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# Legal Reconstruction of Corruption Crime As A Result of the Abuse of Authority Based on the Pancasila Justice Value

Bambang Tri Bawono[1*], Emilwan Ridwan[2], Anis Mashdurohatun[1], Sri Endah Wahyuningsih[1]

[1]Faculty of Law Sultan Agung Islamic University Semarang, Indonesia
[2]Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

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***Corresponding author:** Bambang Tri Bawono
Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

## Abstract

The aim of the research is to examine and analyze the weaknesses of regulations regarding corruption crime as a result of the abuse of authority, and how to reconstruct the regulations based on justice value. This research was conducted using socio-juridical research which is a legal research method that functions to see the law in its real sense and examines how the law works in a society that is analytically descriptive using primary and secondary data and using the theory of pancasila justice as a grand theory. The research result shows that the Weakness is in the issue of light sentences for defendants in corruption cases has more or less had an effect on efforts to reduce corruption rates. It is impossible for the government and law enforcement officials to try to reduce the number of corruption cases if, on the other hand, these efforts are countered by light sentences from the Corruption Court and then There is a disparity in decisions in cases of corruption in Article 2 paragraph (1) and Article 3 of the PTPK Law not to mention the Corruption in Indonesia is very widespread and has penetrated all levels of society, a crime that has been deeply-rooted and systemic in the life of the nation and has a very detrimental impact on all aspects of life and Its development continues to increase from time to time. Therefore, a legal Reconstruction is needed in Article 3 of the Corruption Crime Law, by adding a minimum prison sentence of 5 years so that it reads to: "sentenced to life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 twenty years". and added the revocation of political rights for 5 years against corruptors as an action that should be supported in order to provide a deterrent effect in eradicating corruption amid the low verdict on corruption cases.

**Keywords:** Legal Reconstruction, Corruption Crime, Abuse of Authority, Justice Value.

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## INTRODUCTION

One of the problems that arise in efforts to eradicate criminal acts of corruption is the existence of actions that impede or impede the process of investigating criminal acts of corruption. The act of obstructing or obstructing the investigation shows that the perpetrator's behavior is becoming more aggressive in thwarting efforts to disclose criminal acts of corruption. On this basis, the role of judges in examining, adjudicating, and deciding on a criminal act of corruption is very important to eradicate corruption in the framework of strict law enforcement.

The act of obstructing the investigative process in criminal acts of corruption as stipulated in Article 21 of Law no. 31 of 1999 which stipulates that any person who deliberately prevents, obstructs, or thwarts directly or indirectly the investigation, prosecution, and examination in court proceedings against suspects and defendants or witnesses in corruption cases is called Obstruction Of Justice and can be subject to imprisonment. a minimum of 3 (three) years and a maximum of 12 (twelve) years or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiahs) and a maximum of Rp. 600,000,000.00 (six hundred million rupiahs).

The term obstruction of justice comes from the Anglo-Saxon legal system, which is translated in Indonesian criminal law as "*the crime of obstructing a legal process*". In Black's Law Dictionary, obstruction of justice is any form of intervention in the entire process of law and justice from the beginning to the end of the process. This form of intervention can be in the form of providing false information, hiding evidence from the police or prosecutors, or injuring or

intimidating witnesses or judges. There are 3 (three) elements of obstruction of justice, namely the action causes a delay in the legal process (pending judicial proceedings); the perpetrator knows his actions or is aware of his actions (knowledge of pending proceedings); and the perpetrator commits or attempts a deviant act to disrupt or intervene in the process or administration of law (acting corruptly with intent).

In this context, criminal law is a normative tool to protect society from actions that threaten and endanger, especially the consequences of criminal acts of corruption that have placed Indonesia as one of the most corrupt countries in the world. The law on corruption at that time was Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes.

As it is well known, to achieve effectiveness in eradicating corruption, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes contains provisions for threats of criminal sanctions that are higher than the previous corruption law. namely Law Number 3 of 1971. Corruption crimes in Indonesia still show very high numbers and the data that the authors obtained from the Indonesia Corruption Watch (ICW) states that there is several data regarding corruption crimes that occurred in various regions in Indonesia.

Apart from that, the existence of acquittals for defendants of corruption is a big question mark because logically, the public can analyze that when the prosecutor submits the dossier of the corruption case to the court, of course, it is equipped with sufficient evidence. The judge should see that if there are deficiencies, he will ask the public prosecutor to correct the indictment so that the chance for the defendant to be released is lost. In other words, it is impossible if the legal process goes correctly but then the panel of judges passes an acquittal.

