

ERADICATION OF CRIMINAL ACTS OF CORRUPTION: SYSTEMIC STRATEGY AND RECONSTRUCTION OF THE EVIDENCE PARADIGM IN INDONESIAN CRIMINAL LAW

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Abstract

Corruption remains a serious problem in the Indonesian legal system, not only because it causes state financial losses but also weakens public trust in government institutions and undermines the principle of the rule of law. The development of corruption shows an increasingly complex pattern, both in terms of the number of cases and the modus operandi used by perpetrators. This condition demands a systemic eradication strategy and the reconstruction of the evidentiary paradigm in criminal law to increase the effectiveness of law enforcement against corruption. This study aims to analyze the strategy to eradicate corruption through a systemic approach and examine the reconstruction of the evidentiary paradigm in Indonesian criminal law. This study uses a normative juridical research method with a statutory and conceptual approach, supported by a literature review of various criminal law and corruption eradication law literature. The results show that corruption eradication cannot rely solely on conventional law enforcement but requires a comprehensive legal system reform that includes institutional strengthening, regulatory refinement, and increased coordination between law enforcement agencies. In addition, the reconstruction of the evidentiary paradigm, particularly through expanding the meaning of the unlawful element and the implementation of more progressive evidentiary mechanisms, is a crucial factor in addressing the complexity of corruption. Therefore, strengthening the legal framework and evidentiary system is a strategic step in realizing more effective and equitable corruption eradication efforts in Indonesia.

Keywords: Corruption Eradication, Criminal Law Policy, Evidence Paradigm, Systemic Strategy

INTRODUCTION

Corruption is a structural problem that seriously hampers development, undermines governance, and undermines public trust in state institutions. In the context of a developing country like Indonesia, corruption not only impacts state finances but also causes widespread social harm, such as increasing social inequality, declining quality of public services, and hampered economic development. Therefore, eradicating corruption is a key agenda in the Indonesian criminal justice system (Hamzah, 2015).

The crime of corruption in Indonesia has become so widespread, its development continues to increase from year to year, both in the number of cases, state financial losses and its modus operandi, is carried out systematically and its scope has penetrated all lines of community life, so that the crime of corruption is classified as an extraordinary crime. The complexity of the modus operandi of the crime of corruption, not only demands renewal of the method of proof, but has demanded the formation of a new institution in the effort to eradicate it (Atmasasmita, 2000).

Normatively, the state has established a sufficiently strong legal framework to eradicate corruption through various regulations, including Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was later updated through Law Number 20 of 2001 concerning Amendments to the Law on the Eradication of Criminal Acts of Corruption. In addition, the establishment of the Corruption Eradication Commission (KPK) through Law Number 30 of 2002 concerning the Corruption Eradication Commission marks the state's commitment to strengthening efforts to eradicate corruption more effectively and independently. However, despite the establishment of various legal instruments, corrupt practices continue to occur with increasingly complex and systematic patterns (Atmasasmita, 2018).

Authorized institutions have also taken action, whether by the Police or the Prosecutor's Office and other related institutions, through criminal instruments in the past are considered to have not shown encouraging results. Based on these considerations, in addition to replacing existing legislative products that regulate the eradication of criminal acts of corruption, the Corruption Eradication Commission (KPK) has also been established. This commission is a special body with broad, independent authority that is free from any power and whose implementation is carried out optimally, intensively, effectively, professionally and continuously, has the authority to coordinate, supervise, including conducting investigations, inquiries, and prosecutions.

In fact, various efforts have been made to combat corruption, with the formation of various commissions/agencies/teams in law enforcement agencies and institutions such as in the Indonesian National Police there is the Corruption Eradication Directorate which is under the Criminal Investigation Agency, while in the Attorney General's Office there is the Special Criminal Investigation Agency, one of whose focuses is to eradicate corruption and various policies have also been issued in various laws and regulations, but it seems that these efforts have not shown the expected results by the public, although recently the Attorney General's Office has begun to show results, but it is still felt that it needs to be improved. This criminal act of corruption has been likened to a malignant cancer that spreads throughout the body after being irradiated, thus placing Indonesia as the most corrupt country in the last few decades.

The above phenomenon demonstrates that criminal law cannot do much to combat corruption. Sudarto's statement is true: "Eradicating corruption cannot be achieved solely through legal regulations, even with harsh criminal sanctions, because the reach of criminal law is limited" (Sudarto, 1996). This phenomenon demonstrates that a repressive approach to eradicating corruption through law enforcement alone is not sufficient; it requires a systemic and comprehensive strategy. This systemic approach positions corruption eradication as part of governance reform, improving oversight systems, increasing transparency, and strengthening public participation. From this perspective, corruption is understood as a crime

closely related to power structures, bureaucratic culture, and institutional weaknesses, so that its eradication strategy must involve various policy instruments in an integrated manner (Klitgaard, 1988).

