



## Challenges and Opportunities Implemented in Preventing Corruption Criminal Actions

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### ABSTRACT

*In the field of education, people are currently faced with formal and informal education such as anti-corruption which is integrated into basic education to higher education. sometimes, sanctions or punishments have no fundamental effect on the harm and are only temporary. Referring to China, although corruptors are shot dead by cruel executions, the corruption rate continues to increase. The main issue discussed in this study is whether corruption prevention is better than punishment and corruption prevention strategies. This type of research is legal research whose research is based on secondary data. Research sources are taken from reference books, laws, expert opinions, and all supporting resources in carrying out legal research. In conclusion, corruption is a despicable and vile behavior that stems from low morality and a person's lack of shame. Corruptors have done everything possible for themselves or others; shows that corruption can be classified as an extraordinary crime. To prevent corruption, government officials and officials must have a strong will to fight moral greed.*

### 1. Introduction

Referring to China, even though corruptors were shot to death with a mean way of execution, the corruption rate keeps increasing. Furthermore, the chairmen of the Constitution Supreme Court, judges, and some regional heads in Indonesia have been sent to prisons due to corruption cases. On the contrary, not many governors were involved in such cases in previous years.

The researcher as a law practitioner has encountered many of the corruption accused whose penalization process and mechanisms are full gaffes ranging from deferment of detention to cancelation permission involving bribery. The bribery has reached the court and is practiced internally by the family of the accused; indicating that corruption prevention is not effective yet and has not been able to support the law enforcement. Therefore, such deviant indications are no longer confidential among the law enforcers in the police department, the attorney, the judicature, the society in general, and the defendant with a legal lawsuit. To date, legal, criminological, and psychological experts need to work harder to solve the issues and establish future actions in response to corruption cases. The researcher as an academician giving courses on criminal law has frequently encountered questions from the undergraduate students concerning the reasons why the theories accepted are highly different from their practices on

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the form (i.e., equality before the law does not always work as it is since the well-offs are oftentimes given a special treatment by the law enforcers). As an academician, the researcher responded to such questions objectively that it was the real implementation on the field ranging from the police investigation to the judicature stages committed by particular people with certain capacities (with a negative connotation). Thus, the law enforcers should focus more on the corruption eradication particularly in terms of prevention for it is better to prevent the occurrence of corruption criminal actions than waiting for its occurrence and bringing it to trial.

## 2. Method

This research is a legal study with a normative approach that is, the study towards the secondary data obtained from the literature studies. The secondary data used in the study were primary legal materials namely legislation or regulation concerning corruption. Also, there were also secondary legal materials in the form of literature and experts' opinion regarding the problems being studied. The collected secondary data were then qualitatively analyzed, that is the analysis based on the values, quality, and condition of the obtained data. In other words, the implementation of truth-seeking in the study was based and measured with the quality, values, and condition of the obtained data.

## 3. Analysis and Results

This section is the most important section of your article. The analysis and results of the research should be clear and concise. The results should summarize (scientific) findings rather than providing data in great detail. Please highlight differences between your results or findings and the previous publications by other researchers.

### 3.1 Defenition of Law

To date, there has not been a mutual understanding among the experts concerning the definition of law. There have been a huge number of law experts, scholars, and graduates attempting to formulate the definition of law. Nevertheless, none of them has formulated the definition which is acceptable for all the parties<sup>1</sup>; whereas the term 'law' is not a new word in social life and many people have been familiar with this term. Above all, the Indonesian country has recently been going through random issues of law enforcement.

According to M.H Tirtaamidjaja , in his book entitled principals of trading law emphasizes that "Law is all norms which must be obeyed and practiced in the social life actions bringing the consequence and thread of compensating the loss, in case someone violating the rules will harm others' lives and wealth (i.e., causing a person to lose his freedom will lead to fining or other sanctions.)"<sup>2</sup>

### 3.2 The Meaning of Law in Etymological Perspectives

The term 'law' is a singular noun coming from Arabic. It's plural form is "ahkam" derived in the Indonesian language into "hukum." The definition of law is closely related to the definition of the ability to do some forcefulness.<sup>3</sup> Meanwhile, the term *Recht* comes from the word *Rectum* (Latin) meaning guidance, pursuit, or government administration. About *Rectum*, another well-known term is *Rex* meaning a person whose job is to guide or to rule. *Rex* can also be translated into "King" having regimen meaning kingdom. The word *Rectum* can be related to the word *Directum* meaning a person whose job is to guide or to direct. Therefore, the words *Director* or *Rector* have the same meanings.<sup>4</sup>

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<sup>1</sup> Laurensius Arliman. S, *Penegakan Hukum dan Kesadaran Masyarakat*, Republisher, Yogyakarta, 2015, page 5.

