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PROBLEMATICS OF EVIDENCE IN CORRUPTION CASES A REVIEW OF THE APPLICATION OF THE PRINCIPLE OF REVERSAL OF BURDEN OF PROOF IN INDONESIAN CRIMINAL PROCEDURE LAW

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Abstract

Corruption in Indonesia has long been categorized as an extraordinary crime that requires special and extraordinary legal handling. However, the criminal procedure law approach used to date still relies on the normative framework in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) which is general and conventional. This study aims to analyze the gap between the characteristics of corruption crimes and the available criminal procedure law instruments, as well as to describe the urgency of updating the criminal procedure law system in order to increase the effectiveness of law enforcement against corruption crimes. Through a normative legal approach and literature study of legal documents, academic literature, and judicial practices, this study found that the Criminal Procedure Code has not been able to answer the challenges of corruption crimes which are complex, closed, and cross-sectoral. Mechanisms such as justice collaborators, plea bargaining, wiretapping, and protection of reporters have not been fully and integrally accommodated in the current legal procedure system. This imbalance results in weak effectiveness of evidence and raises doubts about the legitimacy of the criminal justice process. Therefore, criminal procedural law reform is needed that not only accommodates the need to eradicate corruption efficiently and accountably, but also guarantees the protection of human rights, legal certainty, and a balance between the rights of suspects and the public interest. Recommendations in this study include formal integration of justice collaborator protection, legalization of plea bargaining mechanisms, strengthening the legitimacy of electronic evidence, and harmonizing the coordination of law enforcement agencies in the process of investigating and prosecuting corruption crimes.

Keywords: Corruption, Criminal Procedure Law, Reform

INTRODUCTION

Large-scale corruption has been recognized as a crucial problem that threatens the foundation of the rule of law and social welfare. Since the beginning of the nation's independence, the practice of corruption has been formed as an endemic crime that is difficult to eradicate completely. Although there have been the old Criminal Code and HIR, the presence of special regulations strengthens law enforcement against corruption, starting from Law No. 3 of 1971, Law No. 31/1999, and the amendment to Law No. 20/2001, showing the seriousness of the state in facing these systemic symptoms (Rahardjo & Haryanto, 2012)

According to Moertiono's research (2021), corruption is categorized as an "extraordinary crime" because of its systemic, transnational characteristics, and the deprivation of basic economic and social rights of the wider community. Ariawan (2015) added that vulnerabilities in proving and tracing assets make corruption an "Invisible Crime" which is procedurally difficult to investigate.

The presence of the Corruption Law brought a number of innovations in criminal procedure law: reverse burden of proof (Article 37A), wiretapping, electronic evidence, and the establishment of the Corruption Court. However, the characteristics of the Criminal Procedure Code which are still lex generalis cannot fully answer the needs of handling this extraordinary crime. In practice, significant obstacles arise, one of which is in the investigation stage. Research on investigation problems at the Tanjung Jabung Timur Police (3.5 years ago) found limitations in the Criminal Procedure Code, especially the 14-day clause for improving P19 files which is not realistic for the

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complexity of cross-regional corruption cases and involving witnesses from various locations (Wiyanti, 2013:34–54).

Another problem is the overlapping authority between law enforcement agencies—the Corruption Eradication Committee, the Prosecutor's Office, and the Police. According to Moertiono et al. (2013), although initially designed as an integrated system, in reality it triggers coordination conflicts and potential competition in handling corruption cases. Even the Constitutional Court was once asked to provide legal certainty regarding this authority.

Furthermore, the reversal of burden of proof in the Corruption Law is actually intended to accelerate the proof of the source of unnatural wealth. However, theoretically there is tension with the principle of presumption of innocence, raising concerns about the potential for violation of the suspect's rights (Andi Hamzah, 2001). In addition, the effectiveness of the Corruption Court as a Special Court is closely related to the character of the faster process and special evidence (electronic and wiretapping). Mulyadi (2007) said that this system was designed to be more responsive, but in practice it still depends on the general regulations of the Criminal Procedure Code, so that deviations in practice are sometimes difficult to tolerate.

