

Development of Criminal Law on Corruption in Indonesia: Historical and Legal Review

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Info Articles	Abstract
<p>Article History Received: 2024-07-01 Revised: 2024-07-12 Published: 2024-07-31</p> <p>Keywords: <i>Criminal Law; Corruption; Historical Review; Jurisprudence; Indonesia.</i></p>	<p>Corruption is one of the most damaging crimes to the life of the nation and state in Indonesia. The development of criminal law regulations for corruption in Indonesia has undergone a long journey from the colonial period to the reform era. This study aims to examine the historical and juridical development of criminal law for corruption in Indonesia, starting from the Dutch colonial period, the Old Order era, the New Order era, and the post-1998 Reformation era. The research method used is normative legal research with a historical and legislative approach. The results of the study indicate that there has been a significant paradigm shift in the handling of criminal acts of corruption in Indonesia, from a partial and sectoral approach to a more comprehensive and systemic approach. The establishment of the Corruption Eradication Commission (KPK) in 2002 through Law Number 30 of 2002 was an important milestone in the effort to eradicate corruption in Indonesia. However, various regulatory changes and institutional challenges still characterize the journey of corruption eradication to date. This study concludes that strengthening regulations, institutions, and anti-corruption culture simultaneously is the key to the success of corruption eradication in Indonesia.</p>

I. INTRODUCTION

Corruption is a universal phenomenon that has existed for a long time in human history. In Indonesia, corruption is not merely a legal issue, but has become a deeply rooted social, cultural, and political problem. As a result of massive and systemic corruption, various state resources that should be used for the welfare of the people are instead misused for personal and group interests.

Corruption is categorized as an extraordinary crime because its impacts go far beyond mere material losses. This crime is systemic, organized, and capable of destroying the very foundations of national life. In Indonesia, anti-corruption regulations have undergone a long evolution and winding. Starting from the legacy of Dutch colonial law through the *Wetboek van Strafrecht* (KUHP), then continued through various laws and regulations in the era of independence, until the establishment of the Corruption Eradication Commission (KPK) in the reform era as a manifestation of the state's commitment to eradicating corruption systematically and independently.

As stated by Transparency International, corruption is the abuse of entrusted power for private gain, which in turn undermines the legitimacy of state institutions and erodes public trust. Examining the history of corruption regulation is crucial because it provides a comprehensive understanding of how societies across civilizations have attempted to address this problem. From ancient Rome, which recognized the concept of *crimen repetundarum* (the crime of extortion by officials), to the development of increasingly sophisticated modern laws for ensnaring corruptors, the long history of anti-corruption regulation reflects humanity's collective awareness of the dangers of corrupt practices.

The history of criminal law on corruption in Indonesia cannot be separated from the historical context of the Indonesian nation itself. Since the Dutch colonial era, various regulations related to corruption have been enacted, albeit in different contexts and for different purposes. (Syamsuddin, 2020).

After independence, the Indonesian government continued its efforts to build a

stronger legal framework to combat corruption, although the journey was not easy.

The development of criminal law regulations for corruption in Indonesia shows quite complex dynamics. There are at least several important phases in the journey of anti-corruption legislation in Indonesia, namely: (1) the colonial phase marked by the enactment of the *Wetboek van Strafrecht (WvS)*; (2) the Old Order phase with the issuance of Military Rule Regulation Number PRT/PM/06/1957 and Law Number 24 Prp of 1960; (3) the New Order phase with the birth of Law Number 3 of 1971; and (4) the Reformation phase which gave birth to Law Number 31 of 1999 which was later amended by Law Number 20 of 2001, as well as the establishment of the Corruption Eradication Commission through Law Number 30 of 2002.

This study aims to comprehensively examine the development of criminal law on corruption in Indonesia from a historical and legal perspective. It is hoped that this study will provide a deeper understanding of the root causes, the dynamics of regulatory change, and the challenges faced in eradicating corruption in Indonesia, aimed at achieving justice. (Soekanto, 2022).

II. RESEARCH METHODS

This research uses a normative legal research approach that focuses on library research. Normative legal research examines law as a positive norm within a legal system, positioning law as a hierarchically and systematically structured system.

