

REORIENTATION OF SENTENCING IN CORRUPTION CRIMES AND EFFORTS TO RECOVER STATE LOSSES IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM TOWARD A GOLDEN INDONESIA 2045

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Abstract

Indonesia is a country blessed with abundant natural resources and a strategically advantageous geographic position. Nevertheless, Indonesia still faces various challenges as a developing country. One of the main obstacles lies in the weakness of its governance system and the high level of corruption, particularly in the management of state finances and natural resources. This study aims to assess the extent to which the effectiveness of sentencing in corruption cases contributes to the recovery of state finances. The research uses a normative juridical and empirical approach by analyzing the application of prevailing regulations in court rulings, especially those related to corruption offenses under Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999.

The findings show that the sentencing approach applied has not been optimal in recovering state losses. As of 2022, the amount of restitution successfully deposited into the state treasury was only about 2.48% of the total losses. This low achievement indicates that law enforcement remains more focused on imprisoning perpetrators than on efforts to recover state losses. Therefore, a legal strategy that is more oriented toward comprehensive recovery of state losses is needed as part of a sustainable anti-corruption policy.

Keywords: *Corruption, Sentencing, And Recovery of State Losses.*

A. INTRODUCTION

Indonesia has articulated a long-term vision to attain the status of a developed nation by 2045 through the national strategy known as *Indonesia Emas 2045*. This initiative embodies the collective aspiration of the nation to achieve inclusive, sustainable, and equitable development, coinciding with the centenary of independence. Realizing this vision necessitates comprehensive structural transformation across strategic sectors, including infrastructure, education, healthcare, human capital development, and the advancement of science, technology, and innovation. To ensure an appropriate course of development, policy formulation must be embedded within a long-term framework that is systematic, realistic, targeted, and consistent.

The realization of the *Indonesia Emas 2045* vision is highly contingent upon the availability of sustainable financing mechanisms. Each stage of development requires transparent funding support to ensure that strategic programs can be implemented effectively and with precision. Accordingly, the foundations of fiscal policy and the national financial system must be designed to be resilient and well-integrated, thereby ensuring the continuity of financing from planning through to implementation. In the absence of solid policy support and adequate funding, this grand vision risks remaining merely an ambitious discourse that is difficult to translate into practice. Consequently, synergy between policy planning and public financial management emerges as a critical determinant of success in Indonesia's transformation into a developed nation by 2045.

A key structural impediment to the realization of Indonesia's long-term development agenda toward *Indonesia Emas 2045* is the pervasive nature of corruption. Systemic corruption, encompassing bureaucracy, politics, and law enforcement institutions, results in the inefficient and inequitable allocation of resources. Consequently, numerous national priority programs—such as those in education, healthcare, infrastructure development, and human capital enhancement—are unable to operate optimally and frequently fail to achieve their intended objectives. Without a strong commitment and consistent, concrete measures to eradicate corruption, the aspiration to establish a prosperous, just, and competitive Indonesia by 2045 will remain elusive. Therefore, anti-corruption efforts must be incorporated as an integral component of the national strategic framework to ensure the achievement of the *Indonesia Emas 2045* targets.

Empirical evidence indicates that corruption in the management of public finances continues to pose a serious challenge, exerting significant adverse effects on the implementation of sustainable development in Indonesia. Corruption has been classified as an extraordinary crime due to its pervasive and systemic impact, which undermines the attainment of long-term development objectives, including the *Indonesia Emas 2045* vision. Over the past decade (2013–2022), state losses attributable to corruption have been recorded at Rp238.14 trillion, according to data from Indonesia Corruption Watch (ICW). This figure underscores the magnitude of the losses incurred by the state as a result of persistent corrupt practices, which ultimately obstruct development processes and hinder the pursuit of sustainable progress and prosperity.

Table 1. State Losses Due to Corruption (2013–2022)

No.	Year	State Losses (Rp)
1	2013	Rp 3.46 trillion
2	2014	Rp 10.69 trillion
3	2015	Rp 1.74 trillion
4	2016	Rp 3.08 trillion
5	2017	Rp 29.42 trillion
6	2018	Rp 9.29 trillion
7	2019	Rp 12.00 trillion
8	2020	Rp 56.74 trillion
9	2021	Rp 62.93 trillion
10	2022	Rp 48.79 trillion
Total		Rp 238.14 trillion

Corruption reflects weak governance and the decline of bureaucratic integrity, thereby disrupting budget allocation and undermining the efficiency of public resource management. Although criminal sanctions have been imposed on perpetrators of corruption that cause losses to state finances, their effectiveness in recovering such losses remains suboptimal. Accordingly, there is a pressing need for a more comprehensive criminal law strategy in combating corruption—one that prioritizes the recovery of state losses as part of the revitalization of penal policy. This situation underscores the necessity of adopting a more strategic, holistic, and focused approach, with an emphasis on asset recovery as an integral component of reforming Indonesia’s anti-corruption system (Indonesia, 1999).