In terms of handling corruption assets, there is still a lack of comprehensive regulations. Undip (2020) suggests a progressive strategy in the form of «rule breaking» of early confiscation and the implementation of the obligation to pay compensation with collateral, but this has not been fully accommodated in criminal procedural law. This emphasizes the urgency of updating the procedural and substantial framework of procedural law. Practical obstacles also arise in the protection of witnesses and whistleblowers. The UII Grant (2023) shows that whistleblowers are very important in exposing power-based corruption networks, but currently their protection has not been integrated into general procedural law.

The issue of technology use also arises. The Criminal Procedure Code system does not provide a clear mechanism for the legitimacy of wiretapping and the use of electronic evidence, so that the evidence is vulnerable to being challenged in court. Furthermore, the prosecution and trial aspects also face obstacles. Corruption Judges are still grappling with overlapping procedural regulations between the Criminal Procedure Code and special rules: the composition of the panel, the examination period, the rules of the clerk, to the technical limits of the use of evidence from wiretapping and electronics (Nurdjana, 2017; Mulyadi, 2007).

In addition, the quality of human resources for law enforcement such as judges, investigators, and prosecutors is not yet fully adequate. UNS research (2023) noted the weak quality of human resources and inter-agency coordination as factors that weaken the eradication of corruption. The development of corruption modus operandi is now increasingly complex. Undip (2020) revealed that the practice of asset laundering and concealment of transnational assets is increasingly widespread, demanding a progressive and flexible procedural law strategy in the confiscation and execution of assets.

Overall, the combination of the characteristics of extraordinary crimes, the inadequacy of general procedural law, regulatory constraints, fragmentation of authority, and the quality of human resources indicate that the current Criminal Procedure Code and the Corruption Law are inadequate. There is a gap between the needs of modern corruption enforcement and the still outdated criminal procedure law. The urgency of updating criminal procedure law is also very urgent so that the justice system can take extraordinary measures but still uphold procedural justice and human rights (Nurdjana, 2017; Ariawan, 2015; Moertiono, 2021).

This study aims to answer two main questions: to what extent is the current Indonesian procedural law able to deal with the characteristics of corruption as an extraordinary crime? And what is the ideal procedural reform that can bridge the effectiveness of corruption enforcement with the guarantee of justice? To that end, this study is expected to provide normative recommendations for legislators, jurisprudence, and law enforcement agencies regarding the design of a new version of the Criminal Procedure Code or an amendment to the Corruption Law that is able to answer the challenges of corruption crimes in the 21st century. The hope is that the state can move faster, more

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comprehensively, and fairly in fighting corruption for the sake of restoring public trust and upholding the rule of law.

METHOD

This study uses a normative legal approach method with an emphasis on the analysis of laws and regulations, legal doctrines, and relevant court decisions related to the handling of corruption and criminal procedural law. This approach aims to examine the conformity between the provisions of applicable procedural law, especially in Law Number 8 of 1981 concerning Criminal Procedure Law, with the characteristics of corruption as an extraordinary crime, as regulated in Law Number 31 of 1999 junto Law Number 20 of 2001. Data collection techniques are carried out through library research on primary and secondary legal literature, including law journals, books, and corruption court decisions. Furthermore, the data obtained are analyzed qualitatively with a deductive mindset to draw legal conclusions from applicable norms and the reality of law enforcement practices (Soekanto, 2007; Marzuki, 2017).

RESULTS AND DISCUSSION

Characteristics of Corruption as an Extraordinary Crime and the Need for Criminal Procedure Law Reform

Corruption is not actually an ordinary criminal law violation; it is an evil phenomenon that damages the foundations of national life, the economy, and social values systemically. Many experts emphasize that corruption is an extraordinary crime because of its multi-dimensional, hidden, and systemic characteristics. For example, Putra (2023) emphasized that with the inclusion of corruption in the new Criminal Code (KUHP), it is no longer classified as an extraordinary crime, which has a broad impact on the effectiveness of law enforcement. This shows that the perception of corruption as an extraordinary crime has indeed been recognized, but has not been fully reflected in the consistency of procedural law policies.

