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The authority of judges in determining suspects of corruption: Rationality for the reform of Indonesia criminal justice in corruption

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ABSTRACT

This study aims to clarify the rationale for granting judges the authority to evaluate suspects based on trial evidence in corruption cases and to outline the potential consequences of granting such power in future revisions to the corruption justice system. This research employs a normative legal framework, utilising both legislative and conceptual techniques. The findings of this study indicate that the justification for granting judges the authority to identify suspects based on trial evidence in corruption cases includes the following: Corruption is an extraordinary crime; also, judges' identification of corruption suspects, based on trial evidence, corresponds with the principles of legal realism in the American legal system. The justification and capacity of judicial authorities to identify suspects in corruption charges can be validated, as corruption, as an exceptional crime, markedly diverges from conventional procedural law norms. This encompasses, firstly, the reversal of the burden of proof in corruption cases, a notion lacking in traditional criminal procedure; and secondly, the disregard for the principle of non-retroactivity in counter-terrorism efforts, which is not recognised in ordinary criminal procedural legislation. Thirdly, there is a precedent for courts identifying suspects in unlawful logging cases under Law No. 18 of 2013 for the Prevention and Eradication of Forest Destruction.

1. Introduction

The endeavour to eliminate and avert corruption within the public domain remains a compelling subject for discourse, especially in the context of law enforcement. This highlights the importance of each legal measure implemented to combat corruption.

Consequently, it is reasonable to regard corruption as a profound offence, given its systematic and pervasive nature, and the potential consequences it poses; if not addressed, these will be catastrophic for both the economy and national progress. Consequently, the elimination of corruption necessitates exceptional legal interventions.[1]

This phenomenon can be comprehended in light of the adverse effects stemming from these unlawful actions. The ramifications are discernible across multiple dimensions of existence. Consequently, we acknowledge that corruption presents a significant challenge; this transgression can threaten the stability and security of society, compromise socio-economic progress and political integrity, and also erode democratic principles and ethical standards, as this behaviour appears to evolve into a pervasive culture over time. Corruption poses a significant challenge to the realisation of an equitable and thriving society. Consequently, it is not an overstatement to assert, as Romli Atmasasmita has articulated, that 'corruption in Indonesia has evolved into a pervasive virus that has been undermining the entire governmental structure since the 1960s, with efforts to eliminate it remaining in a state of inertia.'[2]

According to estimates from Indonesia Corruption Watch, the overall ramifications of corruption in 2011 totalled Rp2.13 trillion (approximately US$238.6 million). The primary categories of corruption include, firstly, embezzlement, amounting to Rp 1.23 trillion. Secondly, there are instances of fraudulent projects and travel expenditures amounting to Rp446.5 billion. Third, there is the issue of misuse amounting to Rp 181.1 billion, and fourth, the concern of mark-ups totalling Rp 171.5 billion. This sum is regarded as quite substantial for a developing nation like Indonesia. Numerous institutions are often regarded as highly corrupt, encompassing the entirety of the judicial sector, which includes the police, courts, public prosecutors, and the Ministry of Justice. Additionally, significant revenue-generating agencies, such as customs and tax authorities, the Ministry of Public Works, Bank Indonesia, and the Central Bank,

[1] Hendi Yogi Prabowo, Jaka Sriyana, and Muhammad Syamsudin, 'Forgetting Corruption: Unlearning the Knowledge of Corruption in the Indonesian Public Sector', *Journal of Financial Crime*, 25.1 (2018), pp. 28–56, doi:10.1108/JFC-07-2016-0048.

[2] Simon Butt and Sofie Arjon Schütte, 'Assessing Judicial Performance in Indonesia: The Court for Corruption Crimes', *Crime, Law and Social Change*, 62.5 (2014), pp. 603 – 619, doi:10.1007/s10611-014-9547-1.

are also implicated.[3]

The implementation of the Anti-Corruption Law was designed not merely to penalise those engaged in corrupt practices, but also to reclaim the financial losses sustained by the state due to such corruption. Furthermore, the prevailing political climate and pressing societal calls for the government to promptly address the issue of corruption in Indonesia led to the enactment of Law No. 31 of 1999 concerning Corruption Crimes, which was subsequently revised and supplemented by Law No. 20 of 2001, henceforth referred to as the Anti-Corruption Law.[4]

Nevertheless, the prevailing issue lies in the ineffective attainment of objectives, characterised by a selective approach to enforcement and a notable imbalance between the state's budget dedicated to combating corruption and the comparatively modest recovery of financial losses incurred by the state. In 2012, it was noted that the budget designated for the fight against corruption from 2001 to 2009 totalled Rp. 73.1 trillion, whereas the financial recoveries achieved during that timeframe reached Rp. 5.3 trillion. The inadequacy of the strategies employed to address corruption is underscored by Indonesia's Corruption Perception Index, which stands at a notable 40, positioning the nation at 85th among 180 countries globally.[5]

Over the years, corruption in Indonesia has proliferated markedly, infiltrating numerous sectors, including the executive, legislative, and judicial branches. Corruption undermines the financial integrity of the state while simultaneously infringing upon the social and economic rights of individuals, warranting its classification as a grave offence. Consequently, it is imperative to adopt more comprehensive and inventive strategies to tackle the problem of corruption within the Indonesian framework. Throughout history, the Indonesian government has undertaken significant initiatives to address corruption and safeguard state finances, while simultaneously working to eliminate corrupt practices. The government has

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[3] Tinuk Dwi Cahyani, Muhamad Helmi Md Said, and Muhamad Sayuti Hassan, 'A Comparison Between Indonesian and Malaysian Anti-Corruption Laws', *Padjadjaran Jurnal Ilmu Hukum*, 10.2 (2023), pp. 275–99, doi:10.22304/pjih.v10n2.a7.

[4] Anisah Alfada, 'The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model', *Heliyon*, 5.10 (2019), p. e02649, doi:https://doi.org/10.1016/j.heliyon.2019.e02649.

[5] Ratna Juwita, 'Good Governance and Anti-Corruption: Responsibility to Protect Universal Health Care in Indonesia', *Hasanuddin Law Review*, 4.2 (2018), pp. 162–80, doi:10.20956/halrev.v4i2.1424; Ponco Hartanto, Ricky Ricky, and Vincent Ariesto Gunawan, 'Using Indonesian Corruption Law for Eradicating the Yogyakarta Sultanate Land Mafia: A Legal Formulation Study', *Indonesian Journal of Crime and Criminal Justice*, 1.1 (2025), pp. 23–53, doi:10.62264/ijccj.v1i1.122.

instituted a range of laws, established institutions, and formed specialised teams aimed at addressing corruption at its foundational level, to preserve the economy and safeguard state finances.[6]

The narrative surrounding the eradication of corruption commenced in the Old Order era, marked by initiatives grounded in Law No. 24 Prp of 1960, which addressed the investigation, prosecution, and examination of corrupt practices. In this context, an expansion of the definition of corruption offences within the Criminal Code was implemented, alongside the creation of a dedicated institution aimed at eradicating corruption. Nonetheless, this anti-corruption entity lacked efficacy, as evidenced by the absence of precise delineations regarding actions detrimental to state finances.[7]

In the era of the New Order (1971–1999), Law No. 3 of 1971 concerning the Eradication of Corruption was established, delineating corruption offences through references to articles in the Criminal Code, employing a formal offence methodology. The OPSTIB Team was constituted as the executing authority of the law by Presidential Instruction No. 9, dated 1977. Nevertheless, the performance of the OPSTIB Team fell short of expectations. In 1999, the Commission for the Examination of State Officials' Assets (KPKPN) was established using Presidential Decree No. 127/1999. Throughout the reform period from 1999 to 2002, Law No. 3 of 1971 had become increasingly irrelevant due to the changing legal requirements. Consequently, Law No. 31 of 1999 was established, subsequently revised by Law No. 20 of 2001, concerning the Eradication of Corruption, which aimed to enhance the definition of corruption offences outlined in Law No. 3 of 1971, encompassing both active and passive corruption. The delineation of corruption offences has been elucidated via formal charges, and the characterisation of civil servants has been broadened.[8]

Furthermore, Law No. 28 of 1999 concerning Clean Government, Free from Corruption, Collusion, and Nepotism was established. Alongside the enforcement efforts of the National Police and the Attorney General's Office, a Joint Team for the Eradication of Corruption (TGTPK) was established by Government Regulation No.