At present, anti-corruption strategies and policies are implemented in an integrated manner through preventive and repressive approaches, supported by active community participation. These policies are formulated in statutory regulations and operationalized through various prevention programs and law enforcement measures. One of the primary strategies employed to combat corruption that harms state finances is the application of criminal law. Criminal law is enforced through penal mechanisms within the criminal justice system, which constitutes an essential element of law enforcement. The process culminates in court decisions, serving both as the final resolution of corruption cases and as an instrument of justice for offenders (Indonesia, 1999; Indonesia Corruption Watch [ICW], 2022).

A strategic effort in addressing corruption in Indonesia lies in the criminal law approach, particularly through the imposition of firm and proportional criminal sanctions. Penal policy (**penal policy**) is part of the juridical framework aimed at controlling crime to ensure social protection and welfare. The application of criminal law is not merely repressive but also preventive, oriented toward the overarching objectives of **social defence** and **social welfare**. Within the context of corruption eradication, penal policy plays a crucial role in creating deterrent effects and strengthening a legal system that is fair and imbued with integrity—conditions that are essential for the achievement of sustainable development (Becker, 1968; Posner, 1998).

The enforcement of criminal law in corruption cases resulting in state financial losses serves as a mechanism of legal accountability for offenders. Criminal liability is closely tied to the imposition of sanctions as stipulated in Law No. 31 of 1999 on the Eradication of Corruption (Indonesia, 1999). The effectiveness of criminal law in addressing corruption can be assessed by the extent to which it ensures justice, legal certainty, and utility for both society and the state. However, in practice, the effectiveness of

criminal law in corruption eradication continues to face challenges, such as inconsistent law enforcement, obstacles in asset recovery, and the persistence of corruption within law enforcement institutions themselves (ICW, 2022).

The implementation of law as an instrument for safeguarding public and state interests serves to preserve social, economic, and political order through the enforcement of justice and legal certainty. Firm and consistent law enforcement ensures the protection of citizens' rights from abuses of power, injustice, and actions detrimental to the collective interest, such as corruption. In addition, the application of law functions as a preventive and corrective mechanism against violations that may harm the state, thereby ensuring that every act committed by individuals or legal entities remains in accordance with established legal norms, with the ultimate aim of promoting collective welfare and safeguarding future generations.

Although the national criminal law framework prescribes stringent sanctions for acts of corruption, the effectiveness of criminal punishment in terms of recovering financial losses to the state remains limited. In practice, numerous judicial decisions that impose additional penalties—such as restitution or asset confiscation—are not optimally enforced. Convicted offenders often opt to serve additional prison terms rather than fulfill restitution obligations, primarily because illicit assets have been concealed, transferred, or remain untraceable. This reality highlights that the prevailing penal system continues to emphasize retribution over restoration.

Law plays a pivotal role in preventing corruption, restoring state losses, and safeguarding sustainable development in pursuit of *Indonesia Emas 2045*. Its role is critical in ensuring that anti-corruption policies are implemented effectively and consistently as part of a strategic framework to realize a transparent, sustainable, and equitable Indonesia Emas 2045 that delivers tangible benefits across all levels of society. How the law functions to address corruption that harms the state, to recover financial losses arising from corrupt practices, and to safeguard developmental activities in pursuit of Indonesia Emas 2045 must therefore constitute a central concern.

B. PROBLEM FORMULATION

Despite the imposition of severe sanctions, including long-term imprisonment, Indonesia's criminal justice system has not proven effective in recovering state financial losses resulting from corruption. Court rulings that impose restitution or asset forfeiture are often not implemented optimally, as offenders tend to prefer serving additional prison sentences rather than fulfilling restitution obligations, largely due to assets being concealed, transferred, or untraceable. This raises a fundamental issue: why has the penal system in corruption cases remained ineffective in restoring state financial losses? The problem is closely tied to a punitive orientation that emphasizes retribution over restoration.

