



Formulation of Social Sanctions for Corruption Convicts as a Form of Finding New Legal Rules in Indonesia

Rere Mahardika; Muhamad Fahrudin; Asmak Ul Hosnah; Nazaruddin Lathif

Law School, Pakuan University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v12i2.6630>

Abstract

Corruption is an extraordinary crime that has a very complex modus operandi with the involvement of more than one party. Corruption has become a culture in government life in Indonesia. Therefore, effective law enforcement is needed to be able to eradicate this crime. So far in Indonesia, criminal sanctions have been implemented as a form of legal accountability, but in fact this is not enough to deter corruptors. The aim of this research is to formulate new legal findings in the form of implementing social sanctions as a form of law enforcement in corruption cases. The research method used is normative research. The results of the research show that social sanctions are felt to be effective because the focus is on causing psychological burdens, namely in the form of shame because they are required to become social workers for a certain period of time. It is hoped that this feeling of shame will trigger a sense of deterrence so that corruptors do not repeat the same actions. However, unfortunately until now there are no laws and regulations that stipulate social sanctions as an alternative sanction for criminal acts of corruption. Therefore, from this research, it is hoped that the government can immediately formulate social sanctions as additional sanctions to assess their effectiveness in eradicating criminal acts of corruption.

Keywords: *Social Sanctions; Corruption; Legal Discovery*

Introduction

Corruption is nothing new in Indonesia, in fact its existence predates Indonesia's independence. Corruption in Indonesia has become embedded in the social structure and cultural system of society, and over time corruption can become a habit. Corruption is not just an ordinary criminal act but has become a structural criminal act that does not only involve one or two parties. That is why corruption is considered to have become a culture for the Indonesian people, but gradually cases of criminal acts of corruption become more complex and continue to increase in quantity every year. In 2021 the number of corruption cases amounted to 533 cases with total state financial losses reaching IDR 18 trillion, then in 2022 the number increased to 579 cases. In 2023 the number of corruption cases will continue to increase with a total of 791 cases with the number of suspects reaching 1,695 people.

Of course, the increase in the number of corruption cases has caused losses to the country's finances and economy and is in stark contrast to the living conditions of officials who commit corruption and the people who pay taxes to obtain facilities from the state. Law enforcement against corruption cases is not without effort. Indonesia has its own legal umbrella to take action against perpetrators of corruption, namely through Law Number 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes (UU PTPK). Not to mention, Indonesia also has an independent institution that has the authority to strictly investigate and investigate perpetrators of corruption, namely the Corruption Eradication Commission (KPK) which was formed through Law no. 30 of 2002 concerning the Corruption Eradication Commission. However, Indonesian officials still have dirty hands and are skilled at carrying out corruption and even collaborating with law enforcement officials in carrying out their actions. Money and wealth really blind the conscience of homeland officials who should be fighting for people's rights.

Like statutory regulations in general, the PTPK Law also contains provisions for criminal sanctions imposed on perpetrators of corruption. It seems that the criminal threats contained in this law are unable to prevent perpetrators from committing corruption. This is proven by the still high rate of corruption. Even though legal sanctions are provided to provide a deterrent effect as well as provide a threat to people who have the intention to commit corruption, in fact empirically the number of corruption cases has never decreased (Tansar et al., 2022).

The perpetrators of criminal acts of corruption mostly come from officials or corporate administrators who have power and authority so that in their actions they will take greater profits than they should (Hartono & Sugi, 2016). They will make every effort to manipulate, change, accept bribes and other actions that indicate taking advantage of state finances without valid legal grounds. This is what is called a criminal act of corruption. The definition of corruption based on Article 2 paragraph (1) of the PTPK Law is "any person who unlawfully commits acts of enriching themselves or another person or a corporation which can harm state finances or the state economy". Corruption means taking people's money to enjoy it for personal interests, thereby causing harm to state finances or the country's economy. Funds that should be intended for building infrastructure and public services are actually being corrupted and used to satisfy personal interests.