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[6] Subagio Gigih Wijaya and Matthew Marcellinno Gunawan, 'Police Discretion on Terminating Corruption Investigations After Return State Financial Losses in Indonesia: Validity and Challenges', Indonesian Journal of Crime and Criminal Justice, 15.1 (201925), p. 1, doi:10.62264/ijccj.v1i1.124.

[7] Hendi Yogi Prabowo, 'Re-Understanding Corruption in the Indonesian Public Sector through Three Behavioral Lenses Hendi', *Facilities*, 35.6 (2015), pp. 925–45, doi:10.1108/JFC-08-2015-0039.

[8] Johanes D Widojoko, '17 - Indonesia's Anticorruption Campaign: Civil Society versus the Political Cartel', in *The Changing Face of Corruption in the Asia Pacific*, ed. by Marie dela Rama and Chris Rowley (Elsevier, 2017), pp. 253–66, doi:https://doi.org/10.1016/B978-0-08-101109-6.00017-4.

19 of 2000 to expedite the dismantling of corruption. Due to the ineffectiveness and inefficiency of government agencies tasked with addressing corruption crimes, the Corruption Eradication Commission was established under Law No. 30 of 2002 (hereinafter referred to as Law No. 30/2002).[9]

Moreover, considering the severe consequences of corruption, which not only destabilise the core of a nation's economy but also exert a considerable influence on the global economic framework and erode democratic principles and justice on a global scale. About the previously mentioned assertion, the elimination of corruption transcends the duties of an individual nation; it is a shared responsibility among all countries globally, as the implementation of legal frameworks necessitates cooperative efforts on an international scale. This aligns with the 2003 United Nations Convention Against Corruption, which governs the process of asset recovery and confiscation. The Convention establishes that the restitution of assets is a core tenet, obligating participating nations to exert all possible efforts to collaborate and facilitate assistance in the endeavours of asset recovery. The primary aim of the United Nations Convention Against Corruption is to facilitate the recovery of state assets to promote economic recovery. As previously indicated, endeavours in asset recovery, particularly regarding assets situated in foreign jurisdictions, necessitate collaboration among the involved nations. A notable mechanism is the Mutual Legal Assistance in Criminal Matters (MLA) Agreement.[10]

In this context, it appears that a considerable array of legal instruments is accessible at both national and international levels. Nonetheless, in practical application, the prosecution of corruption cases proves to be quite challenging, leading to instances where, in court, the evidence presented indicates that an individual has met the criteria of a suspect in a corruption offence. Nevertheless, the investigators from the Corruption Eradication Commission, the Police, and the Attorney General's Office have not yet identified them as suspects about corruption offences. Nonetheless, the efforts of these three law enforcement agencies in addressing corruption warrant recognition. This observation is based on the most recent data, which indicate that, overall, the enforcement of corruption laws in Indonesia is relatively effective. Data

[9] Shubhan Noor Hidayat, Lego Karjoko, and Sapto Hermawan, 'Discourse on Legal Expression in Arrangements of Corruption Eradication in Indonesia', *JOURNAL of INDONESIAN LEGAL STUDIES*, 5.2 (2020), pp. 391–418, doi:10.15294/jils.v5i2.40670.

[10] Alvedi Sabani, Mohamed H Farah, and Dian Retno Sari Dewi, 'Indonesia in the Spotlight: Combating Corruption through ICT Enabled Governance', *Procedia Computer Science*, 161 (2019), pp. 324–32, doi:https://doi.org/10.1016/j.procs.2019.11.130.

spanning from 2017 to 2021 reveals that the KPK undertook 604 investigations, initiated 551 prosecutions, issued 510 indictments, rendered 457 final judgements, and executed 476 actions. Furthermore, the KPK has adeptly brought charges against corporations as suspects. This represents a noteworthy advancement for the KPK, as it could not previously investigate corporations as potential suspects.[11]

This principle is equally relevant to the Prosecutor's Office in the timeframe spanning 2017 to 2021. The 2021 Corruption Case Enforcement Trend Monitoring Report published by Indonesia Corruption Watch (ICW) indicates that the Attorney General's Office has exhibited variability in its enforcement performance over the preceding five years. The incidence of corruption cases and the number of suspects charged have increased, alongside a notable rise in state losses incurred. The most significant state loss addressed by the Prosecutor's Office occurred in the PT. The Asabri corruption case, which culminated in state losses amounting to Rp 22,780,000,000,000 (approximately Rp 22.78 trillion). In 2021, the Prosecutor's Office handled a total of 371 cases, involving 814 individuals identified as suspects.[12]

In assessing the target versus the actual enforcement of corruption cases, the Prosecutor's Office demonstrates a commendable performance, categorising it as B or Good, with an approximate percentage of 64.8%. Nonetheless, upon calculation, it emerges that the average monthly caseload for the Prosecutor's Office stands at 31 cases. This observation raises concerns regarding certain Prosecutor's Offices in specific regions, which appear to be neglecting the handling of corruption cases entirely. According to the monitoring results, five key actors emerge as the most frequently identified suspects by the Attorney General's Office: civil servants (242 individuals), private parties (159 individuals), village heads (101 individuals), directors and employees of state-owned enterprises (60 individuals), and village officials (58 individuals). In the interim, one observes a notable presence of individuals with political affiliations, comprising Chairmen and Members of the Regional People's Representative Council (11), Regents and Vice Regents (5), as well as Chairmen and Members of the People's Representative Council (2), in the PT. In the Asabri corruption case, the Supreme Prosecutor's Office has identified 10 corporations as suspects. This

[11] Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', *International Journal of Law, Crime and Justice*, 51 (2017), pp. 72–83, doi:10.1016/j.ijlcj.2017.07.001.

[12] Musa Darwin Pane and Diah Pudjiastuti, 'The Legal Aspect of New Normal and the Corruption Eradication in Indonesia', *Padjadjaran Jurnal IImu Hukum*, 7.2 (2020), pp. 181–206.

is praiseworthy.[13]

The circumstances surrounding the Police during the 2017-2021 period exhibit notable distinctions. Upon careful examination of the Police's performance metrics over the last five years, it is evident that the efficacy of the Bhayangkara Corps has experienced a notable decline, reflected in both the volume of cases and the identification of suspects. In 2021, the Police set a target for managing corruption cases at 1,526 instances. Regarding personnel, Indonesia is home to 517 police institutions, which include one Directorate of Corruption Crimes at the national level, 34 Provincial Police Headquarters, and 483 District/City Police Headquarters.[14]

Every police department at the provincial and district/city levels is mandated to address corruption cases, with the quantity ranging from a minimum of one case to a maximum of 75 cases. In the meantime, the Criminal Investigation Department of the National Police Headquarters has set an objective to manage 25 cases annually. ICW's monitoring results indicate that the Police addressed a mere 130 cases in 2021, identifying 244 individuals as suspects. In juxtaposing the intended objectives with the actual management of corruption cases, the performance of the Police can be classified as category E, denoting a status of Very Poor, with an approximate percentage of 8.45%.[15]

In contrast to the Attorney General's Office and the Corruption Eradication Commission (KPK), the Police possess a considerable surplus of resources, encompassing both financial allocations and human capital. According to the monitoring results, it has been observed that law enforcement frequently references articles about state financial losses in the context of addressing corruption cases. A total of 121 corruption cases, constituting approximately 94.5%, were prosecuted under Articles 2 and 3 of the Anti-Corruption Law.[16] Furthermore, in the other instances, law enforcement applied charges related to bribery (3 instances), extortion

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[13] M Zaid and others, 'Eradicating Public Official Corruption Indonesia : A Revolutionary Paradigm Focusing on State Financial Losses', *Wacana Hukum*, 29.2 (2023), pp. 87–111, doi:10.33061/wh.v29i2.9564.

