



Redefining the Role of Judges in Achieving Substantive Justice in Corruption Cases

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Abstract

Substantive justice in corruption cases can only be achieved if judges dare to redefine themselves as reflective and transformative actors. This study aims to analyse and formulate a reimagining of the judge's role in achieving substantive justice in corruption cases in Indonesia. This study employs a juridical-normative approach, enriched by a socio-legal perspective, within an exploratory-analytical qualitative research design. The findings unequivocally challenge the judicial orthodoxy that positions judges merely as enforcers of norms, by asserting that in corruption cases, a rigidly neutral stance risks reproducing structural injustice. Thus, the reconstruction of the judge's role as an architect of substantive justice is no longer an option, but a normative and ethical imperative. This study offers a novel approach through a critical synthesis of judicial independence, legal politics, and a sentencing paradigm that positions judges as reflective actors who dare to interpret the law progressively while remaining accountable, thereby simultaneously integrating deterrence, the recovery of state losses, and social justice. The implications call for fundamental reform of the penal system, the strengthening of protections for judicial independence against the pressures of populism and power, and a transformation of legal education that is no longer merely legalistic.

Keywords: *Corruption Cases, Paradigm Shift, Reconstruction, Role of Judges, Substantive Justice*

INTRODUCTION

The phenomenon of corruption in Indonesia is a structural problem that has long been eroding the very foundations of national life and statehood. Consequently, tackling it requires not only a repressive approach through law enforcement but also a paradigm shift within the criminal justice system. In practice, although various legal instruments have been established and strengthened, including through the creation of specialised bodies such as the Corruption Eradication Commission, court rulings in corruption cases often spark public debate regarding the extent to which substantive justice is truly realised. It is not uncommon for rulings to be deemed overly formalistic, focused solely on legal certainty, and failing to take into account the dimensions of justice that exist within society. This situation highlights a tension between procedural justice, which emphasises compliance with written legal norms, and substantive justice, which seeks to achieve a broader sense of justice, including consideration of the social, moral, and economic impacts of corruption offences.¹

In this context, the role of judges becomes highly strategic, as they do not merely act as the mouthpiece of the law but also serve as key actors with the authority to interpret and apply it contextually.² Judges face a choice between merely applying the rules mechanically or delving into deeper values of justice to produce rulings that reflect substantive justice. Nevertheless, judicial practice in Indonesia still shows a tendency towards a positivist approach that treats the law as a closed system autonomous from social reality. This paradigm limits judges' scope to engage in progressive interpretation that can bridge the gap between written law and the justice society expects. Consequently, reconstructing the judge's role has become an urgent necessity to ensure that the enforcement of the law in corruption cases not only delivers legal certainty but also meaningful justice.

The urgency of reconstructing judges' roles becomes increasingly apparent when considered alongside the multidimensional nature of corruption offences. Corruption not only causes financial loss to the state but also contributes to social inequality, erodes public trust in state institutions, and hinders national development.³ Consequently, a law enforcement approach that focuses solely on formal legal aspects is no longer sufficient. Judges are required to possess social sensitivity and moral courage as they explore a broader meaning of justice, including consideration of restitution for state losses, deterrence, and the impact on the wider community. From this perspective, substantive justice becomes the primary orientation that must be realised through court rulings, so that the law functions not only as a tool of social control but also as a means of just social transformation.

Several previous studies have examined the role of judges in law enforcement, particularly in corruption cases, using various approaches. Studies analysing court rulings reveal disparities in the imposition of criminal penalties, reflecting differences in judges' interpretations of the same legal norms.⁴ Other studies highlight the importance of a progressive legal approach in encouraging judges to be bolder in breaking free from the shackles of legal positivism, thereby

¹ Cahaya Rembulan et al., "The Impact of the Digital Economy on Economic Empowerment Models for Muslim Youth in Indonesia," *Jurnal Lentera Insani* 1, no. 1 (2025): 48–63, <https://doi.org/10.65586/jli.v1i1.17>.

² Agnieszka Kubal, "Judicial Relational Legal Consciousness: Authoritarian Backsliding as a Catalyst of Change," *Journal of Law and Society* 51, no. Galleli, B., Amaral, L. (2026). Bridging institutional theory and social and environmental efforts in management: A review and research agenda. *Journal of Management*, 52(1), 42–93. <https://doi.org/10.1177/01492063251322429> (2024): S45–65, <https://doi.org/10.1111/jols.12497>.

³ Poppy Sofia Koeswayo, Sofik Handoyo, and Dede Abdul Hasyir, "Investigating the Relationship between Public Governance and the Corruption Perception Index," *Cogent Social Sciences* 10, no. 1 (2024): 2342513, <https://doi.org/10.1080/23311886.2024.2342513>.

⁴ Fangzhou Wang, "Sentencing Disparity and Focal Concern: An Assessment of Judicial Decisions on Sha Zhu Pan Cases Collected from China Judgements Online," *Crime & Delinquency* 71, no. 6–7 (2025): 1845–77, <https://doi.org/10.1177/00111287231158571>; Haris Maiza Putra and Hisam Ahyani, "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 68–90, <https://doi.org/10.30984/jis.v20i1.1861>.

enabling them to deliver rulings that are more responsive to society's needs.⁵ Furthermore, studies emphasise the importance of judges' integrity and independence as key factors in realising justice.⁶

