



Reorientation of the Principle of Legality in the Handling of Corruption Offences in Indonesia

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Abstract

The reorientation of the principle of legality in the handling of corruption offences in Indonesia is essential to challenge normative formalism. This study aims to conduct an in-depth analysis of how the principle of legality can be reoriented within the framework of handling corruption offences in Indonesia. This study employs a legal-normative approach enriched with a socio-legal design and critical qualitative analysis to examine the reorientation of the principle of legality in the handling of corruption offences. The results confirm that upholding the principle of legality in its formalistic guise risks turning the law into a covert protector of modern corruption; consequently, a reorientation towards substantive and progressive legality is no longer an option but an epistemological and practical necessity within Indonesia's criminal law system. The expansion of the meaning of unlawful acts and the interpretative boldness of judges can serve as emancipatory tools to break through normative deadlocks, without strict methodological boundaries, this risks giving rise to over-criminalisation and the erosion of legal legitimacy; thus, a new construct is required in the form of calibrated legality, flexible in addressing the complexities of corruption, yet still governed by the principles of proportionality, rationality, and accountability. The novelty of this study lies in a paradigm shift from legality as a bastion of certainty to legality as a measurable instrument of justice, which theoretically challenges the dominance of legal positivism and, practically, encourages the formation of more progressive yet standardised interpretative guidelines.

Keywords: *Corruption Offences, Extraordinary Crimes, Normative Formalism, Principle of Legality, Reorientation*

INTRODUCTION

The principle of legality has long been regarded as a fundamental principle that guarantees legal certainty through the adage *nullum crimen sine lege, nulla poena sine lege*.¹ However, in law enforcement against corruption offences, a rigid, formalistic application of the principle of legality can hinder the achievement of substantive justice.² This is particularly evident in cases where perpetrators of corruption evade the law or receive sentences that do not reflect the public's sense of justice, due to the limitations of existing positive legal norms. This situation highlights the need to re-examine the position and application of the principle of legality, particularly in the context of extraordinary crimes such as corruption, which possess complex, transnational characteristics and often evolve faster than the regulations governing them.

In the development of modern legal thought, the principle of legality is no longer understood narrowly as an absolute principle.³ Still, it has evolved towards a more flexible approach whilst maintaining a balance between legal certainty and justice. Several countries have adopted an approach that allows for progressive interpretation of the law, particularly in cases involving extraordinary crimes.⁴ In the Indonesian context, this dynamic is becoming increasingly relevant, as corruption not only harms the state's finances but also undermines the very foundations of social, economic, and political life.⁵ Therefore, a reorientation of the principle of legality is required, one that does not focus solely on formal legal aspects but also accommodates substantive values of justice, public benefit, and the protection of broader public interests.

Academics and legal practitioners have extensively conducted studies on the principle of legality in Indonesian criminal law. Previous studies generally highlighted the principle of legality as a cornerstone of the criminal justice system, serving to prevent state arbitrariness in imposing criminal penalties.⁶ On the other hand, studies also criticise the rigidity of the principle of legality in addressing the evolution of modern crime, including corruption.⁷ Several recent studies indicate that an overly literal application of the principle of legality can create legal loopholes that criminals exploit to evade criminal liability.⁸

Other studies emphasise the need for a more contextual and teleological interpretative approach in interpreting criminal law norms, so that the legal objective of achieving justice can

¹ Beni Puspito and Ali Masyhar, "Dynamics of Legality Principles in Indonesian National Criminal Law Reform," *Journal of Law and Legal Reform* 4, no. 1 (2023): 109–22, <https://doi.org/10.15294/jllr.v4i1.64078>.

² Amir Firmansyah and Pujiono Suwandi, "Achieving Efficiency with Justice in the Reform of Anti-Corruption Law Enforcement in State-Owned Enterprises," *Journal of Human Rights, Culture and Legal System* 6, no. 1 (2026): 84–115, <https://doi.org/10.53955/jhcls.v6i1.898>.