The acquittal that received the most criticism was in the case of criminal acts of corruption, in which Bank Mandiri involved the Main Director of Bank Mandiri E.C.W. Neloe, former Director of Risk Management I Wayah Pugeng, and former EVP Coordinator of Corporate & Government M. Sholeh Tasripan who caused losses to the state of Rp. 160 billion, but the panel of judges at the South Jakarta District Court passed an acquittal on the three defendants on the basis that the public prosecutor could not prove the element of state loss even though the public prosecutor had charged him with 20 years in prison and a fine of Rp. 1 billion subsidiaries 12 months in prison. (Tempo, 2007)

Based on the decision of the panel of judges, the debtors of Bank Mandiri were automatically released, namely Edyson, Saiful Anwar, and Diman Ponijan as well as three managers of PT. Cipta Graha Nusantara. Even though the court has handed down acquittals in 76 cases, and 254 cases of corruption were sentenced to imprisonment for under 2 years. Thus, it can be concluded that in general, the panel of judges views the crime of corruption as the same as the crime of stealing a chicken. This means that they are still facing various quite difficult obstacles in efforts to minimize the practice of criminal acts of corruption. The deterrent effect that is about to be created is sometimes not felt directly by the perpetrators, the result of which is that until now there has been an increase in criminal acts of corruption at all levels of society.

Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Corruption Crime As A Result Of The Abuse Of Authority Based On The Pancasila Justice Value*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of regulation regarding Corruption Crime As A Result Of The Abuse Of Authority in Indonesia currently?
2. How is the Legal Reconstruction Of Corruption Crime As A Result Of The Abuse Of Authority Based On The Pancasila Justice Value?

## METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the

issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses of Regulation Regarding Corruption Crime As A Result of the Abuse of Authority In Indonesia Currently

The Punishment in the Corruption Act at least aims to provide a deterrent and also restore state financial losses arising from corruption cases. If using the deterrence point of view, the punishment in Article 2 and Article 3 is still in the light category. When compared to the punishments for ordinary crimes, the punishments in Article 2 and Article 3 do not reflect the punishment for extraordinary crimes. In addition, the goal of recovering state losses is still not optimal. There is still a chance for the defendant to avoid the obligation to pay compensation.

The issue of light sentences for defendants in corruption cases has more or less affected efforts to reduce corruption rates. The government and law enforcement officials can't try to reduce the number of corruption cases if, on the other hand, these efforts are countered by light sentences from the Corruption Court. The government's efforts must also be accompanied by a spirit of creating a deterrent and antidote effect through the Corruption Court's decision.

In the context of enforcing the law on corruption, the State of Indonesia has law enforcers who have the authority to examine, try and decide cases of acts of abuse of authority committed by state officials or state agencies to create justice, peace, and order in the state and society. Achieving the success of law enforcement in criminal acts of corruption requires commitment and good cooperation between law enforcers, such as the police, prosecutors, judges, advocates, the community, and the Corruption Eradication Commission.

The performance of the corruption criminal court (tipikor) was not maximal as seen in the weight of the sentences handed down to corruption defendants. At least there are major issues that are important notes (Siahaan, 2021).

First, the tendency of the Corruption Court to punish corruptors lightly. This trend can be seen from the number of corruption defendants who were sentenced to less than 1 year to 4 years in prison. As many as 79.7 percent of the defendants were given light sentences by the Corruption Court. This penalty is even lower than the penalty for motor vehicle theft offenders.

Second, it is not optimal to recover state losses through the imposition of replacement money. Indonesia Corruption Watch noted that state losses incurred in 2014 amounted to IDR 10.689 trillion. Meanwhile, the total cost of replacement money is IDR 1.4 trillion. The amount of compensation charged is certainly not proportional to the state losses that have been incurred. In addition, it should be noted that there is still a possibility that the defendant will avoid the obligation to pay compensation.

Third, the imposition of low fines. In addition to the main punishment in the form of imprisonment, Article 10 Paragraph (4) of the Criminal Code regulates fines. In the context of deterrence, the combination of prison sentences and fines is intended to punish corruptors as severely as possible to provide a deterrent effect. Unfortunately, the facts speak otherwise. At least 274 defendants were given relatively light fines (Rp 25 million-Rp 50 million).

The imposition of criminal fines from the perspective of the Corruption Law is still relatively light. Articles 2 and 3 of the Corruption Law stipulate a maximum fine of IDR 1 billion. Ironically, corruption judges prefer to impose the lightest fines rather than burdening the defendant with heavy fines.