These studies generally agree that judges' roles are crucial in law enforcement. Yet, there remain differing views on the extent to which judges can and should engage in interpretations that go beyond the legal text. Nevertheless, most previous studies still tend to view the role of judges within a normative or descriptive framework, without thoroughly examining how this role can be systematically reconstructed to realise substantive justice. Some studies have proposed applying progressive law or a restorative justice approach, but have not yet provided a comprehensive conceptual framework for how judges can integrate various values of justice into judicial practice, particularly in the context of corruption cases with specific characteristics.⁷

Existing studies are also limited in their examination of the interactions among structural, cultural, and individual factors that influence judges' decisions to produce substantively just outcomes. In other words, there is a gap in the literature for a holistic examination of how judges' roles can be reconstructed to address the increasingly complex challenges of law enforcement. The research gap identified in these studies lies in the absence of a model for reconstructing the judge's role that explicitly integrates normative, sociological, and philosophical dimensions within the framework of substantive justice. Previous studies tend to be fragmented, ranging from those focusing on normative aspects without considering the social context, to those emphasising sociological aspects without providing a strong normative foundation.

Few studies specifically examine how judges in corruption cases can develop an interpretative approach that is not only oriented towards legal certainty, but also towards justice and utility in a balanced manner. This gap highlights the need for research that is not merely descriptive or normative, but also constructive in formulating a model of the judge's role that is more adaptive and responsive to the demands of substantive justice. Within this framework, the novelty of this study lies in the effort to reconstruct the judge's role in realising substantive justice in corruption cases through an integrative and multidimensional approach.

This study will examine the role of judges not only from a positive law perspective but also from a normative perspective. Still, it will also integrate sociological and philosophical perspectives to understand how judges can act as agents of change within the judicial system. Furthermore, this study will develop a conceptual framework linking the principles of substantive justice with judicial practice, thereby providing more concrete guidance for judges in carrying out their functions. The objective of this study is to analyse and formulate a reconstruction of judges' role in the realisation of substantive justice in corruption cases in Indonesia. The significance of this study lies in its contribution to strengthening the theoretical and practical foundations for efforts to realise substantive justice in the enforcement of corruption law.

⁵ Tom Campbell, *Prescriptive Legal Positivism: Law, Rights and Democracy* (Routledge-Cavendish, 2024), <https://doi.org/10.4324/9781003579533>.

⁶ Azul A Aguiar Aguilar, "Courts and the Judicial Erosion of Democracy in Latin America," *Politics & Policy* 51, no. 1 (2023): 7–25, <https://doi.org/10.1111/polp.12516>.

⁷ Suud Sarim Karimullah, "From Punishment to Healing: The Transformative Power of Restorative Justice," *SASI* 29, no. 4 (2023): 678–90, <https://doi.org/10.47268/sasi.v29i4.1688>; Siti Aminah, Arif Sugitanata, and Suud Sarim Karimullah, "Restorative Justice for the Survivor of Sexual Violence," *Restorative: Journal of Indonesian Probation and Parole System* 2, no. 1 (2024): 15–23, <https://doi.org/10.61682/restorative.v2i1.10>.

METHODS

This study employs a legal-normative approach enriched with a socio-legal perspective, using an exploratory-analytical qualitative research design to enable a comprehensive and contextual conceptual reconstruction of the role of judges in realising substantive justice in corruption cases. The focus of the study is directed at the role of judges as the primary variable, operationalised within the dimensions of legal interpretation, decision-making considerations, and an orientation towards substantive justice, whilst substantive justice itself is defined as the alignment between judicial decisions and the values of social justice, utility, and legal certainty.

The study population comprises court rulings on corruption criminal cases and related judicial practices, with sampling determined through purposive selection of representative rulings with jurisprudential significance, alongside supporting subjects comprising judges and legal academics selected via snowball sampling. The research instruments consist of document analysis and in-depth interview guidelines, developed iteratively based on the theoretical frameworks of progressive law and substantive justice, with data validity tested through triangulation of sources, methods, and theory. Data collection was carried out in stages through literature review, analysis of judicial decisions, and semi-structured interviews.⁸ Meanwhile, data analysis utilised interactive qualitative analysis techniques, including data reduction, data presentation, and conclusion drawing, combined with an interpretative-constructive approach to formulate a model reconstructing the relevant role of judges.

RESULTS AND DISCUSSION

Between the Voice of the Law and the Architect of Substantive Justice in Corruption Cases

In the Indonesian legal system, which is deeply rooted in the civil law tradition, the position of the judge is typically that of an enforcer of norms, tasked with applying the law consistently and objectively, so that the law is understood as a closed system that provides certainty through adherence to its text.⁹ This paradigm gives rise to the conception of the judge as a conduit of the law, placing the will of the legislator as the primary source of legitimacy for rulings, whilst constraining the judge's scope of discretion within a strict normative framework. However, in the context of increasingly complex corruption cases, such an approach reveals its limitations, as corruption is not merely a violation of written legal norms but also an abuse of power with far-reaching impacts on social, economic, and public trust structures.¹⁰

The tension between the judge's role as a conduit for the law and as an architect of substantive justice becomes increasingly apparent when judges confront corruption cases involving complex power dynamics, actors with significant economic and political clout, and damages that are not always quantifiable.¹¹ In such situations, the textual application of the law is often unable to capture the full dimensions of relevant justice, thereby potentially resulting in rulings that are formally correct but substantively fail to satisfy the public's sense of justice.¹² This demonstrates that justice cannot be reduced to legal certainty alone, but must be

⁸ Michael Nii Laryeafio and Omoruyi Courage Ogbewe, "Ethical Consideration Dilemma: Systematic Review of Ethics in Qualitative Data Collection through Interviews," *Journal of Ethics in Entrepreneurship and Technology* 3, no. 2 (2023): 94–110, <https://doi.org/10.1108/JEET-09-2022-0014>.