³ Tom Hannant, "Deadlock in Rule of Law Theory and the Potential of Internal Critique," *Legal Theory* 31, no. 3 (2025): 215–47, <https://doi.org/10.1017/S1352325225100748>.

⁴ Carolyn Hoyle and Lucy Harry, "Diversion or Death? The Moral Framework Shaping Bifurcated Punishments for Drug Offences in Indonesia," *Drugs: Education, Prevention and Policy* 32, no. 4 (2025): 347–57, <https://doi.org/10.1080/09687637.2024.2402262>.

⁵ Derwin Tambunan, "Indonesia under Threat: The Danger of Corruption to Political Legitimacy," *Asian Journal of Comparative Politics* 8, no. 1 (2023): 112–40, <https://doi.org/10.1177/20578911221124965>; 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>; Bahrul Ulum et al., "The Narrative of Pancasila as Indonesia's Moral Identity in Global Politics," *Jurnal Pelita Raya* 1, no. 3 (2025): 182–97, <https://doi.org/10.65586/jpr.v1i3.32>.

⁶ 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>; Sultan Zora Fernanda, "Dampak Revisi Undang-Undang KPK Terhadap Independensi Dan Efektivitas KPK Dalam Pemberantasan Korupsi," *PALAR (Pakuan Law Review)* 10, no. 2 (2024): 133–41, <https://doi.org/10.33751/palar.v10i2>.

⁷ Tina Sørdeide, "Corruption and Criminal Justice: Bridging Economic and Legal Perspectives," in *Corruption and Criminal Justice* (Edward Elgar Publishing, 2016); Zhihao Chang, Violet Rusu, and Jillian C Kohler, "The Global Fund: Why Anti-Corruption, Transparency and Accountability Matter," *Globalization and Health* 17 (2021): 1–11, <https://doi.org/10.1186/s12992-021-00753-w>.

⁸ Muhammad Syahlan Samosir and Rahman Unknown Rahman, "Eksistensi Lembaga Komisi Pemberantasan Korupsi Dalam Menanggulangi Tindak Pidana Korupsi (Suatu Analisis Normatif)," *Jurnal Yuridis Unaja* 3, no. 1 (2020), <https://doi.org/10.35141/jyu.v3i1.148>; Sørdeide, "Corruption and Criminal Justice: Bridging Economic and Legal Perspectives."

be realised more effectively.⁹ Nevertheless, most existing studies still discuss the principle of legality within a general theoretical framework, without specifically linking it to the practice of handling corruption offences in Indonesia. Studies that directly link the reorientation of the principle of legality with the need for effective and just enforcement of anti-corruption law remain relatively limited. Furthermore, existing studies have not comprehensively integrated the perspective of substantive justice as a normative foundation for reformulating the application of the principle of legality. In other words, there is a tendency for discourse on the principle of legality to remain fragmented between normative-dogmatic and empirical-practical approaches, without an adequate synthesis to address the concrete challenges of enforcing anti-corruption law.

There is also a mismatch between regulatory developments and judicial practice in handling corruption cases. On the one hand, legislators have sought to broaden the scope of corruption offences through various legal instruments; on the other hand, law enforcement officials often remain bound by a narrow interpretation of existing norms. This results in inconsistencies in court rulings and a decline in public confidence in the judicial system. In this context, the principle of legality, which should serve as a guarantee of legal certainty, may become an obstacle to the realisation of substantive justice. Therefore, a new approach is required that can bridge the demands for legal certainty and the need for a broader sense of justice.

The research gap identified from the above discussion lies in the absence of a systematic and integrative study examining the reorientation of the principle of legality in the context of handling corruption offences in Indonesia, with substantive justice as the primary foundation. Furthermore, there remains a gap in formulating a conceptual model that accommodates flexibility in applying the principle of legality without compromising the fundamental principles of the rule of law. This limitation indicates that research is required that is not merely descriptive or normative, but also capable of offering new theoretical constructs relevant to law enforcement's practical needs.