Funds originating from taxes and other state revenues which should be used to realize social justice actually create further distance between the poor and the rich (Harkrisnowo, 2002). Government officials who commit corruption will get richer while the people will get poorer because their rights are taken away. Corrupt behavior is often driven by dissatisfaction which is supported by weak supervision in the government sector. The opportunity to commit corruption is one of the main causes of corruption. In fact, if someone has the determination and understanding that corruption is something that violates the norms and values of Pancasila and is contrary to statutory regulations, he will not commit corruption even if the opportunity is before his eyes.

In fact, the state has made efforts to eradicate criminal acts of corruption through the establishment of laws and regulations and the Corruption Eradication Commission (KPK) institution, but to date the existence of these rules and institutions has not been effective enough to eliminate the culture of corruption in Indonesia. That is why it is necessary to formulate new criminal sanctions for corruptors. According to the author, criminal sanctions in the form of imprisonment and fines will be considered light by corruptors because in reality the amount of the fine that must be paid is only a small part of the proceeds of corruption that they have previously enjoyed (Muttaqi, 2023). This reality is clearly disproportionate to the state financial losses incurred. In terms of the length of the prison sentence given, it is also quite short. This causes prison sanctions and/or fines to be unable to provide a deterrent effect on corruptors and results in the corruption rate in Indonesia never experiencing a significant decline because the wealth obtained from corruption is still much greater than the fines and/or compensation money for state financial losses determined by the court.

Seeing this problem phenomenon, it is necessary to formulate new legal sanctions that are more capable of providing a "deterrent" or "shame" effect on corruptors for the corrupt actions they commit. Therefore, the idea of finding a new law emerged, namely the formulation of social sanctions for those convicted of corruption. Corruptors will still be imprisoned and pay fines as a form of responsibility for the actions they committed. However, apart from that, corruptors are also required to become social workers who carry out their work in an open environment. Officials will be more embarrassed to appear in public wearing typical convict uniforms, so it is hoped that if these social sanctions are actually realized, they will result in effective repressive efforts for law enforcement against criminal acts of corruption.

Methodology

The research methodology used in this research is a normative method which tries to explore the application of legal norms in society so as to find formulations for the formulation of new norms that do not conflict with existing norms and were created with the aim of improving and completing previous norms. The formulation of a new law is based on reflective experience that has occurred previously which is the main evaluation material before formulating a new law. Later, the main idea of implementing social sanctions will be analyzed further descriptively to weigh the good and bad of its implementation so that it can become an effective solution for law enforcement for criminal acts of corruption.

The type of data used in this research is secondary data which is subdivided into three legal sources, namely primary, secondary and tertiary. Primary sources of law come from statutory regulations and other unwritten norms whose validity is recognized. Secondary legal sources function as reference materials in legal discoveries, namely journals, books and previous research reports, while tertiary legal sources function as a complement to interpret vocabulary that is difficult to interpret, so the sources are in the form of legal dictionaries and language dictionaries.

The data collection method used is a literature review which is carried out by carrying out an inventory of existing legal sources and then compiling them systematically. Comparing one source with another is the main point in data collection. Then finally, the data analysis method is carried out qualitatively, descriptively, where data that has been systematically arranged will be analyzed in depth and critically, only then can a conclusion be drawn as a solution to the legal problems discussed.

Literature Review

The literature review here will explain several previous studies which state the ineffectiveness of law enforcement through criminal sanctions against perpetrators of corruption so that it can be a strong reference for why new legal discoveries in the form of formulating social sanctions must really receive special attention.

The first research was conducted by Laila Nurul Indria and Ali Muhammad with the title "The Effectiveness of Prison Sentences as a Deterrent Effect for Corruption Perpetrators in Indonesia". Judging from the title used, this research only focuses on the analysis of criminal sanctions in the form of imprisonment. In the research, it was stated that many prisoners only served 1/8 of their original prison sentences due to cuts in remissions. This certainly does not have any deterrent effect on corruptors. Not to mention the unfair treatment in detention cells where convicted corruptors often receive luxurious facilities because they dare to pay more to get different treatment. Improvements to the prison system have been carried out gradually, but the culture of remission and "favouritism" in correctional institutions cannot just disappear (Indria & Muhammad, 2022).

