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Criminal Legal Policy Against Perpetrators of Corruption Criminal Acts That Cause Damage to State Finances Based on Pancasila Justice Values

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Abstract. *This study aims to analyze the criminal law policy for perpetrators of corruption that causes financial losses to the state in Indonesian positive law, identify factors that cause the suboptimal reflection of Pancasila's justice values, and formulate an ideal criminal law policy formulation based on Pancasila's justice values. This study uses a normative juridical method with a statute approach, a conceptual approach, and a case approach, which are analyzed qualitatively. The research findings indicate that criminal law policy on corruption in Indonesia has developed normatively through regulations in the Corruption Eradication Law, support from law enforcement institutions, and strengthening through the National Criminal Code. However, its implementation still faces various obstacles, both structural and cultural. Furthermore, current criminal law policy does not fully reflect the values of Pancasila justice optimally, as it is still dominated by positivistic and legalistic approaches, an imbalance between repressive and preventive approaches, weak asset recovery mechanisms, and the suboptimal integrity of law enforcement officers. This study concludes that the ideal formulation of criminal law policy should be directed towards a holistic and integrative approach by internalizing the values of Pancasila justice in every stage of criminal law policy. This includes strengthening the philosophical foundation, integrating penal and non-penal approaches, optimizing the recovery of state losses, reformulating the criminal justice system based on dignified justice, strengthening institutions, and harmonizing regulations. Thus, criminal law policy is expected to achieve substantive justice, legal certainty, and benefits in a balanced manner.*

Keywords: Criminal Law Reform; Corruption; Pancasila Justice; State Finance.

1. Introduction

In the current direction of national legal development, the state's commitment to strengthening the rule of law has gained strong political legitimacy through President Prabowo Subianto's strategic agenda, within the framework of Asta Cita (Asta Cita), which places corruption eradication, legal system reform, and strengthening the integrity of the state apparatus as top national development priorities. This agenda not only reflects political will but also emphasizes that the law must be the primary instrument in maintaining clean, authoritative, and just governance.[1]

Philosophically, Indonesia, as a state based on the rule of law (rechtsstaat), places law as the primary foundation for the administration of national and state life. The concept of a state based on the rule of law is not only oriented toward legal certainty, but also requires justice and utility as an inseparable whole. Within this framework, criminal law has a strategic function as a means of social control and public interest protection.[2]

From a theoretical perspective, modern criminal law has evolved from the classical paradigm, which emphasized retributive justice, to a more progressive paradigm, namely as part of social policy. Criminal law no longer merely punishes perpetrators but also aims to prevent crime, reform perpetrators, and redress the harm caused.[3]

One crime that significantly threatens the nation's goals is corruption, particularly those that result in state financial losses. Corruption not only impacts economic losses but also undermines public morality, weakens state legitimacy, and hinders national development. Therefore, corruption is classified as an extraordinary crime requiring extraordinary measures.[4]

In criminology studies, corruption is included in the category of white collar crime as introduced by Edwin H. Sutherland, namely crimes committed by individuals of high social status through abuse of power or position.[5]These characteristics make corruption difficult to detect, systemic in nature, and have a broad impact on people's lives.

Sociologically, empirical reality shows that corruption in Indonesia remains at an alarming level. According to a report by Indonesia Corruption Watch, throughout

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[1] State Secretariat of the Republic of Indonesia. (2024). Asta Cita of the President of the Republic of Indonesia. Jakarta: Setneg RI, pp. 3–5.
[2] Hiariej, EOS (2016). Principles of criminal law. Yogyakarta: Cahaya Atma Pustaka, pp. 12–14.
[3] Arief, BN (2010). Anthology of criminal law policies. Jakarta: Kencana, pp. 23–25.
[4] Bawono, BT (2019). Criminal law policy from a justice perspective. Semarang: Pustaka Ilmiah, pp. 60–62.
[5] Sutherland, E. H. (1949). White collar crime (pp. 9–10). New York: Holt, Rinehart and Winston. Retrieved fromhttps://archive.org/

2023, hundreds of corruption cases were recorded, with a significant number of suspects and state losses reaching tens of trillions of rupiah.[6]This shows that corruption is still a structural problem that cannot be optimally resolved.