<sup>2</sup>C.S.T Kansil dan Christine S.T Kansil, *Pengantar Ilmu Hukum Indonesia*, Pt Rineka Cipta, Jakarta, 2014, page 34.

<sup>3</sup> Soeroso, *Pengantar Ilmu Hukum*, Sinar Grafika, Jakarta, 2013, page 24.

<sup>4</sup> *Ibid.*

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The term “*Gerechtiged*” emerged from the word *Recht*. It is a Dutch word or is called “*Gerechtiged*” in German meaning justice. Thus, the law is strongly related to justice. Therefore, *Recht* can be translated into a law having two essential elements namely authority and justice.<sup>5</sup>

### 3.3 Definition of Criminal Actions

Sudarto states that simply a criminal action can be understood as a sorrow given by the state to a person intentionally committing a violation towards the legislation rules so that he is given a sanction as the sorrow.<sup>6</sup>

W.A. Bonger states that the definition of a criminal action is charging a punishment or a kind of affliction to someone for he has committed a deed harming the society or inflicting a financial loss to the society. Ruslan Shaleh suggests that a punishment or a criminal sanction is considered as a reaction towards an offense (criminal action) and is represented in the form of affliction charged by the State to the offense maker.<sup>7</sup> Furthermore, an offense should fulfill the following characteristics<sup>8</sup>: A criminal offense or sanction is an affliction; criminal offense or sanction always has a sense of forcefulness; A criminal offense or sanction is charged on behalf of the State; A criminal offense or sanction requires the presence of the Constitution determined previously; A criminal offense or sanction is charged to a person committing a criminal act; The load and form of an offense or a criminal sanction charged to a person depend on the criminal acts committed and will increase or decrease depending on the motives and disruptions caused by the criminal action. *tolol bos*.

In the literature of criminal law particularly the pure normative thought, the discussion on offense and criminal sanction must constantly be in contradiction with a paradoxical controversy point where in one hand a criminal sanction is charged for the sake of protecting a person's interest, but on the other hand is violated for others' interest by charging a punishment in the form of affliction to a person<sup>9</sup> Not every scholar believes that a criminal sanction or an offense is an affliction or sorrow. According to Hulsman, the nature of criminal sanction is “to call upon law and order (*tot de orde reopen*); for a criminal sanction has two major objectives namely influencing someone's attitude (*gedragsbeïnvloeding*) and conflict resolution (*Conflictoplissing*). Conflict resolution may consist of compensation of loss experienced by the victim, improving the harmed mutual relation, or return of the mutual trust. Binsbergen suggests that the true character of punishment is "a statement or an assignment by one of the authorities about a criminal action" (*een terechwijzing door de overhead gegeven terzake van een strafbaar feit*). The basis of social justification for such a statement according to Binsbergen is the agent's behavior; "It is not acceptable both to maintain the social neighborhood and to save the agent himself." (*ondulbaar is, zowel om het behoud van de gemenschcamp, also om het behoud van de dader zelf*).<sup>10</sup>

Similarly, GP Hoefnagels refutes the point of view stating that a criminal sanction is a censure, discouragement, or suffering. This view is in contradiction to the general definition that a sanction in criminal law is all reactions towards lawlessness/ violation of law determined by the Constitution ranging from arrest, investigation of the defendant by police officers, to the verdict. Therefore, Hoefnagels sees it empirically that a punishment or a criminal sanction is a

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<sup>5</sup> Laurentius Arliman. S. *Op.Cit*, page 6.

<sup>6</sup> Sudarto, *Kapita Seleka Hukum Pidana*, Alumni, Bandung, 1981, page 109.

<sup>7</sup> Ruslan Shaleh, *Hukum Pidana Sebagai Konfrontasi Manusia dan Manusia*, Ghalia Indonesia, Jakarta, page 9.

<sup>8</sup>: Ruslan Shaleh, *Hukum Pidana Sebagai Konfrontasi Manusia dan Manusia*, Ghalia Indonesia, Jakarta, page 9.