The occurrence of disparity in decisions in cases of corruption in Article 2 paragraph (1) and Article 3 of the PTPK Law is a serious problem because it involves the value of justice, sentencing disparities are commonplace and reasonable because each case has its characteristics which are not the same between one case with other cases, but what becomes a problem is when the sentencing disparity has a large difference in sentences between one case and another which can raise suspicions in society, causing injustice.

Corruption in Indonesia is very widespread and has entered all levels of society. Corruption is a problem that is rooted and systemic in the life of the nation and has a very detrimental impact on all aspects of life. Its development continues to increase from year to year. Of the many corruption cases that have occurred, there has been a large amount of loss to state finances, this cannot be separated from the aspect of the quality of criminal acts of corruption that are carried out increasingly systematically and have penetrated all aspects of people's lives.

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As emphasized by Andi Hamzah (1984), the proliferation of white-collar crimes with new modes has been predicted, as well as rampant corruption throughout the world. At the end of the 20th century, various conventions emerged, including bilateral and multilateral, in the world regarding the eradication of corruption. Based on the convention, both bilaterally and multilaterally, ratification was then carried out, as well as Indonesia also participated in ratification and made several adjustments in several legal aspects.

At present, the mode of corruption has begun to shift to the regions due to the regional autonomy policy granted by the central government to manage its regions independently. This policy cannot be separated from the so-called decentralization of authority which has resulted in the emergence of corruption cases, especially in the regions.

The emergence of a corruption mentality stems from the unlimited authority possessed by policymakers, and the low level of supervision from the people unless the people have high awareness. This is indicated as an easy target for corruption, the modes of which include misappropriation of regional budgets and general allocation funds (DAU), inflating funds in the procurement of goods and services, making fictitious projects, transferring the status of social infrastructure and forest areas, to receiving gratuities. The mode of corruption most often used by regional heads is the misuse of APBD and APBN funds. These regional and central treasury funds are widely used for personal or group interests, even extending to the level of village officials.

Corruption has always received more attention than other crimes. Corruption and collusion as well as nepotism are acts in one breath because all three of them violate the principles of honesty and legal norms. This can make corruption a serious crime that can endanger the stability and security of society, and national, social, political, and economic development and can undermine democratic values and morality because gradually this act seems to become a culture.

Legal culture is related to the legal awareness of society. This can be seen from the higher the self-awareness of the community, the better the legal culture. The level of public compliance is a measure of the functioning of the law there are still many cases of gratification. In Indonesia, there are still 56 cases of corruption in the form of gratuities in 2022 alone. This shows that law enforcement in terms of legal culture indicators in Indonesia is still not effective.

**2. Legal Reconstruction Of Corruption Crime As A Result Of The Abuse Of Authority Based On The Pancasila Justice Value**

The issue of light sentences for defendants in corruption cases has more or less affected efforts to reduce corruption rates. The government and law enforcement officials can't try to reduce the number of corruption cases if on the other hand, these efforts are countered by light sentences from the Corruption Court. The government's efforts must also be accompanied by a spirit of creating a deterrent and antidote effect through the Corruption Court's decision.

Reflecting on a number of these issues, it is important to reconstruct the penal policy in the Corruption Crime Law. Therefore, the legal Reconstruction intended by the author is In Article 3 of the Corruption Crime Law, by adding a minimum prison sentence of 5 years so that it reads to: "*sentenced to life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 twenty years*". and added the revocation of political rights for 5 years against corruptors.

This reconstruction is necessary to respond to the apprehensive conditions in Indonesia, where according to ICW research, the average corruptor was only sentenced to 2 years and 2 months in prison in 2016. In 2013, the average sentence was 2 years and 11 months; in 2014, it's 2 years and 8 months; and in 2015, for 2 years and 2 months. With this low verdict, the imposition of additional punishment in the form of revocation of political rights is hope in eradicating corruption. Revocation of political rights against corruptors is an action that should be supported to provide a deterrent effect in eradicating corruption amid the low verdict on corruption cases. However, to be effective and have a deterrent effect, additional legal instruments are needed so that the mechanism for revoking political rights against corruptors remains in line with human rights and becomes a progressive legal movement in eradicating corruption (Sadjijono, 2017).

Instead of promoting an effective deterrent effect for perpetrators of corruption, through the Draft Criminal Code, the Government is weakening it. After stripping down the Corruption Eradication Commission (KPK) some time ago, this time systematic weakening of law enforcement against corruption was contained in the text of the Criminal Code.