In addition, the global corruption perception index also shows that Indonesia's position is still relatively low, which indicates that the level of public trust in the integrity of the public sector still needs to be improved.[7]This condition shows a gap between existing legal norms and the reality of law enforcement in the field.

In a legal context, Indonesia already has a fairly comprehensive legal framework for eradicating corruption, including Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. However, the dynamics of national legal reform have presented a new development with the enactment of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code).[8]

One important aspect of the National Criminal Code is the inclusion of various specific crimes in a separate chapter, the "Chapter on Special Crimes," which covers, among other things, corruption, terrorism, money laundering, narcotics, and serious human rights violations. This grouping is intended to consolidate the law within a single national codification and to serve as a bridging provision between the Criminal Code and specific laws outside the Criminal Code.[9]

However, this policy has sparked considerable academic debate. Some argue that despite its inclusion in the National Criminal Code, corruption retains its character as a special crime. On the other hand, others argue that this integration makes corruption part of the general criminal offenses within the national criminal law system.[10]

These differences of opinion are closely related to the interpretation of the ratio legis of the regulation of special criminal acts in the National Criminal Code, which basically aims to unify various criminal provisions in one codification system without eliminating their specificity.[11]

Furthermore, in the provisions of Article 622 of the National Criminal Code, it is emphasized that when the Criminal Code is implemented, provisions regarding

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[6] Indonesia Corruption Watch. (2024). Report on corruption eradication trends in 2023. Jakarta: ICW, pp. 5–7.
[7] Transparency International. (2024). Corruption perceptions index 2024 (pp. 2–4). Retrieved fromhttps://www.transparency.org/en/cpi/2024
[8] Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code. Jakarta: State Secretariat, pp. 145–147.
[9] Republic of Indonesia. (2023). Explanation of Law Number 1 of 2023 concerning the Criminal Code. Jakarta: State Secretariat, pp. 210–212.
[10] Marzuki, PM (2021). Legal research. Jakarta: Kencana, pp. 135–137.
[11] Ibid. pp. 138–140.

special criminal acts in laws outside the Criminal Code are declared invalid as long as they are regulated in the Criminal Code.[12]This provision has important implications for the applicability of the Corruption Law.

In this context, Article 603 of the National Criminal Code stipulates that anyone who unlawfully enriches themselves or another person to the detriment of state finances shall be punished with imprisonment and a fine. This formulation is substantially an adoption of Article 2 paragraph (1) of the Corruption Law, but with several important changes, including the removal of the phrase "can" before the element of state loss as a consequence of the Constitutional Court Decision.[13]

Furthermore, there are significant differences in the regulation of criminal sanctions, particularly regarding minimum and maximum prison sentences and fines. The National Criminal Code (KUHP) has made adjustments that in some cases actually lower the minimum sentence, but in others, increase the maximum fine.[14]

This difference raises serious practical issues, particularly regarding the application of the principle of lex favor reo, or the legal principle that prioritizes provisions that are more favorable to the accused. In the context of the transition between the Corruption Eradication Law and the National Criminal Code, this principle has the potential to create legal uncertainty in determining which provisions should be applied.[15]

As stipulated in the provisions of the National Criminal Code, if a statutory regulation changes, the provisions that are more favorable to the perpetrator of the crime will apply. This provision is reinforced by the provision that ongoing cases may continue to use laws that are more favorable to the accused.[16]

However, in practice, the substantive differences between the Corruption Eradication Law and the National Criminal Code, particularly in Articles 603 and 604, have the potential to create conflicting norms and legal uncertainty. This situation indicates that criminal law reform has not fully addressed the need for substantive justice in eradicating corruption.

[12] Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code (Article 622). Jakarta: State Secretariat, pp. 312–313.
[13] Constitutional Court of the Republic of Indonesia. (2016). Decision Number 25/PUU-XIV/2016. Jakarta: MK RI, pp. 98–101.
[14] Republic of Indonesia. (2001). Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Jakarta: State Secretariat, pp. 4–6.
[15] Moeljatno. (2008). Principles of criminal law. Jakarta: Rineka Cipta, pp. 54–56.
[16] Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code (Article 3 and Article 618). Jakarta: State Secretariat, pp. 10–11, 305–306.

