

In formulating the provisions on corruption offences in the Criminal Code (KUHP), rational and legal considerations play an important role in ensuring a proportional balance between the type of offence and the stipulated punishment. Law No. 31/1999 on the Eradication of Corruption, which was later amended by Law No. 20/2001, in Paragraph 2 and Paragraph 3, clearly states that the punishment imposed for corruption offences must be adjusted to the seriousness of the offence. This provision was drafted by considering the broad impacts resulting from corruption offences, in particular state financial losses and the negative impacts felt by society as a whole. The criminal penalties in this provision are not only intended to punish the perpetrators, but also to provide a strong deterrent effect, in order to prevent similar acts from occurring in the future. The principle of proportionality is the main foundation in determining sanctions, where the punishment imposed must be proportional to the seriousness of the corruption offence committed. In addition, factors such as the

[12] Faisal, F., Rahayu, S., Rahayu, D. P., Darmawan, A., & Yanto, A. (2023). Progressive Consderation of Judges in Deciding Sentencing Under Indonesia New Criminal Code. Jambe Law Journal, 6(1), 85–102. https://doi.org/10.22437/jlj.6.1.85-102

[13] Sutisna, N., & Sara, R. (2021). Criminal Law Policy and Protection of Witnesses and Victims in Corruption Cases in Government Procurement of Goods and Services. European Alliance for Innovation n.o. https://doi.org/10.4108/eai.6-3-2021.2306463

presence of malicious intent (mens rea), the level of loss caused, as well as the role and involvement of the perpetrator in the criminal offence, are important considerations in determining the amount of punishment. Furthermore, the reason for applying this provision also reflects the purpose of punishment in the Indonesian legal system, which is to recover state losses due to acts of corruption and uphold social justice.[14]

Paragraph 12 of the Criminal Code, which emphasises the principle of justice in sentencing, serves as a guideline for judges to impose sanctions that are not only punitive (repressive), but also oriented towards rehabilitation and prevention (preventive). In carrying out their duties to uphold justice, judges are expected to use their discretion to assess each corruption case with objectivity and comprehensiveness, including considering the background of the perpetrator, the motive behind the crime, and the impact of the act. Therefore, the decision must reflect a balance between the punishment given and the seriousness of the criminal offence, and be in line with the principles of justice that apply in the Indonesian criminal law system.

Ratio Legis is a legal term derived from two words with different meanings: 'Ratio,' which means reason or consideration, and "Legis," which refers to the law or legal structure. In the legal world, Ratio Legis refers to the reasons or motivating factors behind the formation of a law, i.e. the reasonable considerations used as the basis for a law. The term implies that laws are made based on rational thought, with the aim of achieving fairness and balance in their application. In simple terms, Ratio Legis reflects deep thinking about why a law is made and what is to be achieved through the application of the law. Meanwhile, the term "corruption" itself has a long origin that comes from the Latin word "Corruptio" or "Corruptus," which means evil, immoral, or fraudulent acts. From Latin, the term evolved into "Corruption" in English and French, and "Korruptie" in Dutch. Generally, corruption refers to acts that erode integrity or honesty, especially with regard to public finances or the use of public power for personal gain. The term corruption is also known in Sanskrit, where it is used in the ancient text Negara Kertagama to describe corrupt, foul, depraved and dishonest acts, often relating to state finances. Semantically, the term "Corruption" comes from the English "Corrupt," which is a combination of two Latin words: "Com" meaning together, and "Rumpere" meaning to break or destroy. Therefore, corruption can be defined as a dishonest or misappropriated act committed by someone in a position of power or authority, often in exchange for a reward or bribe. In practice, corruption usually involves the receipt of money that is not officially recorded and is related to public office.[15]

Corruption cases in Indonesia receive special attention in the justice system, as stipulated by law that their resolution must be prioritized over other cases. This privilege reflects the view that corruption cases are major cases of public concern due to their far-reaching impact, both on state finances and on public confidence in the government. This can be seen in the legal process of corruption cases, where the Minutes of Investigation (BAP) prepared by investigators are often very thick and involve many witnesses, so the examination process can take a long time. However, despite the special attention to corruption cases, the regulations in the Corruption Eradication Law (UU-PTPK) still face various challenges, especially related to the differences in qualifications and rationality between Paragraph 2 and Paragraph 3 of the law.[16]