C. THEORETICAL FRAMEWORK

The evolution of penal theory reflects broader social changes that increasingly emphasize human rights and prioritize addressing the root causes of crime rather than relying solely on punishment. Theories of punishment—retributive, deterrent, rehabilitative, and restorative—collectively aim to achieve justice, preserve order, and sustain social harmony. Sudarto highlights that the objectives of punishment extend beyond retribution to include preventive and rehabilitative functions. Gustav Radbruch (1940) conceptualizes law as a cultural construct that embodies justice, oriented toward three fundamental values: legal certainty, justice, and utility. Similarly, Roscoe Pound's notion of *law as a tool of social engineering* views law as an instrument to protect public, collective, and individual interests. When combined with frameworks such as Law and Economics Theory and Restorative Justice, this perspective positions law as a strategic instrument for the state to safeguard public interests against corruption, which constitutes a serious economic crime.

D. RESEARCH METHODOLOGY

This study employs a methodological approach that integrates normative juridical and empirical methods. The normative juridical method is applied to examine, at a theoretical level, the effectiveness of legal norms in statutory provisions, particularly those regulating the execution of restitution for state financial losses. The empirical method is used to assess the application of such norms in practice, through the analysis of selected court decisions that serve as the basis for execution processes. This research

combines a statute approach with a case approach, thereby providing a comprehensive understanding of the relationship between normative provisions and their practical implementation.

E. DISCUSSION

Corruption represents a form of economic crime typically committed to obtain financial or material benefits for individuals or groups involved. Such crimes have a significant impact on the implementation of development programs aimed at advancing Indonesia, and continue to occur in a structured and systematic manner. Given its extensive impact, complexity, and widespread nature, corruption is categorized as an *extraordinary crime*. Its systemic and persistent occurrence requires intensive, consistent, and sustainable countermeasures. One strategic instrument to address corruption is the implementation of criminal law policies.

Donald R. Cressey's *Fraud Triangle Theory* identifies three main factors influencing fraudulent behavior, including corruption: opportunity, pressure, and rationalization. Opportunity arises when oversight or internal controls are weak, creating gaps for misconduct to go undetected. Pressure refers to personal or external conditions, such as economic difficulties, lifestyle demands, or certain ambitions, which drive individuals to commit fraud. Rationalization, meanwhile, reflects the perpetrator's moral justification to mitigate feelings of guilt for their actions. According to Cressey, these three elements interact equally and mutually reinforce one another in motivating deviant behavior. This theory provides an important foundation for understanding the causes of corruption and remains highly relevant in designing prevention policies based on behavioral insights and robust internal control systems.

The implementation of law as an anti-corruption instrument is a strategic measure to support the vision of *Indonesia Emas 2045*. Law plays a crucial role in promoting transparent, sustainable governance focused on improving public welfare. It is not merely a set of written norms but functions as a supervisory mechanism that ensures power is exercised responsibly. Without serious, consistent, and continuous law enforcement, the role of law as a pillar of justice risks being undermined, weakening its purpose. Accordingly, upholding the rule of law must remain a primary requirement in building a clean, accountable government system capable of realizing an advanced and prosperous Indonesia.

Law as an anti-corruption instrument constitutes a central element of the national strategy to ensure that anti-corruption policies are implemented consistently and effectively, thereby supporting the achievement of *Indonesia Emas 2045*. Beyond its normative character, law functions as a controlling mechanism that obliges power to be exercised responsibly and with integrity. Inconsistent or unsustainable enforcement risks eroding the law's role as a guarantor of justice and integrity, ultimately obstructing the realization of national development goals.

Corruption, as both a national and global phenomenon, poses a significant threat to development, exacerbates social inequality, and generates injustice. Therefore, its eradication demands comprehensive, sustained, and coordinated action at both national and international levels. In this context, the *United Nations Convention Against Corruption* (UNCAC) of 2003 provides an important framework, emphasizing preventive measures, law enforcement, international cooperation, and asset recovery. Indonesia ratified the convention through Law No. 7 of 2006, thereby strengthening its commitment to effective and efficient anti-corruption strategies. One of UNCAC's crucial provisions concerns the recovery of assets obtained through corruption.

In Indonesia's criminal justice system, punishment for corruption aims not only to penalize offenders but also to deter future misconduct and ensure restitution. Sentencing practices draw upon a combination of retributive, preventive, and restorative approaches. As a social construct, law operates within spatial and temporal dimensions, shaped by historical, cultural, and societal contexts, requiring flexible interpretation and application in line with prevailing realities.

Punishment for corruption should therefore be applied integratively—not merely as retribution, but as a mechanism to restore state financial losses. Within the framework of the state as victim, a restorative justice approach prioritizes the recovery of misappropriated assets. In this view, punishment serves both punitive and restorative functions, with restitution embedded in material criminal law as a key sanction. Accordingly, law and its application must operate as instruments to safeguard the interests of the state by ensuring the recovery of financial losses caused by corruption.