From the perspective of criminal law policy, Barda Nawawi Arief emphasized that criminal law must function as a means of protecting society and achieving social welfare.[17]Meanwhile, Herbert L. Packer reminded the importance of balance between the effectiveness of law enforcement and the protection of human rights through the crime control model and the due process model.[18]

In the Indonesian context, the Pancasila values of justice serve as the philosophical foundation that must inform all criminal law policies. Pancasila justice emphasizes not only legal aspects but also moral, social, and humanitarian dimensions oriented toward the welfare of society.

Therefore, a reconstruction of criminal law policy is needed that is able to integrate philosophical, juridical, and sociological aspects comprehensively, so that law enforcement against criminal acts of corruption is not only repressive, but is also able to realize substantive justice based on Pancasila values.

2. Research Methods

This research is normative legal research, focusing on the study of legal norms contained in legislation, court decisions, and the doctrines or opinions of legal experts. This research does not focus on empirical societal behavior, but rather on the system of norms that govern that behavior.

In normative legal research, law is viewed as an autonomous, hierarchically structured system, thus analyzing the consistency, synchronization, and harmonization of applicable legal norms. This approach also allows researchers to conduct legal construction and legal discovery to address the issues being studied.[19]

3. Results and Discussion

3.1. Criminal law policy against perpetrators of corruption crimes that harm state finances in current Indonesian positive law

Criminal law policy regarding corruption that harms state finances cannot be separated from the dynamics of national legal developments, which continually strive to respond to the complexities of modern crime. Corruption, within the context of a state governed by the rule of law, is viewed not only as a violation of legal norms but also as a betrayal of the constitutional mandate and the values of social justice that underpin national and state life.

[17] Arief, BN (2010). Anthology of criminal law policies. Jakarta: Kencana, pp. 40–42.
[18] Packer, H.L. (1968). The limits of the criminal sanction (pp. 153–155). Stanford University Press. Retrieved fromhttps://books.google.com/
[19] Soekanto, S., & Mamudji, S., Normative Legal Research, pp. 13–15.

In empirical reality, corruption has evolved into a structural phenomenon that systematically involves power relations, economics, and institutions. Therefore, criminal law policies formulated by the state must be able to address these challenges through a comprehensive approach, not only repressive but also preventive and corrective.

Furthermore, criminal law policies in eradicating corruption must also be placed within a framework of justice values rooted in the nation's philosophy, so that they do not fall into a purely legalistic approach but instead reflect substantive justice. In this context, the law functions not only as a tool of repression but also as a means of social engineering aimed at building clean and integrated governance.[20]

Based on this thinking, this discussion begins by examining the conceptual basis of criminal law policy in combating corruption as a theoretical basis for understanding the current positive legal construction.

1. Conceptual Basis of Criminal Law Policy in Combating Corruption

Criminal law policy in the Indonesian legal system is essentially an integral part of social policy aimed at protecting the interests of society while realizing general welfare. From a theoretical perspective, criminal law policy reflects the rational efforts of the state in utilizing criminal law as a means of controlling crime (an instrument of social control), as stated by Barda Nawawi Arief that criminal law must be placed within a comprehensive policy framework, encompassing the stages of formulation (legislative policy), application (judicial policy), and execution (executive policy).[21]

Furthermore, Marc Ancel emphasized that criminal law policy is part of modern criminal science which is not only oriented towards sentencing, but also towards protecting society effectively through a rational and humane approach.[22]Thus, criminal law policy cannot be understood narrowly as a retributive instrument, but must be directed towards achieving broader goals, namely a balance between legal certainty, utility and justice.

In the context of corruption, criminal law policy takes on a far more complex dimension. Corruption is no longer understood as a conventional crime, but rather as an extraordinary crime with systemic impacts on economic stability, political legitimacy, and public trust in the state. Susan Rose-Ackerman states that

[20] Rahardjo, S. (2009). Law and social change. Yogyakarta: Genta Publishing, pp. 25–27.
[21] Arief, BN (2016). Anthology of criminal law policies. Jakarta: Kencana, pp. 12–15.
[22] Ancel, M. (1965). Social defense: A modern approach to criminal problems. London: Routledge, pp. 45–48. Retrieved fromhttps://books.google.com

corruption is a form of abuse of public power for private gain, which leads to the weakening of state institutions and the distortion of public policy.[23]

In line with this, Robert Klitgaard stated that corruption thrives in situations where there is a monopoly of power, broad discretion, and weak accountability (corruption = monopoly + discretion – accountability).[24]This perspective shows that corruption is not merely an individual moral issue, but is also a structural problem that requires a comprehensive and systemic criminal law policy approach.