Based on this research gap, this study offers a novel approach by reorienting the principle of legality through the integration of legal certainty and substantive justice in the handling of corruption offences. The objective of this study is to analyse in depth how the principle of legality can be reoriented in the context of handling corruption offences in Indonesia, and to formulate a conceptual model that integrates the principle of legal certainty with substantive justice. The significance of this study lies in its ability to bridge the gap between theory and practice in the application of the principle of legality, whilst providing a new direction for criminal law reform in Indonesia.

METHODS

This study employs a legal-normative approach, enriched by a socio-legal framework and critical qualitative analysis, to examine the reorientation of the principle of legality in the handling of corruption offences, based on the premise that the issues under investigation lie not only at the level of legal norms, but also in the practices and dynamics of their enforcement. The study focuses on the construction of the principle of legality, its interpretative practice in corruption cases, and its integration with the principle of substantive justice, which is operationally defined as the flexibility in interpreting criminal law norms that maintains legal certainty whilst accommodating the value of justice.

⁹ Andi Hamzah, "Restorative Justice Policy Analysis in Eradicating Corruption," *Ratio Legis Journal* 3, no. 4 (2024): 615–25, <https://doi.org/10.30659/rlj.3.4.541-550>; Salma Aulia Farahdina Ariani and Nanik Prasetyoningsih, "Fighting Corruption Post Revision of the Act of the Corruption Eradication Commission," *Media of Law and Sharia* 3, no. 3 (2022): 235–54, <https://doi.org/10.18196/mls.v3i3.13232>.

The study population comprises legislation, court rulings on corruption, and expert opinions, with purposive sampling applied to representative legal documents and jurisprudential rulings. The research instruments consist of document analysis guidelines and semi-structured interview guidelines developed through literature review and conceptual feasibility testing, with data validity ensured through triangulation of sources, methods, and theory, as well as member checking. Data collection was conducted in stages through a literature review, a search of the judgment database, and in-depth interviews with academics and legal practitioners.¹⁰ Data analysis utilised qualitative analysis techniques with an interpretative and constructive approach through data reduction, thematic categorisation, and reflective conclusion-drawing, chosen for their ability to reveal in depth the relationship between norms, practices, and values of justice within the framework of a comprehensive reformulation of the principle of legality.

RESULTS AND DISCUSSION

The Reconstruction of the Principle of Legality between Legal Certainty and Substantive Justice in the Fight against Corruption

The principle of legality, classically formulated through the adage *nullum crimen sine lege, nulla poena sine lege*, is the cornerstone of the rule of law, serving to protect individuals from the arbitrary exercise of power by ensuring that every criminal act must have a clear, written and pre-existing legal basis. However, in the context of corruption, an extraordinary crime, this principle faces serious challenges due to the adaptive, complex nature of corruption, which often transcends the rigid normative boundaries set out in legislation.¹¹ This tension becomes increasingly apparent when judicial practice tends to interpret the principle of legality narrowly as merely a prohibition on punishment without a statutory basis, without considering the broader dimensions of the legal purpose, namely justice and public interest.

Within the framework of modern legal theory, the principle of legality is no longer viewed as an absolute and static principle, but rather as a norm that must be interpreted dynamically, taking into account social context and the evolution of crime. Progressive legal thought emphasises that the law must not be confined to rigid normative formalities but must be capable of adapting to an ever-changing social reality.¹² In this context, reconstructing the principle of legality is imperative to bridge the gap between written legal norms and the increasingly sophisticated practice of corruption. A more teleological and systemic interpretative approach is required so that law enforcement is not merely oriented towards formal certainty. Still, it is also capable of achieving substantive justice that reflects the public's sense of justice.

In Indonesian judicial practice, there is a tendency for judges and law enforcement officials to remain bound by a positivist approach that treats the law's text as the sole reference for determining whether a criminal offence has been committed.¹³ Whilst this approach is important for maintaining legal certainty, it is often inadequate when confronting the modus operandi of corruption that exploits formal legal loopholes. For example, in some corruption cases involving abuse of authority or conflicts of interest, perpetrators may evade criminal

¹⁰ Alysia Blackham, "When Law and Data Collide: The Methodological Challenge of Conducting Mixed Methods Research in Law," *Journal of Law and Society* 49 (2022): S87–104, <https://doi.org/10.1111/jols.12373>.