1. Corruption Offenses Causing State Financial Losses.

Corruption offenses that result in state financial losses remain one of the principal obstacles to realizing the vision of *Indonesia Emas 2045*. Corruption not only drains public funds intended for national development but also undermines systems of governance. When public resources are diverted for personal

or group interests, the implementation of priority programs—such as education, healthcare, infrastructure development, and innovation—becomes severely constrained. This ultimately hampers national competitiveness and slows the improvement of human capital, which is the foundation of the 2045 vision. Accordingly, consistent, comprehensive, and sustainable anti-corruption measures are essential to building a progressive, just, and prosperous Indonesia.

Corruption has the characteristics of a *hidden crime*, known only to a limited number of individuals, typically involving multiple actors with aligned interests who collude to conceal their misconduct. Perpetrators often conspire to eliminate traces of their actions, while the lengthy gap between the commission of the offense (*tempus delicti*) and the initiation of legal proceedings presents further challenges for investigators in gathering evidence. Asset-tracing is equally difficult, as illicit proceeds are often systematically hidden or secured well before legal processes begin, in an effort to evade prosecution.

Research by Indonesia Corruption Watch (ICW) indicates that corruption causing state financial losses remains the most prevalent form of corruption, as regulated under Articles 2 and 3 of Law No. 31 of 1999, as amended by Law No. 20 of 2001. Throughout 2022, corruption in budget management—particularly in state and regional budget allocations—was the dominant offense, with recurring modes of operation such as budget misuse and influence peddling, most notably in procurement activities within government agencies and state-owned enterprises.

The data illustrate that corruption in Indonesia constitutes an *extraordinary crime* that inflicts severe damage on national development and public welfare. Procurement of goods and services within government institutions and state-owned enterprises represents one of the most corruption-prone sectors. The combination of large budgets, complex systems, and weak oversight creates fertile ground for misconduct. Common practices include bid-rigging, price mark-ups, and fictitious projects—all of which result in significant financial losses for the state.

Corruption offenses that harm state finances are explicitly regulated in Article 2(1) and Article 3 of Law No. 31 of 1999, as amended by Law No. 20 of 2001. Article 2(1) prohibits any individual from unlawfully enriching themselves or others through abuse of authority, resulting in losses to state finances or the national economy. Article 3 focuses on acts of abuse of power committed intentionally, with adverse consequences for the state, regardless of broader public or national interests. Together, these provisions form the substantive legal framework for addressing corruption through criminal sanctions as a form of legal accountability.

Corruption is often likened to an iceberg in the Atlantic Ocean: the visible portion is only a small fraction of the larger, hidden structure beneath the surface. This analogy illustrates that cases exposed to the public represent only the surface of a much broader and more complex network of corruption. Left unchecked, the cumulative effects of corruption can destabilize governance and jeopardize state continuity. For organizations, corruption not only generates financial losses but also obstructs the achievement of institutional objectives.

This reflects the situation in Indonesia today, where high-profile corruption cases continue to surface in succession. Media outlets—both print and electronic—frequently highlight this trend with the term “*Corruption League*,” underscoring the widespread prevalence of corruption across sectors and levels of government.

Nevertheless, most corruption cases remain undisclosed, forming part of the so-called “*iceberg phenomenon*”—hidden practices shielded by weak oversight mechanisms and a lack of transparency. Many acts of corruption escape detection during internal or external audits, as supervisory mechanisms remain ineffective in identifying fraud in the management of state finances. Consequently, official statistics fail to capture the full scope of the problem. Reported figures reflect only a small fraction of the broader issue, emphasizing the urgent need for comprehensive reform of supervisory and law enforcement systems to ensure that corruption cases can be effectively uncovered and prosecuted.

2. Sentencing of Corruption Crimes that Cause State Losses.

Sentencing is a form of state intervention manifested through the imposition of criminal sanctions by the court against perpetrators who have been proven guilty beyond reasonable doubt of committing a crime. Sentencing plays a crucial role in the criminal law system as it aims to uphold the principle of justice, maintain social stability, and ensure the supremacy of law. Apart from being a response to unlawful acts, sentencing also carries a preventive aspect, both in the context of deterrence, so that the offender does not repeat the act. Therefore, sentencing is not merely aimed at punishing, but also reflects the functions of rehabilitation and protection of the interests of the state and public order.