In the Indonesian context, Muladi's thinking emphasizes that criminal law policy must pay attention to the balance between community protection and individual protection, so as not to give rise to new injustices in the law enforcement process.[25]Meanwhile, the thoughts of other national legal academics emphasize that the eradication of corruption must be placed as part of efforts to maintain the integrity of the rule of law based on the Pancasila values of justice, so that its orientation is not solely on punishment, but also on recovery and prevention.[26]

Philosophically, the orientation of criminal law policy towards corruption also conforms to the principles of Islamic law:

God willing

This principle implies that preventing harm must take precedence over achieving public welfare. This principle reinforces the argument that eradicating corruption is a moral and legal obligation to safeguard the public interest and prevent broader damage to social and state life.

Furthermore, from a more progressive perspective, criminal law policy on corruption should not only focus on taking action after a crime has occurred (a reactive approach), but also prioritize a preventative approach by strengthening systems of integrity, transparency, and accountability. This aligns with Lawrence M. Friedman's view that legal effectiveness is determined not only by legal substance but also by legal structure and legal culture.[27]

Thus, it is understandable that criminal law policy in combating corruption is a complex construct, not only related to legal norms but also involving structural,

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[23] Rose-Ackerman, S. (1999). Corruption and government: Causes, consequences, and reform. Cambridge: Cambridge University Press, pp. 3–5. Retrieved fromhttps://books.google.com
[24] Rose-Ackerman, S. (1999). Corruption and government: Causes, consequences, and reform. Cambridge: Cambridge University Press, pp. 3–5. Retrieved fromhttps://books.google.com
[25] Muladi. (2002). Selected chapters on the criminal justice system. Semarang: UNDIP Publishing Agency, pp. 33–36.
[26] Prasetyo, T. (2015). Dignified justice from a criminal law perspective. Yogyakarta: Nusa Media, pp. 40–44.
[27] Friedman, L. M. (1975). The legal system: A social science perspective. New York: Russell Sage Foundation, pp. 15–20. Retrieved fromhttps://books.google.com

cultural, and philosophical dimensions. Therefore, its formulation and implementation must be carried out holistically to address the challenge of corruption as an extraordinary crime that threatens the continuity of the rule of law and social justice.

3.2. Corruption Regulations in Indonesian Positive Law and Their Relevance to the National Criminal Code

The regulation of corruption crimes in Indonesian positive law cannot be separated from the dynamic and multi-layered construction of the national legal system. In this context, corruption regulations are not only positioned as part of special penal law, but are also integrated within the general criminal law framework, which has been updated through the codification of the National Criminal Code. Therefore, understanding criminal law policy in eradicating corruption requires a comprehensive analysis of the relationship between special and general legal regimes (lex specialis and lex generalis).

Furthermore, theoretically, as stated by Jan Remmelink, modern criminal law is no longer seen as a static system, but rather as a normative construction that continues to develop in line with the needs of society and the complexity of crime.[28]In this context, the existence of the National Criminal Code is a form of penal reform that not only aims to codify, but also harmonize various criminal law provisions, including those related to criminal acts of corruption.

From a criminal law policy perspective, the integration of the Corruption Eradication Law and the National Criminal Code reflects an effort to create a more systematic, consistent, and effective legal system. However, this integration also presents conceptual challenges, particularly in maintaining the characterization of corruption as an extraordinary crime so that it is not diminished by the general, more formalistic approach to criminal law.[29]

Based on this description, normatively, the main regulations for criminal acts of corruption in Indonesia still rely on:

1. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001;

2. Regulations related to law enforcement institutions;

3. As well as the provisions in the National Criminal Code (Law No. 1 of 2023) as a new codification of Indonesian criminal law.

[28] Remmelink, J. (2003). Criminal law: Commentary on the most important articles of the Dutch Criminal Code and their equivalents in the Indonesian Criminal Code. Jakarta: Gramedia, pp. 45–47.
[29] Arief, BN (2014). Criminal law policy. Jakarta: Kencana, pp. 78–80.