<sup>9</sup> — Bambang Poernomo, *Pelaksanaan Pidana Penjara Dengan System Pemasarakat*, Liberty, Yogyakarta, 1986, page 37.

<sup>10</sup> Syafrinaldi, Husnu Abadi, dan Zul Akrial, *Hukum dan Teori Dalam Realita Masyarakat*, UIR PRESS, Pekanbaru, 2015, page 349.

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time process covering the overall process of the criminal offense itself (i.e., ranging from arrest, investigation, to verdict).<sup>11</sup>

Based on some points of view on the definition of the criminal offense, it can be understood that a criminal offense must include four elements namely:<sup>12</sup> A criminal offense is an affliction or suffering (i.e., physical, mental, and social) or other effects and results not pleasing the convicted person; A criminal offense is charged on purpose the State through the court ruling to the criminal offender based on the previously existing legislation; The execution of criminal offense is forced by the State to the criminal offender; and The load of the affliction or suffering is influenced by the elements of the criminal offense committed, the motives of committing the criminal offense, and the impacts of the criminal offense towards the society and victim.

### 3.4 Definition of Criminal Offense

Sudarto emphasizes that the emergence of modern schools in criminal law has led to a type of new criminal sanction in the criminal law science called "measure" or *maatregel*.<sup>13</sup> If Pompe's point of view is considered in the perspective of conviction theories, a criminal offense is a legal sanction which is merely directed to particular prevention (specific objective) and is not retaliatory.<sup>14</sup>

Meanwhile, according to Andi Hamzah, the purpose of charging a criminal offense is to protect society.<sup>15</sup> Also, P.A.F Lamintang suggests that the criminal offense or *maatregel* in Dutch is implemented by the law institutions highlighted in the positive law having a direct relation to the judge's verdict in adjudicating the criminal cases. However, such implementation is not a conviction or a policy.<sup>16</sup>

On the other hand, Sudarto suggests that a criminal offense is meant for protecting society from the crimes committed by the criminal offender.<sup>17</sup>

### 3.5 Definition of Corruption

The word "corruption" is derived from Latin that is "*Corruptio*" coming from the term "*Corrumpere*". Similar terms emerging in other languages are derived from these Latin words, namely "*Corruption, corrupt*" (English), "*Corruption*" (French) and "*Corruptie/korruptie*" (Dutch). From the origin of the language, corruption means rotten, damaged, destabilizing, twisting, bribing, slandering, deviating from chastity or insulting words.<sup>18</sup>

The definitions of corruption according to some experts are as follows.<sup>19</sup>

1. According to Mubyarto, corruption is more like a political problem instead of economic one concerning the government's legitimacy before the youth, highly educated elite groups, and employees in general, Corruption cases lead to the elite groups' lack of support to the government both in the provincial and regency levels. This definition of corruption is given by Mubyarto highlighting corruption cases in terms of politics and economy.
2. According to Prof. R. Subekti, SH, and Tjitrosudibio, corruption is a deceitful criminal action causing some financial loss to a country or a company.
3. According to Dr. Andi Hamzah, SH, corruption is a contemptible, foul, immoral and deviant behavior containing bribery and defamation.

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<sup>11</sup> Dwija Priyatno, *Sistem Pelaksanaan Pidana Penjara di Indonesia*, Refika Aditama, Bandung, 2009, page 8.

<sup>12</sup> Syafrinaldi, Husnu Abadi, Zul Akrial, *Op. Cit*, page 350.

<sup>13</sup> Sudarto, *Op.cit*, page 110.

<sup>14</sup> Made Sadhi Astuti, *Pemidanaan Terhadap Anak Sebagai Pelaku Tindak Pidana*, IKIP Malang, 1997, page 16.

<sup>15</sup> Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia*, Pradnya Paramita, Jakarta, 1986, page 66.

<sup>16</sup> P.A.F Lamintang, *Hukum Penitesir Indonesia*, Armico, Bandung, 1984, page 209.

<sup>17</sup> Sudarto, *Op.Cit*, page 209.

<sup>18</sup> Syahroni, Maharso dan Tommy Sujawardi, *Korupsi Bukan Budaya Tapi Penyakit*, Deepublish, Yogyakarta, 2018, page 5.

<sup>19</sup> *Ibid*.