In addition to eradication strategies, another challenge that arises in the practice of enforcing corruption laws is the issue of proof. Corruption is often committed covertly, involves networks of power, and utilizes complex administrative mechanisms, making it difficult to prove using conventional evidentiary approaches in criminal law. The evidentiary system in Indonesian criminal procedure law, which is fundamentally oriented towards the principle of "negativ wettelijk bewijs theorie" (negative wettelijk bewijs theorie) as stipulated in the Criminal Procedure Code, often faces limitations in uncovering organized and power-based corruption crimes (Mertokusumo, 2010).

To address this issue, Indonesian anti-corruption law has introduced several specific evidentiary concepts, such as the reversal of the burden of proof, particularly regarding proving the origin of the defendant's wealth. This mechanism represents a limited deviation from the general principles of proof in criminal law, with the aim of facilitating the prosecution of corruption crimes that are difficult to uncover using conventional methods (Chazawi, 2016).

However, the application of the reversal of the burden of proof continues to generate debate in both practice and academic studies. While this mechanism is considered crucial for strengthening the effectiveness of corruption eradication, it also raises concerns about potential violations of the presumption of innocence and the protection of the defendant's human rights (Asshiddiqie, 2019). Therefore, a reconstruction of the evidentiary paradigm in criminal law is needed that balances the interests of effective corruption eradication and the protection of basic principles of criminal justice.

Based on the description, it can be understood that the eradication of corruption in Indonesia requires an approach that is not only repressive, but also systemic and supported by the reconstruction of the paradigm of proof that is more adaptive to the characteristics of corruption crimes. This research is important to analyze the strategy of eradicating corruption systematically while examining the possibility of reconstructing the paradigm of proof in Indonesian criminal law in order to increase the effectiveness of law enforcement against corruption crimes. Overcoming corruption crimes requires a strategy, not only a concern or from the side of law enforcement officers alone, but also all components of the nation, so that there is a common perception regarding the meaning, causes, impacts and sanctions for perpetrators of corruption crimes.

IMPLEMENTATION METHOD

In this study, the researcher employed normative legal research, a legal research method conducted by examining literature (secondary data) and applicable legal norms as the primary object of study. Normative legal research focuses on analyzing laws and regulations, legal principles, doctrines, and legal concepts relevant to the research problem. Through this approach, the researcher seeks to understand and examine law as a system of norms that regulate behavior in society.

Normative legal research aims to examine and analyze law from both conceptual and normative perspectives, encompassing legal rules, legal principles, legal doctrines, legal theories, and various literature related to the research problem. The data sources used in this study are secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations relevant to the research topic, while secondary legal materials include books, scientific journals, previous research results, and the opinions of legal experts that support the research analysis. Tertiary legal materials, such as legal dictionaries, encyclopedias, and other relevant reference sources, are used as supporting sources.

Through a review of these various sources, this research is expected to provide a systematic and comprehensive analysis of the legal issues under study. Therefore, normative legal research not only describes applicable legal provisions but also provides legal interpretations and arguments to scientifically address the research problem (Muhaimin, 2020).

RESULTS AND DISCUSSION

Definition and causes of corruption.

In general, the term corruption has been used to describe various illicit, illegal, and unlawful acts committed by individuals for personal or group gain. Broadly speaking, corruption encompasses not only the misuse of state funds but also all forms of abuse of power carried out dishonestly and in violation of legal norms and public ethics. Therefore, corruption is often understood as a deviant practice that occurs when an individual exploits their position, authority, or resources for personal or group gain (Klitgaard, 1988).

In the development of modern legal and social science studies, the definition of corruption has been further clarified, placing the element of abuse of public power at the core of corrupt practices. Corruption is understood as the misuse of a position or authority entrusted to an individual within a public institution for personal, family, or group gain. This definition is widely used in international studies on governance and corruption eradication, as it positions corruption as a violation of the principles of accountability and integrity in the exercise of public power (Rose-Ackerman, 1999). Thus, corruption is not only seen as a violation of criminal law, but also as a form of moral and institutional deviation that damages the system of good governance.

Etymologically, the term corruption has quite extensive roots in various languages. The word "corruption" originates from the Latin "corruptio" or "corruptus," meaning damage, depravity, or deviation from a proper state. The term was later adopted into various European languages, such as "corruptie" in Dutch and "corruption" in English, which generally refer to

the abuse of power or office for illegitimate gain (Hamzah, 2015). In the development of Indonesian, the term "corruption" is used to describe acts related to fraud, dishonesty, and the misuse of state finances or public power.

Furthermore, the concept of corruption can also be found in various classical literatures in the Indonesian archipelago. Ancient manuscripts such as the *Negarakertagama*, originating from the Majapahit kingdom, contain terms describing the behavior of officials who engage in irregularities, dishonesty, and acts that undermine the order of government. Literally, terms related to "corrupt" denote acts that are damaged, rotten, depraved, and dishonest, especially when associated with financial management or power. This shows that the concept of abuse of power and irregularities in the management of public wealth has actually been known for a long time in the tradition of government in the archipelago (Muljana, 2006).