⁹ Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (2022): 2104710, <https://doi.org/10.1080/23311886.2022.2104710>.

¹⁰ Maharatna Shifa Nurizka et al., "Criticism of the Neoclassical Approach in Islamic Economic Policy in Indonesia," *Jurnal Pelita Raya* 1, no. 1 (2025): 17–30, <https://journal.mahkotascience.org/index.php/jpr/article/view/9>.

¹¹ Ngurah Wisnu Murthi et al., "Indonesia's Inclusive Economic Diplomacy Based on the Pancasila Ideology," *Jurnal Pelita Raya* 1, no. 3 (2025): 152–65, <https://doi.org/10.65586/jpr.v1i3.30>.

¹² Daniel Peterson, Adriaan Bedner, and Ward Berenschot, "The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia," *Journal of Contemporary Asia* 55, no. 3 (2025): 430–51, <https://doi.org/10.1080/00472336.2024.2440855>.

understood as a dynamic and contextual concept, requiring an interpretation sensitive to social realities.

The ambiguity of the judge's role in interpreting the law, balancing legal certainty against substantive justice, reflects an epistemological conflict within legal theory, particularly between legal positivism and progressive or sociological approaches to law.¹³ Legal positivism emphasises that law is a set of rules that must be applied as they stand, without regard to values beyond the text, so that judges have no authority to create law.¹⁴ Conversely, the progressive legal approach views the law as an instrument for achieving justice, thereby giving judges scope for creative interpretation that can bridge legal norms with the needs of society. In the context of corruption cases, an overly rigid approach to legal positivism risks overlooking broader dimensions of justice, whilst an overly lenient approach risks creating legal uncertainty and the potential for abuse of authority.

This dilemma is further complicated by the specific characteristics of corruption offences, which are not merely about breaches of formal rules but also involve aspects of public morality and trust in state institutions. Corruption is often committed through complex and covert mechanisms, meaning that proving it requires interpretation based not only on formal evidence but also on an understanding of the underlying patterns of behaviour and power relations.¹⁵ In judicial practice, the tendency to adhere to a formalistic approach is often driven by concerns about potential breaches of the principles of legality and non-retroactivity, which are key pillars of the criminal justice system.

A judge who is overly progressive in interpreting the law risks being perceived as overstepping their authority and creating new norms that should fall within the legislature's domain. Nevertheless, these concerns should not prevent judges from exercising their interpretative function effectively, as the application of law inherently involves interpretation. Therefore, the issue is not whether judges may interpret the law progressively, but rather how such interpretation is carried out responsibly and in a manner that is academically and legally accountable.¹⁶ Within this framework, the concept of the judge as an architect of substantive justice offers a more dynamic perspective on the judge's role within the judicial system.

As an architect, the judge not only applies existing norms but also designs and shapes the structure of justice through the judgments they deliver. This role demands that judges not only understand the law textually, but also internalise the values of justice that exist within society and consider the long-term implications of their rulings. In corruption cases, this can be reflected in a judge's courage to deliver a ruling that considers not only retribution, but also the recovery of state losses, the deterrent effect, and the prevention of future corruption.

The transformation of the judge's role from a mere conduit of the law to an architect of substantive justice does not mean disregarding the importance of legal certainty; rather, it places legal certainty as one component within a broader concept of justice. Legal certainty remains necessary to ensure the predictability and consistency of law enforcement.¹⁷ Still, it

¹³ Rizal Al Hamid et al., "Political Conflict between Islamic Law and National Law in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 48–62, <https://journal.mahkotascience.org/index.php/insani/article/view/4>.

¹⁴ Emad H Atiq, "Legal Positivism and the Moral Origins of Legal Systems," *Canadian Journal of Law & Jurisprudence* 36, no. 1 (2023): 37–64, <https://doi.org/10.1017/cjlj.2022.17>.

¹⁵ Yanik G Harnois and Stéphane Gagnon, "Fighting Corruption in International Development: A Grounded Theory of Managing Projects within a Complex Socio-Cultural Context," *Journal of Advances in Management Research* 19, no. 5 (2022): 677–712, <https://doi.org/10.1108/JAMR-06-2021-0195>.

¹⁶ Ani Purwanti and Aga Natalis, "Law as Text, Culture as Context: The Semiotics of Marriage Dispensation and Judicial Considerations in Indonesia," *International Journal for the Semiotics of Law-Revue Internationale de Sémiotique Juridique*, 2025, 1–32, <https://doi.org/10.1007/s11196-025-10370-0>.

¹⁷ Philip Sales, "Certainty and Flexibility in the Law," *Judicial Review* 30, no. 1 (2025): 7–18, <https://doi.org/10.1080/10854681.2025.2467592>.

must not be made the sole focus at the expense of other dimensions of justice. The reconstruction of the judge's role must also take into account institutional and legal cultural factors that influence judicial practice.

A judicial system still dominated by a hierarchical, bureaucratic culture may limit judges' scope for innovative interpretation, particularly when there is pressure to maintain uniformity in rulings or to avoid controversy. Furthermore, the lack of clear guidelines regarding the application of substantive justice can also lead to uncertainty in practice, causing judges to tend towards a more formally safe approach. Therefore, efforts are needed to develop a normative and institutional framework that supports judges' role as architects of justice, including through more critical legal education, strengthened judicial ethics, and the development of progressive jurisprudence.

From a broader perspective, this debate regarding the role of judges also reflects the dynamics of the relationship between law and power within society. In corruption cases, judges are confronted not only with legal norms but also with power structures that frequently seek to influence the judicial process. In such situations, judges' courage to uphold substantive justice becomes crucial to protecting the public interest. However, such courage must be balanced with prudence and accountability to avoid the impression that judges are acting arbitrarily.

