

Reformulation of Corruption Sentencing Policy Based on Substantive Justice

Zahwa Khairunnisa^{1*}, Naura Khadijah², Raisa Amani³, Noor Fatima⁴

¹ Universitas Islam Negeri Syarif Hidayatullah, Jakarta, Indonesia

² Omdurman Islamic University, Omdurman, Sudan

³ Universitas Pamulang, South Tangerang, Indonesia

⁴ Universiti Islam Sultan Sharif Ali, Bandar Seri Begawan, Brunei Darussalam

* Corresponding author email: zahwanisa99@gmail.com

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Abstract

Amid the failure of a sentencing paradigm that prioritises formal legality over justice as perceived by the social conscience, the reformulation of corruption sentencing policy grounded in substantive justice has become imperative. This study aims to formulate a concept for reformulating corruption sentencing policy grounded in substantive justice by identifying weaknesses in existing policies and developing an alternative model that is more responsive to society's needs. This study employs a juridical-normative approach enriched by socio-legal methods and an exploratory-analytical qualitative research design. The results indicate that the primary problem with corruption sentencing in Indonesia is not merely a lack of norms or weak sanctions, but rather the failure of the legal system to move beyond the illusion of symbolic firmness, which actually masks its inability to restore public losses and dismantle corrupt power structures. Therefore, policy reformulation grounded in substantive justice must dare to shift the legal centre of gravity from punishing perpetrators to restoring society and restructuring the system. The novelty of this study lies in its proposal of a synthetic framework that not only critiques the dominance of retributivism but also constructively integrates policy rationality and global standards into a measured, context-sensitive sentencing design. The implications demand radical changes to sentencing guidelines, the courage of judges to articulate social impacts, and the repositioning of the state from merely a repressive actor to an agent of restoration.

Keywords: *Policy Reformulation, Criminalisation of Corruption, Substantive Justice, Extraordinary Crimes, Social Justice*

INTRODUCTION

Corruption in Indonesia has long been regarded as an egregious crime that not only causes financial loss to the state but also systematically undermines the very foundations of social, economic and political life (Kristiana & Hutahayan, 2024). Since the reform era, various efforts to combat corruption have been undertaken through the establishment of legal and institutional frameworks, including strengthening the Corruption Eradication Commission's role and refining regulations, such as the law on the Eradication of Corruption Offences. However, in practice, the approach to the criminalisation of corruption offenders still exhibits a dominant tendency towards formalistic retribution, that is, emphasising punishment as a response to the act without fully considering the broader dimensions of substantive justice. This situation raises fundamental questions about the effectiveness and fairness of existing criminal justice policies, particularly in achieving legal objectives that go beyond mere punishment to include restoration, prevention, and social justice.

The phenomenon of sentencing disparities in corruption cases is a clear indicator of this problem. In some cases, perpetrators of corruption that cause significant state losses are handed relatively lenient sentences, whilst in others, those with a lesser role receive harsher sentences (Jiang et al., 2023; Kian et al., 2025). This disparity not only reflects inconsistent application of the law but also risks undermining public confidence in the judicial system. Furthermore, a punitive approach that focuses excessively on deterrence often overlooks the need to recover state losses and reform the systems that enable corruption. In this context, substantive justice becomes a relevant concept to prioritise, as it demands that the law be applied not merely procedurally but also in light of the values of justice within society, including social justice and public benefit.

From a legal theory perspective, substantive justice is rooted in the idea that the law must reflect the moral and ethical values that develop within society, rather than merely following rigid formal rules (Sugeng & Aidy, 2025). This line of thinking aligns with Satjipto Rahardjo's view, who emphasises the importance of progressive law as an approach that prioritises humanity and justice. In the context of corruption sentencing, this approach implies the need to reformulate policy that is not only focused on punishment but also on the recovery of state losses, social rehabilitation, and prevention through systemic reform.