Thus, both etymologically and conceptually, corruption can be understood as the dishonest abuse of power or position for personal or group gain. This definition emphasizes that corruption is not merely a violation of administrative or financial law, but a serious violation of the integrity of public power that has the potential to undermine a country's social, economic, and political systems.

In general, the term "corruption" has referred to various illicit and illegal acts for personal or group gain. However, in recent developments, various definitions of corruption have emphasized the abuse of power or public position for personal, group, or class gain.

The legal definition of corruption, both its types and elements, has been expressly regulated in Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. In these laws, criminal acts of corruption are grouped into several types of crimes, including:

- 1) A group of crimes that can harm state finances or the national economy.
- 2) Bribery, both active (the briber) and passive (the bribed).
- 3) Embezzlement.
- 4) Extortion.
- 5) Crimes related to contracting, suppliers, and partners.

The definition of corruption can be viewed from various perspectives, including criminology, sociology, culture, politics, economics, law, philosophy, and so on. Legally, the definition of corruption according to its types is contained in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was amended by Law Number 20 of 2001. In this law, corruption is defined not only as acts that harm state finances or the economy, but also as other acts, such as bribery and extortion in exchange for office. This law also regulates other crimes related to corruption, including a civil servant who abuses power by forcing someone to do or not do something or allowing someone to do something, and a civil servant who uses coercion in a criminal case, either to extort a confession or to obtain information.

Corruption does not emerge suddenly, but is influenced by various interrelated factors, including individual, structural, and cultural ones. In criminology and legal studies, corruption is understood as a complex social phenomenon involving the interaction of power, opportunity, and weak oversight within the government system. Therefore, to comprehensively understand corruption, an analysis of its underlying causal factors is

necessary.

One theory often used to explain the causes of corruption is that put forward by Robert Klitgaard, who states that corruption occurs when there is a combination of monopoly power, substantial discretion, and weak accountability. Klitgaard formulated this concept in the famous formula: $\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}$. This means that when an individual or institution holds significant power without adequate oversight and accountability mechanisms, the opportunity for corruption increases (Klitgaard, 1988).

In addition to these structural factors, the causes of corruption can also be seen in individual morality and integrity. Low integrity among public officials, weak ethical values, and an excessively materialistic orientation can lead individuals to abuse their positions. From this perspective, corruption is often viewed as a form of behavioral deviation that arises from weak self-control and low moral awareness in carrying out the mandate of public office (Alatas, 1987).

In addition to individual factors, institutional factors also have a significant influence on the occurrence of corruption. A non-transparent bureaucratic system, complex administrative procedures, and weak internal oversight systems can create significant opportunities for corrupt practices. These conditions are often exacerbated by weak law enforcement, resulting in inadequate deterrents for corruptors (Atmasasmita, 2018).

Other factors contributing to corruption include cultural and social factors. In some cases, corrupt practices can flourish due to a permissive culture in society that views corruption as normal or even an unavoidable part of bureaucratic practice. A culture of patronage, nepotism, and the uncontrolled practice of giving gifts or gratuities can also serve as gateways for corruption in various sectors of society (Alatas, 1987).

Based on an analysis conducted by the Financial and Development Supervisory Agency (BPKP), the occurrence of criminal acts of corruption is influenced by several interrelated aspects. First, from the individual aspect of the perpetrator, corruption can be triggered by human greed, weak morals in the face of temptation, and a consumptive lifestyle that encourages individuals to obtain illegal profits. Second, from the organizational aspect, corrupt practices can occur due to a lack of exemplary behavior from leaders, the failure to establish an organizational culture that upholds integrity, weaknesses in the management control system, and the tendency of management to cover up corrupt practices that occur within their organizations. Third, from the societal aspect, the values that develop in society are sometimes permissive or conducive to corruption. In addition, low public awareness that corrupt practices ultimately harm the public interest also contributes to the continuation of these actions. Fourth, from the legal regulatory aspect, corruption can be influenced by inadequate regulatory quality, lack of socialization of applicable regulations, and inconsistent and discriminatory application of legal sanctions. These four aspects show that corruption is a complex problem that is not only related to individuals, but is also influenced by organizational systems, social conditions in society, and the effectiveness of applicable regulations.

Based on the BPKP's analysis, it can be concluded that the causes of corruption are multifaceted and complex. Many believe that corrupt practices stem from the weak legal system in Indonesia. Corruption seems to have spiraled out of control, becoming widespread and systematic, rife not only during the Old and New Order eras, but also during the

Reformation era (BPKP, 1999). Meanwhile, according to Jeremy Pope, the root cause of corruption is poverty; without it, there would be no corruption. However, while poverty is a cause of corruption, it is not the only one. (Jeremy, 2003) While Jeremy Pope's opinion is not entirely correct, we cannot ignore the fact that the factors that stimulate corruption are indeed very diverse, such as low morals and faith, ineffective and inefficient oversight, consumerism, and low public legal awareness.