The next research is research conducted by Syahdi Syahri Buamona with the title "Application of Sanctions to Perpetrators of Corruption Crimes from an Economic Analysis Perspective". As a form of development from previous research, this time it has been mutually understood and agreed that prison sanctions are not an effective punishment for corruptors because in fact treatment in a detention cell requires quite a lot of money. From an economic perspective, the most appropriate legal sanction is a fine where the corruptor is obliged to pay an amount of money determined by the judge, the amount of which is adjusted to the state financial losses incurred (Buamona, 2022). However, legal polemics have occurred again in this case where the amount of fines imposed on corruptors is not commensurate with the amount of losses that have been caused so that once again this criminal sanction becomes ineffective.

The third research is research conducted by Dwi Atmoko and Amalia Syauket under the title "Law Enforcement of Corruption Crimes Viewed from the Perspective of Impact and Eradication Efforts". The conclusions of this research provide real validation of two previous studies which stated that law enforcement against criminal acts of corruption in Indonesia has not been effective. There are still many loopholes for corruptors to escape responsibility, so legal reform is needed (Atmoko & Syauket, 2022). Departing from the focus in this research, a new policy formulation was designed for corruptors, one of which was the emergence of the idea of providing social sanctions to corruptors.

Discussion

Implementation of Social Sanctions for Corruption Convicts

Legal science is not a science that can stand alone but requires the contribution of other sciences to formulate a theory or policy. One of them is sociology. Sociology is a science that is closely related to human behavior (Hannan & Syarif, 2023). Human behavior, the way they interact with the environment and each other, and the way humans resolve conflicts are several aspects studied in sociology.

Studying the reasons why someone takes an action to resolve social phenomena that occur in society is a sociological scientific way of formulating a problem. If the criminal sanctions approach is no longer able to reduce the number of corruption cases, then one alternative solution that can be used is to approach it from a legal sociology perspective. In sociology, the crime of corruption is a deviant act and is considered a social problem. It is called deviant because it departs from the rules of values and norms that exist in society. Different from criminal law which applies sanctions in the form of imprisonment, imprisonment and/or fines, legal sociology recognizes the term social sanctions.

Social sanctions are not only intended to provide a deterrent effect on society so that they do not fall into committing the same actions but also function as social controls. If legal sanctions focus on physical punishment, then social sanctions will emphasize psychological punishment or a person's psychological condition. An easy example is that a person convicted of a corruption case will easily serve a prison sentence or pay a fine as a result of his actions, but he may not necessarily be able to face social sanctions in the form of insults, insults or shame that arise as a result of his actions (Sulisttyawaty, 2019). This has been validated in research conducted by Laila Nurul Indria and Ali Muhammad where when sentenced to prison, corruptors will only serve 1/8 of their prison term and the rest will be released due to remission. So the author believes that providing social sanctions for those convicted of corruption cases will be an effective sanction in addition to criminal sanctions.

Sanctions in general are punishments or consequences that arise and must be carried out by someone because they have violated a rule or not complied with obligations in an agreement. Sanctions are coercive and can be enforced. Criminal sanctions are included directly by the Panel of Judges in the guilty verdict they read out. Meanwhile, social means social life which is closely related to interactions between humans. So social sanctions can be interpreted as a punishment related to social activities

(Wijaya & Umara, 2022). Social sanctions can also be called social penalties where the concrete form of punishment is doing social work. Forms of social work that are generally known in Indonesia are cleaning public toilets, picking up rubbish on the streets, cleaning rivers from rubbish, sweeping streets, serving in nursing homes, or you can also distribute photos in public spaces (Raumin et al., 2018). According to the author, this form of social work will have a more deterrent effect on those convicted of corruption cases than simply serving a prison sentence and paying a fine.

Corruptors in typical prison uniforms will be taken to carry out routine social work where they will face the fact that they have a different position from the people around them. That look of hatred, contempt and a feeling of being looked down on is what is trying to be presented here, where they are usually officials who are highly respected in society, but now their position is only that they are convicted of a corruption case. The effects of shame arising from social work will be more detrimental for them because they are public officials who of course have their own image that must be maintained. However, this does not mean that the implementation of criminal sanctions can be ruled out. Social sanctions only act as additional sanctions besides criminal sanctions to maximize the deterrent effect on corruptors.