The approaches used in this research include: (1) Historical approach, namely examining the development of criminal law on corruption from time to time to understand the root of the problem and the dynamics of regulatory change; (2) Statute approach, namely examining various laws and regulations related to criminal acts of corruption; and (3) Conceptual approach, namely examining the legal concepts used in anti-corruption regulations.

The legal materials used in this research consist of: (a) Primary legal materials, including laws and regulations relating to criminal acts of corruption; (b) Secondary legal materials, including books, scientific journals, research results, and various relevant legal documents; and

(c) Tertiary legal materials, including legal dictionaries and legal encyclopedias.

III. RESULTS AND DISCUSSION

This study aims to examine the development of criminal law on corruption in Indonesia from a historical and legal perspective, particularly in examining the dynamics of regulatory formation and the effectiveness of law enforcement. Based on an analysis of legal documents, legislation, and several relevant literature reviews and case studies, the results of this study reveal several key findings related to the development of criminal law on corruption and the challenges in its implementation.

A. Colonial Phase: The Roots of Anti-Corruption Regulation in Indonesia

Anti-corruption regulations in Indonesia in the modern context can be traced back to the Dutch colonial era. The Dutch colonial government enacted the *Wetboek van Strafrecht voor Nederlandsch Indie (WvS NI)* which came into effect on January 1, 1918, through *Staatsblad* 1915 Number 732. In the *WvS NI*, several provisions relating to acts of corruption can be found, particularly in Articles 209, 210, 418, 419, and 420 which regulate bribery (*omkoopng*) and positions (*ambtsmisdrijven*).

The implementation of the Indonesian National Law (*WvS NI*) was intended more to protect the interests of the colonial government than the interests of the indigenous people. However, after Indonesian independence, the Indonesian National Law (*WvS NI*) remained in effect based on Article II of the Transitional Provisions of the 1945 Constitution, which states that all existing state bodies and regulations remain in effect until new ones are enacted. The Indonesian National Law (*WvS NI*) later became known as the Criminal Code (*KUHP*), which remains in effect to this day. (Hamzah, 2016).

However, the application of law during the colonial period was discriminatory. The colonial legal system differentiated between Europeans, foreign Easterners, and indigenous people,

resulting in unequal enforcement of anti-corruption laws. Dutch officials convicted of corruption often received different treatment than indigenous officials. (Wijayanta, 2021).

B. Old Order Phase: The First Anti-Corruption Regulations After Independence

After independence, the Indonesian government began to recognize the need for specific regulations to combat the increasingly rampant criminal acts of corruption. In 1957, Military Rule Regulation No. PRT/PM/06/1957 was issued, addressing the eradication of corruption. This regulation was the first specific anti-corruption regulation created after Indonesian independence, although it was still of an emergency nature, issued under military rule.

Furthermore, during the administration of President Sukarno, Law Number 24 Prp of 1960 concerning the Investigation, Prosecution, and Examination of Corruption Crimes was issued. This law was the first anti-corruption regulation in the form of a law passed by the House of Representatives (DPR). However, the effectiveness of this regulation in eradicating corruption remains very limited due to various obstacles, both in terms of legal substance and enforcement. (Mulyadi, 2018)

However, Law No. 24 of 1960 has several weaknesses. First, the definition of corruption is too narrow and does not encompass more sophisticated forms of abuse of office. Second, the law enforcement mechanism is not yet robust, relying heavily on ordinary law enforcement officers. Third, weak law enforcement has allowed corruption to continue to thrive today. (Hartanti, 2019)

C. New Order Phase: Paradoxical Anti-Corruption Law Enforcement

During the New Order era under President Suharto, efforts to eradicate corruption experienced a paradoxical development. On the one hand, the New Order government issued various

more comprehensive anti-corruption regulations, but on the other, corrupt practices became increasingly institutionalized and systematic within government structures. (Poernomo, 2021)

The most important anti-corruption regulation during the New Order era was Law No. 3 of 1971 concerning the Eradication of Criminal Acts of Corruption. This law was an update of the previous regulation, with broader coverage and heavier criminal penalties. Article 1 of this law provides a fairly comprehensive definition of corruption, encompassing acts that harm state finances or the national economy, and harm society as a whole.

