

## LEGAL DISCOVERY AND JUDGES' LEGAL REASONING IN RESOLUTION OF CORRUPTION CASES IN INDONESIA

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### Abstract

Corruption is an extraordinary crime that requires a progressive legal approach, including in the process of legal discovery by judges. The complexity of the methods and the development of state losses mean that the application of laws does not always provide certainty in resolving cases. Therefore, legal reasoning is a crucial instrument for emphasizing the principles of justice, certainty, and expediency. This study aims to analyze the legal discovery model in corruption cases and how judges construct legal arguments in their decisions. The research method uses a normative legal approach through analysis of laws, legal principles, and court decisions. The results of the study indicate that legal discovery is necessary in corruption cases involving legal loopholes, multiple interpretations of state losses, and indirect evidence. Legal reasoning can strengthen the legitimacy of decisions and serve as the basis for responsive legal development.

**Keywords:** *Legal discovery, Legal reasoning, Corruption crimes, Judges, Court decisions*

### INTRODUCTION

Corruption in Indonesia continues to evolve, with various methods and involving actors holding strategic positions within the state administration. This complexity increases with technological advances, the development of bureaucratic systems, and the weakening integrity of some state officials. Corruption not only harms state finances but also undermines the foundations of public trust, government legitimacy, and the effectiveness of state administration. In such circumstances, law enforcement cannot rely solely on normative application but requires judges' sensitivity in understanding the social structure and values of substantive justice that exist within society. In various parts of the world, corruption consistently receives far more attention than other crimes. This phenomenon is understandable given the significant negative impact it causes. Corruption is often tolerated by various parties rather than seriously eradicated. Yet, corruption is a crime that can affect various important interests, such as human rights, state ideology, the economy, state finances, national morality, and other fundamental aspects. Corruption is even considered a criminal behavior that tends to be difficult to overcome.

The difficulty in eradicating corruption is evident in the large number of defendants in corruption cases who are acquitted, often with sentences disproportionate to the crimes they committed. This situation is highly detrimental to the state and hinders national development. If this situation persists over a prolonged period, it can erode the sense of justice and undermine public trust in the law and applicable regulations. To achieve justice in corruption cases, judges are often faced with situations where the law cannot provide a direct answer. Legal vacuums (*rechtsvacuum*), unclear norms (*vage norm*), and regulatory disharmony often present obstacles in the process of proving and imposing sanctions. In this context, legal discovery (*rechtsvinding*) becomes crucial as an instrument for judges to ensure the law remains able to respond to societal dynamics. As stated by Rahmayanti, legal discovery is carried out by judges to fill normative vacuums and clarify the meaning of regulations systematically, logically, and based on the values of justice. This process will only be effective if supported by strong legal reasoning, methodologically sound, and consistent with the principles of criminal law. In corruption cases, judges often employ teleological, systematic, extensive, and even legal construction methods to produce decisions that not only comply with positive law but also reflect the spirit of eradicating corruption. The application of teleological interpretation is crucial for exploring the purpose of the Anti-Corruption Law, namely, creating a clean government free from corrupt practices. Furthermore, the use of extensive methods allows judges to broaden the meaning of norms to encompass corrupt

acts that are not explicitly regulated but substantially harm state finances. The Law on the Eradication of Criminal Acts of Corruption only regulates material and financial corruption. Article 2 of Law No. 31 of 1999 which was revised by Law No. 20 of 2001 against perpetrators of criminal acts of corruption for state officials in the perspective of Islamic law is implemented because it is appropriate and in line with *maqasid al-tasyri'* in the sense of still considering the public interest that is oriented towards the benefit and rejecting all evil. Therefore, the main problem in this study is the legal sanctions against perpetrators of criminal acts of corruption according to positive law in Indonesia in law. The theory of Islamic criminal law is regarding the division and operationalization of *jinayah* or *jarimah* and the application of sanctions. To eradicate corruption there are four efforts that must be done immediately, namely: first, Maximizing punishment. Punishment in physical form needs to be discussed and if possible implemented even if necessary up to the death penalty.