Barriers to Implementing Social Sanctions for Corruption Convicts

Social sanctions will intentionally inflict suffering on corruptors by involving community participation. If criminal sanctions focus on law enforcement officials as the party who has the right to impose criminal sanctions, then for social sanctions, it is the community who will provide these sanctions (Aerlang et al., 2016). The social work carried out is not the core of the social sanctions given, but rather the psychological burden and shame because they do the work as punishment for their actions of corruption which is the real social sanction. The public will give hate speech, insults, even insults to those convicted of corruption. Moreover, these government officials have never carried out social work activities before, so when they do such things, they will naturally feel embarrassed. It is hoped that this sense of shame and humiliation from society will make them no longer want to commit acts of corruption and the like.

However, unfortunately the formulation of social sanctions does not yet exist in Indonesian laws and regulations. This is what prompted the author to provide an opinion to regulate social sanctions as alternative sanctions that can be imposed by the panel of judges in their decisions, especially in cases of criminal acts of corruption. Perhaps the first step that can be taken is to conduct a trial of providing social sanctions against those convicted of corruption because the only way to test the effectiveness of a rule is to implement it directly. With the regulation of social sanctions in Indonesian positive law, the panel of judges can use them as alternative sanctions and then see the graph of corruption cases in Indonesia will decrease or remain the same or actually increase. To be able to implement social sanctions in Indonesian positive law, cooperation is needed between the government, especially members of the People's Representative Council (DPR) as the party who formulates legal policies, then law enforcement officials who will later impose penalties, and the main role of the community in implementing sanctions. social because the essence of implementing social sanctions is community participation.

Barriers to implementing social sanctions can be viewed from the perspective of law enforcement theory. Law enforcement is a process carried out to uphold the law as well as norms and values in people's lives so that they are able to maintain existing legal relations. Law enforcement in Indonesia must be able to realize legal ideals, namely being able to provide certainty, justice and legal benefits. According to Soerjono Soekanto, law enforcement is an activity to enforce the legal rules contained in statutory regulations into the attitudes of the community in order to carry out its function of maintaining and maintaining peace in society. There are several factors that influence law enforcement in Indonesia, including (Soekanto, 2005):

a. Legal Factors

The laws contained in statutory regulations and other written norms are sometimes unable to be implemented optimally in empirical conditions, thereby failing to achieve justice and legal certainty. This could be due to an error in interpreting a rule or a double meaning contained in an article formulation so that it becomes a rubber article that is unable to provide legal certainty and justice. If it is related to this problem, there are no laws and regulations in Indonesia that accommodate the provision of social sanctions against perpetrators of criminal acts of corruption, so this sanction cannot be applied as long as there are no regulations that regulate it.

b. Law Enforcement Factors

Law enforcers are officers tasked with implementing the law, from investigators to the panel of judges. Law enforcers have a very important role in law enforcement. If written rules are in accordance with the interests of society but law enforcers are unable to implement these rules, it will still create injustice and legal uncertainty for society. It takes a strong mentality and integrity to be a good law enforcer. If legal regulations do not yet exist, then the law enforcement officers must also not be prepared. It is even felt that law enforcement officials are not ready to implement these sanctions because it does not rule out the possibility that when social sanctions are implemented, they will also feel it in the future.

c. Facilities or Supporting Facilities Factors

The facilities or facility factors referred to here are software and hardware. For example, software is education, while for example hardware is physical facilities such as the availability of district courts which have complete equipment. The absence of supporting facilities or facilities will certainly hamper the law enforcement process. The lack of legal instruments as the main resource for enforcing social sanctions seems to be the main problem which has a domino impact on other factors.

d. Community Legal Culture Factors

The main goal of law enforcement is to create justice and peace in society. However, this cannot be achieved if society refuses to obey the applicable legal rules, even though these legal rules are an instrument for regulating people's lives. Community disobedience will hinder the law enforcement process, on the other hand, high community compliance with legal norms will encourage the creation of ideal law enforcement. Here the public is less open to the idea of finding new laws in the form of social sanctions because the government has not provided socialization so public awareness is still low.