Several previous studies have examined various aspects of corruption prosecution in Indonesia, including the effectiveness of criminal sanctions, the role of law enforcement agencies, and asset recovery mechanisms (Syarafi & Syahbandir, 2024; Yoserwan & Dias, 2024). These studies generally indicate that whilst the number of cases handled has increased, the rate of recovery of state losses remains relatively low, and the intended deterrent effect has not yet been fully achieved. Other research also highlights the mismatch between the scale of state losses and the sanctions imposed, indicating weaknesses in the formulation and implementation of criminal justice policies (Auriol et al., 2023; Moiseienko, 2024). Furthermore, studies on restorative justice in corruption offences are beginning to emerge. However, their application still

faces challenges due to the perception that corruption is a serious crime that cannot be resolved through non-retributive approaches.

Several studies also emphasise the importance of a more holistic approach to tackling corruption, including integrating criminal sanctions, prevention, and restitution (Olasolo et al., 2025; Pavlidis, 2023). This approach stresses that the success of anti-corruption efforts is not measured solely by the number of perpetrators punished, but also by the extent to which state losses can be recovered and systems vulnerable to corruption can be reformed. In the Indonesian context, this approach has not yet been fully integrated into existing criminal justice policies, thereby opening the door to the development of new, more comprehensive concepts. Nevertheless, several research gaps remain inadequately addressed in previous studies.

Firstly, most research still focuses on either the normative or empirical aspects in isolation, without integrating both within a comprehensive analytical framework grounded in substantive justice. Secondly, few studies have specifically examined how the principles of substantive justice can be operationalised in the formulation of corruption criminal justice policies, whether at the legislative or implementation stage. Thirdly, the restorative justice approach in the context of corruption has not yet been examined in depth within the Indonesian legal system, particularly regarding its potential integration with existing retributive approaches. Fourthly, there is a lack of analysis linking sentencing policies to national development objectives, particularly in the context of achieving social justice and public welfare.

Based on the identification of these research gaps, this study proposes developing a model to reformulate corruption sentencing policies grounded in the principles of substantive justice through an integrative approach. This model not only examines the normative aspects of existing legislation but also considers the empirical aspects of judicial practice and the social values prevalent in society. Furthermore, this study seeks to examine the possibility of implementing alternative sentencing mechanisms oriented towards restitution, such as strengthening financial compensation sanctions, asset forfeiture, and social work mechanisms that address the impact of corruption on society.

The objective of this study is to formulate a concept for reformulating corruption sentencing policies grounded in substantive justice by identifying weaknesses in existing policies and developing alternative models that are more responsive to society's needs. Furthermore, this study aims to analyse how the principle of substantive justice can be integrated into Indonesia's criminal justice system, and to examine its implications for the effectiveness of anti-corruption efforts. The significance of this study lies in its ability to bridge the gap between theory and practice in the criminalisation of corruption and to provide a strong, argumentative foundation for policy reform oriented towards substantive justice.

METHODS

This study employs a legal-normative approach enriched by socio-legal methods and an exploratory-analytical qualitative research design, chosen for its ability to

integrate an analysis of positive legal norms with the empirical realities of corruption sentencing practices. The study focuses on reformulating sentencing policies based on substantive justice, which is operationally defined as the alignment between criminal sentences, the recovery of state losses, the proportionality of sanctions, and social utility, whilst conceptual variables encompass the retributive, restorative, and preventive dimensions within the criminal justice system. The study population comprises court rulings on corruption offences, legislation, and stakeholders such as judges, prosecutors, and legal academics, using purposive sampling to obtain subjects that are relevant and substantively representative.

The research instruments consist of guidelines for the analysis of legal documents and semi-structured interview guidelines, developed through a literature review and validated via triangulation of sources and methods, as well as tests of credibility, reliability, and confirmability. Data collection was conducted in stages through a literature review, analysis of court rulings, and in-depth interviews, whilst data analysis utilised interactive qualitative analysis techniques, including data reduction, data presentation, and the drawing of conclusions through reflective-critical analysis using a conceptual and comparative legal approach. This enabled the formulation of a more adaptive sentencing policy model oriented towards substantive justice, in line with the research objectives.