¹¹ Lucinda A Low, Thomas K Sprange, and Milos Barutciski, "Global Anti-Corruption Standard and Enforcement: Implications for Energy Companies," *Journal of World Energy Law & Business* 3, no. 2 (2010): 166–213, <https://doi.org/10.1093/jwelb/jwq004>; Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia," *Legality: Jurnal Ilmiah Hukum* 31, no. 1 (2023): 72–90, <https://doi.org/10.22219/ljih.v31i1.24247>.

¹² Sumiyati Beddu et al., "From Doctrine to Action: Islamic Law's Journey towards Social Change," *Jurnal Wawasan Yuridika* 8, no. 1 (2024): 1–24, <https://doi.org/10.25072/jwy.v8i1.4177>.

¹³ Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (2024): 2301634, <https://doi.org/10.1080/23311886.2023.2301634>.

liability because there are no explicit legal provisions governing such acts.¹⁴ This demonstrates that the principle of legality, in its rigid form, can create legal gaps that criminals exploit to evade the law.

The reconstruction of the principle of legality must be directed towards developing a more flexible concept without sacrificing the fundamental principles of the rule of law. One approach is to reinterpret the principle of legality through a substantive justice framework, which holds that justice is the primary objective of the law. From this perspective, the principle of legality is understood not only as a check on state power, but also as an instrument to protect the public interest from crimes that cause widespread harm.¹⁵ This reconstruction can also be achieved by strengthening the doctrines of extensive interpretation and limited analogy in criminal law, which have often been viewed as controversial, because they are perceived to conflict with the principle of legality. However, given the complex nature of corruption offences, a broad interpretation can encompass acts that substantially harm the state, even if not explicitly regulated by law.¹⁶ Naturally, the application of this approach must be carried out with care and in proportion to prevent the abuse of authority by law enforcement officials.

Reconstructing the principle of legality also requires legislative reform by formulating legal norms that are more responsive to evolving corruption trends.¹⁷ This includes broadening the definition of corruption offences, strengthening regulations regarding the abuse of authority, and recognising non-conventional forms of corruption, such as policy corruption. On the other hand, it is important to emphasise that the reconstruction of the principle of legality does not mean disregarding legal certainty, but rather seeking a balance between certainty and justice. Legal certainty remains necessary to provide clear guidance for the public and law enforcement officials, as well as to prevent arbitrariness. However, such certainty must be balanced with flexibility that allows the law to respond effectively to social dynamics. In this context, the concept of 'legal certainty with a justice orientation' becomes relevant as a normative framework that integrates these two values.

The reconstruction of the principle of legality must also take into account the law's institutional and cultural dimensions. Effective law enforcement depends not only on the quality of legal norms but also on the integrity and professionalism of law enforcement officials. Therefore, efforts are needed to enhance law enforcement officials' capacity and understanding of the importance of a substantive justice approach in handling corruption cases. Furthermore, society's legal culture must also be strengthened to support comprehensive anti-corruption efforts.

The Expansion of the Meaning of Unlawful Conduct Between Formal and Material Legality in Corruption Offences

In the classical conception of criminal law, the element of unlawfulness is understood as a violation of written legal norms explicitly formulated in legislation.¹⁸ Consequently, its existence is closely tied to the principle of legal certainty as guaranteed by the principle of legality. However, in the development of corruption law enforcement practice, this concept has

¹⁴ Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>.

¹⁵ Indriati Amarini et al., "Digital Transformation: Creating an Effective and Efficient Court in Indonesia," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (2023): 266–84, <https://doi.org/10.22219/ljih.v31i2.28013>.

¹⁶ 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.

¹⁷ 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>.