[14] Pupung Purnamasari and others, 'Penta-Helix Model of E-Government in Combating Corruption in Indonesia and Malaysia: Religiosity as a Moderating Role', *F1000Research*, 11 (2022), p. 932, doi:10.12688/f1000research.121746.1.

[15] Purnamasari and others, 'Penta-Helix Model of E-Government in Combating Corruption in Indonesia and Malaysia: Religiosity as a Moderating Role'; Zaid and others, 'Eradicating Public Official Corruption Indonesia : A Revolutionary Paradigm Focusing on State Financial Losses'.

[16] Satria Unggul Wicaksana Prakasa, 'Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures', *Lentera Hukum*, 6.3 (2019), pp. 413–30, doi:10.19184/ejlh.v6i3.14112.

(2 instances), money laundering (2 instances), gratification (1 instance), and conflict of interest in procurement (1 instance). Five categories of individuals emerged as the most frequently identified suspects by law enforcement: civil servants (73 individuals), village heads (57 individuals), private citizens (37 individuals), village officials (28 individuals), and directors or employees of state-owned enterprises (17 individuals). From the viewpoint of the actors involved, it appears that law enforcement has refrained from pursuing any political figures as suspects in corruption cases. This suggests that the law enforcement agencies have not yet succeeded in identifying and addressing the principal figures involved. Regarding the patterns observed, it is notable that individuals at the village level, such as Village Heads and Village Officials, have been apprehended by law enforcement authorities with considerable frequency.[17]

While not seeking to diminish the efforts of the three law enforcement agencies, the author emphasises that, in truth. In numerous corruption cases adjudicated in the Corruption Court, it is evident that the individuals or legal entities involved have fulfilled the criteria necessary to be designated as suspects of corruption, based on the legal facts presented during the trials of these criminal acts. In the case of corruption concerning Setya Novanto, the initial designation of him as a suspect was subsequently annulled by Pre-Trial Ruling No. 97/Pid.Prap/2017/PN.Jkt. The designation of Setya Novanto as a suspect at that time was predicated on trial evidence, with the KPK utilising the Investigation Order (Sprindik) associated with Irman, Sugiharto, and Andi Narogong to interrogate witnesses, execute seizures, and gather evidence. The findings from the examinations, seizures, and evidence were likewise utilised in the proceedings against Setya Novanto. The release of the pre-trial ruling concerning Setya Novanto has generated considerable public discourse, as it is perceived to encompass a multitude of irregularities. The anti-corruption watchdog ICW found numerous irregularities in the pre-trial proceedings concerning the initial designation of Setya Novanto as a suspect.[18]

Despite being overturned in the pre-trial ruling, the corruption case concerning

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[17] Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), p. e11153, doi:https://doi.org/10.1016/j.heliyon.2022.e11153.

[18] Jiwon Suh, 'Human Rights and Corruption in Settling the Accounts of the Past: Transitional Justice Experiences from the Philippines, South Korea, and Indonesia', *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 179.1 (2023), pp. 61–89, doi:https://doi.org/10.1163/22134379-bja10049.

Setya Novanto underwent further scrutiny, leading to his re-designation as a suspect. The matter was later adjudicated in a court of law, culminating in a verdict that imposed a sentence of 15 years of incarceration, a financial penalty of Rp 500 million, and a requirement to provide restitution amounting to 7.3 million US dollars. Moreover, the judge has additionally rescinded the political rights of the former Speaker of the House of Representatives for five years. This case illustrates that the evidence presented in court can serve as a valuable tool for law enforcement, particularly in addressing corruption offences in Indonesia. Consequently, the formulation of law enforcement strategies addressing corruption offences must be attuned to these prevailing circumstances. The application of specific criminal offences ought not to be conflated with the application of general criminal offences. It may be prudent to consider empowering judges with the discretion to identify an individual or legal entity as a suspect in a corruption case, contingent upon the evidence presented during the trial.

To illustrate the originality of this work, the author examined other analogous papers, including the following: A paper titled "Forgetting Corruption: Unlearning the Knowledge of Corruption in the Indonesian Public Sector." The primary objective of this paper, based on the authors' research, is to identify a systematic long-term solution to the issue of corruption in the Indonesian public sector through the lens of knowledge management. This study draws on various perspectives and theories of corruption and knowledge management to address the issue of corruption in Indonesia. This paper analyses the corruption issue in the Indonesian public sector over the past decade by examining reports from various institutions and pertinent documents to elucidate behavioural challenges in knowledge management and their correlation with corruption. The authors assert that a primary reason for the persistent regeneration of corruption within the Indonesian public sector is its long-standing integration into the knowledge conversion processes of public institutions, making its eradication a formidable challenge. Eliminating corruption from Indonesian public institutions necessitates the eradication of it from the prevailing knowledge conversion spiral within these entities through organisational unlearning and relearning. The primary objective of the unlearning and relearning process must be to eradicate knowledge of corruption, in both its implicit and explicit manifestations, and replace it with knowledge of good governance, accountability, and integrity. By implementing rigorous organisational unlearning and relearning, alongside other stringent safeguards, the danger of corruption in Indonesia's public institutions will progressively decrease over time. This study employs documentary analysis to

elucidate the pattern of behavioural issues related to knowledge conversion within the Indonesian public sector. Subsequent research should include interviews with perpetrators of corruption and local authorities to gain a more precise understanding of the role of knowledge conversion in the proliferation and renewal of corruption within the Indonesian public sector. This research advances the formulation of a corruption eradication strategy by presenting a framework for the systematic elimination of corrupt knowledge within an organisation. This enables more effective and efficient allocation of framework resources to fulfil corruption prevention objectives. This research emphasises the significance of behaviour-oriented strategies in combating corruption within the Indonesian public sector.[19]

Secondly, the article titled "From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangements by the Corruption Eradication Commission of Indonesia." This article analyses three formal criminal statutes on corruption to demonstrate the significance of the due process paradigm for wiretapping and legal interception in Indonesia. Investigators from the Indonesian Corruption Eradication Commission (KPK) believe that the application of wiretapping within the due process paradigm impedes the efficacy and autonomy of corruption eradication efforts. The issue arises explicitly during the execution of the caught in the act procedure. This paper examines the design of wiretapping in corruption cases, considering it within the context of the due process paradigm, as a means to safeguard the right to privacy. Initially, legislators emphasised the necessity of effective corruption elimination, underscoring the application of the criminal control approach. Secondly, the recent revision to the Law on the Corruption Eradication Commission of Indonesia designates wiretapping as a procedural activity to enhance collaboration among law enforcement agencies. The regulation of wiretapping as a means to uncover corruption cases in Indonesia does not fully comply with the concept of due process. Wiretapping continues to pertain to the phases of preliminary investigation, investigation, prosecution, and the implementation of the internal approval process.[20]

Thirdly, the document is headed "Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia." The study's findings indicate that corruption is prevalent in Indonesia and has a considerable detrimental impact. It not only undermines the state's wealth but also erodes the legitimacy of law enforcement by diminishing public

[19] Prabowo, Sriyana, and Syamsudin, 'Forgetting Corruption: Unlearning the Knowledge of Corruption in the Indonesian Public Sector'.