Second, Enforcement of the Supremacy of Law. The law must be upheld and enforced fairly without discrimination, including if corruption is carried out by high officials who have strong power and influence. Third, system change and improvement. The research method used was a normative approach. The results concluded that corruption is generally committed by individuals in positions of power, so the characteristics of corruption crimes are always related to the abuse of power, from an organized crime perspective. On the other hand, Rahman emphasized that legal findings in corruption cases must still adhere to the principles of the rule of law and due process of law, which guarantee the rights of the accused, including the principles of legality, non-retroactivity, and legal certainty. In other words, judges' creativity remains limited by the constitutional framework and fundamental principles of criminal law. Given this urgency, this article aims to discuss the legal discovery model in corruption cases and how judges construct legal reasoning in deciding complex corruption cases. This investigation is crucial for strengthening the quality of court decisions, ensuring consistent legal application, and encouraging reform of Indonesian criminal law to be more responsive to developments in corruption.

## FORMULATION OF THE PROBLEM

1. What is the concept of legal discovery from the perspective of juridical reasoning?
2. Why is legal discovery necessary in resolving corruption cases?
3. What is the judge's legal reasoning model in deciding corruption cases?

## RESEARCH METHODS

This research is a normative juridical study, namely legal research that relies on the study of written norms, legal principles, and court decisions as the primary legal materials. This approach was chosen because the issue of judges' legal reasoning in corruption cases is essentially a normative issue, requiring analysis of the construction of laws and regulations, doctrine, and judicial practice in enforcing corruption laws in Indonesia.

To strengthen the analysis, this study uses several approaches as follows:

### 1. Statute Approach

The legislative approach is carried out by examining relevant provisions, including Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, the New Criminal Code (KUHP) Law Number 1 of 2023, and the Criminal Procedure Code (KUHAP). This approach is important for understanding the normative construction of the elements of corruption crimes, the limits of punishment, evidence, and the interpretative space available to judges.

### 2. Case Approach

The case-based approach is conducted through an analysis of several corruption court decisions (Tipikor), both at first instance, appeal, cassation, and judicial review. This approach aims to examine judges' legal reasoning patterns, interpretative tendencies, and the application of criminal law principles in corruption cases. Examples of cases analyzed include decisions concerning state losses, abuse of authority, following the money, and decisions defining the limits of criminal liability for public officials.

### 3. Conceptual Approach

A conceptual approach is used to understand legal theories that serve as analytical foundations, such as legal discovery theory, legal reasoning theory, and crime and corruption theory. This approach allows researchers to develop more comprehensive arguments to explain how judges construct legal frameworks in corruption cases, including the use of extensive and teleological interpretations, and the limited integration of restorative justice principles.

The data were analyzed using legal interpretation and legal construction techniques, namely interpreting norms based on the principles of criminal law, theories of judicial reasoning, and exploring legal arguments from

court decisions. Legal construction analysis was used to develop a new understanding of the reasoning patterns of judges in deciding corruption cases, particularly in the context of the development of the New Criminal Code, which provides broader scope for the principles of proportionality, restitution of state losses, and the reconstruction of modern forms of punishment.

## **DISCUSSION**

### **1. The Concept of Legal Discovery and Juridical Reasoning**

Legal discovery (*rechtsvinding*) is the process by which judges discover, interpret, and develop the law when positive norms do not provide clear answers or raise doubts about their application. In the context of rapidly evolving corruption with various methods, legal gaps often emerge, demanding judicial creativity from judges. Corruption, as an extraordinary crime, demands a progressive legal approach without neglecting the fundamental principles of criminal law. Therefore, legal discovery serves as a bridge between regulatory texts and empirical reality.

In corruption cases, there are several legal loopholes that most often require legal discovery by judges, namely:

#### **a. Determination of State Losses**

Determining state losses often causes debate because it must be proven by official audit instruments, such as the BPK or BPKP.

Therefore, demands for the government's seriousness in combating corruption in Indonesia have recently become increasingly prevalent, especially with the emergence of news related to corruption in the procurement of goods and services for every city, district, village, and hamlet agency, especially in Langkat Regency. It often happens that the funds do not flow according to reality. Regardless of who is wrong and who is right in this matter, it is clear that various efforts have been made by the government in law enforcement matters, including in the procurement of goods and services for each region through repressive measures. Considering that some people still believe that corruption can only be overcome with firm repressive measures. However, in many corruption cases, judges face situations where the losses are not yet final, are potential, or have not been comprehensively calculated. In such circumstances, judges use legal construction and systematic interpretation to assess whether the act meets the elements of "causing state harm," even though the exact figures are not yet final.