Conclusion

Enforcement of cases of criminal acts of corruption in Indonesia is very difficult to reach an effective level in its implementation, even though criminal sanctions in the form of imprisonment, fines, revocation of certain rights have been implemented, but the number of corruption is increasing in Indonesia. This is what led to the emergence of the idea of formulating a new law in the form of implementing social sanctions. Social sanctions do not replace existing criminal sanctions but are only additional sanctions given with the aim of giving convicts shame because they are required to become social workers. However, unfortunately this sanction cannot be implemented until now because there are no statutory regulations that regulate this.

References

- Aerlang, M., Reginasari, A., & Annisa, V. (2016). Pakar Rupia (Apa Kerja Keras Koruptor Indonesia?): Membangun Sanksi Psikososial Bagi Terpidana Kasus Korupsi. *Jurnal Integritas*, 2(1), 175–191.
- Atmoko, D., & Syauket, A. (2022). Penegakan Hukum Terhadap Tindak Pidana Korupsi Ditinjau dari Perspektif Dampak Serta Upaya Pemberantasan. *Binamulia Hukum*, 11(2), 177–191.
- Buamona, S. S. (2022). Penerapan Sanksi Terhadap Pelaku Tindak Pidana Korupsi Dalam Perspektif Analisis Ekonomi. *Al Mizan: Jurnal Kajian Hukum Dan Ekonomi*, 8(2), 155–165.
- Hannan, A., & Syarif, Z. (2023). TINJAUAN SOSIOLOGI HUKUM TERHADAP PENGATURAN SANKSI SOSIAL BAGI PELAKU KORUPSI DI INDONESIA KONTEMPORER. *Yudisia: Jurnal Pemikiran Hukum Dan Hukum Islam*, 14(2), 177–201.
- Harkrisnowo, H. (2002). Korupsi, Konspirasi, dan Keadilan di Indonesia. *Jurnal DictumLeIP Edisi I Lentera Hati*, 67.
- Hartono, & Sugi, M. (2016). Korupsi Kebijakan oleh Pejabat Publik. *Jurnal Komunikasi Hukum*, 2(2).
- Indria, L. N., & Muhammad, A. (2022). Efektivitas Hukuman Pidana Penjara sebagai Efek Jera terhadap Pelaku Korupsi di Indonesia. *JUSTUTIA: Jurnal Ilmu Hukum Dan Humaniora*, 9(3), 1445–1450.
- Muttaqi, N. I. N. (2023). Rekonstruksi Konsep Penjatuhan Sanksi Pidana Penjara dalam Tindak Pidana Korupsi di Indonesia. *Lex Renaissance*, 2(8), 269–289.
- Raumin, L. O., Bouto, L. O. M., & Yusuf, B. (2018). BENTUK-BENTUK SANKSI SOSIAL MASYARAKAT TERHADAP PERILAKU MENYIMPANG REMAJA (Studi Di Desa Mabodo Kecamatan Kontunaga Kabupaten Muna). *Jurnal Neo Societal*, 3(1), 315–324.
- Soekanto, S. (2005). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Rajawali Press.
- Sulisttyawaty, S. (2019). Strategi Pencegahan Korupsi dengan Budaya Malu (Studi Komparatif Masyarakat Melayu dengan Jepang). *Jurnal Penelitian Pendidikan Sosial Humaniora*, 4(1), 442.
- Tansar, A., Manurung, M., & Siregar, S. A. (2022). Kajian Kriminologi Penerapan Sanksi Pemberian Rasa Malu (Shaming) Terhadap Pelaku Tindak Pidana Korupsi. *Jurnal Retentum*, 3(1), 201–212.
- Wijaya, T. H. D., & Umara, N. S. (2022). PENERAPAN SANKSI SOSIAL SEBAGAI ALTERNATIF PEMIDANAAN TERHADAP PELAKU TINDAK PIDANA KEJAHATAN SIBER (CYBER CRIME). *Al-Qisth Law Review*, 5(2), 371–404.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).