The Legal Policy on Corruption Eradication and Pressure on Judicial Independence

The legal policy on combating corruption in Indonesia cannot be separated from the dynamics of the relationship between state power, public demands, and the normative construction of the judicial system that has developed within the civil law tradition. Consequently, law enforcement practices, particularly in corruption cases, are constantly caught in a tug-of-war between the ideal of judicial independence and the reality of external political and social pressures.¹⁸ In this context, legal policy is understood not only as the direction of legislative and law enforcement policies set by the state, but also as the configuration of power that shapes how the law is interpreted and applied by law enforcement officials, including judges.

The fight against corruption, as a national agenda with high moral legitimacy, has fostered immense public expectations that the judiciary will deliver firm, severe sentences that serve as a deterrent. In practice, corruption cases often serve as a symbolic arena for the state to demonstrate its commitment to the rule of law¹⁹. Consequently, court rulings are assessed not only on their legal merits but also for the political and moral messages they convey. This places judges in a dilemma, as on the one hand they are required to uphold independence and adjudicate cases based on facts and applicable law, whilst on the other hand there is intense pressure from the public, the media, and even political authorities to impose maximum sentences as a response to collective outrage over corruption. This pressure is not always explicit but often manifests as public opinion, intense media coverage, and political narratives that frame corruption cases as extraordinary crimes that must be addressed with extraordinary measures.²⁰

This conflict between judicial independence and public expectations reflects the tension between two fundamental principles in a rule-of-law state: the principle of judicial independence in adjudicating cases without interference, and the principle of public

¹⁸ A Achmad Aulia, "Disruption in Corruption Eradication in Indonesia," *Public Integrity* 27, no. 6 (2025): 736–57, <https://doi.org/10.1080/10999922.2025.2455757>.

¹⁹ Geoffrey Swenson, "Symbolic Rule of Law Promotion," *Law & Social Inquiry*, 2025, 1–32, <https://doi.org/10.1017/lsi.2025.10127>.

²⁰ Bhakti Wiranti et al., "Political Feminism and Women's Representation in Public Policy in Indonesia," *Jurnal Pelita Raya* 1, no. 1 (2025): 1–16, <https://journal.mahkotascience.org/index.php/jpr/article/view/11>.

accountability of the judiciary. Judicial independence is, in theory, a key prerequisite for a fair judiciary, as without freedom from external pressure, judges cannot perform their duties objectively and impartially.²¹ However, in the context of combating corruption, such independence is often perceived as an obstacle to achieving substantive justice, particularly when a judge's ruling is deemed too lenient or fails to reflect the public's sense of justice. In such situations, judges face the risk of delegitimisation, as public trust in the judiciary may decline significantly if the rulings issued do not align with prevailing societal expectations.

Pressure to impose severe sentences also risks encouraging judges to overstep their authority, whether through overly broad interpretations of the law or by basing their rulings more on non-legal considerations. This situation raises concerns regarding the erosion of the principles of due process of law and the rule of law, which form the cornerstone of the criminal justice system. The theoretical debate regarding the role of judges in such situations can be understood through the dichotomy between judicial restraint and judicial activism.

The judicial restraint approach emphasises that judges must confine themselves to the strict application of the law, in accordance with the text of the legislation, and avoid involvement in public policy agendas, including the fight against corruption. From this perspective, judges are viewed as guardians of legal neutrality who must not be influenced by external pressures, as any form of judicial activism can disrupt the balance of power and create legal uncertainty.²² This approach aligns with the classical principle in the civil law tradition, which positions judges as executors of the legislator's will, so that the legitimacy of a ruling depends on its conformity with applicable legal norms.

The judicial activism approach encourages judges to take a more active role in realising justice, including in combating corruption, which is regarded as an extraordinary crime. From this perspective, judges do not merely function as enforcers of the law, but also as agents of social change who bear a moral responsibility to ensure that the law effectively protects the public interest.

Judicial activism affords judges the scope to engage in more progressive and context-specific interpretation, thereby bridging the gap between general legal norms and the concrete realities of each case.²³ In corruption cases, this approach may be reflected in judges' willingness to impose harsher sentences, broaden the definition of state losses, or adopt a more responsive approach to the social impact of such criminal acts. However, both approaches have their own strengths and weaknesses, so their application cannot be absolute.

Judicial restraint provides legal certainty and prevents potential abuse of authority by judges, but risks neglecting the dimension of substantive justice and the public's need for effective law enforcement. Conversely, judicial activism can achieve more responsive justice but also create legal uncertainty and open the door to judicial subjectivity. Therefore, what is required is not to choose one approach exclusively, but to develop a synthesis that accommodates the strengths of both within a balanced framework.

In the context of Indonesia's legal policy on combating corruption, such a synthesis can be realised by strengthening the principle of judicial independence, accompanied by enhanced

²¹ Dana Burchardt, "A Behavioural Approach to Judicial Independence," *Maastricht Journal of European and Comparative Law* 32, no. 5–6 (2025): 552–79, <https://doi.org/10.1177/1023263X251363881>.

²² Gabriel Pereira, "Judges as Equilibrists: Explaining Judicial Activism in Latin America," *International Journal of Constitutional Law* 20, no. 2 (2022): 696–732, <https://doi.org/10.1093/icon/moac044>.