In the National Criminal Code, although the crime of corruption remains regulated specifically (lex specialis) in the Corruption Law, there are a number of provisions that are directly or indirectly relevant, which strengthen the law enforcement framework against corruption, including the following:

1. Principles of Legality and Scope of Accountability

The National Criminal Code states in Article 1 paragraph (1): "No act can be punished except based on statutory regulations that existed before the act was committed."[30]

This provision reinforces the principle of legality (nullum crimen sine lege) as the primary foundation of the criminal law system, including in law enforcement against corruption. This principle not only ensures legal certainty but also serves as a protective instrument against potential abuse of power in the criminalization process.

In the development of doctrine, Andi Hamzah emphasized that the principle of legality must be understood not only formally, but also materially, so that it can answer the need for justice in a society that continues to develop.[31]Thus, the application of the principle of legality in corruption cases must continue to take into account the dimension of substantive justice, without ignoring the principle of legal certainty.

2. Criminal Liability

The National Criminal Code stipulates that criminal responsibility requires the existence of fault (schuld), which is reflected in the ability to take responsibility, as well as the element of intent (dolus) or negligence (culpa).

In addition, one of the significant developments in the National Criminal Code is the recognition of corporations as subjects of criminal law, as regulated in:

- Article 45: Corporations can be held criminally responsible;

- Articles 46–50: Regulate the form of accountability, the parties representing them, and the types of sanctions against corporations.[32]

This regulation has very strong relevance in corruption crimes, considering that modern corruption practices often involve corporate entities in complex schemes, such as state capture corruption and corporate bribery.

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[30] Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Article 1 paragraph (1).
[31] Hamzah, A. (2010). Principles of criminal law. Jakarta: Rineka Cipta, pp. 25–27.
[32] Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Corporate Liability, Articles 45–50.

From an academic perspective, Muladi emphasized that expanding the subject of criminal law to corporations is a progressive step in responding to the development of modern crime which is increasingly organized and transnational.[33]In line with this, the thinking of Indonesian legal academics also emphasizes that corporate accountability must be balanced with adaptive evidentiary mechanisms so as not to give rise to impunity.

3. Types of Crime

The National Criminal Code expands the criminal system, as regulated in:

- Articles 64–66, which cover principal and additional penalties;
- The main penalties include imprisonment, fines and the death penalty;
- Additional penalties include confiscation of goods, payment of compensation, revocation of rights, and announcement of the judge's decision.[34]

This expansion of criminal types indicates a paradigm shift in Indonesian criminal law, from one that was initially oriented towards punishing the perpetrator (offender-oriented), to an approach that also emphasizes the recovery of losses (victim-oriented), including state financial losses in criminal acts of corruption.

In international literature, Jeremy Bentham emphasized that the aim of punishment should be directed at preventing crime and protecting the public interest, not merely retribution.[35]Thus, the application of additional penalties such as confiscation of assets and payment of compensation in corruption cases is a manifestation of a utilitarian approach that is oriented towards benefit.

4. Purpose of Criminalization

The National Criminal Code in Article 51 emphasizes that criminal punishment aims to:

a. Prevent criminal acts from occurring;

b. Fostering actors;

c. Resolving conflicts;

d. Restoring balance;

e. Realizing a sense of justice in society.[36]

[33] Muladi. (2006). Corporate criminal liability. Semarang: UNDIP Press, pp. 60–63.
[34] Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Articles 64–66.
[35] Bentham, J. (1907). An introduction to the principles of morals and legislation. Oxford: Clarendon Press, pp. 170–172. Retrieved fromhttps://books.google.com
[36] Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code, Article 51.

This formulation reflects a paradigm shift in criminal justice from a retributive justice approach to a more integrative one, including restorative justice. In the context of corruption, this approach is crucial because the losses incurred are not only material but also impact public trust and state legitimacy.

In Herbert L. Packer's view, the modern criminal justice system must be able to balance the crime control model and due process model approaches, so that the effectiveness of crime eradication continues to run alongside the protection of human rights.[37]Therefore, the sentencing policy in the National Criminal Code can be seen as an effort to achieve this balance in the context of Indonesian law.