Fundamentally, corruption involves a complex and cross-border network, targeting public officials, state apparatus, private institutions, and civil society. This clearly fits the definition of an extraordinary crime that damages public trust and the integrity of state institutions (Saputra & Firmansyah, 2023). Thus, handling corruption requires not only the activation of strong substantive law but also responsive, aggressive, and adaptive criminal procedure procedures to its specificity. However, the Criminal Procedure Code, which is the main legal framework in Indonesia—designed to prosecute conventional crimes, establishes general stages of investigation, prosecution, and evidence and does not take into account the complexity of the sophisticated and hidden structure of corruption crimes.

The limited capabilities of the Criminal Procedure Code are evident from the length of the legal process chain, where Article 1 of the Criminal Procedure Code frames the investigation and prosecution in a time frame that is considered unrealistic for major corruption cases that are cross-regional and involve many parties. For example, the 14-day deadline for improving P19 files in investigations is often a fatal obstacle in developing appropriate evidence strategies, uncovering hidden assets, or tracing the flow of funds across institutions and countries. In practice, investigators need more time and steps, but the Criminal Procedure Code procedures tighten time regulations, making it difficult to handle cases comprehensively.

Another obstacle lies in the use of evidence generated from modern technology—such as electronic evidence, digital tracking, and wiretapping results. Based on Law No. 31 of 1999 in conjunction with Law No. 20 of 2001, certain procedural laws are provided for corruption cases, but

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in practice the preparation of supporting regulations for electronic evidence is still not normatively strong. Nurdjana (2017) noted that the regulation of evidence from wiretapping and electronic activities is indeed recognized, but the mechanism has not been explained in detail, so that much of this evidence is vulnerable to being challenged or canceled in court. This creates legal uncertainty regarding the validity of evidence which is a major factor in ensnaring perpetrators of corruption.

On the one hand, a valid wiretapping mechanism is needed that is protected by procedural law; on the other hand, the suspect's human rights must not be ignored. This imbalance creates a paradox: without sophisticated procedures to catch corruption syndicates, law enforcers lose their main weapon; but without procedural protection, fierce criticism arises regarding human rights violations. This reality sparks discussions that the Criminal Procedure Code is no longer adequate as a lex generalis for handling extraordinary crimes, and comprehensive reform is needed so that procedural law can facilitate modern legal strategies such as wiretapping, digital tracking, reversal of the burden of proof, and the use of justice collaborators.

Article 37A of the Corruption Law paves the way for reversed burden of proof against unnatural wealth; in practice, this becomes a legal instrument to suppress perpetrators of major corruption. However, Hamzah (2001) even stated that this reversal of the burden of proof can violate the fundamental principle of the presumption of innocence, triggering normative tensions that must be handled carefully through procedural law regulations. Such regulations are needed so that the normative consequences do not harm the legal rights of the suspect, but also ensure that corruptors do not escape simply because of the optimization of legal defense.

In addition to the regulation of the right to evidence, the urgency of reforming the Criminal Procedure Law is also evident from the fragmentation of authority between corruption enforcement agencies. The KPK, the Prosecutor's Office, and the Police have overlapping authority to investigate and prosecute corruption, which is actually intended to accelerate eradication, but often triggers administrative and practical conflicts. The KPK Law provides retroactive authority in taking over ongoing processes; this is formal and can be applied retroactively, but raises doubts regarding the legitimacy and coordination between agencies. The management of the legal process that is not synergistic causes the occurrence of "silos" of reporting and handling strategies, which actually opens up opportunities for failure and manipulation of procedures.