²³ Adam Ilyas, Fachrizal Afandi, and Indah Dwi Qurbani, "Closing the Injustice Gap: Reconstructing Pre-Trial Proceedings as an Effective Remedy for Victims of Terminated Preliminary Inquiries: Menutup Celah Ketidakadilan: Rekonstruksi Praperadilan Sebagai Effective Remedy Bagi Korban Penghentian Penyelidikan," *Jurnal Konstitusi* 22, no. 4 (2025): 736–76, <https://doi.org/10.31078/jk2247>.

accountability and transparency in judicial proceedings.²⁴ Judges must be afforded sufficient scope to interpret the law progressively, whilst simultaneously ensuring that every ruling is grounded in robust legal reasoning and is rationally justifiable. Furthermore, there is a need to strengthen internal and external control mechanisms that are non-interventional yet capable of safeguarding the integrity and professionalism of judges in the performance of their duties.

Pressure on judicial independence stems not only from external factors but may also arise from within the judicial system itself, such as organisational culture, hierarchical structures, and rigid bureaucratic practices. In some cases, judges may face implicit pressure to follow certain patterns of rulings or to avoid controversial rulings, thereby limiting the scope for innovation and courage in upholding justice. Therefore, judicial reform must include efforts to foster an environment conducive to judicial independence, whether through regulatory reforms, enhanced welfare, or strengthened professional ethics.

Reconstructing the Sentencing Paradigm in Corruption Cases Towards Substantive Justice

Reconstructing the sentencing paradigm in corruption cases towards substantive justice requires a fundamental shift from a purely retributive orientation towards a more integrative, contextual, and recovery-oriented approach, given that empirical evidence indicates that sentencing practices in Indonesia remain dominated by a punitive logic that emphasises the perpetrator's suffering as a form of retribution for unlawful acts.²⁵ The retributive approach, rooted in classical theories of punishment, does indeed possess normative justification within the framework of formal justice, as it affirms the principles of culpability and proportionality of punishment.²⁶

In the context of corruption, which has far-reaching impacts on state finances, public welfare, and the legitimacy of public institutions, this approach is often inadequate to capture the complexity of the harm it causes²⁷. Corruption is not merely an individual crime, but a structural crime that undermines social and economic systems. Consequently, criminal sanctions that focus solely on imprisoning perpetrators without ensuring the recovery of state losses and systemic reform risk producing justice that is partial and insubstantial.

The imbalance between the objectives of criminal punishment is a key issue that reflects a dysfunction within the criminal justice system, in which deterrence, the recovery of state losses, and social justice have not been optimally integrated into judicial decisions. In many cases, judges tend to prioritise the imposition of custodial sentences as the primary indicator of law enforcement's success, whilst aspects such as asset recovery, compensation for public losses, and the prevention of future corruption receive disproportionately little attention. This indicates that the prevailing sentencing paradigm remains oriented towards a logic of retribution rather than towards broader objectives such as restitution and social transformation. From the perspective of modern sentencing theory, such an approach is not only ineffective in preventing corruption but also risks exacerbating social conditions by failing to return resources seized from the public.

A comparison of practices across countries reveals a global trend towards a more holistic approach to criminal justice in tackling corruption. In some European countries, for example,

²⁴ Yudi Kristiana and Benny Hutahayan, "Judicial Corruption in the Post-Reform Era: Assessing the Effectiveness of Legal Reforms in Indonesia," *International Criminal Law Review* 25, no. 2–3 (2024): 420–41, <https://doi.org/10.1163/15718123-bja10208>.

²⁵ Kamsi Kamsi, Very Julianto, and Suud Sarim Karimullah, "Intentionally Changing Everything: Deliberate Constructing in Corruption Case," *Lex Scientia Law Review* 7, no. 2 (2023): 449–88, <https://doi.org/10.15294/lesrev.v7i2.59866>.

²⁶ Suyahman Suyahman, Suud Sarim Karimullah, and Muh Akbar Fhad Syahril, "Intersectionality in Social Justice: Unpacking the Complexity of Oppression," *Jambura Law Review* 7, no. 1 (2025): 275–308, <https://doi.org/10.33756/jlr.v7i1.27828>.

²⁷ Michael Jackson Wakwabubi and Laura A Orobio, "Unpacking the Experiences of Corruption in Local Governments: A Phenomenological Study," *International Journal of Organizational Analysis*, 2025, 1–22, <https://doi.org/10.1108/IJOA-07-2025-5725>.

criminal justice in corruption cases does not merely emphasise custodial sentences, but also prioritises asset forfeiture mechanisms and the recovery of state losses.²⁸ This approach is based on the understanding that the primary objective of law enforcement in corruption cases is to recover public losses and prevent perpetrators from profiting from their criminal acts. Meanwhile, in countries such as Singapore and Hong Kong, a combination of stringent penalties, robust oversight systems, and effective asset recovery mechanisms has proven capable of significantly reducing corruption levels.²⁹ On the other hand, some jurisdictions have begun to adopt a restorative approach in certain cases, emphasising dialogue, perpetrator accountability, and the restoration of social relationships.³⁰ However, its application in corruption cases still faces conceptual and practical challenges.

The debate between retributive, restorative, and utilitarian camps is highly relevant to efforts to reconstruct a fairer and more effective sentencing paradigm.³¹ The retributive camp argues that severe punishment remains necessary as a form of justice enforcement and general deterrence, particularly given that corruption is often committed by actors in strategic positions who have the capacity to repeat their offences. However, criticism of this approach highlights that severe punishment does not always correlate directly with deterrence effectiveness, particularly when efforts at restitution and systemic reform are not accompanied by it.³² Meanwhile, the restorative approach offers a different perspective by prioritising the restoration of losses and the reconstruction of social relationships as the primary objectives of punishment. However, it is often considered insufficient to provide a strong deterrent effect in the context of serious, far-reaching corruption.