¹⁸ Donald A Andrews and James Bonta, "Rehabilitating Criminal Justice Policy and Practice," *Psychology, Public Policy, and Law* 16, no. 1 (2010): 39–55, <https://doi.org/10.1037/a0018362>.

undergone a significant expansion of meaning, whereby 'unlawful' is no longer interpreted solely as a violation of written rules, but also encompasses violations of principles of propriety, justice, and social norms. This shift reflects the legal system's efforts to respond to the characteristics of corruption, which are often beyond the reach of rigid normative formulations, whilst simultaneously raising serious issues regarding the legitimacy and limits of its application.

Within legal theory, the distinction between formal and material illegality has long been a classic debate that remains unresolved. The formal approach emphasises that an act can be unlawful only if it contravenes written legal norms, thereby providing legal subjects with certainty and predictability. Conversely, the material approach views unlawfulness as a broader concept, encompassing violations of the values of justice and propriety, even if not explicitly regulated by statute.

In the context of corruption offences, the material approach is frequently employed to address acts that substantially harm the state's finances or the national economy, even though they are not explicitly defined as criminal offences under existing regulations.¹⁹ This demonstrates that expanding the meaning of 'unlawful' constitutes a response to the limitations of positive law in addressing the complexity of modern corruption crimes. However, the use of the concept of 'against the law' in a material sense in judicial practice is not without deep controversy.

Supporters argue that this approach is a necessary instrument to close legal loopholes frequently exploited by perpetrators of corruption.²⁰ From this perspective, the law must not be trapped in formalistic norms that actually benefit criminals. Judges must be given the scope to interpret legal norms more broadly, taking substantive justice into account. This approach aligns with progressive legal thought, which views the law as a tool for achieving justice, rather than merely a mechanical system of rules. Furthermore, in the context of combating corruption as an extraordinary crime, extraordinary measures are required to enable more effective and adaptive law enforcement. On the other hand, opponents argue that expanding the meaning of 'against the law' in a material sense risks undermining the fundamental principles of the rule of law, particularly the principle of legality, which demands clarity and certainty in the formulation of offences.²¹

The use of overly broad and abstract concepts could open the door to judicial subjectivity in assessing whether an act is unlawful, thereby potentially leading to legal uncertainty and even the criminalisation of acts that are not actually defined as criminal offences. This criticism emphasises the importance of maintaining clear boundaries within criminal law to protect the fundamental rights of the accused, including the right to know precisely which acts are prohibited and subject to criminal sanctions. From this perspective, the expansion of the meaning of 'unlawful' is viewed as a deviation from the principle of legality that could undermine the legitimacy of the criminal justice system.

¹⁹ 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>; 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>; Suud Sarim Karimullah et al., "Pancasila Economy: Forgotten Dream or Weapon Against Inequality?," *Jurnal Lemhannas RI* 13, no. 1 (2025): 103–17, <https://doi.org/10.55960/jlri.v13i1.1023>.

²⁰ Mahrus Ali, Andi Mulyono, and Syarif Nurhidayat, "The Application of a Human Rights Approach toward Crimes of Corruption: Analyzing Anti-Corruption Regulations and Judicial Decisions," *Laws* 12, no. 4 (2023): 68, <https://doi.org/10.3390/laws12040068>.

²¹ Astrid Lorenz et al., "What the Rule of Law Is About. Narrating Its Foundations," in *Narrating the Rule of Law: Patterns in East Central European Parliaments* (Springer, 2024), 121–245, https://doi.org/10.1007/978-3-031-66332-1_5.

The tension between these two positions reflects a broader conflict between the effectiveness of combating corruption and the protection of human rights within the criminal justice system.²² On the one hand, there is a demand to ensure that perpetrators of corruption cannot evade the law merely because of gaps or weaknesses in the formulation of legal norms.²³ On the other hand, it is necessary to ensure that law enforcement does not violate the fundamental principles underpinning the rule of law, including legal certainty and the protection of individuals from arbitrary action. In this context, the expansion of the meaning of 'against the law' must be situated within a balanced framework, where both interests can be accommodated proportionately.