Apart from its substance, the process of discussing the Criminal Code was held behind closed doors because the text had not been conveyed to the public. Naturally, then there is a bad prejudice towards legislators. This is because a similar practice has also occurred in the discussion of other laws and regulations, one of which is the revision of the KPK Law in 2019.

It is important to emphasize if the draft of the Criminal Code is not disseminated to the public, then it is clear that the government and DPR have violated the law and have far deviated from the mandate of the Constitutional Court (MK) decision. The regulations that have been ignored are Article 96 paragraph (1) of

the Law on the Formation of Legislation (UU P3) regarding the right of the public to provide input in every stage of the formation of laws and regulations.

That was not enough, even the legislators ignored the Constitutional Court's order, to be precise the decision Number 91/PUU-XVIII/2020. As is known, the urgency of community participation or commonly referred to as the embodiment of democratic values in the process of forming laws has been emphasized by the Constitutional Court by mentioning meaningful participation. This term refers to a number of prerequisites that must be met by legislators within the scope of public participation, including the right to be heard, the right to have their opinion considered, and the right to receive an explanation or answer to an opinion. given (right to be explained). In this regard, if you do not want to be accused of violating formal regulations, the legislators must immediately socialize the entire draft of the RKUHP to hear and consider the aspirations of the people (Chanhom, 2018).

Sadly, the issue of eradicating corruption is increasingly being sidelined. If seen from the government's statement, the legislators did not include anti-corruption clauses in 14 crucial issues. The substance of the anti-corruption regulation is still filled with several problems. Beyond that, the drafting team for the RKUHP was also inconsistent, because, previously, Prof. Eddy OS Hiariej, before taking the position as Deputy Minister of Law and Human Rights, had said that corruption offenses were only a core crime and merely a bridging article. In simple terms, this means that the RKUHP only defines acts of corruption, without attaching proposals for changes in sentencing. But what happened was just the opposite. The existing draft has the potential to degrade efforts to eradicate corruption.

Apart from the formal aspect, the material domain in the RKUHP text as of 4 July 2020, specifically relating to eradicating corruption contains several fundamental problems. Indonesia Corruption Watch (ICW) identified several serious problems, including:

Corruption Offenders Sentences Reduced; The majority of articles related to corruption, and the main punishment is in the form of corporal punishment and reduced fines. First, Article 607 RKUHP which is a new form of Article 2 paragraph (1) of the Corruption Law. This regulation contains a decrease in corporal punishment from 4 years to 2 years in prison. That's not enough, the minimum fine is also similar, dropping from Rp. 200 million to only Rp. 10 million. Second, Article 608 of the RKUHP which is a new form of Article 3 of the Corruption Law. Even though corporal punishment has increased from 1 year to 2 years in prison, it is not comparable to the legal subjects of the perpetrators, namely public officials. This is also an attempt to equalize the punishment between the public and someone who has a certain public position. Partial Aggravating Punishment.

Article 608 states "*Anyone who tries to benefit himself, others, or the Corporation abuses the authority, opportunity, or facilities available to him because of his position or position which is detrimental to the state's finances or the country's economy, shall be punished with imprisonment for life or imprisonment for a maximum short 2 (two) years and a maximum of 20 (twenty) years and a minimum fine of category II and a maximum of category VI."* Based on the formulation that the researchers discussed, the minimum prison sentence is still below the expectations of researchers, namely 5 years, and in the recently passed Criminal Code there is no additional punishment in the form of revocation of political rights for 5 years after the sentence has been completed.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The Weakness that is found by the author is in the issue of light sentences for defendants in corruption cases has more or less had an effect on efforts to reduce corruption rates. It is impossible for the government and law enforcement officials to try to reduce the number of corruption cases if, on the other hand, these efforts are countered by light sentences from the Corruption Court and then There is a disparity in decisions in cases of corruption in Article 2 paragraph (1) and Article 3 of the PTPK Law not to mention the Corruption in Indonesia is very widespread and has penetrated all levels of society, a crime that has been deeply-rooted and systemic in the life of the nation and has a very detrimental impact on all aspects of life and Its development continues to increase from time to time.
2. The legal Reconstruction intended by the author is In Article 3 of the Corruption Crime Law, by adding a minimum prison sentence of 5 years so that it reads to: "sentenced to life imprisonment or imprisonment for a minimum of 5 (five) years and a maximum of 20 twenty years". and added the revocation of political rights for 5 years against corruptors as an action that should be supported in order to provide a deterrent effect in eradicating corruption amid the low verdict on corruption cases.

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