[20] Christianto, 'From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangement by the Corruption Eradication Commission of Indonesia'.

trust in the law enforcement system. This may result in the obliteration of democracy and modernisation in Indonesia. Recognising the circumstances, or possibly for the sake of political correctness, the post-independence administrations declared the campaign against corruption a state of emergency. However, it was not until the onset of the political period recognised by Indonesians as Era Reformasi in 2000 that the campaign against corruption escalated, culminating in the passing of Law No. 30/2002, which established the Corruption Eradication Commission, known as Komisi Pemberantasan Korupsi (KPK). Since its inception, the Commission has been pursuing corruptors with unprecedented vigour. Pursuing corrupt officials is a formidable endeavour. As the KPK strengthens through enhanced legal support and increased public confidence, corrupt individuals seek illicit methods to circumvent or obstruct the law, thereby evading accountability for their egregious offences. This activity is referred to as obstruction of justice. This study examines the obstruction of justice in the campaign against corruption in Indonesia. This aims to address two questions: what constitutes obstruction of justice in Indonesia's efforts to eradicate corruption, and how can law enforcement authorities effectively address it. Utilising empirical data, the study indicates that an action is considered impeding justice if executed intentionally to hinder the legal process (mens rea). While any individual may engage in obstruction of justice, it is typically facilitated by the backing of influential figures, including government officials, law enforcement agents, attorneys, and legislators. The study advocates for the revision of anti-corruption legislation, sustained collaboration among law enforcement agencies, the utilisation of existing corruption laws, the enhancement of law enforcement professionalism, and the elevation of public awareness as essential strategies to intensify the ongoing battle against corruption.[21]

The author concludes that this paper is innovative regarding ideas and concepts, as described in the preceding section.[22] This study aims to establish a foundation for advocating the authority of judges in identifying corruption suspects within the forthcoming reform of the criminal justice system, while also presenting a legal perspective on the feasibility of integrating this concept by analysing the phenomenon of criminal justice concerning extraordinary crimes.

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[21] Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia'.

[22] Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia'; Christianto, 'From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangement by the Corruption Eradication Commission of Indonesia'; Prabowo, Sriyana, and Syamsudin, 'Forgetting Corruption: Unlearning the Knowledge of Corruption in the Indonesian Public Sector'.

2. Research Method

This study constitutes a normative legal inquiry, employing the concept of 'positive norms within the legislative framework.'[23] This study substantiates that the methodology employed in this legal inquiry is both the statutory approach and the conceptual approach.[24] This study employs document analysis complemented by interviews as its data collection methods.[25] Document studies serve as a method for gathering secondary data derived from a diverse array of literature, encompassing legislation, books, journals, articles, prior research reports, and other pertinent documents associated with the topics under investigation.[26] The analysis involved a meticulous examination of the doctrines underpinning the enforcement of extraordinary criminal law, followed by a translation of these principles to construct a compelling argument in favour of the author's position regarding the judicial authority in adjudicating corruption offences.[27]

3. Results and Discussion

The Rationality of Judges' Authority to Determine Suspects in Corruption Cases in Indonesia

Corruption in Indonesia has permeated the power system in a methodical, organised, and extensive manner. The governance of authority is consequently hindered in its capacity to adequately represent the populace, as pervasive corrupt practices compromise it. This is what complicates the attainment of prosperity in a nation recognised for its wealth of natural resources.[28] The Indonesian populace has acknowledged this situation. Consequently, with the initiation of the reform process, the elimination of corruption has

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[23] M Zaid, M Musa, and Bianglala Asmarasari, '"Novum" in Indonesian Criminal Justice: Problems and Legal Reform', *Indonesian Journal of Crime and Criminal Justice*, 1 (2025), pp. 54–88, doi:10.62264/ijccj.v1i1.121.

[24] Gregorius Widiartana, Vincentius Patria Setyawan, and Ariesta Wibisono Anditya, 'Ecocide as an Environmental Crime: Urgency for Legal Reform in Indonesia', *Journal of Law, Environmental and Justice*, 3.2 (2025), pp. 268–308, doi:10.62264/jlej.v3i2.129.

[25] Pujiyono Suwadi and Rian Saputra, 'Non-Fungible Tokens and the Metaverse Using Cryptocurrency in Indonesia: Money Laundering Potential and Challenges', *Indonesian Journal of Crime and Criminal Justice*, 1.1 (2025), pp. 109–31, doi:10.62264/ijccj.v1i1.120.

[26] Suparto Suparto and others, 'The Concept of State Control over Forests and Forest Areas in Indonesia', *Journal of Law, Environmental and Justice*, 3.2 (2025), pp. 201–28, doi:10.62264/jlej.v3i2.136.

[27] Daswanto Daswanto and others, 'Authority of the Ministry of Environment in the Investigation of Money Laundering from Environmental Crimes', *Journal of Law, Environmental and Justice*, 3.2 (2025), pp. 309–41, doi:10.62264/jlej.v3i2.134.

[28] Januar Rahadian and Silas Oghenemaro, 'Monodualistic and Pluralistic Punishment Politics in Criminal Code Reform : Lessons from Indonesia', *Journal of Law, Environmental and Justice*, 1.3 (2023), pp. 225–43, doi:10.62264/jlej.v1i3.17.

emerged as a paramount concern. Indeed, nearly all reform initiatives, whether explicitly or implicitly, seek to reduce the likelihood of corruption. The thorough elimination of corruption is not simply an aspiration for all; however, such a goal cannot be realised in an instant.[29]

Corruption on an international scale presents a grave concern, as it poses significant risks to societal and state stability and security. It adversely affects social and economic progress, and it can even erode the foundations of democracy and national ethics by fostering a pervasive culture of corruption.[30] The establishment of the United Nations Convention Against Corruption in 2003 exemplifies the international community's concern about the consequences of corruption. This convention received ratification from Indonesia via Law No. 7 of 2006. One of the key aspects of the law's preamble is the assertion that corruption transcends local boundaries, emerging as a transnational issue that impacts all communities and economies. This reality underscores the urgent need for international collaboration aimed at preventing and eradicating this issue, as well as the recovery or repatriation of assets derived from corrupt practices.[31]

Consequently, corruption constitutes a remarkable offence. The author articulates a logical framework for empowering judges with the authority to identify suspects in corruption cases through the following arguments:

a. Corruption as an extraordinary crime

Among the transgressions that possess a worldwide character and exert a harmful influence on human civilisation are those categorised as extraordinary or exceptional crimes. The concept of extraordinary crime can be elucidated through various terminologies, including exceptional crimes, extreme crimes, and serious crimes. These terms refer to offences that exert a profound and systematic influence on the social, economic, political, legal, and cultural dimensions of life. Irrespective of the terminology employed to characterise exceptional offences, it is evident that these transgressions diverge from typical crimes concerning their essence, attributes, methodologies, and

[29] Hwian Christianto, 'From Crime Control Model to Due Process Model: A Critical Study of Wiretapping Arrangement by the Corruption Eradication Commission of Indonesia', Padjadjaran Jurnal Ilmu Hukum, 7.3 (2020), pp. 421–42, doi:10.22304/pjih.v7n3.a7.

[30] Fransisco Tarigan and others, 'The Rights of Victims of Environmental Crimes in Indonesia: Challenges for Legal Reform', *Journal of Law, Environmental and Justice*, 3.2 (2025), doi:10.62264/jlej.v3i1.130.