The sentencing system in Indonesia's criminal justice is an essential element in the mechanism of law enforcement, designed to address crimes, realize justice, and maintain public order and security. This

system encompasses a series of stages, from investigation, inquiry, prosecution, trial, up to the execution of court decisions that have obtained permanent legal force. The sentencing system can be defined as the entirety of the legal framework for the functionalization/operationalization/concretization of punishment. This entire set of statutory rules, which regulates how criminal law is enforced and concretely operationalized, is referred to as the sentencing system, namely the juridical mechanism governing the process of law enforcement until an individual is imposed with criminal sanctions. Furthermore, L.H.C. Hulsman argues that the sentencing system refers to statutory rules relating to penal sanctions and punishment.

The imposition of sentences must be based on the principles of legality, proportionality, and justice, which serve as the fundamental basis of the criminal law system. The principle of legality stipulates that a person may only be punished for acts that have been defined as crimes under existing laws and regulations prior to their commission (*nullum crimen sine lege, nulla poena sine lege*). The principle of proportionality emphasizes that the type and severity of punishment must be balanced with the degree of culpability of the perpetrator and the consequences of their actions. Meanwhile, the principle of justice demands that court decisions provide a fair balance between the rights of the offender, the victim, and the interests of the wider community. These three principles serve as crucial foundations for judges in rendering decisions, ensuring that judgments not only reflect adherence to positive law but also uphold humanitarian values and substantive justice within society.

Corruption crimes that cause losses to state finances remain one of the main obstacles to realizing the *Indonesia Emas 2045* vision. Corruption not only misappropriates budgets that should be allocated for national development but also undermines governance systems. The misuse of public funds for personal or group interests disrupts the implementation of priority programs such as education, healthcare, infrastructure development, and innovation. This results in declining national competitiveness and delays in improving the quality of human resources, which form the cornerstone of the 2045 vision. Therefore, consistent, comprehensive, and sustainable efforts to eradicate corruption are essential to building a progressive, just, and prosperous Indonesia in the future.

The purpose of sentencing in the modern legal system is no longer limited to retribution or punishment, but rather emphasizes the restoration of justice through an approach known as *restorative justice*. The concept of restorative justice is understood as a form of criminal law dispute resolution involving the offender, victim, and other related parties to seek a fair resolution, prioritizing restoration to the original state rather than retribution. Long before, Aristotle had already expressed the principle underlying restorative justice: *"to restore both parties to equality, a judge must take the amount that is greater than the equal that the offender possesses and give that part to the victim so that both have no more and no less than the equal."*

Sentencing is part of the law enforcement process carried out through the criminal justice system. The sentencing system is defined as the entirety of statutory rules for the functionalization/operationalization/concretization of punishment, which regulates how criminal law is concretely enforced until an individual is subject to criminal sanctions. This system not only focuses on imposing punishment that may create deterrence but also aims to restore state losses and prevent the recurrence of corruption crimes in the future. This approach reflects a strong legal commitment to combating corruption as an extraordinary crime, requiring consistent, precise, and efficient law enforcement measures.

Corruption crimes are linked to various complexities, including economic demands and disparities, as well as structural and systemic problems in the economy. These interconnected complexities—ranging from economic needs that provide opportunities for corrupt acts, widening social and economic inequality fueling injustice and dissatisfaction, to inefficient economic structures and unaccountable governance—contribute to sustained and systemic corruption practices. These interrelated factors create a vicious cycle that perpetuates widespread corruption to this day.

Law and law enforcement are built within an interconnected legal system, where each element plays a supportive role in creating justice. The legal system regulates the behavior of individuals and groups in society, while law enforcement focuses on the consistent and fair implementation of these rules. Indonesia's legal system, rooted in civil law traditions, places statutory law as the main source in addressing corruption crimes that cause state financial losses. Law No. 31 of 1999, as amended by Law No. 20 of 2001, serves as the primary legal basis for imposing criminal sanctions on corruption offenders, with provisions including imprisonment, fines, restitution, and revocation of certain rights.

The formulation of offenses and sanctions for corruption crimes that harm state finances is set out in Article 2(1) and Article 3 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, as follows:

- **Article 2(1):**
Any person who unlawfully enriches themselves, another person, or a corporation that may cause losses to state finances or the national economy shall be punished with life imprisonment or imprisonment of no less than four (4) years and no more than twenty (20) years, and a fine of no less than Rp200,000,000 and no more than Rp1,000,000,000.
- **Article 3:**
Any person who, with the intent to benefit themselves, another person, or a corporation, abuses authority, opportunity, or facilities available to them because of their office or position, thereby causing losses to state finances or the national economy, shall be punished with life imprisonment or imprisonment of no less than one (1) year and no more than twenty (20) years, and/or a fine of no less than Rp50,000,000 and no more than Rp1,000,000,000.