Efforts to achieve this balance can be made through the development of a more systematic and measured interpretative approach to understanding the concept of 'against the law' in a substantive sense. One relevant approach is teleological interpretation, which emphasises the purpose of creating legal norms as the basis for interpreting their meaning.²⁴ In the context of corruption offences, the primary purpose of the law is to protect state finances and prevent the abuse of power. The interpretation of the unlawfulness element must be directed towards supporting these objectives. However, this interpretation must still be constrained by the fundamental principles of criminal law, including the prohibition of analogies that are detrimental to the defendant and the obligation to provide legal certainty. Furthermore, it is important to develop clear parameters for applying the concept of material unlawfulness, thereby minimising the potential for subjectivity in law enforcement.

Such parameters may include objective criteria regarding the existence of state losses, abuse of authority, and violations of the principles of good governance. With measurable criteria in place, the use of a material approach remains within a legally accountable framework, whilst providing the necessary flexibility to address various complex forms of corruption. In a normative dimension, the expansion of the meaning of 'unlawful' also demands legislative reforms that are more responsive to developments in the law of corruption offences. Formulating more comprehensive and adaptive legal norms can reduce reliance on material interpretations that may spark controversy.

Material unlawfulness must also be viewed within the context of legal culture and the integrity of law enforcement officials. Without strong integrity, the expansion of the meaning of unlawfulness risks being abused for specific interests, thereby undermining the very objective of combating corruption. Therefore, the reconstruction of this concept must be accompanied by the strengthening of oversight and accountability mechanisms within the criminal justice system. Thus, expanding the meaning of unlawful acts in corruption offences is an inevitable phenomenon in efforts to adapt the law to the dynamics of modern crime. Yet it simultaneously demands caution in its application to avoid conflict with the fundamental principles of the rule of law. A balanced approach between formal and material legality is key to ensuring that criminal law can function effectively in combating corruption without sacrificing legal certainty or human rights protection. Within this framework, the concept of unlawfulness is no longer understood in a dichotomous manner between formal and material aspects, but rather as a spectrum that must be managed wisely through a combination of

²² Imat Hibbatulloh et al., "The Secularisation of Islamic Criminal Law and Its Implications for the Protection of Human Rights in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 17–31, <https://journal.mahkotascience.org/index.php/insani/article/view/7>.

²³ 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>.

²⁴ Alfons Bora, "Scientific Norms, Legal Facts, and the Politics of Knowledge," in *Reflexion Des Rechts–Beiträge Zur Responsiven Rechtssoziologie: Soziologische Theorie Des Rechts* 2 (Springer VS, Wiesbaden, 2023), 119–36, https://doi.org/10.1007/978-3-658-40787-2_7.

normative reform, responsible interpretation, and the strengthening of law enforcement institutions, thereby enabling the realisation of a fair, effective, and sustainable legal system.

Legality from a Progressive Legal Perspective and the Challenge of Overcriminalisation in Tackling Corruption

Within a progressive legal framework, the law is not viewed as a closed, rigid normative system, but rather as a dynamic instrument constantly oriented towards achieving social justice and the public good.²⁵ This paradigm encourages a more flexible, context-based interpretation of the law, enabling it to respond to the systemic, adaptive, and often transgressive nature of corruption offences. In this context, the principle of legality is no longer interpreted narrowly as a prohibition on punishment without a written legal basis, but rather as a principle that must be integrated with the broader objectives of the law, namely, substantive justice.²⁶

A progressive legal approach to tackling corruption justifies broadening the interpretation of criminal law, particularly when positive legal norms are insufficient to address the evolving nature of corrupt practices.²⁷ For example, in cases involving covert abuse of authority or policy manipulation that benefits specific groups, a progressive approach allows judges to interpret legal norms more broadly by considering the social impact and the purpose for which the law was enacted. This reflects the view that the law must prioritise substantive justice and the interests of the wider public, rather than merely formal certainty that criminals can manipulate. However, broadening criminal law interpretation within a progressive legal framework carries the risk of overcriminalisation, namely the tendency to expand the scope of criminalisation excessively and disproportionately.