RESULTS AND DISCUSSION

The Shift from Retributive Punishment to Punishment Focused on Restoring Public Losses

The paradigm shift in criminal justice regarding corruption cases, from a retributive orientation towards the restoration of public losses, is an issue that is garnering increasing attention in contemporary criminal law discourse, both at the national and global levels, as awareness grows that the retributive approach, which has long been dominant, is not entirely capable of addressing the complexity of the impacts caused by corruption. In legal practice in Indonesia, the handling of corruption cases remains heavily influenced by a punitive logic that emphasises imprisonment as the state's primary response to perpetrators, an approach often deemed politically effective for demonstrating the state's firm stance in combating corruption. However, this symbolic effectiveness frequently fails to align with substantive effectiveness, particularly regarding the recovery of state losses and the remediation of broader social impacts. In this context, the role of the Corruption Eradication Commission (KPK) as the frontline in the fight against corruption is also not immune to the challenge of balancing the demand for firm enforcement with the need for comprehensive recovery.

The dominance of a retributive orientation in the criminalisation of corruption can be traced to the Corruption Eradication Act's normative framework, which establishes imprisonment and fines as the primary sanctions, emphasising harsher penalties to deter (Putri et al., 2024). This approach aligns with classical theories of criminal punishment, which view punishment as retribution for unlawful acts, whilst also serving as a means of general deterrence. However, in the context of systemic

corruption with far-reaching consequences, this approach reveals its limitations. Corruption not only causes financial loss to the state but also undermines the quality of public services, weakens the legitimacy of institutions, and deepens social inequality.

Within the framework of substantive justice, criminal law is viewed not merely as an instrument for punishment, but also as a means to correct real injustices in society. This view aligns with Tatjipto Rahardjo's emphasis that the law must side with humanity and justice, not merely with formal rules. In the context of corruption, substantive justice demands that criminal sanctions be oriented not only towards the perpetrator but also towards the victims in the broadest sense, namely, the society that has been harmed.

The tension between retributive and restorative orientations in the punishment of corruption reflects the existence of two distinct logics in understanding justice (Suparno et al., 2024). On the one hand, a maximalist repressive approach assumes that the harsher the punishment, the greater the deterrent effect. This approach is often reinforced by political pressure and public opinion demanding severe punishment for corrupt perpetrators. On the other hand, the substantive justice-based approach emphasises that the essence of justice lies in the restoration of the harm caused, rather than merely in the suffering inflicted on the perpetrator. Within this framework, criminal sanctions must be directed towards restoring society's condition as closely as possible to its state before the corruption. This goal cannot always be achieved solely through criminal sanctions.

The restorative approach to criminalising corruption is also closely linked to the concept of restorative justice, which emphasises conflict resolution through the restoration of relationships and the redress of harm. Although this concept is more commonly applied in conventional criminal offences involving individual victims, its principles can be adapted to the context of corruption by broadening the definition of the victim to include society as a whole. In this regard, mechanisms such as restitution payments, asset forfeiture, and compensation to the state become vital instruments in achieving restorative objectives. Nevertheless, the application of this approach in corruption cases still faces various challenges, both in regulation and in judicial practice, including a tendency among judges to continue treating imprisonment as the primary sanction.

A shift towards restorative sentencing also demands a change in perspective on the very purpose of sentencing. Whereas in the retributive paradigm, the primary aims are retribution and deterrence, in the restorative paradigm, these objectives are expanded to include rehabilitation, social reconstruction, and systemic prevention. This means that sentencing must be designed so that it not only punishes the perpetrator but also addresses the conditions that enable corruption. In this context, the recovery of public losses is not limited to financial matters but also encompasses restoring public trust, improving governance, and strengthening institutions (Wardani et al., 2025).

In international practice, there is a growing trend towards integrating a restorative approach into the handling of corruption, including through cross-border cooperation on asset recovery and the strengthening of asset recovery mechanisms. This approach

is based on the understanding that corruption often involves cross-border flows of funds, which means that recovering state losses requires effective international cooperation. In the Indonesian context, these efforts still face various obstacles, including institutional capacity constraints and the complexity of international legal procedures. Therefore, the reformulation of criminal justice policies oriented towards recovery must also consider institutional aspects and international cooperation as an integral part of the anti-corruption strategy.

A recovery-oriented approach does not mean neglecting the need for firm action against perpetrators of corruption. On the contrary, this approach demands a balance between punishment and recovery, so that both can complement one another in achieving the goal of justice. In this regard, imprisonment retains its role as a means of upholding norms and a deterrent, but it is no longer the sole indicator of the success of criminal sanctions. Thus, an ideal criminal justice system is one capable of integrating various objectives of criminal sanctions within a coherent framework oriented towards substantive justice.