Thus, both articles emphasize the element of losses to state finances or the national economy as a result of corruption, whether committed unlawfully (Article 2) or through abuse of authority (Article 3). The element of “potential state financial loss” has been revised under Constitutional Court Decision No. 25/PUU-XIV/2016, which mandates that such financial losses must be proven and occur in reality.

In addition to principal punishments, supplementary punishments may also be imposed, such as restitution, asset confiscation derived from corruption, revocation of certain rights, and public announcement of court decisions. The imposition of supplementary punishments aims to recover state losses, create deterrence, and prevent offenders from benefiting from their crimes. Restitution in Indonesia is regulated under Article 18(1)(a) and (b) of Law No. 31 of 1999 on the Eradication of Corruption Crimes, which provides for:

- (a) confiscation of tangible or intangible movable property, or immovable property obtained from corruption crimes;
- (b) restitution payments equal to the value of assets obtained from corruption crimes.

The imposition of punishment in corruption cases causing state financial losses must be based on proof that all elements of the offense are fulfilled. These elements are:

- **Article 2(1):**
 - Any person
 - Enriching themselves, another person, or a corporation
 - Unlawfully
 - Causing losses to state finances or the national economy
- **Article 3:**
 - Any person
 - With the intent of benefiting themselves, another person, or a corporation
 - Abusing authority, opportunity, or facilities
 - Derived from office or position
 - Causing losses to state finances or the national economy

Each element must be proven through at least two legally recognized pieces of evidence, so that the panel of judges can be convinced that the alleged act truly occurred and meets the requirements of a corruption offense beyond reasonable doubt.

Efforts to recover state financial losses (*asset recovery*) in corruption cases are in fact undertaken from the investigation and prosecution stages. These efforts involve legal measures to gather sufficient evidence of corruption acts, alongside asset tracing to track and identify assets suspected to originate from corruption. This asset-tracing process is a key stage in law enforcement to ensure offenders do not benefit from their crimes while maximizing the recovery of state assets.

Sentencing of corruption crimes is carried out through a special court mechanism, namely the Corruption Court (*Pengadilan Tindak Pidana Korupsi*), established under Law No. 46 of 2009. The existence of this court represents a response to the need for a judicial body with high capability and integrity in handling corruption cases professionally, transparently, and accountably. All corruption cases investigated by the police, prosecution, or the Corruption Eradication Commission (KPK), and prosecuted by either the Prosecutor's Office or KPK, are tried in this court according to jurisdiction where the corruption occurred. The Corruption Court plays a vital role in Indonesia's criminal justice system as a specialized court,

ensuring corruption trials proceed transparently, objectively, and in line with justice and prevailing legal principles.

The outcomes of sentencing in corruption cases can be assessed through court rulings, which reflect the legal reasoning of judges, including the application of offense elements, justification for sentencing, and the proportionality between the acts committed and the punishment imposed. Illustrations of sentencing can be seen in the following corruption rulings, showing how judges assess the elements of corruption and the scale of state losses in determining punishment:

Table 3. Corruption Cases Causing State Losses

Case Number	State Losses	Imprisonment	Fine	Restitution	Substitute Imprisonment	Revocation of Rights
9/PID.SUS-TPK/2023/PT BDG	Rp6.2B	6 yrs	Rp400M	Rp363M	3 yrs	-
4/TIPIKOR/2020/PT.BDG	Rp236M	2.5 yrs	Rp100M	Rp190.7M	1 yr	-
29/Pid.Sus-TPK/2020/PN.Jkt.Pst	Rp16.8T	life	-	Rp6.1T	-	-
4/Pid.Sus-TPK/2022/PT SMG	Rp29.1B	10 yrs	Rp500M	Rp9.5B	5 yrs	-
14/Pid.Sus-TPK/2017/PT SMG	Rp135M	2 yrs	Rp50M	Rp59M	2 mos	-
36/Pid.TPK/2013/PT.DKI	Rp121.8B	18 yrs	Rp1B	Rp32B	5 yrs	Yes
41/Pid.TPK/2013/PT.BDG	Rp17.2M	1 yr	Rp50M	Rp14.2M	2 mos	-
12/Pid.Sus-TPK/2018/PT.SMG	Rp5.1B	4 yrs	Rp50M	Rp739.7M	2 yrs	-
130/Pid.Sus/TPK/2017/PN.Jkt.Pst	Rp2.3T	15 yrs	Rp500M	USD7.3M	2 yrs	5 yrs

The motives of offenders in committing corruption are essentially aimed at obtaining economic, business, or financial benefits. Such acts are generally driven by the desire to gain wealth or profit for oneself or others unlawfully by abusing positions, authority, or access to state resources. The offender's response to court decisions—imposing imprisonment along with restitution or substitute imprisonment in case of non-payment—depends largely on the composition, type, and proportionality of punishments imposed in the judgment.