The role of justice collaborators in enforcing corruption crimes has extraordinary potential to reveal hidden facts and unravel closed corruption syndicate networks. According to Kurniawan Harahap (2021), witnesses who cooperate with justice collaborators play an important role because they not only know firsthand the course of the crime, but are also able to bring evidence and clues to fatally ensnare other perpetrators or syndicates. The implementation of justice collaborator rights has so far been limited and lacks legal certainty; although regulated in Law No. 31 of 2014 and Supreme Court Circular Letter No. 4 of 2011, there are various differences in interpretation and inconsistencies that give rise to uncertainty regarding rights related to leniency, assimilation, or remission that have not been clearly standardized. Furthermore, Dwiasty et al. (2024) emphasized that legal protection for justice collaborators is only explicitly stated in Law No. 31 of 2014 concerning amendments to Law No. 13 of 2006, but in practice its implementation is very dependent on the consistency of the testimony and the quality of the report concerned.

Collaboration of criminal perpetrators in uncovering cases in the context of justice collaborators requires a clear procedural legal umbrella, so that their legal rights in the investigation, prosecution, and trial institutions are protected. However, in reality, many justice collaborators experience inconsistent statements during the trial, which then becomes a loophole for judges to reject their recognition as witnesses of perpetrators who cooperate in order to reduce the sentence. This condition illustrates that the available criminal procedural legal instruments are not sufficient to guarantee an effective procedural protection mechanism, so that justice collaborators tend to hesitate to reveal facts without getting guaranteed rights. As a result, the potential presence of justice collaborators in eradicating corruption has not been optimally utilized because procedural legal issues

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concerning legal treatment, guarantees of remission, and security guarantees do not guarantee the consequences of the collaboration.

At the same time, the role of whistleblowers as a form of community participation is also an important pillar in the early detection system of corruption. Frangki Boas (2016) emphasized the importance of providing legal, physical, and psychological protection for whistleblowers because this figure is the main actor who is often the initial source of information in corruption cases but is also vulnerable to threats, intimidation, and counterattacks. Meanwhile, Sunu (2024) emphasized that Law No. 31 of 2014 and Law No. 30 of 2002 recognize the status of whistleblowers, but their technical protection is very limited. MA Circular Letter No. 4/2011 tries to establish special treatment for reporters, but instead creates irony because the provisions in the Witness & Victim Law (Law No. 13/2006) expressly close the opportunity for reporters not to be prosecuted as long as they provide reports in good faith; however, SEMA instead provides space for reporters to also be processed legally for the reports they submit—which creates a paradox of legislation that confuses reporters and law enforcement officers.

As a result of the duality of these norms, a whistleblower who dares to reveal a criminal act of corruption still faces a threatening legal uncertainty—who confirms that they are safe from counter-claims? When will the reporter be prioritized? Who ensures their safety? These questions are crucial because the level of threat to whistleblowers is very high, including the possibility of dismissal, intimidation, or physical threats. Consequently, public participation in eradicating corruption is still limited by the cautious attitude of citizens because the protection regulations are not operational and have not been integrated into criminal procedure law.

In addition, the Supreme Court through SEMA No. 4/2011 tried to answer this challenge by setting criteria for reporters and perpetrators who cooperate, and providing guidelines for judges to prioritize examinations and special treatment such as remission, conditional probation, and protection of identity and safety. However, this Circular is in the context of the lowest regulatory hierarchy and is not legally binding, so it is very dependent on the consistency of implementation by law enforcement officers who are faced with obstacles in the general procedures of the Criminal Procedure Code and normative fragmentation. The dependence on this SEMA shows that criminal procedure law has not systematically adapted the values and mechanisms of protection for justice collaborators and whistleblowers; this step leaves a great risk that protection only applies on a case-by-case basis, not institutionally.