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All the experts' definitions above actually have the same meaning. From all the above definitions, two essential points of corruption definitions can be drawn both in narrow and broad senses. Below are the elaborations:<sup>20</sup>

1. In the narrow sense

Corruption is an act of fraud and embezzlement of the State's money, enterprise agencies, and other institutions leading to the adverse impacts for the State's financial;

2. In the broad sense

Corruption is an act of fraud deviating from the prevailing conditions in various fields or aspects. Such fraud is committed to the advantages of particular individuals, groups, or classes.

From the law perspectives, the criminal acts of corruption generally cover several elements namely, deeds violating the law and misuse of authorities, opportunities, or facilities. Such misuse is committed by the individuals to enrich themselves, others, or corporations leading the State's loss of finance and economy.

### 3.6 Corruption Prevention is Better than Prosecution

The points of view held by the society in general stating that corruption eradication will be more efficient and successful if it prioritizes prevention actions instead of legal prosecution. At least, the frequencies of both prevention and prosecution actions are conducted simultaneously based on the legislation in regards to corruption eradication. Corruption prevention is essential to be prioritized since the actions were taken by the law enforcers in eradicating the corruption by emphasizing the prosecution on arresting, trialing, punishing, sending the criminal offender to prison, or sentencing him to death will not work in eradicating the corruption if the State in terms of fund management regarding revenue and expense does not implement the system which can cover the holes of the State's financial leakage.<sup>21</sup>

The United Nations' anti-corruption convention has specifically established ten prevention actions as follows: Policies and practices of corruption prevention; Corruption prevention agencies; Public sectors; Rules of conduct for public officials; Procurement of goods and management; Public reporting; Actions regarding judiciary and prosecution services; Private sectors; Money laundering prevention actions.

### 3.7 Methods and Strategies to Prevent Corruption

Prevention and eradication of corruption criminal acts, similar to any prevention and overcoming attempts of any crimes in general, are parts of criminal policies within a State. Criminal policies are inseparable from policies in a broader sense namely, social policies. Bardah Nawawi Arif states that social policies consist of <sup>22</sup>: Policies or efforts to create *social welfare policy*; and Policies or efforts to protect society (*social defense policy*).

Therefore, in preventing and overcoming crimes, Bardah Nawawi Arief identifies the following points.<sup>23</sup> Prevention and overcoming actions of crimes must support the goals, "social welfare," and "social defense." Prevention and overcoming actions of crimes must be implemented through an "integral approach" with the existence of "penal" and "non-penal" balance facilities. In terms of criminal politics, the most strategic policies will be through "non-penal" facilities since they are more preventive and since the "penal" ones have some limitations and weaknesses (i.e., more fragmentary and simplistic/ not structural-functional; symptomatic/ not causative/ not eliminative; individualistic or "offender-oriented"/ not "victim-oriented"; more repressive/ not preventive; must be supported by costly infrastructures).

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<sup>20</sup> *Ibid.* Page 9.

<sup>21</sup> Juni Sjafrien Jahja, *Say No To Korupsi*, visit media, 2012, Jakarta, page 13.

<sup>22</sup> Mansur Kartasaya, *Korupsi dan Pembuktian Terbalik*, Kencana, Jakarta, 2014, page 45.

<sup>23</sup> *Ibid.* page. 46.

1. Crime prevention and overcoming actions through “penal” methods are “penal policy” or “penal law enforcement policy” the functioning and operation of which must go through some stages as follows: Formulation stage (legislation policy); Application stage (judicative policy); and Execution stage (execution policy)

Efforts to prevent, overcome, and eradicate corruption requires attention, concern, and spirit and attitude consistency from the elite authorities and the law enforcers.<sup>24</sup>

According to Barda Nawawi Arief, the overcoming actions of crimes including corruption can be implemented through functional approaches done by selecting and determining criminal law as a medium to overcome the crimes. It must take into account all the factors capable of supporting the functions and implementation of criminal law. Barda's point of view has indicated that corruption eradication cannot be separated from causative overcoming actions regarding comprehensive approaches.<sup>25</sup>

Artidjo Alkostar also describes the strategies to overcome corruption in terms of penal efforts in the form of prosecution and non-penal ones in the form of prevention. In terms of prosecution, Artidjo mentions the needs for maximum punishment by the danger level of the corruption case committed.<sup>26</sup>