[31] Zico Junius Fernando and others, *Deep Anti-Corruption Blueprint Mining, Mineral, and Coal Sector in Indonesia*, in *Cogent Social Sciences*, no. 1 (2023), IX, doi:10.1080/23311886.2023.2187737.

repercussions.[32]

Few references exist that adequately address the meaning, definition, or interpretation of the term extraordinary crimes. Nevertheless, in the discourse surrounding exceptional criminal acts, all analyses converge on offences against humanity and genocide, which represent two categories of severe infringements upon human rights. The concept of 'extraordinary crime' initially arose from severe breaches of human rights. Article 5 of the Rome Statute of 1998 delineates the criteria for the gravest offences that are of paramount concern to the international community, specifically identifying genocide, crimes against humanity, war crimes, and crimes of aggression. The designation 'extraordinary crime' has consistently been applied to these four categories of offences. While the occurrence of war crimes and acts of aggression may be challenging to identify or may seem improbable as democratic principles take root globally, the complexities of such issues remain significant. Nevertheless, by contemporary legal advancements, the designation 'extraordinary crime' extends beyond these four categories to encompass offences that exhibit analogous traits, including terrorism, narcotics, and psychotropic substances.[33]

Extraordinary crimes are rendered in Indonesian as kejahatan luar biasa. Ford posits that the remarkable transgressions alluded to in this context constitute grave violations of human rights. Remarkable offences are actions undertaken to eradicate the fundamental rights of individuals. They are subject to the authority of the International Criminal Court, where the imposition of the death penalty on the offenders of such acts may be considered.[34]

Sukardi articulates that extraordinary crimes are those that exert a profound and multifaceted influence on society, culture, ecology, the economy, and politics. This influence is discernible through the repercussions of actions that are examined and analysed by a range of governmental and non-governmental entities, both at national and international levels. Winarno posits that extraordinary crimes exert detrimental effects not only on economic matters but also on the ecological, societal, and cultural fabric of a nation. Mar A. Drumbl asserts that extraordinary crimes represent a distinct category of offences that are qualitatively different from conventional crimes. The gravity, prevalence,

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[32] Marco Arnone and Leonardo S Borlini, *Corruption: Economic Analysis and International Law*, in *Corruption: Economic Analysis and International Law* (2014), doi:10.4337/9781781006139.

[33] Caroline Gratia Sinuraya and Tutik Rachmawati, 'Does Icts Matters for Corruption?', *Asia Pacific Fraud Journal*, 1.1 (2017), p. 49, doi:10.21532/apfj.001.16.01.01.04.

[34] Qingjie Du and Yuna Heo, 'Political Corruption, Dodd–Frank Whistleblowing, and Corporate Investment', *Journal of Corporate Finance*, 73 (2022), p. 102145, doi:https://doi.org/10.1016/j.jcorpfin.2021.102145.

and magnitude of these offences render them as profound adversaries to the collective well-being of humanity. As articulated by Claude Pomerleau, extraordinary crimes fundamentally consist of planned, systematic, and organised behaviours—actions that deliberately target individuals and specific groups for discriminatory motives.[35]

Within the framework of the Indonesian legal system, this category of offence is designated as a special criminal act, as these transgressions are governed by regulations that exist independently of the Criminal Code (KUHP). Illustrative instances of specialised legislation addressing offences considered akin to extraordinary crimes include: First, Law No. 26 of 2000 concerning Human Rights Courts; Second, the Law of the Republic of Indonesia No. 5 of 2018, which amends Law No. 15 of 2003 regarding the Implementation of Government Regulation instead of Law No. 1 of 2002 on the Eradication of Criminal Acts of Terrorism; Third, Law No. 35 of 2009 about Narcotics; Fourth, Law No. 5 of 1997 addressing Psychotropic Substances; Fifth, Law No. 31 of 1999, subsequently amended by Law No. 20 of 2001, focussing on the Eradication of Corruption.[36]

The categorisation of exceptional offences is likely to provoke discourse or divergent viewpoints among legal scholars. This arises from the absence of a standardised approach in establishing the formulation of categories and classifications about extraordinary crimes. Nonetheless, notwithstanding the variances in interpretation concerning the categorisation of extraordinary crimes, there exists a consensus among experts that offences characterised by their extensive and systematic repercussions, resulting in significant losses, may indeed be classified as extraordinary crimes.[37]

Remarkable offences are defined by the presence of a distinct procedural law governing their enforcement. This encompasses acts of corruption or criminal activities associated with corruption. In essence, the procedural law governing examinations at the Corruption Court is implemented in alignment with established criminal procedural law; however, certain exceptions or specific provisions exist that deviate from this standard

[35] Sauro Mocetti and Tommaso Orlando, 'Corruption, Workforce Selection and Mismatch in the Public Sector', *European Journal of Political Economy*, 60 (2019), p. 101809, doi:https://doi.org/10.1016/j.ejpoleco.2019.07.007.

[36] Seung-Hyun Lee and Kyeungrae Kenny Oh, 'Corruption in Asia: Pervasiveness and Arbitrariness', *Asia Pacific Journal of Management*, 24.1 (2007), pp. 97 – 114, doi:10.1007/s10490-006-9027-y.

[37] Yasmirah Mandasari Saragih and Berlian Berlian, 'The Enforcement of the 2009 Law Number 46 on Corruption Court: The Role of Special Corruption Court', *Sriwijaya Law Review*, 2.2 (2018), p. 193, doi:10.28946/slrev.vol2.iss2.69.pp193-202.

procedural framework.[38] Corruption offences constitute a distinct category within the realm of criminal law, exhibiting unique characteristics that set them apart from general criminal law, including procedural variations and the specific subject matter they address. Consequently, offences related to corruption are designed, either directly or indirectly, to reduce leaks and discrepancies within state finances and the broader economy. By proactively identifying potential deviations at the earliest and most comprehensive stages, it is anticipated that the mechanisms of the economy and development can function optimally, ultimately fostering progressive enhancements in development and the welfare of the broader populace.[39]

Based on the preceding discourse, one may deduce that deviations from the general criminal procedure law are permissible when addressed explicitly by the special criminal procedure law concerning corruption. Consequently, the potential for judges to designate suspects in corruption cases, grounded in the facts and evidence presented in court, warrants further examination within the framework of reforming the procedural law that governs corruption offences. This initiative aims to streamline the judicial process for such cases and enhance efforts to combat corruption in Indonesia.

b. The determination of corruption suspects by judges based on trial facts from a legal realism perspective

Advancements in the realm of legal philosophy mark the evolution of legal thought. The formation of a legal school of thought often serves as a response or critique to an earlier intellectual framework, or it may emerge as a reaction to contemporary social developments. The various schools of thought that have arisen and evolved within the realm of legal theory encompass natural law, legal positivism (the pure theory of law), utilitarianism, legal realism, American sociological jurisprudence, and the historical school. The six schools of thought present distinct theses, shaped by their varying perspectives on reality, or ontology, which subsequently inform their approaches to studying and analysing that reality, or methodology.[40]

The sociological jurisprudence approach should not be viewed in isolation, as it is intrinsically connected to anthropological and historical perspectives, as well as to

[38] Muhammad Arif Setiawan and Mahrus Ali, 'When Double Intention Ignored: A Study of Corruption Judicial Decisions', *Jurnal Hukum Ius Quia Iustum*, 28.3 (2021), pp. 459–80, doi:10.20885/iustum.vol28.iss3.art1.

[39] Jon S.T. Quah, 'Curbing Police Corruption in Singapore: Lessons for Other Asian Countries', *Asian Education and Development Studies*, 3.3 (2014), pp. 186–222, doi:10.1108/AEDS-07-2014-0029.

[40] Brian Z. Tamanaha, *A Realistic Theory of Law*, in *A Realistic Theory of Law* (2017), doi:10.1017/9781316979778.

realism.[41] Currently, a vigorous discourse exists between sociological jurisprudence and legal realism. In the context of legal positivism, Stanley L. Paulson elucidates Hans Kelsen's legal philosophy, juxtaposing natural law with empirical positivism (legal realism) through the following diagram:

Table: Natural Law and Legal Realism

Law, Legal Facts and Morals	Normative thesis (separation of law and facts)	Reductive Thesis (Unity of law and fact)
The Moral Thesis (The Unity of Law and Morality)	Theory of Natural Law	----------
Separability Thesis (Separation of law and morality)	Kelsen's Theory of Pure Law	Empirical Positivism

Source: created by the Author

The diagram above illustrates that the thesis of pure legal theory represents a synthesis of the natural law school and empirical positivism. The thesis of the natural law school posits a connection between law and morality, asserting their unity, alongside a normative perspective that distinguishes law from empirical facts. This stands in contrast to empirical positivism, which advocates for the separability of law from morality and emphasises a reductionist view that aligns law with factual circumstances. In this context, pure legal theory selectively incorporates the normative thesis from the natural law perspective while also embracing the separability thesis from empirical positivism. The vacant box remains unfilled due to the inherent contradiction that arises from attempting to reconcile the reductive thesis with the moral thesis.[42]

The author will concentrate on the thesis of empirical positivism, commonly referred to as legal realism. Natural law posits a connection between law and morality, whereas empirical positivism advocates for their separation, arguing that law must exist independently of moral considerations. Legal realism similarly does not distinguish between law and facts, a notion that stands in contrast to the principles upheld by the natural law school of thought. In the context of legal realism, the law is conceptualised as a manifestation of social facts, or as an outcome of social interactions. Within the realm of legal philosophy, American legal realism emerges as a distinct perspective that delineates the separation between law and morality, emphasising the significance of social facts over normative considerations. Realism pertains to the accurate representation of the world,

[41] Luis Alfonso Navarrete Aldaco, 'What Can Mexican Law Schools Learn from the American Legal Realists?', *Mexican Law Review*, 7.1 (2014), pp. 83–108, doi:https://doi.org/10.1016/S1870-0578(16)30009-9.