It's no exaggeration that Bung Hatta once stated that corruption has become a part of Indonesian culture. In eradicating corruption, the focus of attention is inseparable from the factors that stimulate its rise. This should be placed at the center stage, from which a strategy can be found that provides the right formula for therapy, considering that so far the focus has been solely on criminal instruments. In addition to welfare factors, oversight, as one of the management functions, is an essential factor as therapy. This oversight must be carried out optimally across all sectors that can provide opportunities for corruption to occur. Furthermore, consistent action must be taken on any findings. For example, in development projects, oversight begins during planning and continues continuously throughout implementation. Although welfare factors are relatively good with a substantial income and supported by strong faith/religion among civil servants, if opportunities arise without oversight, it is difficult to prevent corruption from occurring. Many cases brought to court recently involve perpetrators with sufficient income, but due to a lack of oversight and the presence of greed and vested interests, corruption occurs. Existing supervisory institutions, whether structural, functional, or social and community oversight, appear to be underperforming, thus constituting a weak point in the eradication of corruption. This aligns with the aforementioned understanding that legal instruments are not the sole means of combating corruption. Even with the imposition of heavy sanctions, they will have no deterrent effect without the support of individual, organizational, and societal factors. Nevertheless, legal instruments remain crucial in eradicating corruption when enforced consistently and in accordance with applicable laws, particularly for corruption committed during disasters or other special circumstances.

After welfare and supervision, which are essential factors, faith, which leads to exemplary behavior, is closely linked to morality, which fosters a culture of shame, a sense of shame about committing corruption. Furthermore, other factors that can act as incentives, such as welfare, a consumerist lifestyle, socialization efforts, the implementation of laws and regulations, must be implemented simultaneously.

Corruption is a form of crime that has a far-reaching impact on various aspects of society. Corruption not only causes financial losses to the state but also damages the social, economic, political, and legal systems within a country. Therefore, corruption is often viewed as a crime with systemic impacts because it can hinder national development and undermine public trust in state institutions (Alatas, 1987).

According to Susan Rose-Ackerman, corruption can lead to inefficiency and injustice, which can undermine the state's political legitimacy, indicating deeper problems in the state's dealings with the private sector (Susan, 1999). Selo Soemarjan stated that corruption, collusion, and extortion can not only undermine the authority of the state and government but can also lead to a high-cost economy that increases product prices and reduces business competitiveness (Soemarjan, 1978).

The Asian Development Bank (ADB) in its Anti-Corruption Policy states that corruption typically causes more harm than good to a country's development. The ADB concludes that corruption leads to inefficient producer selection, unfair and unequal distribution of limited public resources, and the leakage of government savings into the hands of individuals. This indirectly, but no less detrimental, corruption results in a loss of trust in the government (Asian Development Bank, 1998).

The various opinions above are truly concerning. If corruption does not receive serious attention from all components of the nation and efforts are not immediately made to eradicate it, it will have a broad impact on the life of the nation and state, as well as on regional and international relations. Not only does this act harm the state, damage the foundations of development, injustice, legal certainty, and inefficiency due to high costs (high-cost economy) and decreased competitiveness in global trade, but it also reduces the authority of the state and government and the loss of public and international trust in the government.

Strategies in Eradicating Criminal Acts of Corruption

In fact, various efforts have been taken by the Government to eradicate the crime of corruption, both preventive and repressive, starting from preparing the legal instruments and the establishment of implementing institutions. The laws and regulations on corruption have undergone several changes, both those contained in the Criminal Code in the form of offenses related to crimes against public authorities and those contained in offenses related to crimes of office, as well as those regulated in regulations or laws. Since the issuance of Military Ruler Regulation Number: PRT/PM/011/1957 concerning the Eradication of Corruption, which was then replaced by the Regulation of the Central Military Ruler of the Army Number: PRT/PEPERPU/013/1958 concerning the Investigation, Prosecution and Examination of Corruption, Criminal Acts and Ownership of Property, which then resulted in the issuance of Government Regulation in Lieu of Law Number 24 of 1960 concerning the Investigation, Prosecution, Examination of Corruption Crimes which became Law with the issuance of Law Number 1 of 1961, then replaced again by Law Number 3 of 1971 concerning the Eradication of Corruption Crimes which was then replaced again by Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which was amended based on Law Number 20 of 2001 and the last is Law Number 30 of 2002 concerning the Criminal Eradication Commission. Corruption which was then most recently amended by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. In addition to the Criminal Act Regulations or Laws, various provisions accompany it, including MPR Decree Number XI / MPR / 1998 concerning Clean and Corruption-Free State Administrators, Collusion and Nepotism and MPR Decree Number VIII / MPR / 2001 concerning Recommendations for Policy Directions for Eradication and Prevention of Corruption, Collusion and Nepotism, Law Number 28 of 1999 concerning Clean and Corruption-Free State Administrators, Collusion and Nepotism, while the institutions formed to assist in the eradication of criminal acts of corruption that have been carried out by the Prosecutor's Office and the Police.