This phenomenon can arise when the boundary between behaviour that warrants criminalisation and that which does not becomes blurred through the use of overly broad and abstract concepts, such as justice or propriety, without clear parameters. In the context of tackling corruption, overcriminalisation may arise when law enforcement agencies adopt a progressive approach to criminalising behaviour that falls within the administrative or policy sphere, thereby creating legal uncertainty and hindering public officials' decision-making.²⁸ This risk demonstrates that whilst progressive law offers solutions to the limitations of positive law, its application must be carried out with the utmost caution.

The core issue is how to maintain a balance between the courage to interpret the law progressively and the obligation to respect the principle of legality, as a guarantee of legal certainty and the protection of human rights.²⁹ On the one hand, a progressive approach is necessary to ensure that criminal law remains relevant and effective in tackling the ever-evolving crime of corruption. On the other hand, the principle of legality requires clear boundaries in the formulation and application of criminal law norms, so that individuals can know with certainty which acts are prohibited and subject to sanctions.³⁰ This tension reflects the classic dilemma between flexibility and certainty in law, which in the context of corruption

²⁵ 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>.

²⁶ Fernanda, "Dampak Revisi Undang-Undang KPK Terhadap Independensi Dan Efektivitas KPK Dalam Pemberantasan Korupsi"; Petr Wawrosz, "How Corruption Is and Should Be Investigated by Economic Theory," *Economies* 10, no. 12 (2022): 326, <https://doi.org/10.3390/economies10120326>.

²⁷ Moh Thamsir, Mukhtar Latif, and Pauzi Muhammad, "Islamic Criminal Law Reform in Corruption Cases: Maqasid Al-Shariah Perspective," *Jurnal Ius Constituendum* 10, no. 1 (2025): 16–27, <https://doi.org/10.26623/jic.v10i1.10932>.

²⁸ Hariyanto Hariyanto and Fihtriatus Shalihah, "The Purpose of Crimination against Perpetrators and Victims in the Perspective of Restorative Justice," *Corruptio* 4, no. 1 (2023): 1–12, <https://doi.org/10.25041/corruptio.v4i1.2922>; Thamsir, Latif, and Muhammad, "Islamic Criminal Law Reform in Corruption Cases: Maqasid Al-Shariah Perspective."

²⁹ Hariyanto and Shalihah, "The Purpose of Crimination against Perpetrators and Victims in the Perspective of Restorative Justice."

³⁰ Puspito and Masyhar, "Dynamics of Legality Principles in Indonesian National Criminal Law Reform."

becomes increasingly complex due to the high public demand for the effectiveness of law enforcement.

The debate between proponents and opponents of progressive law in this context reflects fundamental differences in perspective regarding the function and purpose of criminal law.³¹ Proponents view progressive law as a solution to legal stagnation that fails to keep pace with the evolution of modern crime, thus emphasising the importance of innovation and boldness in interpreting the law.³² They argue that without a progressive approach, perpetrators of corruption will continue to exploit legal loopholes to evade accountability, thereby preventing the eradication of corruption. Conversely, opponents fear that this approach may blur the line between the law and subjective morality, thereby opening the door to the abuse of power by law enforcement officials. From this perspective, criminal law must remain anchored in clear, measurable principles to avoid becoming an arbitrary tool.³³

To bridge these differences, a conceptual framework is required that can integrate progressive legal principles with the principle of legality in a balanced manner.³⁴ One approach that can be developed is the concept of substantive legality, which remains rooted in written legal norms but allows for interpretation that takes into account values of justice and the purposes of the law. Within this framework, progressive interpretation is not carried out freely. Still, it must be based on methods of interpretation that are academically and legally accountable, such as systematic, teleological, and historical interpretation.

To avoid over-criminalisation, the principle of proportionality is required as a constraint on the application of criminal law. This principle emphasises that criminalisation must be selective and applied only to acts that genuinely cause significant harm to society or the state. In the context of corruption, this means that not all forms of administrative or policy violations should be criminalised, but only those meeting specific criteria, such as the presence of an element of abuse of authority, malicious intent, and actual harm. With these limitations in place, a progressive approach can still be used to address complex crimes without leading to excessive criminalisation.