#### **b. Inclusion of Actors (*Deelneming*)**

Legal loopholes also arise in the concept of involving perpetrators, particularly in cases involving multiple parties, such as department heads, treasurers, private parties, or authorized users of budgets. The Criminal Code and the Corruption Law do not specifically define role boundaries, requiring judges to use a doctrinal approach to determine whether someone is a perpetrator, an accomplice (*medepleger*), or an aid (*medeplichtige*).

#### **c. Proof Method**

The Corruption Law allows for limited reversal of proof, but its application must be careful to avoid violating the presumption of innocence. Problems arise when administrative evidence is incomplete, digital traces are unclear, or the flow of funds is difficult to trace. In these situations, judges rely on evidentiary theory, logical reasoning, and the consistency of the evidence.

#### **d. Interpretation of Corruption Crimes that are Open Norm**

Many articles in the Corruption Eradication Law are open norms or undetermined legal concepts, such as the terms "abuse of authority," "self-enrichment," or "unlawful act." Judges must interpret these terms contextually, taking into account doctrine, jurisprudence, and the purpose of the lawmakers (*telos legis*). Legal Reasoning as the Basis for Judges' Decisions Legal reasoning is the logical foundation judges use to construct arguments and conclusions in their decisions. Without proper reasoning, decisions lack philosophical and scientific foundations. In corruption cases, legal reasoning is crucial because corruption cases often involve complex evidence, power relations, and political and bureaucratic influence. Some forms of legal reasoning used by judges include:

#### **a. Analogy (*Argumentum per Analogiam*)**

Analogies are used when the law does not specifically regulate an action, but there are similar regulations that can be used as a comparison. In the Corruption Eradication Commission (Tipikor), analogies are often used to adjust the definitions of "state losses," "unlawful acts," or "abuse of authority." However, judges must be careful not to violate the principle of *nullum crimen sine lege*.

**b. Argumentum a Contrario**

It's used when a judge draws a conclusion based on the opposite of existing norms. For example, if a regulation states that a certain permit can only be held by officials, then non-officials are automatically not authorized to issue such a decision. In corruption cases, a *contrario* can be used to demonstrate that the perpetrator's actions outside their authority constitute an abuse of power.

**c. Systematic Interpretation (Systematische Interpretatie)**

Judges interpret norms by examining the relationships between articles, laws, and the legal system as a whole. This interpretation is often used to connect the Corruption Law with the State Administration Law, the State Finance Law, or the LKPP regulations.

**d. Teleological Interpretation (Doelmatige Interpretatie)**

Teleology is used to explore the purpose of the Corruption Eradication Law. The goal is to maintain the integrity of state administration and effectively eradicate corruption. This goal-based interpretation helps judges apply the law more progressively while remaining within the bounds of legality.

**e. Proof Theory Beyond Reasonable Doubt**

In criminal law, a judge must be convinced of the defendant's guilt beyond a reasonable doubt. In corruption cases, this standard is difficult to apply because the evidence is often indirect. Therefore, judges combine administrative evidence, witness testimony, digital footprints, and financial analysis to reach a legal conviction. Thus, legal discovery and legal reasoning are inseparable. Both serve as a means for judges to maintain a balance between the demands of eradicating corruption and protecting the defendant's human rights within the framework of the rule of law.

**2. The Urgency of Legal Discovery in Resolving Corruption Cases**

The handling of corruption cases in Indonesia demonstrates that judges do not always find normative answers directly from the text of the law. The complexity of power structures, technological advancements, and changes in the methods of corruption create situations where written law is no longer sufficient. Therefore, legal discovery is an inherent necessity in the corruption trial process. The following are some conditions that encourage judges to engage in legal discovery:

**a. Normative Voids and Regulatory Gaps**

A legal vacuum (*rechtsvacuum*) occurs when the law does not clearly regulate an event or action. In the context of modern corruption, many forms of state losses arise from digitalization policies, such as the manipulation of electronic payment systems, algorithmic fraud, or the misuse of cloud-based public service applications. These methods are not yet fully and explicitly regulated in the Corruption Eradication Law or its derivative regulations. A concrete example is state losses arising from regional financial digitalization schemes through system errors, manipulated servers, or digital procurement fraud. While regulations only address general forms of state losses, judges must employ a teleological and systematic interpretation to ensure that such actions still fall within the category of "causing harm to state finances." Therefore, legal discovery is necessary to bridge the gap between technological developments and lagging regulations.