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[14] Dianita, Pujiyono, & Sutanti, R. D. (2023). The Criminalization Of Illicit Enrichment in Combating Corruption in Indonesia. Mahadi: Indonesia Journal of Law, 2(2), 165-174. https://doi.org/10.32734/mah.v2i2.13183

[15] Septiana, E. (2023). Juridical Analysis of the Judge's Decision on the Case of Planned Murder Committed by a Child (Case study of decision 5/Pid.Sus-anak/2023/PN.Mks). Proceedings Series on Social Sciences & Humanities, 14, 182–188. https://doi.org/10.30595/pssh.v14i.1032

[16] Alam, A. S., & Ilyas, A. (2010). Pengantar kriminologi. Makassar: Pustaka Refleksi Books.

Paragraph 2 of Law No. 31 Year 1999 jo. Law No. 20 of 2001 stipulates the elements of the crime of corruption, including any person who unlawfully commits an act to enrich himself, another person, or a corporation, which may cause losses to state finances or the national economy. The difference in qualifications between Paragraph 2 and Paragraph 3 often triggers debates on legal rationality, particularly regarding the amount of state loss required to be categorized as a corruption crime. It also involves consideration of whether every act of enriching oneself or others can always be classified as corruption, or whether there are other factors that should be considered, such as the intention of the perpetrator or the context of the act. The qualification of corruption offenses under Paragraph 2 and Paragraph 3 also reflects the complexity of the law in identifying and prosecuting perpetrators of corruption, and emphasizes the importance of Ratio Legis as a foundation in the formation and application of fair and effective laws to combat corruption.

Paragraph 2 and Paragraph 3 of the Corruption Eradication Law (UU-PTPK) stipulate criminal penalties with different provisions but also have some important similarities. In Paragraph 2, the penalties include imprisonment with a minimum duration of 4 years and a maximum of 20 years, as well as a minimum fine of Rp200,000,000 (two hundred million rupiah) to a maximum of Rp1,000,000,000 (one billion rupiah). Meanwhile, Paragraph 3 stipulates a criminal threat in the form of imprisonment with a minimum duration of 1 year and a maximum of 20 years, as well as a minimum fine of Rp100,000,000 (one hundred million rupiah) to a maximum of Rp500,000,000 (five hundred million rupiah). When examined further, the two Paragraphs show some similarities, such as the inclusion of the element "Every Person" and the statement that the criminal offense can harm state finances or the national economy.

The main difference between the two Paragraphs lies in the core of the formulation. Paragraph 2 includes the elements of "unlawfully" and "committing an act of enriching oneself or another person or a corporation," which focuses on actions that explicitly violate the law. Meanwhile, Paragraph 3 focuses more on the elements of "abusing the authority, opportunity, or means available to him because of his position or position," and "with the aim of benefiting himself or others or a corporation." Therefore, Paragraph 3 does not include the element of "unlawfully" as in Paragraph 2, but instead focuses on the abuse of power or opportunity that a person has by virtue of his or her position. This difference shows that Paragraph 3 has a broader reach than Paragraph 2.Paragraph 3 specifically regulates abuse of power as the core of the criminal offense, while Paragraph 2 focuses more on violations of the law that directly benefit themselves, others, or a corporation. The element of "abuse of authority" in Paragraph 3 is an important difference, because it is different from the element of "against the law" contained in Paragraph 2, thus providing a different approach in dealing with corruption cases according to UU-PTPK.

When analyzed from the perspective of the Criminal Code (KUHP), the differences between Paragraph 2 and Paragraph 3 of the Corruption Eradication Law (UU-PTPK) can be examined through the general principles of criminal law contained in the KUHP. Paragraph 2 of the Anti-Corruption Law reflects the more traditional principles of criminal law, where the element of "unlawfully" takes center stage. This is consistent with the principle in the KUHP that every criminal offense must be based on a clear violation of the law.