[42] Brian Z. Tamanaha, *Legal Pluralism Explained: History, Theory, Consequences*, in *Legal Pluralism Explained: History, Theory, Consequences* (Oxford University Press, 2021), doi:10.1093/oso/9780190861551.001.0001.

reflecting its current state as it truly exists. Legal realism examines the law as it is genuinely applied, rather than merely a collection of statutes that exist in theory but are seldom or ineffectively enforced.[43]

Proponents of this philosophical perspective argue that the prescriptive essence of law should be disregarded. This is because, for them, law fundamentally represents the symbolic interpretations of social agents. This interpretation distinctly diverges from the realm of philosophy, instead gravitating towards an amalgamation of multiple disciplines, including sociology, psychology, anthropology, and economics.[44]

In the context of case management, judges are invariably required to make discerning choices regarding the principles they prioritise and the parties they adjudicate in favour of. Such decisions frequently occur prior to the establishment or formulation of the legal frameworks that underpin them. Consequently, concerning legal realism, the role of judges' creativity is pivotal in the development of law (judge-made law), as law transcends mere logic and is rooted in experience or empirical realities (the essence of law has been shaped by lived experiences rather than by logical constructs). Thus, it is reasonable to claim that the objective of legal realism is to enhance the law's responsiveness to societal demands.[45]

The provided explanations significantly bolster the argument that the author presents as the central theme of this paper. Initially, suppose this power is conferred upon judges and grounded in the factual matrix of the trial. In that case, the expertise and ethical standards of judges in the application of criminal law concerning corruption will be significantly enhanced. Furthermore, this may enable judges to exhibit greater adaptability within the boundaries of legal positivism, a dominant and evolving theme in contemporary legal discourse.[46]

Secondly, should this authority be conferred upon judges with constraints informed by the particulars of the trial, it would offer a novel viewpoint in the pursuit of eliminating

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[43] Brian Z. Tamanaha, *Sociological Approaches to Theories of Law*, in *Sociological Approaches to Theories of Law* (2022), MMMMMDCCCXV, doi:10.1017/9781009128193.

[44] Anna Tomza, 'Is There Any Morality Here? Richard Posner's Economic Approach to Judge Behavior', *Studia Iuridica Lublinensia*, 31.3 (2022), pp. 255–69, doi:10.17951/sil.2022.31.3.255-269.

[45] Jia-Rong Sun, Mao-Lin Shih, and Min-Shiang Hwang, 'Cases Study and Analysis of the Court Judgement of Cybercrimes in Taiwan', *International Journal of Law, Crime and Justice*, 43.4 (2015), pp. 412–23, doi:https://doi.org/10.1016/j.ijlcj.2014.11.001.

[46] Jenny Domashova and Anna Politova, 'The Corruption Perception Index: Analysis of Dependence on Socio-Economic Indicators', *Procedia Computer Science*, 190 (2021), pp. 193–203, doi:https://doi.org/10.1016/j.procs.2021.06.024.

extraordinary crimes. In this framework, judges would be compelled to prioritise the community's sense of justice, grounded in the legal realities that manifest within the fabric of national and state life. Moreover, it is imperative for judges to perpetually enhance their understanding to prevent themselves from becoming mere conduits of the law. This ongoing intellectual engagement enables them to anchor the ideal law in the tangible world and render legal judgements that reflect public justice and the specifics of each case.[47]

Reform of the Criminal Justice System for Corruption through the Designation of Suspects by Judges: Concepts and Prospects

Upon initial examination, the assessment of a suspect's authority by a judge, based on the evidence presented in court during corruption cases, reveals a considerable degree of sensitivity. This occurs due to its frequent divergence from widely recognised principles in criminal procedure law. Undoubtedly, all legal scholars and law students understand the principles underlying the doctrine of due process of law, which is often referred to as a cornerstone of the criminal justice system.[48] In this framework, law enforcement personnel are subject to specific constraints in the application of criminal law to mitigate the potential for abuse of authority and to ensure that the enforcement of criminal law adheres to established legal standards, rather than being executed capriciously.[49]

Nevertheless, in light of the current circumstances, the persistent stagnation and ineffectiveness of initiatives aimed at addressing corruption in Indonesia necessitate the exploration of alternative strategies that extend beyond traditional methodologies.[50] Consequently, it is entirely justifiable to diverge from the established tenets of the traditional criminal justice framework in order to cultivate innovative ideas and concepts that may be explored in the future. Indeed, concerning the procedural law concerning the eradication of extraordinary crimes that diverge from traditional procedural law

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[47] Stephen Farrall and others, 'Thatcherite Ideology, Housing Tenure and Crime: The Socio-Spatial Consequences of the Right to Buy for Domestic Property Crime', *British Journal of Criminology*, 56.6 (2016), pp. 1235 – 1252, doi:10.1093/bjc/azv088.

[48] Han Qin and Li Chen, 'Virtual Justice, or Justice Virtually: Navigating the Challenges in China's Adoption of Virtual Criminal Justice', *Computer Law & Security Review*, 56 (2025), p. 106112, doi:https://doi.org/10.1016/j.clsr.2025.106112.

[49] Francis Pakes, *Comparative Criminal Justice, Second Edition*, in *Comparative Criminal Justice, Second Edition* (2012), doi:10.4324/9780203118290.

[50] Rian Saputra, M Zaid, and Devi Triasari, 'Executability of the Constitutional Court ' s Formal Testing Decision : Indonesia ' s Omnibus Law Review', *Journal of Law, Environmental and Justice*, 1.3 (2023), pp. 244–58, doi:10.62264/jlej.v1i3.18.

doctrines, numerous implementations have been undertaken.[51] In a similar vein, the existing procedural framework concerning corruption offences has, in certain instances, undermined traditional criminal procedural law. Consequently, the author has formulated a series of arguments and principles to illustrate the viability of empowering judges to identify suspects based on trial evidence in corruption cases as a plausible avenue for future anti-corruption legislation. The following arguments are delineated below:

a. The system of proving corruption in the judicial system that deviates from conventional criminal procedure law

The framework governing evidence in cases of criminal corruption is grounded not solely in Law No. 8 of 1981 concerning Criminal Procedure, but also in the formal criminal law delineated in Law No. 31 of 1999, which addresses the Eradication of Criminal Corruption. This is further refined by Law No. 20 of 2001, which amends Law No. 31 of 1999, and Law No. 30 of 2002, which pertains to the Corruption Eradication Commission. The stipulations outlined in Article 183 of the Criminal Procedure Code assert that: 'A judge is precluded from imposing a criminal penalty on an individual unless he is persuaded, based on a minimum of two credible pieces of evidence, that a criminal act has indeed occurred and that the defendant is culpable for its commission.' Law No. 31 of 1999, concerning the eradication of corruption, underwent amendments through Law No. 20 of 2001, which modified the original provisions of Law No. 31 of 1999 regarding the same subject. Corruption is fundamentally regarded as a remarkable offence within the legal framework.[52]

The Law on the Eradication of Corruption establishes a reverse burden of proof that is either constrained or equitable. This stipulates that the defendant is entitled to demonstrate their innocence regarding corruption allegations and is required to disclose information about their assets, as well as those of their spouse, children, and any individual or entity believed to be associated with the case. Meanwhile, the public prosecutor retains the responsibility to substantiate the charges brought forth. From the standpoint of the evidentiary framework concerning corruption offences, this legislation imposes a constrained or equitable reverse burden of proof as articulated in Article 37,

[51] Kai Ambos and others, *Core Concepts in Criminal Law and Criminal Justice: Anglo-German Dialogues: Volume I*, in *Core Concepts in Criminal Law and Criminal Justice: Volume 1, Anglo-German Dialogues* (2019), doi:10.1017/9781108649742.