The Conflict Between Formal Legal Certainty and Substantive Justice in the Imposition of Sentences for Corruption

The conflict between formal legal certainty and substantive justice in the imposition of sentences for corruption is one of the most complex epistemological and practical problems in modern criminal law, particularly in Indonesia, as it brings together two fundamental values that are equally essential yet often in tension: certainty as a guarantee of legal predictability and consistency, and justice as a reflection of moral and social demands regarding the real consequences of a crime. Within the rule of law, legal certainty is a primary prerequisite for law to function as a clear and reliable guide to conduct, as reflected in the principle of legality, which holds that no act may be punished without a clear legal basis established beforehand.

This principle inherently requires judges to be bound by the normative provisions of legislation, including the law on the Eradication of Corruption Offences, so that the resulting judgments possess strong formal legitimacy. However, in the practice of corruption cases, the application of the principle of legal certainty in an overly formalistic manner often results in rulings that are procedurally valid but socially perceived as unfair, particularly when the sentences imposed are not commensurate with the public harm caused or when the key actors in the corruption network are not held fully accountable by the law.

This phenomenon demonstrates that formal legal certainty is not always synonymous with substantive justice, as the rigid application of the law, without regard for social context, can render it ineffective in addressing the inequalities generated by crime. In corruption cases, this inequality takes the form not only of financial losses to the state but also includes damage to public services, the erosion of public trust in institutions, and distortions in democratic governance.

Substantive justice demands that the imposition of criminal penalties be based not only on the formal fulfilment of the elements of the offence, but also on considerations

regarding the extent to which the act has harmed the broader public interest (Ramsay, 2025). From this perspective, Satjipto Rahardjo's thinking on progressive law becomes relevant, as it emphasises that the law must dare to step outside the confines of the text when that text is no longer capable of realising the justice that lives within society. However, expanding the scope for substantive justice in the imposition of criminal penalties cannot be separated from concerns regarding the potential for subjectivity and inconsistency in rulings.

Within the framework of legal positivism, law is understood as an autonomous system of norms separate from moral considerations, such that any deviation from the text is potentially deemed to undermine certainty and predictability. From this perspective, granting judges too broad a discretion to interpret substantive justice can open the door to judicial moralism, where rulings are based on personal preferences or external pressures rather than the applicable law. These concerns become particularly significant in corruption cases, which often have strong political and economic dimensions, making them vulnerable to intervention and politicisation.

On the other hand, socio-legal and critical legal studies approaches criticise legal formalism as an illusion of neutrality which, in practice, often perpetuates structural injustice (Malkani, 2025). In the context of corruption, formalism can become a tool that indirectly protects perpetrators in power and with access to resources, as they are better able to exploit legal loopholes and procedures to avoid severe sanctions. Conversely, perpetrators in weaker positions tend to be more easily ensnared and subjected to harsher penalties, thereby creating disparities that are not merely quantitative but also qualitative. From this perspective, substantive justice is viewed as an effort to correct such systemic bias by prioritising social impact and power relations as crucial factors in the imposition of criminal penalties (Pangaribuan, 2025).

The debate between these two approaches ultimately leads to a fundamental question about the law's function: does the law aim solely to maintain order through the certainty of norms, or does it also aim to realise a living justice within society, even if this requires going beyond existing formal boundaries? In practice, these two objectives cannot be absolutely separated, as certainty without justice produces a rigid and unresponsive law, whilst justice without certainty produces an unstable and unpredictable law. Therefore, the main challenge in reformulating corruption sentencing policy is to find a balance that allows these two values to complement, rather than negate, one another.

One approach that has emerged in efforts to bridge this tension is judicial contextualism, which encourages judges to consider the social, economic and political context when assessing a case, without disregarding the existing normative framework. Under this approach, judges do not merely act as conduits for the law, but also as actors with a moral responsibility to ensure that the resulting judgments reflect a broader sense of justice. In corruption cases, this means that judges must explicitly consider factors such as the extent of public harm, the perpetrator's position within the power structure, the degree of abuse of trust, and the long-term impact on institutions.