In the Criminal Code, the "unlawful" act is one of the main bases in establishing a criminal offense (delict). Therefore, Paragraph 2 of UU-PTPK emphasizes the importance of violating the law as a basis for imposing punishment on the perpetrator, where the action directly benefits oneself or others and causes losses to state finances. In contrast, Paragraph 3 of UU-PTPK expands the scope of criminal law by adding the element of "abuse of authority." In the context of the Criminal Code, abuse of authority generally relates to criminal acts committed by public officials who utilize their positions for personal gain. These acts of abuse of power are often difficult to categorize as "unlawful" in the traditional sense, as they may be formally lawful but carried out with dishonest or harmful intent.

Paragraph 3 therefore provides an opportunity to crack down on conduct that may not explicitly violate the law, but nonetheless compromises the integrity and fairness expected of a public official. From the perspective of the Criminal Code, the difference between these two Paragraphs can be seen as a reflection of different approaches to law enforcement. Paragraph 2 is more in line with a strict legalistic approach, where criminal law is applied to crack down on acts that explicitly violate the law. In contrast, Paragraph 3 reflects a more flexible and pragmatic approach, with an emphasis on abuse of power and ethical violations, even if the conduct does not clearly violate written law. Both approaches are important in criminal law, and in the context of the Criminal Code, demonstrate that law enforcement against corruption offenses requires consideration of both formal legal aspects and substantive justice and ethical aspects. Paragraph 3, with its focus on abuse of power, allows the legal system to address cases that may not fall under the strict definition of "unlawful", but are nonetheless detrimental to the public interest and the state.The distinction between the core of the offense (bestanddelen) and the elements of the offense (element delict) is a significant one in criminal law. Van Bemmelen explains that "bestanddelen" is an element that is explicitly stated in the formulation of the offense, while "element" is something that is inherently contained in the formulation of the offense. Hazewinkel-Suringa provides a similar view by equating "Samenstellen de Elementen" with "Bestanddelen," while the term "Kenmerk" is used to describe "element."

Indriyanto Seno Adji provides further explanation of the elements contained in Paragraph 3 of the Corruption Eradication Law (UU-PTPK). According to him, "abusing authority" is a "bestanddeel delict," while "with the purpose of benefiting..." is categorized as an "element delict." The difference between these two terms is very important, because the "bestanddeel delict" is always related to a punishable act (strafbare handeling), while the "element delict" does not directly determine whether an act is punishable or not. Andi Hamzah, however, has a different view. He disagrees with Indriyanto Seno Adji and argues that both "abusing the authority, opportunity, means available to him because of his position or position" and "with the aim of benefiting himself, another person or a corporation" are both part of the core of the offense (bestanddeel delict) because they are written in the formulation of the offense.[17]

According to Schaffmeister, this is known as "specifically against the law." This key difference in the elements of the offense, particularly between "against the law" in Paragraph 2 of UU-PTPK and "abuse of authority" in Paragraph 3, raises a fundamental question: What is the ratio legis or legal basis behind the difference between these two elements? Is abuse of power in Paragraph 3 actually a form of unlawful act mentioned in Paragraph 2? Abuse of authority, which is included as part of the core offense (bestanddeel delict) in Paragraph 3 of UU-PTPK, is not explained in detail in the law. The absence of a clear definition has consequences that implicate various interpretations among legal practitioners.

Leden Marpaung provides a definition of abuse of authority as an action that is contrary to the rights and obligations of a person in his position. Darwan Print explains that authority is power or rights, so that abuse of authority can be interpreted as the abuse of power or rights that a person has because of his position. According to him, abusing opportunities means abusing the time available due to position or position, while abusing means using available tools or facilities for purposes that are not in accordance with their authority. Hermien Hadiati Koeswadji provides a practical illustration of how abuse of authority can occur, such as when a state treasury employee deducts pensioners' money or an official establishes a company which is then involved in a project funded by the state.