The utilitarian approach seeks to bridge these two extremes by viewing sentencing as an instrument to maximise social welfare through a combination of punishment and restitution.³³ Within this framework, sentencing is assessed not only by the severity of the punishment imposed on the offender, but also by the extent to which the judgment is capable of recovering state losses, preventing future corruption, and enhancing public trust in the legal system. This approach affords judges the scope to formulate more flexible and context-sensitive rulings, taking into account various factors such as the extent of the loss, the offender's role, and the potential for restitution.

The reconstruction of the sentencing paradigm towards substantive justice also demands a shift in perspective regarding the very function of punishment itself. Punishment is no longer understood merely as an instrument of retribution, but as a means to achieve broader objectives, including restitution, prevention, and social transformation. In this context, judges play a strategic role as actors capable of integrating these various objectives into their rulings, through the creative and responsible use of available legal instruments.³⁴ For example, judges can optimise the use of supplementary penalties, such as asset forfeiture, restitution payments, and

²⁸ Georgios Pavlidis, "Global Sanctions against Corruption and Asset Recovery: A European Approach," *Journal of Money Laundering Control* 26, no. 1 (2023): 4–13, <https://doi.org/10.1108/JMLC-10-2021-0120>.

²⁹ Laurence R Helfer, Cecily Rose, and Rachel Brewster, "Flexible Institution Building in the International Anti-Corruption Regime: Proposing a Transnational Asset Recovery Mechanism," *American Journal of International Law* 117, no. 4 (2023): 559–600, <https://doi.org/10.1017/ajil.2023.32>.

³⁰ Fery Dona et al., "Implementing Restorative Justice in Criminal Case Resolution: A Socio-Legal Research," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 10, no. 1 (2025): 20–38, <https://doi.org/10.22515/alakhkam.v10i1.10263>.

³¹ Suud Sarim Karimullah, "Prison System Transformation: Delving into Restorative Justice, Rehabilitation, and Religious Life Based on Islamic Law," *Fitrah: Jurnal Kajian Ilmu-Ilmu Keislaman* 9, no. 2 (2023): 201–24, <https://doi.org/10.24952/fitrah.v9i2.8804>.

³² Daniel P Mears and Mark C Stafford, "A Theoretical Critique of Deterrence-Based Policy," *Journal of Criminal Justice* 95 (2024): 102305, <https://doi.org/10.1016/j.jcrimjus.2024.102305>.

³³ Mahmoud Alghali, "Regulations and Limitations of Utilitarian Function of Criminal Penalty," *Pakistan Journal of Criminology* 17, no. 2 (2025): 21, <https://doi.org/10.62271/pjc.172.21.32>.

³⁴ Jamil Afzal, "Future of Legal Tools and Justice," in *Implementation of Digital Law as a Legal Tool in the Current Digital Era* (Springer, 2024), 155–77, https://doi.org/10.1007/978-981-97-7106-6_8.

bans on holding public office, which not only serve as deterrents but also contribute to the recovery of state losses and the prevention of future corruption. However, these reconstruction efforts cannot be separated from the structural and cultural challenges present within the judicial system.

One of the main challenges is the limited regulatory framework, which does not yet fully support an integrated approach to sentencing.³⁵ Consequently, judges are often constrained by a normative framework that emphasises custodial sentences. Furthermore, a legal culture that remains largely formalistic can hinder innovation in judicial practice, as judges may be reluctant to adopt unconventional approaches. Therefore, comprehensive reform is required at both the legislative and judicial levels to create conditions that enable the application of a more substantive sentencing paradigm.

The reconstruction of the sentencing paradigm must also take into account the dimension of social justice, which is often overlooked in corruption cases. Corruption has a disproportionate impact on vulnerable groups in society. Consequently, sentencing that fails to account for this risk reinforces social inequality. In this context, substantive justice demands that judicial decisions not only address the relationship between the perpetrator and the state, but also the impact on the wider community. This can be achieved through a more inclusive approach, for example, by considering the use of recovered funds for programmes that directly benefit the affected communities.

CONCLUSION

A re-evaluation of the role of judges in corruption cases in Indonesia is essential to bridge the tension between the positivist paradigm, which positions judges as mere mouthpieces of the law, and the demands of substantive justice, which require sensitivity to the social, economic and political impacts of corruption. Therefore, judges need to be positioned as architects of justice, capable of integrating judicial restraint and judicial activism proportionately, whilst reorienting sentencing away from a retributive dominance towards a model that combines dimensions of restitution, prevention, and social benefit. The contribution of this study lies in the formulation of a multidimensional, integrative framework that links judicial independence, legal policy, and sentencing paradigms into a coherent conceptual construct to realise substantive justice, thereby offering a novel perspective on the role of judges as agents of systemic transformation.

In practical and policy terms, these findings imply the need to strengthen judges' interpretative capacity, undertake restorative-based sentencing reforms, and protect judicial independence from external pressures, whilst theoretically enriching the discourse on the relationship between law, power, and justice within the context of the modern rule of law. However, the limitations of this study lie in the dominance of a normative approach and the lack of empirical exploration of actual judicial practice, therefore further research is recommended to develop comparative empirical studies across jurisdictions and to test the implementation of the proposed model in concrete practice, whilst also promoting the renewal of judicial education and ethics, so that the reconstruction of the judge's role does not remain at the conceptual level, but transforms into a praxis capable of strengthening the legitimacy of the judiciary and the effectiveness of the fight against corruption in a sustainable manner.