However, to prevent this approach from leading to excessive disparity, clear guidelines are needed on how these factors should be integrated into legal considerations.

In this context, the policy reformist camp offers a solution by developing sentencing guidelines that internalise the principle of substantive justice through more measurable indicators. Such guidelines could include parameters for aggravating and mitigating factors, based not only on formal legal considerations but also on the social and institutional impacts of corruption. Thus, judicial discretion remains, but is guided by a more systematic and transparent framework, thereby reducing the risk of subjectivity and inconsistency. This approach is also in line with practices in various jurisdictions that have developed sentencing guidelines to enhance consistency and accountability in the imposition of criminal penalties.

Meanwhile, critics point out that the main issue in the sentencing of corruption lies not merely in the clash between formality and substance, but also in the selectivity of law enforcement, which is often biased in favour of the interests of the elite (Doria Vilaça et al., 2025). From this perspective, the debate over substantive justice may become less meaningful unless accompanied by efforts to ensure that the law is consistently applied to all offenders, regardless of their social or political standing. In other words, substantive justice concerns not only the content of the judgment but also the entire law enforcement process, including the investigation, prosecution, and enforcement stages. Therefore, reforms to sentencing policy must be accompanied by institutional reforms that reduce bias and enhance the integrity of the judicial system.

The conflict between formal legal certainty and substantive justice in the imposition of criminal penalties for corruption cannot be resolved by prioritising one value above the other, but rather through an integrative effort that harmonises both within a coherent policy framework. This requires not only changes at the level of legal norms, but also in judicial practice and legal culture, so that criminal law can function optimally as an instrument for upholding justice that is not merely formal, but also tangibly felt by the public.

The Reformulation of Corruption Punishment as an Arena of Conflict Between Moral Populism, Policy Rationality, and Global Anti-Corruption Standards

The reformulation of corruption sentencing within the Indonesian and global contexts cannot, in essence, be understood merely as a technocratic process of drafting legal norms, but rather as a complex arena where various rationalities, often in competition with one another, convergent moral populism, evidence-based policy rationality, and the growing pressure and standards of global anti-corruption in the era of legal globalisation. Corruption, as a phenomenon, not only causes economic losses but also triggers public moral outrage, as it is perceived as a betrayal of collective trust (Boly & Gillanders, 2023). It is therefore understandable that, in many contexts, there are demands for the state to respond with harsh and symbolic punishments.

The dynamics of corruption sentencing in Indonesia are also inseparable from public pressure demanding firmness, which is often translated into harsher sanctions under the law on the Eradication of Corruption Offences and into law enforcement

practices by institutions such as the Corruption Eradication Commission. However, this moral pressure does not always align with the need for effective and sustainable policy design, making the reformulation of corruption sentencing a space for negotiation between symbolic demands and substantive needs.

From a populist moral perspective, criminal law is viewed as an instrument for expressing collective anger at corrupt actors perceived as unlawfully depriving people of their rights. This approach places the severity of punishment as the primary indicator of justice, leading to a push for extreme sanctions such as life imprisonment or even the death penalty. Politically, this approach holds strong appeal because it can enhance the government's legitimacy in the public's eyes by demonstrating a firm stance against corruption. However, from the perspective of public policy theory and criminology, the effectiveness of this approach in reducing corruption levels remains a matter of debate.

Various studies indicate that the severity of punishment does not always correlate linearly with a crime reduction, particularly in cases of corruption, which often involve perpetrators' rational calculations of risk and reward. Consequently, the moral populist approach risks producing policies that are more performative than substantive, where the state focuses more on projecting an image of firmness than on tangible results in the fight against corruption. Conversely, the evidence-based policy rationality approach emphasises the importance of empirically evaluating the effectiveness of various legal instruments in achieving the goal of combating corruption.

Criminal prosecution is not viewed as an end in itself, but rather as one tool within a broader system encompassing prevention, detection and recovery (Laputigar et al., 2024). This approach encourages the use of instruments that may be less politically popular but have proven more effective, such as beneficial ownership, deferred prosecution agreements for corporations, asset forfeiture without a criminal conviction, and the strengthening of corporate compliance systems. These instruments are geared towards recovering state losses and preventing future corruption, thereby aligning with the principle of substantive justice, which emphasises tangible outcomes for society. However, the main challenge of this approach is its lack of symbolic appeal in the public eye, making it often difficult to adopt widely within a political system responsive to public opinion.