In addition, various institutions related to the eradication of criminal acts of corruption have also been formed, at the beginning of 1967 the Corruption Eradication Team (TPK) was formed from 1967 to 1982 under the control of the Attorney General chaired by Attorney

General Sugih Arto, then the Commission of Four (K4) January - May 1970 chaired by Wilopo, the Anti-Corruption Committee (KAK) June - August 1970 with members of the Class of 66 such as Akbar Tanjung, et al, then the Order Operation (Opstib, based on Presidential Instruction No. 9 of 1977) was formed with members of the Minister of Administrative and Bureaucratic Reform, the Commander of the Security and Order Coordination Command and the Attorney General assisted by regional officials and the Chief of Police, the Corruption Eradication Team (1982) chaired by MA Mudjono, then based on Government Regulation No. 19 of 2000 the Joint Corruption Eradication Team was formed chaired by Adi Handoyo, SH and the most recent The State Officials' Wealth Audit Commission (KPKPN), chaired by Yusuf Syakir, is in addition to civil society organizations concerned with corruption, such as Indonesian Corruption Watch (ICW), the Indonesian Transparency Society (MTI), KONSTAN, and others. In addition to these institutions, there are also financial and government oversight bodies or institutions established under the Constitution or other laws or regulations issued by the government, such as the Supreme Audit Agency (BPK), the Coordinating Minister for Economic Affairs and Development, the Financial and Development Supervisory Agency (BPKP), the Inspector General, the Inspectorate General, the Non-Departmental Institution Supervisory Agency (Banwasda), the Provincial and Regency/City Bawasda. Ironically, these laws and institutions seem unable to reduce or even remove Indonesia from the ranks of the most corrupt countries in the world in recent decades. In fact, there is a trend of increasing corruption in Indonesia, while hundreds of corruption case files are submitted to the courts each year.

Therefore, based on the results of a poll conducted at the corruption prevention and eradication workshop in Indonesia held at the Vice President's Palace on December 16, 1997, three strategies for eradicating corruption were established, namely (Amien, 1997):

- 1) A preventive strategy must be developed and implemented, targeting the causes of corruption. Preventive measures must be implemented for each identified cause of corruption, thereby minimizing the potential for corruption. Furthermore, efforts must be made to minimize opportunities for corruption. Based on this rationale, numerous measures must be implemented as part of the preventive strategy, involving various parties.
- 2) A detective strategy must be developed and implemented, particularly with a focus on ensuring that if an act of corruption has already occurred, it can be identified as quickly and accurately as possible, allowing for prompt and appropriate follow-up. Based on this rationale, numerous systems must be improved so that they can function as alarms, quickly providing a signal when an act of corruption occurs.
- 3) Repressive strategies must be developed and implemented, primarily aimed at providing appropriate legal sanctions quickly and appropriately to those involved in corruption. Based on this rationale, the corruption handling process, from the investigation, inquiry, and prosecution stages to the trial, needs to be reviewed to improve all aspects, ensuring swift and appropriate handling.

The government under Prabowo Subianto's leadership has undertaken various efforts to eradicate corruption, including instructing ST Burhanuddin as Attorney General and Listyo Sigit Prabowo as Chief of Police to optimize investigations and prosecutions of corruption to

punish perpetrators and mitigate state financial losses (Attorney General's Office of the Republic of Indonesia, 2024). Furthermore, the government has emphasized the importance of preventive measures by imposing strict sanctions against abuse of authority by state civil servants (ASN), while strengthening coordination and cooperation between law enforcement agencies, such as the Attorney General's Office of the Republic of Indonesia, the Indonesian National Police, the Financial and Development Supervisory Agency, and the Financial Transaction Reports and Analysis Center (PPATK), in order to increase the effectiveness of law enforcement and recover state financial losses due to corruption (Attorney General's Office of the Republic of Indonesia, 2024; PPATK, 2023).

The Attorney General's Office, through the Attorney General's Office of the Republic of Indonesia, has established a Special Task Force for Handling Corruption Crimes (Satgas Penanganan Tindak Pidana Korupsi/Tastipikor), whose primary duty is to conduct investigations, inquiries, and prosecutions of corruption cases in accordance with applicable criminal procedural law. Furthermore, the task force is also tasked with searching for and arresting perpetrators strongly suspected of committing corruption, as well as tracing and securing assets derived from the proceeds of crime in order to optimize the recovery of state financial losses (Attorney General of the Republic of Indonesia, 2023).

In addition to these law enforcement efforts, the government is also strengthening policies through updating legislative products related to corruption eradication. Efforts to revise or create new laws and regulations are carried out to strengthen the authority of law enforcement institutions so that they are able to reach various developments in the increasingly complex modus operandi of corruption crimes. This step also aims to minimize legal loopholes that have often been exploited by perpetrators of corruption to avoid criminal accountability (Atmasasmita, 2018). One of the main legal foundations in eradicating corruption in Indonesia is Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to the Law on the Eradication of Criminal Acts of Corruption, which provides a normative basis for law enforcement officials in prosecuting various forms of corrupt acts and recovering state financial losses.