This condition reflects a normative crisis in the criminal procedure law framework: on the one hand, the state needs legal tools to dismantle corruption networks through cooperation between perpetrators and reporters; on the other hand, without a clear and binding legal umbrella, the functions of justice collaborators and whistleblowers can experience a decline in credibility or even abuse, if not accompanied by a procedural protection and monitoring mechanism. This situation confirms that the Criminal Procedure Code, which is lex generalis plus SEMA and separate laws, has not created harmony between the strategic needs of eradicating corruption and the principles of criminal justice.

Looking at international comparisons, UN Convention Against Corruption (UNCAC) Article 37 encourages participating countries to provide incentives or even legal immunity for perpetrators' cooperation in the prosecution system (Carlton & UNCAC, 2003). Indonesia as a ratifying party is expected to adopt this value in material and procedural laws. However, until now, domestic criminal procedural law has not accommodated this principle comprehensively or consistently in the revised Criminal Procedure Code Bill. As a result, the imbalance between procedural law and international instruments weakens the position of justice collaborators and whistleblowers, and hinders the effectiveness of eradicating corruption which requires an extraordinary approach.

Therefore, reform of the criminal procedure law system becomes a normative and practical necessity. This reform must lead to the integration of justice collaborator and whistleblower protection instruments into the Criminal Procedure Code or the Corruption Law, with binding and measurable regulations: for example, guarantees of identity protection, rights to legal counsel, priority examination procedures, criminal incentive mechanisms, and prohibitions on prosecution for reporters

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in good faith. Without these steps, Indonesian criminal procedure law will only become a selective legal curator in empowering extraordinary instruments that are important for eradicating corruption.

In conclusion, the close relationship between the extraordinary crime character of corruption and the right of the perpetrator or reporter to cooperate demands the renewal of criminal procedure law. Within the framework of a state of law, this renewal must create a balance: providing legal space for extraordinary actions, while protecting the human rights of suspects and reporters so that they do not become procedural victims. The urgency of this transformation is not merely a matter of legal technique; it is more related to the legitimacy of the state, the effectiveness of law enforcement, and public trust in the criminal system. The next section will outline the benchmarks for improving inclusive and responsive regulations for extraordinary corruption cases in the era of modern democracy.

The Urgency of Updating Criminal Procedure Law to Accommodate It Procedurally and Fairly

Handling corruption in Indonesia requires a procedural law approach that not only recognizes the extraordinary nature of the crime, but is also able to accommodate modern legal mechanisms such as justice collaborators and plea bargaining. The concept of justice collaborators, witnesses or suspects who cooperate fully with law enforcement officers to uncover corruption networks, has the potential to reveal hidden facts and uncover the actors behind major scandals (Thalib et al., 2017). However, according to a study by Aji Lukmansyah (6 months ago), although legal norms in Indonesia, especially SE MA No. 4 of 2011 and the Witness and Victim Law, mention and provide recognition, there has been no clear procedural description outlining the criteria, legal rights, and incentive sanctions for justice collaborators. As a result, justice collaborators are vulnerable to losing substantial legal guarantees such as remission, witness protection, or formal recognition in court, so that this uncertainty makes them reluctant to collaborate, especially in high-risk major corruption cases.

Risk reduction and incentives for justice collaborators actually have a strong basis, according to the mandate of UNCAC Article 37(2), which has been ratified by Indonesia. This mechanism emphasizes the need for the state to provide leniency or immunity for those who substantially assist in the prosecution of corruption crimes. Comparative studies of the common law system show that through the plea bargaining system, defendants who admit their guilt and assist in the investigation process or provide state assets can get reduced sentences and fast procedures (Megayani & Darmadi, 3½ years ago). This system has proven to be able to accelerate the return of state assets and the deepening of corruption cases at a level that cannot be achieved by ordinary court channels.