The regulation of corruption crimes in Indonesian positive law demonstrates a close relationship between the special legal regime (the Corruption Law) and general criminal law (the National Criminal Code). Both complement each other in building a more comprehensive criminal justice system, although caution is still needed to ensure that corruption's characterization as an extraordinary crime is not reduced to a normative level.

Therefore, future criminal law policies need to be directed at strengthening harmonization between the two legal regimes, while still prioritizing the values of substantive justice rooted in Pancasila, so as to be able to answer the challenges of eradicating corruption effectively and fairly.

5. Formulation of Criminal Policy in the Corruption Eradication Law

The formulation of criminal policy in the Corruption Eradication Law (UU Tipikor) is fundamentally inseparable from the direction of national legal policy, which positions corruption as a serious crime requiring extraordinary handling. Within this framework, the formulation of criminal norms in the Law on Tipikor reflects the state's efforts to formulate a criminal policy that is not only effective in prosecuting perpetrators but also capable of preventing systemic corruption.

Theoretically, as stated by Sudarto, the formulation of criminal law is a strategic stage in criminal law policy, because at this stage it is determined what actions are qualified as criminal acts (criminalization), as well as the type of sanctions that will be imposed (penalization).[38]Therefore, the construction of norms in the Corruption Eradication Law not only reflects the legal aspects, but also reflects the social, political and moral values that develop in society.

Furthermore, from a criminal law reform perspective, the formation of the Corruption Eradication Law demonstrates a paradigm shift from a conventional criminal law approach to one that is more responsive to modern crimes. Jeremy

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[37] Packer, H.L. (1968). The limits of the criminal sanction. Stanford: Stanford University Press, pp. 153–155. Retrieved fromhttps://books.google.com

[38] Sudarto, Law and Criminal Law, (Bandung: Alumni, 1986), pp. 34–36.

Pope emphasized that eradicating corruption requires a strong, transparent, and accountable legal framework, supported by effective law enforcement mechanisms.[39]Thus, the formulation of criminal policy in the Corruption Eradication Law can be understood as part of a systematic effort to build a comprehensive anti-corruption legal regime.

3.3. Formulation of an ideal criminal law policy based on Pancasila justice values for perpetrators of corruption crimes that harm state finances

An ideal criminal law policy for combating corruption is an essential part of national legal reform efforts oriented toward Pancasila values. In this context, criminal law can no longer be understood narrowly as a mere repressive instrument, but rather must be positioned as a strategic means to achieve substantive justice, reflecting a balance between legal certainty, expediency, and justice.

The systemic and multidimensional nature of corruption demands the formulation of criminal law policies that are not only normatively comprehensive but also responsive to social dynamics and the needs of societal justice. Therefore, the approach used in formulating criminal law policies must be integrative, harmoniously combining philosophical, legal, and sociological dimensions.

Within this framework, the ideal formulation of criminal law policy should be directed at internalizing the values of Pancasila justice into all aspects of policy, from formulation to application to execution. Thus, criminal law functions not only as a tool of social control but also as an instrument of just social transformation.

1. Strengthening the Philosophical Foundation: Internalizing the Values of Pancasila Justice

Formulation: The ideal formulation of criminal law policy must be rooted in a solid philosophical foundation, namely the values of Pancasila, the foundation of the state and the grundnorm of the national legal system. Within this framework, Pancasila serves not only as a source of normative legitimacy but also as an ethical and philosophical guideline in formulating the direction and objectives of criminal law. Therefore, every criminal law policy formulated must reflect the fundamental values of Pancasila, particularly the value of comprehensive and civilized justice.

The value of justice in Pancasila cannot be reduced solely to the formal dimension oriented toward legal certainty, but must be understood substantively

[39] Pope, J., Confronting Corruption: The Elements of a National Integrity System, (Berlin: Transparency International, 2000), pp. 25–27. Retrieved fromhttps://books.google.com

as an effort to achieve balance between the interests of individuals, society, and the state. Thus, justice from a Pancasila perspective encompasses social, humanitarian, and moral dimensions that are integrated, thus addressing the needs of society holistically.

In this context, the formulation of criminal law must always consider the living values of society, so that the law is inseparable from the surrounding social reality. This approach demands a paradigm shift from rule-based justice to value-based justice, where the law is not merely enforced mechanically based on written norms but is also oriented toward achieving more substantial and contextual justice.