One form of such effort is to expand the system of proof of corruption crimes, one of which is by expanding the definition of indicative evidence that is commonly applied in the Criminal Procedure Code, obtained from witness statements, letters and statements of the accused. The definition of indicative evidence for corruption crimes, is not only based on the definition of indicative evidence in the Criminal Procedure Code, but based on Article 26A of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, expanded and can be obtained from:

- 1) other evidence in the form of information spoken, sent, received, or stored electronically using optical or similar devices; and
- 2) documents, namely any recording of data or information that can be seen, read, and/or heard that can be produced with or without the aid of a medium, whether written on paper, any physical object other than paper, or recorded electronically, in the form of writing, sound, images, maps, designs, photographs, letters, signs, numbers, or perforations that have meaning.

Furthermore, the Indonesian criminal law regime recognizes the principle of legality, as formulated in the adage "*nullum crimen sine lege*" or "*nullum delictum sine previa lege poenali*," which means that no act can be punished except under pre-existing statutory provisions (Moeljatno, 2008). This principle is a fundamental principle in criminal law, emphasizing that the imposition of criminal penalties must be based on clear and pre-established legal regulations. Over time, the application of this legality principle has been expanded in the corruption eradication regime, particularly through Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law Number 20 of 2001 concerning Amendments to the Corruption Eradication Law. This law not only confirms that the crime of corruption is a formal crime, namely an act that is considered complete when the elements of the act have been fulfilled without having to wait for certain consequences to arise, but also broadens the definition of the unlawful element in the crime of corruption, both in the formal and material sense (Chazawi, 2016).

The formal definition of "unlawful" refers to acts that explicitly violate applicable laws and regulations. Meanwhile, the material definition of "unlawful" also encompasses acts that, while not explicitly violating written provisions, nevertheless contradict a sense of justice, norms of propriety, and the principles of good governance. Therefore, the broadening of the definition of "unlawful" in corruption is intended to strengthen the effectiveness of law enforcement in addressing various forms of abuse of power that harm state finances and the interests of the wider community (Hamzah, 2015).

A formal offense is defined as an act that can be declared a crime if it meets the definition of a crime, without necessarily causing consequences. Therefore, even if the proceeds of corruption have been returned to the state, this does not erase the unlawful nature of the act, and the perpetrator of the corruption can still be brought to court and punished.

The formal and material definition of "unlawful" means that the act not only contradicts applicable laws and regulations but also constitutes reprehensible behavior and violates society's sense of justice, as defined in the General Explanation:

"That an act is said to be against the law, in the formal and material sense, if the criminal act of corruption includes reprehensible acts which according to the sense of justice of society must be prosecuted and punished."

The legislators' considerations for including elements of unlawfulness, both formal and material, in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption include:

- 1) First, given that corruption is systematic and widespread, not only harming the state's finances and economy but also violating the social and economic rights of the wider community. Therefore, it is classified as an extraordinary crime. Its eradication must be carried out with extraordinary measures.
- 2) Second, the impact of criminal acts of corruption, in addition to harming the state's finances and economy, also hinders the growth and sustainability of national development, which demands high efficiency.
- 3) Third, in an effort to respond to evolving legal needs within society, to facilitate the provision of evidence, thereby addressing the increasingly sophisticated and complex modus operandi of financial or economic irregularities.

The expansion of the definition of material unlawfulness above, *expressis verbis*, represents an extension of the principle of legality in Book I of the Criminal Code. The considerations of the lawmakers mentioned above appear to align with the expanded formulation of the principle of legality as adopted in the draft of the new Criminal Code. The new Criminal Code is based on the principle of mono-dualistic balance. This mono-dualistic view is commonly known as "daad-dader strafrecht," meaning that criminal law considers not only the objective aspects of the "act" (daad) but also the subjective aspects of the "person/perpetrator" (dader) (Barda, 2002).

The concept of the Criminal Code expands the teaching of unlawfulness in both formal and material terms, recognizing the existence of living law (unwritten law/customary law) as the basis for punishing an act as long as it is not similar to or regulated by law. This broadening of the legality principle is inseparable from the underlying idea of realizing and simultaneously guaranteeing the balance between individual and societal interests, and between legal certainty and justice.

With this broadening of the legality principle, the boundaries of criminal acts have also expanded, based not only on formal criteria stipulated by law but also encompassing material criteria derived from the legal values inherent in society (living law) (Moeljatno, 2008). This line of thought then developed, emphasizing the adoption of the view of material unlawfulness, namely that an act can be considered a crime not only because it violates written statutory provisions, but also because it violates a sense of justice, norms of propriety, and prevailing legal principles within society (Hamzah, 2015). With this affirmation, the unlawful nature is seen as an essential and absolute element in a criminal act. In the context of criminal acts of corruption regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to the Law on the Eradication of Criminal Acts of Corruption, the concept of unlawfulness plays an important role in the process of proof in court (Chazawi, 2016).