³⁵ Suyuti Dahlan Rifa'i et al., "Deconstructing Colonial Law Through Critical Race Theory in Indonesian Regulations," *Jurnal Pelita Raya* 1, no. 1 (2025): 46–60.

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REFERENCES

- Achmad Aulia, A. "Disruption in Corruption Eradication in Indonesia." *Public Integrity* 27, no. 6 (2025): 736–57. <https://doi.org/10.1080/10999922.2025.2455757>.
- Afzal, Jamil. "Future of Legal Tools and Justice." In *Implementation of Digital Law as a Legal Tool in the Current Digital Era*, 155–77. Springer, 2024. https://doi.org/10.1007/978-981-97-7106-6_8.
- Aguiar Aguilar, Azul A. "Courts and the Judicial Erosion of Democracy in Latin America." *Politics & Policy* 51, no. 1 (2023): 7–25. <https://doi.org/10.1111/polp.12516>.
- Alghali, Mahmoud. "Regulations and Limitations of Utilitarian Function of Criminal Penalty." *Pakistan Journal of Criminology* 17, no. 2 (2025): 21. <https://doi.org/10.62271/pjc.172.21.32>.
- Aminah, Siti, Arif Sugitanata, and Suud Sarim Karimullah. "Restorative Justice for the Survivor of Sexual Violence." *Restorative: Journal of Indonesian Probation and Parole System* 2, no. 1 (2024): 15–23. <https://doi.org/10.61682/restorative.v2i1.10>.
- Atiq, Emad H. "Legal Positivism and the Moral Origins of Legal Systems." *Canadian Journal of Law & Jurisprudence* 36, no. 1 (2023): 37–64. <https://doi.org/10.1017/cjlj.2022.17>.
- Burchardt, Dana. "A Behavioural Approach to Judicial Independence." *Maastricht Journal of European and Comparative Law* 32, no. 5–6 (2025): 552–79. <https://doi.org/10.1177/1023263X251363881>.
- Campbell, Tom. *Prescriptive Legal Positivism: Law, Rights and Democracy*. Routledge-Cavendish, 2024. <https://doi.org/10.4324/9781003579533>.
- Dona, Fery, Evi Ariyani, Junaidi Junaidi, Luthfiana Zahriani, and Abdul Fattaah. "Implementing Restorative Justice in Criminal Case Resolution: A Socio-Legal Research." *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 10, no. 1 (2025): 20–38. <https://doi.org/10.22515/alahkam.v10i1.10263>.
- Hamid, Rizal Al, Mohamad Sobrun Jamil, Rodhotun Nimah, and Mahrus Alwi Hasan Siregar. "Political Conflict between Islamic Law and National Law in Indonesia." *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 48–62. <https://journal.mahkotascience.org/index.php/insani/article/view/4>.
- Harnois, Yanik G, and Stéphane Gagnon. "Fighting Corruption in International Development: A Grounded Theory of Managing Projects within a Complex Socio-Cultural Context." *Journal of Advances in Management Research* 19, no. 5 (2022): 677–712. <https://doi.org/10.1108/JAMR-06-2021-0195>.
- Helfer, Laurence R, Cecily Rose, and Rachel Brewster. "Flexible Institution Building in the International Anti-Corruption Regime: Proposing a Transnational Asset Recovery Mechanism." *American Journal of International Law* 117, no. 4 (2023): 559–600. <https://doi.org/10.1017/ajil.2023.32>.
- Ilyas, Adam, Fachrizal Afandi, and Indah Dwi Qurbani. "Closing the Injustice Gap: Reconstructing Pre-Trial Proceedings as an Effective Remedy for Victims of Terminated Preliminary Inquiries: Menutup Celah Ketidakadilan: Rekonstruksi Praperadilan Sebagai Effective Remedy Bagi Korban Penghentian Penyelidikan." *Jurnal Konstitusi* 22, no. 4 (2025): 736–76. <https://doi.org/10.31078/jk2247>.
- Kamsi, Kamsi, Very Julianto, and Suud Sarim Karimullah. "Intentionally Changing Everything: Deliberate Constructing in Corruption Case." *Lex Scientia Law Review* 7, no. 2 (2023): 449–88. <https://doi.org/10.15294/lesrev.v7i2.59866>.