Such corruption issues are closely related to various complexities of the other issues covering mental or moral behaviors. Those behaviors include lifestyle and socio-cultural issues, economic necessities or demands, political culture or structure issues, and the issues of the existing opportunities in the national development mechanisms or the weaknesses in administration procedures/ bureaucracy (including the surveillance system) in financial and public service aspects. The complexity of the issues or circumstances which can be criminological is outside of the criminal law enforcers' extents. Criminal law is merely a symptomatic eradication facility instead of a causative one. This is one of the limitations or weaknesses of the criminal law abilities apart from the other limiting factors.<sup>27</sup>

Every situation encountered in the analysis of anti-corruption policies requires different policy guidelines. The guidelines should be represented in the framework aiming at five categories of anti-corruption policies as follows:<sup>28</sup>

1. Selecting employees

We can take the independent commission of corruption eradication in Hong Kong which was established as a result of the systematic corruption cases of the Hong Kong police department as an example. This institution was unable to appoint and inaugurate the investigators from the local police department. To solve the problem, the judge's ideas did not use the Internal Security Division. They appointed a senior officer from England; such a solution was difficult to apply since the case occurred in a state which is not included in the England colony.

2. Altering Compensation and Sanction

A better system to measure the work accomplishments should be counterbalanced by other compensations (e.g., promotion of position, money prize, incentives, and compliment) and sanction (e.g., deposition and publicity on corruption criminal acts and the offenders' names). For example, the Singaporean government gives the award to the police officers rejecting bribes, and Singaporean court gives severe punishment for those receiving the bribes. Another example is the United States Army in Korea has blacklisted the contractors involved in the collusive agreement.

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<sup>24</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana*, Kencana, Jakarta, 2007, page. 77.

<sup>25</sup> *Ibid*, page 79.

<sup>26</sup> Artidjo Alkostar, *Korupsi Politik Di Negara Modern*, FH UII Press, Yogyakarta, 2008 page 343.

<sup>27</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, 2005, page 100.

<sup>28</sup> Andi Hamzah, *Pemberantasan Korupsi: Hukum Pidana Nasional dan Internasional*, Raja Grafindo Persada, Depok, 2005, page 261.

### 3. Altering the Relationship Structure among Superiors, Subordinates (Employees), and Clients

Various cases have indicated that it is essential to have appropriate methods and mediums to ease off employees' authority and their monopolist power towards clients. For example, the attempt to reduce the corruption opportunity between the tax assessor and the taxpayer by simplifying the Tax Constitution as performed by the Judge. The Gross Income Tax recommended it is the fixed tax version by reducing the further authority agreed by the Judge. The agreement is also given for tax case reference more than 100,000,- peso to the central office, so that the field officers will not take care of serious cases).

## 4. Conclusion

After comprehending the experts' elaboration, definitions, and points of view, we can conclude that: Corruption behavior is a contemptible and vile behavior coming from the offenders' low morality and lack of shame using all kinds of methods to enrich themselves or others; it is categorized as an extraordinary crime; Talking about breaking metaphorically which can be committed to an individual, similarly, corruption is another kind of breaking to the State's money leading to some loss to the State. The finance being seized will cause some loss to the community of all circles. Therefore, the prevention of corruption in criminal acts is essential before they occur; Preventing corruption should come from the law enforcers' strong intention to morally fight against greed within oneself.

The followings are preventive strategies to avoid corruption in criminal acts: Improving the human resources' moral and religious qualities due to their possible greedy and corrupt behaviors coming from their degraded morality; There should be anti-corruption (i.e., risks and danger) education in primary, secondary, and higher education; The law enforcers should review whether the anti-corruption constitution has fulfilled the philosophical, sociological, and juridical elements;

The causes for the high level of corruption cases in Indonesia are the absence of a system capable of managing and monitoring policy. Decision making in Indonesia still uses conventional methods namely face-to-face meetings in the same room. Different from that in the overseas countries, when a decision in regards to policies is about to be made, a highly organized system has been established to avoid face-to-face meetings leading to the deviation, collusive behavior, and bribery during the policy-making process. Considering that corruption comes from the greed of an individual. Therefore, every government or private institution had better conduct a briefing embedding the anticipation on the danger and risks of corruption or even more highlight editorials in art, songs, allusion, or poetries against corruption, conduct socialization to some regions or institutions regarding the danger and risks of corruption. Religion or spiritual enlightenment and activities are necessary to improve an individual's morality and ease off his greed. It is also essential to implement anti-corruption education ranging from schools to higher education and to limit the monopoly of job opportunities. Similarly, it is useful to evolve the transparency among employees and to review the Constitution on Corruption Criminal Acts.

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