It is important to strengthen control mechanisms over the use of the progressive approach in law enforcement, whether through judicial oversight, professional ethical standards, or public participation. These mechanisms are necessary to ensure that law enforcement officials' interpretation of the law remains within acceptable limits and does not deviate from the fundamental principles of the rule of law.³⁵ In this regard, transparency and accountability are key to maintaining the legitimacy of the criminal justice system. In a broader sense, the discourse on progressive law and overcriminalisation is also linked to developments in legal theory that emphasise the importance of balancing certainty, justice, and utility. None of these three values can be prioritised absolutely without sacrificing the others. Therefore, the reconstruction of the principle of legality within the context of progressive law must be directed towards integrating these three values harmoniously. The law must be flexible enough to respond to social dynamics, yet certain enough to protect individuals, and beneficial enough to achieve the desired social objectives.

³¹ Syinta Amelia, "Progressive Legal Approach to Modern Community Law Enforcement in Indonesia," *Pancasila and Law Review* 4, no. 1 (2023): 1–12, <https://doi.org/10.25041/plr.v4i1.2729>.

³² Che Hao, "Understanding Contemporary Chinese Legal Dogmatics of Criminal Law," in *Handbook of Contemporary Chinese Social Sciences* (Springer, 2025), 449–500, https://doi.org/10.1007/978-981-97-4026-0_13.

³³ Héctor Olasolo, Pablo Galain Palermo, and R J Blaise Maclean, "Strategies to Fight Corruption as a Central Element of Governance," *International Criminal Law Review* 25, no. 4 (2025): 708–32, <https://doi.org/10.1163/15718123-bja10233>.

³⁴ Shulhan Iqbal Nasution, "Mono-Dualistic Theory and the Principle of Balance: A Conceptual Framework for Criminal Law Reform in Indonesia," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam*, 2025, 533–44, <https://doi.org/10.25217/jm.v10i2.6649>.

³⁵ Suud Sarim Karimullah, "The Role of Law Enforcement Officials: The Dilemma Between Professionalism and Political Interests," *Jurnal Hukum Dan Peradilan* 13, no. 2 (2024): 365–92, <https://doi.org/10.25216/jhp.13.2.2024.365-392>.

CONCLUSION

The reorientation of the principle of legality in the handling of corruption offences in Indonesia is an urgent necessity arising from the inherent tension between formalistic legal certainty and the demands of substantive justice in the face of corruption that is becoming increasingly complex, adaptive, and exploitative of normative loopholes. Consequently, the principle of legality is no longer adequate if maintained within a rigid framework. Still, it must instead be reconstructed as a principle that is open, contextual, and oriented towards legal objectives. The expansion of the meaning of unlawful acts in a material sense and a progressive legal approach can serve as corrective instruments against the limitations of positive law; however, these must be controlled through strict interpretative parameters, the principle of proportionality, and accountability mechanisms to prevent the risk of over-criminalisation and to safeguard the protection of the accused's human rights.

The novelty of this study lies in the conceptual formulation of substantive-progressive legality, which integrates legal certainty with substantive justice within the framework of anti-corruption efforts. Theoretically, this enriches the discourse on criminal law by offering a synthetic model that bridges legal positivism and the teleological approach; practically, it provides guidance to judges and policymakers in formulating more responsive interpretations and regulations. Policy implications call for more adaptive legislative reform, the strengthening of judicial interpretation guidelines, and the enhancement of the capacity and integrity of law enforcement officials; however, critically, this study remains limited to a normative approach and has not empirically tested the dynamics of application across various levels of the judiciary, thereby potentially leaving conceptual biases unresolved. Therefore, further research is recommended to develop cross-jurisdictional empirical-comparative studies and judgment-based analyses to test the validity of the proposed model. Furthermore, law enforcement practice requires measured boldness in progressively interpreting the law whilst adhering to the principle of legality, so that the reorientation of the principle of legality does not remain merely a normative discourse but becomes an effective, fair, and sustainable operational framework in the fight against corruption.

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