On the other hand, developments in the global anti-corruption regime add complexity to the reformulation of corruption sentencing, as states are no longer entirely free to determine their legal policies but must consider international standards and obligations. Instruments such as international anti-corruption conventions, cross-border cooperation in asset recovery, and regulations regarding global financial transparency encourage states to adopt a more comprehensive and coordinated approach.

The prosecution of corruption is no longer viewed merely as a domestic matter, but as part of global governance that demands legal harmonisation and cross-jurisdictional cooperation. This approach broadens the focus from merely punishing individuals to corporate accountability, monitoring international financial flows, and strengthening institutions. However, adopting these global standards also poses challenges,

particularly for developing countries that must adapt to norms that may not fully align with their domestic contexts.

From a critical and postcolonial perspective, global anti-corruption standards are not always neutral. Rather, they may reflect the interests of developed nations that hold a dominant position within the international system. In this regard, there is concern that legal harmonisation may lead to homogenisation that disregards the diversity of social, political, and economic contexts across different nations. Furthermore, pressure to adopt specific legal models may divert attention from more fundamental structural issues, such as economic and political oligarchies that lie at the root of corruption in many countries (Mugellini, 2022). Therefore, the reformulation of corruption criminalisation must be undertaken critically, taking into account not only global standards but also local needs and conditions, so that it does not merely become a process of imitation but rather a contextual adaptation.

The most politically popular policies are not always the most substantively effective ones. Severe punishments, such as the death penalty or extreme sentencing, often receive widespread support because they are perceived to reflect moral justice (Karimullah et al., 2024). Still, empirical evidence of their effectiveness in reducing corruption remains limited. Conversely, more technocratic and system-based instruments often receive less attention as they do not provide a strong symbolic effect. This presents a dilemma for policymakers: meeting public expectations or adopting a more rational, evidence-based approach. In this context, the media and public opinion play a significant role in shaping policy direction. Consequently, the reformulation of corruption sentencing cannot be separated from the dynamics of political communication and the social construction of the crime.

The four camps of argument emerging in this debate reflect this complexity. The penal populism camp emphasises the importance of a harsh response as a form of moral justice, whilst the evidence-based policy camp demands a more rational and data-driven approach. The global governance camp emphasises integration with international regimes, whereas the critical camp warns of the risks of hegemony and structural bias. None of these approaches can fully address all existing challenges; therefore, a synthesis is required that can integrate the strengths of each without disregarding their limitations. In this regard, the substantive justice approach can serve as a normative framework for reformulating sentencing towards broader objectives, namely the restoration of public harm and systemic improvement.

CONCLUSION

The reformulation of corruption sentencing policies based on substantive justice in Indonesia requires a paradigm shift from a retributive-formalistic orientation towards an integrative approach that places the recovery of public losses, systemic reform, and a balance between legal certainty and social justice at the heart of sentencing objectives, whilst critically managing the clash between the moral pressures of populism, evidence-based policy rationality, and the demands of the global anti-corruption regime. A conceptual framework that synthesises retributive, restorative, and preventive

dimensions into a single operational and contextual policy model, whilst implicitly offering a novel approach to articulating indicators of substantive justice as the basis for rationalising criminal sanctions.

In practical and policy terms, these findings imply the need to develop more measurable sentencing guidelines, strengthen asset recovery mechanisms, and integrate considerations of the social impact and the perpetrator's position of power into judicial decisions. Meanwhile, theoretically, these findings enrich the dialogue between legal positivism, the socio-legal approach, and global legal pluralism. However, the limitations of this study lie in the dominance of a conceptual-normative approach and the limited cross-jurisdictional empirical exploration; consequently, further research is recommended to empirically examine judicial reasoning practices, the influence of public opinion and the media, and the effectiveness of recovery instruments across various contexts, whilst in practice, consistent institutional commitment is required to ensure that reformulation does not remain merely a normative discourse, but becomes a tangible strategy capable of transforming the prosecution of corruption into a process that is fairer, more effective, and substantively oriented towards the public interest.

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