Furthermore, Eko Soponyono emphasized that national criminal law reform must be directed at reconstruction based on Pancasila values, so that the law retains social legitimacy and does not become trapped in rigid normative formalism.[40]In this view, criminal law that is not rooted in Pancasila values has the potential to lose its orientation towards justice, making it unable to answer society's demands for justice.

Thus, internalizing the values of Pancasila justice in the formulation of criminal law policy is a necessity, not only as a normative basis but also as a philosophical foundation that determines the direction of national criminal law reform. Through this internalization, it is hoped that criminal law can function optimally as an instrument that not only guarantees legal certainty but also realizes civilized substantive justice oriented toward the public good.

2. Proportional Integration of Penal and Non-Penal Approaches

An ideal criminal law policy should integrate penal and non-penal approaches in a proportional and balanced manner. While the penal approach still plays a crucial role in providing a deterrent effect, it cannot stand alone without the support of a preventive approach aimed at reducing the factors that cause corruption.

The non-penal approach encompasses various efforts, such as increasing transparency, strengthening oversight systems, and developing a culture of integrity in governance. Thus, criminal law policy serves not only as a means of enforcement but also as an effective preventive instrument.

Sri Endah Wahyuningsih emphasizes that crime prevention policies must be implemented in an integral manner through a combination of penal and non-penal approaches, so as to provide optimal results.[41]Therefore, the integration of

[40] Soponyono, E. (2019). Reconstruction of Pancasila-based criminal law policy. pp. 60–63.
[41] Wahyuningsih, SE (2018). Integral criminal law policy. pp. 75–78.

these two approaches is an important element in the formulation of criminal law policies based on Pancasila justice.

3. Orientation towards State Loss Recovery (Asset Recovery)

In corruption cases, justice is measured not only by the severity of the sanctions imposed on the perpetrator, but also by the state's ability to recoup the losses incurred. Therefore, the formulation of an ideal criminal law policy must prioritize restitution of state losses.

This approach requires strengthening asset recovery mechanisms, both through criminal and civil instruments, as well as developing more effective asset confiscation mechanisms. Thus, criminal law is not only retributive but also restorative.

Gunarto emphasized that criminal law policies against corruption must be directed at recovering state losses as a form of justice for the community.[42]This shows that orientation towards asset recovery is an integral part of substantive justice.

4. Conclusion

Based on the results of research and discussion regarding criminal law policies against perpetrators of corruption crimes that harm state finances based on Pancasila justice values, the following conclusions can be drawn: 1. The criminal law policy regarding criminal acts of corruption in Indonesian positive law has currently shown relatively comprehensive developments in normative terms., reflected in the provisions of the Corruption Eradication Law, support for law enforcement institutions, and strengthening through the National Criminal Code. This policy not only covers aspects of criminalization and sentencing but also accommodates special mechanisms such as limited reversal of proof and recovery of state losses. However, its implementation still encounters various structural and cultural obstacles that render its effectiveness less than optimal, particularly in addressing the character of corruption as an extraordinary, systemic crime. 2. The current criminal law policy on corruption does not fully reflect the values of Pancasila justice optimally., because it is still dominated by positivistic and legalistic approaches that emphasize legal certainty alone. This results in a gap between normative aspects (das sollen) and empirical reality (das sein), so that substantive justice has not been optimally realized. Furthermore, the imbalance between repressive and preventive approaches, weak asset recovery mechanisms, and the suboptimal integrity of law enforcement officers also hinder the internalization of Pancasila's justice values in law enforcement practices. 3. The formulation of an ideal criminal law policy based on Pancasila justice values must be directed towards a holistic, integrative approach and

[42] Gunarto. (2017). Reconstruction of corruption law enforcement. pp. 85–88.

oriented towards substantive justice., by internalizing the values of Pancasila into all stages of criminal law policy. This includes strengthening the philosophical foundation, proportionally integrating penal and non-penal approaches, focusing on asset recovery, reformulating the criminal justice system based on dignified justice, strengthening the institutions and integrity of law enforcement officers, and harmonizing regulations within the national legal policy framework. Thus, criminal law policy functions not only as an instrument of enforcement but also as a means of realizing civilized social justice.

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