Judges are the spearhead of justice for society. On the other hand, they carry professional responsibilities, meaning they cannot act arbitrarily. Judges bear moral, legal, and professional responsibilities. Posner, based on his experience as a judge, argues that judges are rational actors with motives he describes as maximizing "utility," rationally directing decisions to achieve complex objectives in court. The maximization of utility in court decisions, particularly in corruption cases that harm state finances, can only be assessed once the decision is executed or implemented.

3. Execution of Court Decisions and Recovery of State Financial Losses.

The execution of court decisions with permanent legal force (*inkracht van gewijsde*) is carried out by the Public Prosecutor at the Corruption Eradication Commission (KPK) or the Attorney General's Office. In corruption cases that cause financial losses to the state, execution represents the final stage of law enforcement, aiming both to uphold justice and to recover state losses. Pursuant to Article 18 of Law No. 31 of 1999 as amended by Law No. 20 of 2001, restitution of state losses may be imposed through the payment of compensation by the convicted person. If the convict fails to make such payment within the time specified in the judgment, the prosecutor, acting as executor, is authorized to seize and auction the convict's assets to fulfill this obligation. Should the auction proceeds prove insufficient, execution continues with the imposition of substitute imprisonment as stipulated in the judgment.

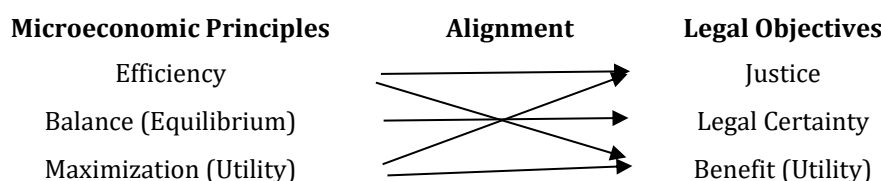
A court decision with permanent legal force constitutes a valid and binding legal basis for the execution of sanctions against corruption offenders who have caused losses to state finances. Such a decision is the final determination that the accused has been proven guilty and must serve the sentence imposed, whether in the form of imprisonment, fines, or restitution of state losses. Once the judgment attains permanent legal force, no further legal remedies are available to the convict, and law enforcement

authorities are obliged to promptly execute it to ensure legal certainty, uphold justice, and secure recovery of state losses resulting from corrupt practices.

A sound legal system and its implementation must reflect the “living law” within society, in line with the social jurisprudence school of legal philosophy. This school distinguishes between positive law (statutory law) and the living law. While positive law remains abstract, it gains juridical effect when applied through law enforcement. The enforcement of legal norms, as codified in legislation, may influence societal behavior. As theorized by Roscoe Pound, law functions as a tool of social engineering, tasked with protecting public, group, and individual interests.

Corruption, as an economic crime, fundamentally seeks financial or economic gain for its perpetrators. It typically involves multiple actors who misuse authority or office for personal or group benefit, ultimately causing harm to the public interest and undermining the state’s economic order. Thus, corruption is not only a violation of law but also a significant threat to sustainable development, economic stability, and social justice. Its destructive impact jeopardizes strategic efforts to achieve the vision of *Indonesia Emas 2045*, which aspires to establish an advanced, just, and prosperous nation.

The application of law in combating corruption and executing court decisions may be evaluated using Gustav Radbruch’s theory of legal purpose. This theory identifies three fundamental values that every legal system must pursue: justice (*gerechtigkeits*), legal certainty (*rechtssicherheit*), and utility (*zweckmäßigkeit*), which together form an ideal legal order. According to Cooter and Ulen, these legal purposes—justice, certainty, and utility—can be harmonized with the principles of microeconomics, such as utility maximization, market equilibrium, and resource allocation efficiency. Such integration ensures that law is viewed not only in normative terms but also through the lens of economic rationality. The alignment between microeconomic principles and the aims of law may be illustrated as follows:



The application of law in combating corruption aims to uphold justice, legal certainty, and utility in a balanced manner. Justice requires proportional sanctions for offenders; legal certainty ensures consistent and transparent enforcement; while utility emphasizes the protection of public interests and the recovery of state financial losses. How can microeconomic concepts be applied in the sentencing of corruption crimes that harm the state? Can law enforcement through court rulings be implemented to uphold justice that is both legally certain and beneficial? The alignment of law enforcement objectives with microeconomic principles can be outlined as follows:

- **Justice paired with efficiency and balance.** The criminal enforcement of corruption offenses that harm state finances is deemed just when court decisions can be executed to recover state financial losses, and when the imposition of imprisonment as the principal penalty is proportional to the substitute imprisonment in cases where the convict fails to pay restitution.
- **Legal Certainty paired with balance.** This becomes a crucial foundation in the effective implementation of criminal law through sentencing mechanisms, ultimately creating an incentive structure that encourages rational behavior and prevents corruption. By maintaining a fair proportion between the offender’s degree of culpability, the impact of their actions, and the severity of sanctions imposed, law enforcement can avoid the risks of over-penalization as well as impunity.
- **Utility paired with the microeconomic principles of efficiency and maximization.** The criminal enforcement of corruption offenses that harm state finances is considered beneficial when the execution of court rulings can serve as an instrument to maximize the recovery of state financial losses through restitution.

Asset recovery in corruption cases represents a significant shift in law enforcement, moving from conventional punitive measures toward the confiscation of illicit gains. This development is grounded in the classical maxim *Naturae aequum est, neminem cum alterius detrimento et injuria, fieri locupletiore*—no one should enrich themselves at the expense and suffering of others. The principle later evolved into the doctrine of *unjust enrichment*, which in modern times is encapsulated in the notion that *crime does not pay*.

(Julio Alberto Diaz, 2007). From a microeconomic perspective, the effectiveness of recovering state financial losses depends on how judicial decisions create an incentive structure that aligns with rational behavior. Criminal sanctions, particularly restitution, function not only as punitive measures but also as corrective mechanisms that reallocate illicitly obtained resources back to the state. When sanctions are effectively enforced, they increase the expected cost of corruption, thereby reducing its attractiveness as a rational choice.

However, the current practice reveals a significant imbalance between the legal framework and its enforcement. An assessment of legal effectiveness in combating corruption—especially asset recovery—requires consideration of three interrelated variables: (1) the nature of corruption as the targeted offense, (2) the adequacy of criminal law as the principal instrument, and (3) the role of judges in exercising judicial authority. The latter is crucial because judicial reasoning and proportional sentencing directly affect whether sanctions function as effective deterrents.

A legal system can only be considered economically efficient when its sanctions are not only normatively prescribed but also practically enforceable. Otherwise, the system risks creating *moral hazard* by signaling to offenders that the probability of retaining illicit wealth outweighs the risk of punishment. In this sense, ineffective enforcement weakens deterrence and undermines the principle of economic efficiency in law enforcement.

Empirical data highlight this problem. While courts ordered restitution totaling more than **IDR 28.48 trillion**, only **IDR 706.9 billion**—approximately **2.48%**—was successfully recovered.

Executor	Ordered Restitution (IDR)	Paid Restitution (IDR)	%
Corruption Eradication Commission (KPK)	1,476,344,184,768.00	290,300,708,137.00	19.66
Prosecutor's Office	27,010,226,937,862.00	416,627,037,233.00	1.54
Total	28,486,571,122,630.00	706,927,745,370.00	2.48

The sharp discrepancy between ordered and recovered restitution illustrates a failure of economic rationality in sentencing outcomes. Instead of maximizing public utility through efficient recovery, the system allows offenders to externalize the costs of corruption onto society. From a microeconomic standpoint, this undermines deterrence, reduces efficiency, and perpetuates rent-seeking behavior. Therefore, strengthening mechanisms for asset tracing, confiscation, and enforcement of judicial rulings is essential to restore both economic efficiency and the legal principle that *crime does not pay*. Only then can law enforcement achieve justice, legal certainty, and utility in a balanced and economically rational manner.

F. CONCLUSION

The criminalization of corruption is an urgent and vital effort to strengthen Indonesia's criminal justice system in the pursuit of clean, transparent, and accountable governance. Within the framework of the *Indonesia Emas 2045* vision, combating corruption requires not only firm and consistent law enforcement but also a strong emphasis on the recovery of state financial losses as a form of restorative justice. Sentencing should not be limited to deterrence but must also be oriented toward restoring state assets that have been misappropriated, thereby serving the public interest and supporting national development.

To achieve this, it is essential to reinforce the legal framework, foster effective collaboration among law enforcement institutions, and optimize the use of asset recovery and confiscation mechanisms. By doing so, the reorientation of sentencing toward the recovery of state losses will become a crucial pillar in building a resilient legal system—one that upholds sovereignty, prosperity, and justice as Indonesia moves toward 2045.

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