[17] Rohrohmana, Basir. "The Element of Unlawful in Corruption (a Study of the Court's Decision of Corruption in the District Court Class IA Jayapura)." *Papua Law Journal*, vol. 1, no. 2, May. 2017, pp. 203-219. https://www.neliti.com/id/publications/279209/the-element-of-unlawful-in-corruption-a-study-of-the-courts-decision-of-corrupti#cite

The history of these laws shows that the main target of corruption eradication was initially public servants or state administrators, as stipulated in Law No. 28/1999 on Clean and Authoritative State Administration and Law No. 30/2002 on the Corruption Eradication Commission. Initially, the eradication of corruption in many countries also focused on government officials, as corruption was seen to be committed only by those with government authority or positions. The replacement of the Corruption Eradication Law from Perpu No. 24 of 1960, which was later revoked by Law No. 3 of 1971, was carried out because the previous law was considered unable to accommodate the various new methods used to commit corruption. This statement was made by Minister of Justice Oemar Senoadji in his explanation before the DPR-GR on August 28, 1971. The government felt the need to add the element of "against the law" in Paragraph 2 as the core of the crime of corruption, replacing the term "Crimes and/or Offenses" that existed in Law No. 24 of 1960. Another fundamental change is regarding the legal subject of the crime of corruption. Since the amendment of the Corruption Eradication Law in Law No. 31 of 1999, in addition to public servants, corporations and private individuals are also recognized as legal subjects in the crime of corruption. These legal subjects are described in more detail in Law No. 31 of 1999, including new criteria that include corporations as one of the legal subjects.[18]

In Law No. 31/1999, the three legal subjects regulated include: public servants in a broad sense, natural persons, and corporations. The term "public servant" is explained in Paragraph 1 number 2, while the terms "individual" and "corporation" are explained in Paragraph 1 number 3. With the changes regulated in Law No. 31 of 1999, the legal subjects of corruption have become more complete and comprehensive in law enforcement related to corruption to date. The difference in legal subjects targeted in Law No. 31 of 1999 needs to be understood by referring to the general explanation in Law No. 3 of 1971. The elucidation states that civil servants as subjects of corruption crimes do not only include civil servants in the context of administrative law, but also include individuals who receive certain duties from state bodies. This explains the need to expand the definition of legal subjects to include people who may not be formally civil servants, but still have the potential to commit acts of corruption.

In law enforcement related to corruption in Indonesia, the implementation of provisions in the Corruption Crime Law (Corruption Crime Law) is not always evenly distributed. Law enforcement officials, such as the police, prosecutors, and the Corruption Eradication Commission (KPK), seem to have a tendency to use certain Paragraphs more often than others. Based on the processed data, it was found that of the 30 types of corruption offenses regulated in the Anti-Corruption Law, only 20 categories of Paragraphs were used in the prosecution of 735 corruption convicts. This indicates that there are a number of provisions in the Anti-Corruption Law that are rarely or even never used in the law enforcement process. The Paragraph most frequently used by public prosecutors in corruption cases is Paragraph 3 of the Anti-Corruption Law, which relates to abuse of authority. As many as 68.43% or around 503 out of 735 cases used this Paragraph to ensnare corruption offenders. Paragraph 3 provides a minimum penalty of one year for officials who abuse their authority that can harm state finances or the state economy. The use of this Paragraph is quite dominant because abuse of authority is often the core of corruption crimes involving public officials or civil servants. In addition to Paragraph 3, Paragraph 2 of the Anti-Corruption Law is also often used by prosecutors. This Paragraph regulates acts of enriching oneself or others that can harm state finances. About 20% or 147 corruption cases are prosecuted using this Paragraph. Paragraph 2 provides a more severe criminal penalty than Paragraph 3, with a minimum sentence of four years in prison. The use of these

[18] Ariani, S. A. F., & Prasetyoningsih, N. (2022). Fighting Corruption Post Revision of the Act of the Corruption Eradication Commission. Media of Law and Sharia, 3(3), 235–254. https://doi.org/10.18196/mls.v3i3.13232

two Paragraphs shows that acts that harm state finances, either through abuse of authority or acts of self-enrichment, are the main pattern in corruption cases in Indonesia.[19]

However, some Paragraphs in the Anti-Corruption Law are rarely or never used in prosecutions. For example, Paragraph 7 which regulates fraudulent acts, such as in the procurement of infrastructure projects, has never been used by law enforcement officials, despite numerous cases in court showing evidence of fraudulent acts. This raises questions as to whether law enforcement officials choose to focus on offenses that are easier to prove or that have a greater chance of reaching a favorable verdict.