However, in Indonesia, the implementation of plea bargaining is still on the verge of an idea. The Criminal Procedure Code Bill which includes a "special path" mechanism still does not fully imitate common law-style sentencing negotiations, but rather merely access to a quick settlement without clear negotiation procedures or asset incentives (Risda Ramadhan, 2015; Pratiwi, 2023). This inequality makes it difficult for officials to obtain efficient legal tools and tactics, while defendants still have to face the risk of maximum sentences even though they have cooperated. This condition shows the unpreparedness of our criminal procedure law in responding to international legal facts and the urgency of eradicating modern corruption.

In addition, institutional arrangements also need to be considered. The KPK and LPSK, institutions that are the main parties in facilitating justice collaborators, often face obstacles in understanding and practicing justice towards this mechanism, including matters of evidence, witness statements, and testimony verification procedures (Thalib et al., 2017). In fact, the conformity between the role of justice collaborators and constitutional norms on witness and victim protection is very important for the legitimacy of law enforcement.

Thus, criminal procedural law reform is needed in the form of:

1. Formal integration of justice collaborators in the Criminal Procedure Code or the Corruption Law, complete with criteria, status application procedures, incentive rights (remission, conditional release, reduction of sentence), and obligations of officers in providing physical and psychological protection in accordance with the Witness and Victim Law.

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2. Adoption of clear plea bargaining in the formal mechanism of criminal procedure law, with essential negotiation parameters: type of demand, duration of sentence, obligation to restitution or return assets, and deadline for completion according to global best practices (America, Canada), as well as APPLE guidelines (Argument, Public interest, Legal certainty, Legal principle, Efficiency) in legal reform.
3. Institutional coordination that is determined regulatoryly between the Corruption Eradication Committee (KPK), LPSK (Lembaga Penitentiary Agency), the Prosecutor's Office, and the Police, so that the status of justice collaborator and plea bargaining is recognized in its entirety across all stages of the trial: investigation, prosecution, and execution.
4. Affirmation of the legitimacy of digital and electronic evidence, because collaborators often bring access to internal information materials so that evidence of wiretapping and electronic fund transfers must be recognized as legally valid and not easily dismissed.
5. Intensive training for officers: judges, prosecutors, and investigators require a practical understanding of the procedures for assisting justice collaborators and facilitating plea bargaining so that the implementation of the rules does not stagnate in procedural doubt.

This whole idea strengthens the thesis that corruption really needs an extraordinary procedural law approach because without adaptive and strategic evidence-based procedural law services from justice collaborators, our law enforcement system loses its ability to touch the main actors and unravel the syndicate structure even though the Criminal Procedure Code formally opens up space, but practically ignores the courage of the perpetrators or witnesses who are the key to eradication. This procedural reform not only simplifies the system, but also increases legitimacy, efficiency, and the return of state assets, all in line with the spirit of the rule of law and the public mandate in demanding law enforcement towards justice and effectiveness.

CONCLUSION

Corruption is an extraordinary crime that cannot be handled with a conventional criminal procedure law approach. The complexity of the perpetrators' networks, hidden modus operandi, and its damaging impact on the state system demand procedural law reform that can accommodate the principles of justice and the effectiveness of law enforcement. The Criminal Procedure Code as lex generalis has proven unable to answer this challenge, especially in terms of electronic evidence, protection of justice collaborators and whistleblowers, and procedural weaknesses in handling cases involving digital evidence and a structural approach. This imbalance causes inconsistency in legal protection for perpetrators who cooperate and reporters who act in good faith, and hinders the process of revealing facts in corruption cases that are systemic and organized.

As a strategic step, criminal procedure law reform must be directed at integrating specific norms that explicitly regulate the justice collaborator and plea bargaining mechanisms into the national criminal justice system. The draft of the Criminal Procedure Code reform must include procedural provisions that guarantee legal certainty, physical and legal protection for reporters, and formal recognition of the contribution of perpetrators who cooperate in providing evidence. In addition, it is necessary to formulate legal standards for the validity of electronic evidence, wiretapping, and strong institutional coordination between law enforcers. Without these steps, eradicating corruption will only be normative rhetoric without substantive effectiveness in enforcing justice.

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