[52] Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, 'Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)', *JOURNAL of INDONESIAN LEGAL STUDIES*, 8.1 (2023), pp. 243–88, doi:10.15294/jils.v8i1.67632.

which states the following: Initially, the defendant possesses the opportunity to demonstrate that he did not engage in any criminal act of corruption. Furthermore, should the defendant successfully establish his non-involvement in such an act, the evidence presented will serve as the foundation for asserting that the charges lack substantiation.[53]

The elucidation of Article 37 of this legislation states: "This provision represents a departure from the stipulations of the Criminal Procedure Code, which asserts that it is the responsibility of the prosecutor to establish that a criminal act has occurred, rather than that of the defendant." This provision allows the defendant to demonstrate that he did not engage in a criminal act of corruption. Should the defendant demonstrate that he is not guilty of corruption, the public prosecutor remains duty-bound to substantiate the allegations. This provision represents a limited shift in the burden of proof, as the prosecutor remains responsible for substantiating the charges.[54]

The stipulations outlined in Article 37 of Law No. 20 of 2001, as elucidated, represent a judicious outcome of implementing a reverse burden of proof upon the defendant. This framework guarantees that the defendant is afforded equitable legal safeguards against infringements of fundamental rights, particularly those about the presumption of innocence and the prohibition of self-incrimination.[55] Departures from established doctrines of criminal procedural law in this context arise as a rational outcome of the understanding that corruption constitutes an exceptional crime, necessitating exceptional legal responses and instruments.

b. Deviation from the principle of non-retroactivity in extraordinary crimes of terrorism.

In this segment of the discourse, the author aims to present a concise examination of how traditional criminal procedure law tends to lose its significance and is often overlooked in the context of exceptional offences. In this sub-discussion, the author presents an illustration of the divergence within criminal procedure law, specifically regarding the non-retroactive principle, which has been undermined in the context of

[53] Rian Saputra and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (Journal of Indonesian Legal Studies)*, 6.2 (2021), pp. 437–82, doi:10.15294/jils.v6i2.51371.
[54] Rian Saputra and others, 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review*, 7.1 (2023), pp. 61–118, doi:10.15294/lesrev.v7i1.64143.
[55] Ken Peak, 'Criminal Justice, Law, and Policy in Indian Country: A Historical Perspective', *Journal of Criminal Justice*, 17.5 (1989), pp. 393–407, doi:https://doi.org/10.1016/0047-2352(89)90049-4.

terrorism-related offences.[56]

The discourse surrounding the principle of retroactivity would come to an end if we were to depend exclusively on the stipulations of Article 1(1) and Article 1(2) of the Criminal Code, as these stipulations confine the notion of retroactivity to transitional contexts or transitional law (law applicable during a transitional phase). This suggests that the absence of prior criminal regulations, followed by the enactment and application of new regulations to past offences, does not raise a retroactive concern. Barda Nawawi Arief categorises this as an issue about the source of law. Nevertheless, if we adopt a more expansive interpretation, retroactive signifies the application of principles to past events, which pertains to deliberations regarding the existence of transitional law or the absence of criminal regulation prior to the commission of the act.[57]

The issue of retroactivity arises as a consequence of enforcing the principle of legality. The principle of legality can be scrutinised through multiple lenses, including historical contexts, socio-criminological factors, considerations of legal reform from both iterative and linear viewpoints, and elements pertinent to criminal policy. Within the framework of Indonesian criminal law, the principle of legality is articulated in Article 1(1) of the Criminal Code, which asserts: 'No act may be punished unless it is punishable under criminal law in force before the act was committed.' This principle encompasses three fundamental aspects: Nulla poena sine lege (no punishment without a legal provision), Nulla poena sine crimine (no punishment without a crime), and Nullum crimen sine poena legali (no criminal act without a legal punishment). Sudarto posits that this article encompasses two fundamental elements: firstly, a criminal act must be explicitly defined or referenced within the framework of legislation; secondly, such legislation must be in place prior to the commission of the criminal act.[58]

A notable outcome of this provision is the restriction on the retroactive application of criminal legislation (non-retroactivity). The application of retroactive measures is allowable provided it adheres to the stipulations outlined in Article 1(2) of the Criminal Code. The ban on applying criminal law retroactively is grounded in several key considerations. Initially, it is imperative to safeguard personal liberty against the

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[56] Vani Wirawan and others, 'Measuring the Land Mafia in Indonesia: New Phenomenon of Extraordinary Crime; [Medición de La Mafia Agraria En Indonesia: Un Nuevo Fenómeno de Criminalidad Extraordinaria]', *Novum Jus*, 18.1 (2024), pp. 311 – 353, doi:10.14718/NovumJus.2024.18.1.11.

[57] Albert W. Dzur, 'Civic Implications of Restorative Justice Theory: Citizen Participation and Criminal Justice Policy', *Policy Sciences*, 36.3/4 (2003), pp. 279–306, doi:10.1023/B:OLIC.0000017480.70664.0c.

[58] 'Design-of-Electronic-Based-Criminal-Justice-in-Realizing-Enforcement-Reform-Criminal-Law', preprint, n.d.

capricious application of authority. Subsequently, criminal law functions as a form of psychological compulsion, as articulated in Anselm von Feuerbach's theory of 'psychologische dwang.' The authorities aim to shape the mindset of potential offenders by imposing the prospect of criminal punishment for those who engage in unlawful behaviour, thereby encouraging them to abstain from such actions.[59]

Nonetheless, this tenet of non-retroactivity is set aside in instances involving terrorism offences. It is widely recognised that the stipulation regarding the principle of retroactivity is articulated in Article 46 of Government Regulation instead of Law (Perpu) No. 1 of 2002 concerning the Eradication of Terrorism Offences, which subsequently evolved into Law No. 15 of 2003. Additionally, Government Regulation No. 2 of 2002 pertains to the implementation of Government Regulation, which was enacted on November 1, 2002, concerning the eradication of terrorism, and led to the enactment of Law No. 16 of 2003.

Article 46 of Law No. 15 of 2003 articulates that: 'The stipulations of this Government Regulation instead of Law may be applied retroactively to legal actions in particular instances that occurred before the enactment of this Government Regulation in Lieu of Law, the execution of which is governed by a distinct Law or Government Regulation in Lieu of Law.' This provision underpins the issuance of Government Regulation instead of Law No. 2 of 2002, which encompasses principles of retroactivity. Nevertheless, the expression '… may be applied retroactively for legal actions in specific cases prior to the entry into force of this Perpu…' suggests that, alongside Perpu No. 2 of 2002, there exists a potential for retroactive application to acts of terrorism beyond the Bali Bombing on October 12, 2002. The outcome of this situation is yet to be determined, contingent upon the progression of both Perpus.