Despite regulatory progress, law enforcement against corruption during the New Order era remained weak. This was due to several structural factors. First, the centralized and authoritarian system of government placed the executive above all else, severely limiting the independence of law enforcement officials. Second, corruption had become an integral part of the political and economic systems.

First, the current definition of corruption is still too narrow and doesn't encompass more sophisticated forms of abuse of office. Second, the law enforcement mechanism is not yet robust, relying heavily on ordinary law enforcement officers. Third, weak law enforcement has allowed corruption to continue to thrive today.

D. Reform Phase: New Paradigm for Corruption Eradication

The Reformation Era, which began in 1998, brought a fundamental paradigm shift in efforts to eradicate corruption in Indonesia. The fall of the New Order regime opened the way for more comprehensive and systemic legal reforms. Public demands for clean and corruption-free governance grew stronger, prompting the government and the House of Representatives (DPR) to immediately reform anti-corruption legislation. (Loqman, 2018)

The first step taken was the ratification of Law Number 28 of 1999 concerning the Governance of a Clean State Free from Corruption, Collusion, and Nepotism (KKN). This law requires state officials to report their assets before and after taking office, as a means of preventing corruption.

The next important milestone was the ratification of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which was later amended by Law Number 20 of 2001. These two laws significantly expanded the scope and definition of criminal acts of corruption, introduced heavier criminal penalties, and most importantly, introduced the concept of reverse burden of proof (*omkering van bewijslast*) for certain cases.

The culmination of anti-corruption legal reform efforts was the establishment of the Corruption Eradication Commission (KPK) through Law Number 30 of 2002. The KPK is an independent state institution specifically tasked with coordinating, supervising, preventing, and prosecuting corruption. The KPK's presence marked a new chapter in corruption eradication in Indonesia because it has broader authority than conventional law enforcement institutions, including the authority to wiretap, conduct independent investigations, indictments, and prosecute.

In addition to the establishment of the Corruption Eradication Commission (KPK), the reform era was also marked by the strengthening of various legal instruments and institutions supporting corruption eradication. The Supreme Court established the Corruption Crimes Court (*Tipikor*), a specialized court with judges trained in handling corruption cases. Furthermore, Indonesia ratified the UNCAC through Law No. 7 of 2006, further strengthening Indonesia's commitment to eradicating corruption internationally. (KPK, 2022)

However, the KPK's journey has not always been smooth. Various attempts to weaken it have continued, from judicial review lawsuits to the Constitutional Court, conflicts with the police and prosecutors, to the most controversial, the 2019 revision of the KPK Law, which many considered an attempt to weaken the institution.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the results of the historical and legal studies conducted, it can be concluded that the development of criminal law on corruption in Indonesia exhibits complex dynamics and continues to change in line with the changing socio-political context of the nation. The journey of anti-corruption legislation in Indonesia has gone through four main phases: the colonial period, the Old Order, and the New Order.

The establishment of the Corruption Eradication Commission (KPK) through Law Number 30 of 2002 was a significant milestone in the history of corruption eradication in Indonesia. However, eradicating corruption cannot rely solely on regulations and institutions; it also requires cultural and mental changes within society. The greatest challenge still faced is how to build an anti-corruption culture that is deeply rooted in the collective consciousness of the Indonesian nation.

B. Suggestion

Based on the conclusions above, several suggestions can be put forward: First, anti-corruption regulations need to be continuously strengthened, taking into account the increasingly sophisticated *modus operandi* of corruption. Second, the Corruption Eradication Commission (KPK), as the vanguard in eradicating corruption, must continue to be strengthened, both in terms of its institutions and human resources. Third, anti-corruption education needs to be integrated into formal and non-formal education curricula as a long-

term preventative measure. Fourth, coordination between the KPK, the police, the prosecutor's office, and the judiciary needs to be continuously improved to build an effective and efficient corruption criminal justice system.

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