Based on this classification of unlawful nature, the scope of proving the unlawful element in corruption cases is broader, extending beyond violations of written regulations to include acts that materially contradict the principles of justice and propriety in governance. Therefore, in proving a corruption crime, the unlawful element is crucial and decisive in assessing the perpetrator's criminal liability (Chazawi, 2016; Hamzah, 2015).

According to Sudarto, including the unlawful element in the material sense, in addition to the formal sense in the Corruption Law, provides benefits. Otherwise, if unlawful means contrary to the law, according to the formal view, there would be no progress (Sudarto, 2000). In line with this opinion, Indriyanto Seno Adji argues that the application of the material unlawful element in the law will foster a sense of justice and should be upheld, as the doctrine of material unlawful acts is intended to capture perpetrators deemed corrupt, but which are not covered or regulated by the Criminal Code or laws (Indriyanto, 2002). Therefore, incorporating the material unlawful element, in addition to its formal meaning, has a significant impact on the evidentiary process, as it makes it easier for law enforcement to prosecute corruptors. The application of the material unlawful element in the Corruption Crime Law will foster a sense of justice and legal certainty.

The Supreme Court has long applied the broadening of the understanding of the doctrine

of unlawfulness in both formal and material terms, as evidenced in its Decision Number 275 K/Pid/1983 dated December 15, 1983, which stated:

"...it is inappropriate to only associate unlawfulness with violating regulations that carry criminal sanctions. However, in accordance with the prevailing opinion in legal science, it should be measured based on general principles of social propriety."

Another strategy to eradicate corruption is the discretion granted by the law to severely punish perpetrators of corruption, even in certain cases, perpetrators of corruption can be sentenced to death, if their actions meet the criteria of Article 2 paragraph (2) of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption and its Explanation, which states:

"...if the crime is committed against funds allocated for dealing with emergencies, national natural disasters, dealing with the consequences of widespread social unrest, dealing with economic and monetary crises, and repeated acts of corruption."

Obstacles in Eradicating Criminal Acts of Corruption

The eradication of criminal acts of corruption cannot be separated from normative regulations, supporting human resources and management. The National Supervision Coordination Meeting in Bali in December 2002 agreed to group obstacles in handling criminal acts of corruption into (National Action Plan for Corruption Eradication 2004-2009, 2005):

- 1) Structural Barriers, namely long-standing obstacles stemming from state and government practices that prevent the handling of corruption from proceeding as intended. These include: low "formal salaries" for civil servants; sectoral and institutional egoism that leads to the application of maximum funds for sectors and agencies without regard for overall national needs and attempts to cover up irregularities within the relevant sectors and agencies; the ineffective functioning of oversight functions; weak coordination between supervisory and law enforcement officials; and a weak internal control system that is positively correlated with various irregularities and inefficiencies in the management of state assets and the low quality of public services.
- 2) Cultural Barriers, namely obstacles stemming from negative habits that have developed in society that prevent the handling of corruption from proceeding as intended. These include: the persistence of "reticence" among government officials, which can hinder the handling of corruption; The lack of transparency among agency leaders, giving the impression of protecting perpetrators of corruption; interference by the executive, legislative, and judicial branches in handling corruption; a low commitment to firmly and thoroughly addressing corruption; and a permissive attitude (indifference) on the part of the majority of the public toward corruption eradication efforts.
- 3) Instrumental Barriers, namely obstacles stemming from a lack of supporting instruments in the form of laws and regulations, which hinder the handling of corruption crimes from proceeding as intended. Included in this group are: the continued presence of numerous overlapping laws and regulations, which give rise to

corrupt acts such as embezzlement of funds within government agencies; the absence of a "single identification number" or a form of identification applicable to all public needs (driver's license, bank taxes, etc.) that could reduce the opportunity for misuse by every member of the public; weak law enforcement in handling corruption; the absence of firm sanctions for supervisory and law enforcement officials; the difficulty of proving corruption crimes; and the slow process of handling corruption cases up to sentencing. Based on the Study and Inventory of Legislation Possessing Potential for Corruption, Collusion, and Nepotism (KKN) by the Ministry of Administrative and Bureaucratic Reform, it was concluded that legislation containing loopholes for corruption is characterized by ambivalent and multi-interpretable articles, as well as the absence of firm sanctions (multi-interpretation) for violators of the legislation.

- 4) Management Barriers, namely obstacles stemming from the neglect or non-application of good management principles, which hinder the handling of corruption crimes from proceeding as intended. Included in this group are: a lack of commitment by management (the government) in following up on supervision results; weak coordination among supervisory officials and between supervisory officials and law enforcement officials; a lack of information technology support in governance; a lack of independence of supervisory organizations; a lack of professionalism on the part of most supervisory officials; and a lack of support for supervisory systems and procedures in handling corruption.