The legal framework established by Perpu No. 1 of 2002/Law No. 15 of 2003 and Perpu No. 2 of 2002/Law No. 16 of 2003 has served as the foundation for the application of the death penalty against the individuals responsible for the Bali Bombing I, specifically Amrozi, Ali Imron, and Imam Samudera. The evolution of Perpu No. 1 of 2002/Law No. 16 of 2003 has been scrutinised through a judicial review initiated by Masykur Abdul Kadir at the Constitutional Court. While the constitutional review specifically targeted Perpu No. 1 of 2002/Law No. 16 of 2003, the ruling issued by the Constitutional Court

[59] Saldi Isra and others, 'Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia', International Journal of Law, Crime and Justice, 51 (2017), pp. 72–83, doi:10.1016/j.ijlcj.2017.07.001; Musa Darwin Pane and Diah Pudjiastuti, 'The Legal Aspect of New Normal and the Corruption Eradication in Indonesia', Padjadjaran Jurnal IImu Hukum, 7.2 (2020), pp. 181–206; M Zaid and others, 'Eradicating Public Official Corruption Indonesia : A Revolutionary Paradigm Focusing on State Financial Losses', Wacana Hukum, 29.2 (2023), pp. 87–111, doi:10.33061/wh.v29i2.9564.

will undoubtedly affect the stipulations outlined in Article 46 of Perpu No. 1 of 2002/Law No. 15 of 2003.

c. Designation of Suspects by Judges in Illegal Logging Cases

The empowerment of judges to identify individuals as suspects based on evidentiary facts presented in court is already acknowledged within the Indonesian legal framework, as part of the initiative to address the issue of illegal logging. The intriguing aspect of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, commonly referred to as the PPPH Law, lies in the empowerment of judges to identify suspects and incorporate them into the list of wanted persons (DPO).[60]

It is widely recognised that in the realm of judicial authority, the role of judges in maintaining the law is enhanced by the powers conferred upon them to fulfil their responsibilities in the adjudication of cases. Adjudicating entails the process of receiving, scrutinising, and rendering decisions on cases presented to them, mirroring the examination of cases at a more advanced stage, specifically the examination conducted in a court setting. The legal processes are distinctly and thoroughly delineated within the Criminal Procedure Code (KUHAP), alongside various other statutes, regulations, and rulings from the Constitutional Court. The PPPH Law empowers judges with enhanced authority to include individuals on the wanted list and classify them as suspects.[61]

The authority of these two powers is not inherently granted to judges when we consider the stipulations outlined in the Criminal Procedure Code and other relevant procedural statutes. The authority to place an individual on the wanted list (DPO) was initially vested in the investigator and the public prosecutor during the preliminary investigation phase of a case. In the interim, the designation of an individual as a suspect falls under the purview of an investigator, conducted within the framework of investigative procedures.[62]

The empowerment of judges to classify individuals as suspects based on adequate

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[60] Rini Astuti and others, 'Making Illegality Visible: The Governance Dilemmas Created by Visualising Illegal Palm Oil Plantations in Central Kalimantan, Indonesia', *Land Use Policy*, 114 (2022), p. 105942, doi:https://doi.org/10.1016/j.landusepol.2021.105942.

[61] Vincentius Patria Setyawan and Djuyamto, 'Kajian Terhadap Kewenangan Penetapan Tersangka Oleh Hakim Dalam Perkara Illegal Logging (Analisis Putusan No. 145/Pid.B/2014/PN.Dpu)', *Justisi*, 10.1 (2024), pp. 108–19, doi:10.33506/jurnaljustisi.v10i1.2657.

[62] Daniel Blum and others, 'Subnational Institutions and Power of Landholders Drive Illegal Deforestation in a Major Commodity Production Frontier', *Global Environmental Change*, 74 (2022), p. 102511, doi:https://doi.org/10.1016/j.gloenvcha.2022.102511.

preliminary evidence presented during court appearances or when there are compelling indicators of potential criminal activity carries significant ramifications for the legal framework. The determination of suspect status typically transpires during the initial examination or preliminary investigation phase.[63] The subsequent step involves conveying the suspect and pertinent evidence to the public prosecutor at the prosecutor's office, by the applicable jurisdiction of the case. The act of identifying an individual as a suspect serves as a crucial link between the initial investigative phase and the trial process, with the public prosecutor providing the foundational support for that link.[64]

When a judge determines an individual's status as a suspect, it is evident that the case has progressed to the stage of judicial scrutiny and has, at the very least, commenced the evidentiary phase. In the instance referenced by the researcher in this analysis, the judge identified an individual, initially designated as a witness by the public prosecutor, as a suspect. Should the judge, upon reviewing the witness testimony or other forms of evidence, ascertain adequate preliminary evidence, that individual shall be formally identified as a suspect. The judge will confer the designation of suspect status by incorporating it into the verdict of the case under consideration, particularly about the examination of other defendants. Consequently, it follows that the public prosecutor, acting as the implementer of the judge's ruling, is obligated to execute the directive.[65]

Consequently, the arguments and reasoning articulated in this qualification paper elucidate that the conferral of authority upon a judge to designate a suspect based on trial facts in corruption cases, as extraordinary crimes that transcend conventional procedural law doctrines, has been extensively practised.[66] In a similar vein, the existing criminal

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[63] Shubhan Noor Hidayat, Lego Karjoko, and Sapto Hermawan, 'Discourse on Legal Expression in Arrangements of Corruption Eradication in Indonesia', JOURNAL of INDONESIAN LEGAL STUDIES, 5.2 (2020), pp. 391–418, doi:10.15294/jils.v5i2.40670; Muhammad Bagus Adi Wicaksono and Rian Saputra, 'Building The Eradication Of Corruption In Indonesia Using Administrative Law', Journal of Legal, Ethical and Regulatory Issues, 24.Special Issue 1 (2021), pp. 1–17; Hendi Yogi Prabowo, 'Re-Understanding Corruption in the Indonesian Public Sector through Three Behavioral Lenses Hendi', Facilities, 35.6 (2015), pp. 925–45, doi:10.1108/JFC-08-2015-0039.

[64] Lego Karjoko and others, *The Principle of Social Justice As a Solution in Illegal Mining Activities in The Old Wells Oil Management*, 5.2 (2021).

[65] Klaus Bachmann and Aleksandar Fatić, 'Accepting the Political Face of International Criminal Justice', *International Journal of Law, Crime and Justice*, 57 (2019), pp. 26–35, doi:https://doi.org/10.1016/j.ijlcj.2019.01.005.

[66] Tinuk Dwi Cahyani, Muhamad Helmi Md Said, and Muhamad Sayuti Hassan, 'A Comparison Between Indonesian and Malaysian Anti-Corruption Laws', Padjadjaran Jurnal Ilmu Hukum, 10.2 (2023), pp. 275–99, doi:10.22304/pjih.v10n2.a7; Anisah Alfada, 'The Destructive Effect of Corruption on Economic Growth in Indonesia: A Threshold Model', Heliyon, 5.10 (2019), p. e02649, doi:https://doi.org/10.1016/j.heliyon.2019.e02649; Subagio Gigih Wijaya and Matthew Marcellinno

procedure law about corruption has rendered certain provisions incompatible with traditional criminal procedure law: Initially, the reverse burden of proof in corruption cases, which lacks acknowledgement in traditional criminal procedural law; subsequently, the departure from the principle of non-retroactivity in the fight against terrorism; finally, the governance of the identification of suspects by judges in illegal logging cases as stipulated by Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction.

4. Conclusion

According to the author's research, the logical foundation for empowering judges to assess suspects based on trial facts in corruption cases encompasses the following considerations: Initially, it is essential to recognise that corruption constitutes a profound offence; Furthermore, the adjudication of corruption suspects by judges, grounded in the evidentiary realities of the trial, aligns with the principles of legal realism as articulated within the American legal framework. The potential for judges to identify suspects based on trial facts in cases of corruption, categorised as extraordinary crimes that transcend traditional procedural law principles, has been extensively examined. This includes, firstly, the inversion of the burden of proof in corruption cases, a concept not acknowledged within standard criminal procedural law; and secondly, the dismissal of the principle of non-retroactivity in the fight against terrorism, which also lacks recognition in conventional criminal procedure law. Lastly, an illustration can be found in the regulation concerning the identification of suspects by judges in cases of illegal logging, as outlined in Law No. 18 of 2013 about the Prevention and Eradication of Forest Destruction.

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