In addition, Paragraph 12 letter i, which regulates conflict of interest in the procurement of goods and services, is also rarely used. In fact, cases involving public servants in procurement, contracting or renting are often revealed in court. The non-use of this Paragraph indicates a gap between the available legal provisions and their application in the field. This may be due to the difficulty of proof, the lack of supervision in the procurement of goods and services, or the lack of understanding by law enforcement officials of the importance of this Paragraph in ensnaring perpetrators of corruption.

In terms of sentencing, the data shows that the majority of corruption defendants receive relatively light sentences. Around 76.8% or 546 defendants received sentences of less than four years in prison, with 39% of them sentenced to only one year in prison. In contrast, only 23.3% of defendants were sentenced to four years or more in prison, with 91 of them receiving exactly four years. The average sentence handed down by the courts was around two years and three months, which is lighter than the average prosecutor's recommendation of three years and two months. The difference of almost a year between the charges and the sentences raises questions about the effectiveness of sentences in providing a deterrent effect to perpetrators of corruption. Sentencing effectiveness is a major concern in the context of corruption eradication in Indonesia. Relatively light sentences, as reflected in the average sentence, are considered insufficient to provide a deterrent effect. Therefore, there have been calls for legal breakthroughs to increase the proportionality and severity of punishment for perpetrators of corruption. One of the proposed ways is to apply jurisprudence or precedent from decisions that have succeeded in providing a significant deterrent effect on corruption offenders. This approach aims to ensure that the penalties imposed not only serve as a form of sanction, but also as an effective deterrent against future corruption crimes.

On the other hand, the concept of proportionality in sentencing has also been highlighted. The principle of proportionality requires that the punishment imposed be proportional to the actions committed by the defendant and the impact caused. However, in practice, this principle is often overlooked both in the formulation of the law and in the imposition of punishment. The vagueness in the determination of criminal penalties by legislators, especially in the Anti-Corruption Law, reflects the lack of attention to the principle of proportionality. For example, the criminal punishment in Paragraph 2 paragraph (1), which regulates material offenses, is more severe than Paragraph 3, which regulates the offense of abuse of authority. In fact, abuse of authority is often considered more serious because it can only be committed by public officials or state administrators.

In addition, the comparison of criminal penalties in the Anti-Corruption Law with other laws, such as the Banking Law, also shows a striking imbalance. Criminal penalties for banking offenses, which are categorized as administrative offenses, can reach 15 years in prison and a fine of up to Rp200 billion. Meanwhile, criminal penalties for corruption offenses that harm state finances are often lighter. This imbalance raises questions as to whether legislators have properly considered the seriousness of the

[19] Abdullah, A., & Mustomi, O. (2023). LAW ENFORCEMENT AGAINST CORRUPTION ERADICATION COMMISSION BASED ON LAW NO 19/2019. SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum, 2(5), 495–502. https://doi.org/10.55681/seikat.v2i5.957

offense in determining criminal penalties. Therefore, further studies are needed to assess whether the policy of determining criminal sanctions in the Anti-Corruption Law has reflected the expected principle of proportionality. Without a clear system of ranking the seriousness of the offense, it is difficult to conclude that the current criminal policy is fair and in accordance with the principle of proportionality. The imbalance in the determination of criminal threats has the potential to weaken public confidence in the criminal justice system and create injustice for the defendant.[20]

CONCLUSION

In an effort to eradicate corruption, it is necessary to adjust the ratios and considerations in the formulation of the law to reflect the seriousness of the criminal offense and the appropriate criminal penalties. Currently, the criminal penalties in the Criminal Code often do not reflect the real impact of corruption crimes, so the penalties imposed are often disproportionate. To improve fairness in sentencing, an in-depth assessment of economic and social losses, as well as the position of the offender, is essential. In addition, corruption-fighting strategies should include good leadership, public program reforms to reduce bribery incentives, as well as improved government organization and consistent law enforcement. Law enforcement needs to be supported by the role of society and effective corruption prevention agencies, which work transparently and are adequately resourced. The system of criminal penalties should be improved to be proportionate, by ensuring a match between prosecutors' charges and final sentences through clear sentencing guidelines. The principle of proportionality must be observed in any sentencing, particularly in high-profile cases, with the application of jurisprudence supporting harsher sentences. In this context, Article 2 and Article 3 of the Anti-Corruption Law should be applied appropriately to ensure that sentences are fairer and proportional to the social and economic impact of the crime.

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