Referring to L. M. Friedman's opinion regarding the legal system consisting of three main elements, namely legal substance, legal structure, and legal culture (Friedman, 1975), efforts to eradicate corruption often encounter various obstacles related to these three elements. From the aspect of legal substance, problems that arise include overlapping and inconsistencies in laws and regulations, implementation of laws that are hampered by inadequate implementing regulations, and suboptimal international cooperation such as extradition agreements and Mutual Legal Assistance (MLA) which are needed to prosecute perpetrators of criminal acts who flee abroad. From the aspect of legal structure, obstacles faced include the lack of independence of law enforcement agencies, unclear institutional accountability mechanisms, low quality of human resources in the legal field, both researchers, drafters of laws and law enforcement officers, and a judicial system that is not yet fully transparent and open. Meanwhile, from the aspect of legal culture, obstacles that arise include the degradation of legal culture in society and a decline in public awareness of legal rights and obligations (Friedman, 1975). This condition shows that the effectiveness of corruption eradication is greatly influenced by the quality of legal substance, the strength of institutional structures, and the level of legal awareness in society.

In addition to these three factors, law enforcement in practice often encounters significant obstacles, such as:

- 1) Sophisticated modus operandi.
- 2) The legal subjects/perpetrators are protected by their corps, superiors, or colleagues.
- 3) Complicated objects.
- 4) Difficulty gathering preliminary evidence.
- 5) Human resources are not yet professional and specialized.

- 6) Differences in perception and interpretation persist in the application of the law.
- 7) Inadequate facilities and infrastructure.
- 8) Threats and harassment against law enforcement officers, such as terror attacks, vandalism of office buildings and official residences, demonstrations, and shootings.

Regardless of the pros and cons regarding the causes and eradication efforts, it is worth noting Barda Nawawi Arief's opinion that the strategy for eradicating corruption is not to eradicate corruption itself, but rather to eradicate the "causes and conditions that give rise to corruption." Eradicating corruption through criminal law enforcement is merely symptomatic, while eradicating the causes and conditions that give rise to corruption constitutes causal eradication (Badra, 1998). In line with Barda Nawawi Arief's opinion, Soedjono Dirdjosisworo stated that the approach to developing laws designed to address crimes, including corruption, is a totalitarian and integral approach (Soedjono, 2002). The totalitarian and integral approach in eradicating corruption is a systemic approach. Indriyanto Seno Adji said that "Especially the eradication of criminal acts of corruption, must be carried out with a system approach itself or known as a "systemic approach", especially if this system approach is linked to the role of the judicial institution which is very decisive as one of the law enforcement institutions in the final process of eradicating corruption." (Indriyanto, 2003).

Furthermore, it is stated that the system is examined as a whole that includes re-evaluation, repositioning, and reform of the structure, substance of law, and legal culture. The integration of the legal system should be carried out simultaneously, integrally, and in parallel. First, in terms of structure, which includes improvements to all institutions or organs that administer justice so that there is a minimum of corruption, collusion, and nepotism (without having to develop a government organizational structure, author's italics). Second, substance concerns the renewal of various regulatory instruments and normative provisions (legal reform), patterns and desires of community behavior that exist within the legal system. Third, legal culture is a significant aspect that examines how society views provisions as civic-minded so that society will always obey and be aware of the importance of law as a legal regulation. This legal culture is closely related to the ethics and morals of society and law enforcement officials in responding to corruption, collusion, and nepotism.

CONCLUSION

The existing anti-corruption law, as one element of the legal system (legal substance), is quite sound and contains severe sanctions, such as the death penalty, life imprisonment, and a maximum of 20 years' imprisonment with a minimum sentence for perpetrators, to provide a deterrent effect. However, legal substance is not the only instrument capable of combating corruption. The occurrence of corruption is inseparable from factors that act as stimuli and the opportunities that arise as a result of an inadequate legal structure and legal culture. Therefore, whether consciously or not, these two elements themselves have fostered the culture of corruption. Another quite dominant factor that needs attention, first is improving the moral, mental, nationalism, and faith of state administrators and supervision in all lines that have the potential for corruption to occur effectively and efficiently by empowering functional supervisory institutions/bodies, both the BPK, BPKP, Inspector General and Bawasda

Province/Regency/City, supervision of structural officials carried out by structural officials in a hierarchical manner and social supervision of the community in addition to legislative institutions also social institutions that care about corruption, the press and the community itself which must then be consistently prosecuted against the findings. Then there is exemplary behavior, which is closely related to the morality of the estuary of the realization of a culture of shame while other stimulating factors such as welfare, a consumptive lifestyle, efforts to socialize the implementation of products of legislation and so on should also be carried out simultaneously. Therefore, it is clear now that the eradication of criminal acts of corruption is not solely the task of law enforcement institutions and related institutions/bodies but is the task and responsibility of all components of the nation so that it can be hoped that in the future Indonesia will no longer be entrenched in the group of the most corrupt countries in the world.

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