- Karimullah, Suud Sarim. "From Punishment to Healing: The Transformative Power of Restorative Justice." *SASI* 29, no. 4 (2023): 678–90. <https://doi.org/10.47268/sasi.v29i4.1688>.
- — —. "Prison System Transformation: Delving into Restorative Justice, Rehabilitation, and Religious Life Based on Islamic Law." *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 9, no. 2 (2023): 201–24. <https://doi.org/10.24952/fitrah.v9i2.8804>.
- Koeswayo, Poppy Sofia, Sofik Handoyo, and Dede Abdul Hasyir. "Investigating the Relationship between Public Governance and the Corruption Perception Index." *Cogent Social Sciences* 10, no. 1 (2024): 2342513. <https://doi.org/10.1080/23311886.2024.2342513>.
- Kristiana, Yudi, and Benny Hutahayan. "Judicial Corruption in the Post-Reform Era: Assessing the Effectiveness of Legal Reforms in Indonesia." *International Criminal Law Review* 25, no. 2–3 (2024): 420–41. <https://doi.org/10.1163/15718123-bja10208>.
- Kubal, Agnieszka. "Judicial Relational Legal Consciousness: Authoritarian Backsliding as a Catalyst of Change." *Journal of Law and Society* 51, no. Galleli, B., Amaral, L. (2026). Bridging institutional theory and social and environmental efforts in management: A review and research agenda. *Journal of Management*, 52(1), 42–93. <https://doi.org/10.1177/01492063251322429> (2024): S45–65. <https://doi.org/10.1111/jols.12497>.
- Mears, Daniel P, and Mark C Stafford. "A Theoretical Critique of Deterrence-Based Policy." *Journal of Criminal Justice* 95 (2024): 102305. <https://doi.org/10.1016/j.jcrimjus.2024.102305>.
- Murthi, Ngurah Wisnu, Ihsan Taufiq, Emily Yee, and Ninda Ayuk Aktaniensia. "Indonesia's Inclusive Economic Diplomacy Based on the Pancasila Ideology." *Jurnal Pelita Raya* 1, no. 3 (2025): 152–65. <https://doi.org/10.65586/jpr.v1i3.30>.
- Nii Laryeafio, Michael, and Omoruyi Courage Ogbewe. "Ethical Consideration Dilemma: Systematic Review of Ethics in Qualitative Data Collection through Interviews." *Journal of Ethics in Entrepreneurship and Technology* 3, no. 2 (2023): 94–110. <https://doi.org/10.1108/JEET-09-2022-0014>.
- Nurizka, Maharatna Shifa, Aufa Islami, Moh Rofi'ieh, and Muhammad Lathif Dzulfikar. "Criticism of the Neoclassical Approach in Islamic Economic Policy in Indonesia." *Jurnal Pelita Raya* 1, no. 1 (2025): 17–30. <https://journal.mahkotascience.org/index.php/jpr/article/view/9>.
- Pavlidis, Georgios. "Global Sanctions against Corruption and Asset Recovery: A European Approach." *Journal of Money Laundering Control* 26, no. 1 (2023): 4–13. <https://doi.org/10.1108/JMLC-10-2021-0120>.
- Pereira, Gabriel. "Judges as Equilibrists: Explaining Judicial Activism in Latin America." *International Journal of Constitutional Law* 20, no. 2 (2022): 696–732. <https://doi.org/10.1093/icon/moac044>.
- Peterson, Daniel, Adriaan Bedner, and Ward Berenschot. "The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia." *Journal of Contemporary Asia* 55, no. 3 (2025): 430–51. <https://doi.org/10.1080/00472336.2024.2440855>.
- Purwanti, Ani, and Aga Natalis. "Law as Text, Culture as Context: The Semiotics of Marriage Dispensation and Judicial Considerations in Indonesia." *International Journal for the Semiotics of Law-Revue Internationale de Sémiotique Juridique*, 2025, 1–32. <https://doi.org/10.1007/s11196-025-10370-0>.
- Putra, Haris Maiza, and Hisam Ahyani. "Internalization in Islamic Law Progressive in Criminal Law Changes in Indonesia." *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 68–90. <https://doi.org/10.30984/jis.v20i1.1861>.
- Rembulan, Cahaya, Ibnu Roghidul Maghfur, Mahrus Alwi Hasan Siregar, Moh Ali Jakfar, and Sofiatu Solehah. "The Impact of the Digital Economy on Economic Empowerment Models for Muslim Youth in Indonesia." *Jurnal Lentera Insani* 1, no. 1 (2025): 48–63.

- <https://doi.org/10.65586/jli.v1i1.17>.
- Rifa'i, Suyuti Dahlan, Mahrus Alwi Hasan Siregar, Indah Pratiwi Utami, Ach Mujahid, and Adinda Zeranica Putri Fakhis. "Deconstructing Colonial Law Through Critical Race Theory in Indonesian Regulations." *Jurnal Pelita Raya* 1, no. 1 (2025): 46–60.
- Sales, Philip. "Certainty and Flexibility in the Law." *Judicial Review* 30, no. 1 (2025): 7–18. <https://doi.org/10.1080/10854681.2025.2467592>.
- Suyahman, Suyahman, Suud Sarim Karimullah, and Muh Akbar Fhad Syahril. "Intersectionality in Social Justice: Unpacking the Complexity of Oppression." *Jambura Law Review* 7, no. 1 (2025): 275–308. <https://doi.org/10.33756/jlr.v7i1.27828>.
- Swenson, Geoffrey. "Symbolic Rule of Law Promotion." *Law & Social Inquiry*, 2025, 1–32. <https://doi.org/10.1017/lsi.2025.10127>.
- Wakwabubi, Michael Jackson, and Laura A Orobias. "Unpacking the Experiences of Corruption in Local Governments: A Phenomenological Study." *International Journal of Organizational Analysis*, 2025, 1–22. <https://doi.org/10.1108/IJOA-07-2025-5725>.
- Wang, Fangzhou. "Sentencing Disparity and Focal Concern: An Assessment of Judicial Decisions on Sha Zhu Pan Cases Collected from China Judgements Online." *Crime & Delinquency* 71, no. 6–7 (2025): 1845–77. <https://doi.org/10.1177/00111287231158571>.
- Wardhani, Lita Tyesta Addy Listya, Muhammad Dzikirullah H Noho, and Aga Natalis. "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems." *Cogent Social Sciences* 8, no. 1 (2022): 2104710. <https://doi.org/10.1080/23311886.2022.2104710>.
- Wiranti, Bhakti, Faizah Abdullah Latif, Imat Hibbatulloh, Hijriatu Sakinah, and Moh Wildan Hidayatullah. "Political Feminism and Women's Representation in Public Policy in Indonesia." *Jurnal Pelita Raya* 1, no. 1 (2025): 1–16. <https://journal.mahkotascience.org/index.php/jpr/article/view/11>.