**b. Development of Corruption Modus Operandi**

The modus operandi of corruption continues to evolve from conventional corruption to systemic corruption involving technology, money laundering, and cross-sector collaboration. In contemporary cases, corruption is not only carried out through direct bribery, but also through:

- 1) money laundering which disguises the origins of corrupt funds through shell companies, crypto assets, or offshore accounts;

- 2) disguised gratification, in the form of gifts in the form of digital vouchers, crypto assets, shares, or other corporate benefits;
- 3) digital corruption, for example electronic data manipulation, auction algorithm manipulation, and data tampering in electronic government systems.

Because the development of modus operandi is not always outlined in the Corruption Law, judges must apply extensive interpretation and legal construction to effectively hold perpetrators accountable. This process demonstrates that positive law is not static but must evolve with the dynamics of crime. Therefore, we need to ensure that anti-corruption education doesn't stop at introducing anti-corruption values, but rather progresses to understanding, internalizing, and practicing these values in everyday life. In general, anti-corruption education is viewed as a form of cultural correction aimed at introducing new ways of thinking and values to students. Therefore, this education requires stages of reasoning, internalization of values, and moral formation, so that the learning design focuses not only on cognitive aspects but also on affective and psychomotor aspects. Anti-corruption education is not simply a means of transferring knowledge, but also a process of character formation and moral awareness to combat all forms of corrupt behavior. Through targeted, systematic, and effective anti-corruption education, the internalization of anti-corruption values in students is highly possible. Given that the future of the Indonesian nation and state lies in the hands of the younger generation, strengthening anti-corruption education is crucial. Young people are agents of change who determine the progress or decline of a nation. Therefore, instilling anti-corruption values from an early age is both a moral investment and a long-term strategy for realizing a society of integrity.

**c. Indirect Evidence**

In many corruption cases, direct evidence cannot be established because the perpetrators systematically erase digital traces, manipulate documents, or use third parties as nominees. Therefore, judges often utilize circumstantial evidence to establish legal conviction. Some commonly used indirect evidence includes:

**1) Circumstantial Evidence**

This is indirect evidence that proves a logical sequence of events, for example budget transfer patterns, changes in account balances, or functional relationships between actors.

**2) Investigative Audit**

Audits by the Financial and Development Supervisory Agency (BPKP) or independent auditors are often used to uncover potential state losses, even though the figures are sometimes not final. In such circumstances, judges often use legal construction to assess the sufficiency of the audit as evidence.

**3) Proof of Fund Flow (Follow the Money)**

Tracing the flow of funds through bank accounts, crypto transactions, and digital wallets is vital evidence. Judges often link transaction data to the perpetrator's motives and roles to achieve a standard of proof beyond a reasonable doubt.

In situations where there is minimal direct evidence, judges make legal discoveries through argumentative construction and the use of legal logic to ensure that the evidence remains valid and does not violate the principles of justice.

**d. Strengthening the Principle of Substantive Justice**

Corruption is not simply an unlawful act, but a crime that undermines social structures, weakens governance, and undermines public trust. Therefore, judges often employ a substantive justice approach, rather than merely formal justice.

Judges interpret the law not only based on normative texts, but also based on:

- 1) the purpose of establishing the Corruption Eradication Law,
- 2) social values to be protected,
- 3) the concept of a state based on law which demands clean governance,
- 4) wider public interest.
- 5) This substantive approach is in line with the teleological interpretation, where punishment is imposed not only based on formal elements, but also on the damaging effects caused to the state.

Thus, legal discovery becomes a way for judges to balance the principle of legality and the goal of eradicating corruption.

### 3. Judges' Legal Reasoning Model in Corruption Cases

Judges' legal reasoning in corruption cases is the primary foundation for constructing high-quality, objective decisions that align with the principles of the rule of law. The complexity of corruption, which often involves abuse of authority, white-collar crime, and digital technology, requires judges to develop various models of legal reasoning. These reasoning models are based not only on normative texts but also on rationality, legal doctrine, and the values of substantive justice that the Indonesian criminal law system seeks to achieve. Therefore, support from all components of the nation is needed so that law enforcement officers do not need to hesitate to take action against anyone who commits criminal acts of corruption because the responsibility for eradicating corruption does not only lie on the shoulders of law enforcement officers, but is the responsibility of all components of the nation. The following is a description of the legal reasoning models commonly applied by judges in corruption cases:

#### a. Extensive Interpretation

Extensive interpretation is used to broaden the scope of a norm's meaning without going beyond the logical boundaries of the law. In the Corruption Eradication Law, several terms, such as "state losses," "self-enrichment," or "abuse of authority," are not strictly defined norms and therefore require extensive interpretation. Judges can conclude that "state loss" includes not only actual losses that have occurred, but also potential losses based on investigative audits or expert examinations. Similarly, the phrase "self-enrichment" does not necessarily imply a direct increase in personal assets, but can also involve indirect gains through other parties (nominees or beneficial owners). Extensive interpretation provides a logical bridge between regulations and complex realities on the ground.

#### b. Teleological Interpretation

Teleological interpretation (*doelmatige interpretatie*) is used to interpret norms based on the purpose for which the law was created. In corruption cases, the primary goal of the Corruption Eradication Law is to eradicate corruption effectively, efficiently, and fairly. Thus, judges can broaden their interpretation of actions detrimental to state finances, even if not all factual elements have been fully formulated. Through a teleological approach, judges are able to adapt the application of the law to the dynamics of modern corruption, including digital corruption, disguised bribery, and technology-based abuse of power. This approach ensures that corruption eradication is not hampered by the limitations of formalistic definitions.

#### c. Restorative Justice Approach (Limited)

Although the Corruption Law does not explicitly regulate the concept of restorative justice, the principles of RJ are starting to be considered by judges in certain cases, particularly those involving:

- 1) Small state losses,
- 2) Minor administrative errors,
- 3) Cooperative actors,
- 4) The perpetrator immediately compensates for the loss.

In this context, RJ does not eliminate the criminal penalty, but rather serves as a mitigating factor that influences the severity of the sentence. The judge considered that asset recovery provided greater benefits to the public interest than overly repressive punishment.

The influence of RJ here is not as a form of decriminalization, but as legal reasoning to balance the objectives of criminalization and the effectiveness of recovering state losses.

#### d. Legal Construction of Evidence

Corruption often uses very covert methods, making direct evidence difficult to find. Therefore, judges often construct legal structures around evidence to reach a conviction beyond a reasonable doubt. This reasoning model includes:

##### 1) Investigative Audit as Evidence

The judge considers an investigative audit (by the Financial and Development Supervisory Agency or an independent auditor) to be valid evidence, either expert testimony or documentary evidence, under procedural law. An investigative audit is considered valid even if the loss amount is not yet finalized.

##### 2) Financial Forensic Expert Statement

Financial forensic experts helped explain transaction patterns, money laundering methods, and beneficial ownership schemes. These expert opinions provided a logical basis for the judge in assessing the defendant's actions.

##### 3) Follow the Money Approach

The "follow the money" model of evidence is applied to trace the flow of funds from the perpetrator's account to another party. This method provides strong evidence even if the perpetrator does not admit to the crime. This aligns with modern criminal law principles that digital transaction traces constitute valid and relevant evidence.

**e. Application of the Principle of Proportionality in Criminal Sentencing**

In the New Criminal Code (Law No. 1 of 2023), the principle of proportionality emphasizes that punishment must balance the severity of the offense and the consequences. In corruption cases, this principle is applied through an assessment of:

- 1) The greater the state loss, the more severe the sentence imposed. However, in cases of small losses, the judge may consider a lighter sentence.
- 2) The degree of culpability of the perpetrator includes considerations such as whether the perpetrator acted intentionally, negligently, or simply committed an administrative error. This assessment is important because not all administrative irregularities constitute corruption.
- 3) Restitution and Asset Recovery The New Criminal Code places restitution as an integral part of sentencing. Judges can use asset recovery as a basis for mitigating sentences, in line with the asset recovery principle stipulated in the UNCAC.

Thus, the principle of proportionality ensures that the judge's decision is not only repressive, but also rational, fair, and oriented towards the public interest.

**A. CLOSING**

**Conclusion**

1. Legal discovery plays a crucial role in handling corruption cases, given the complex, systemic nature of these crimes, and their continued development in response to social, political, and technological dynamics. In many cases, positive legal norms are unable to address all forms of corrupt behavior, necessitating legal creativity through a process of legal discovery (*rechtsvinding*) by law enforcement officials, particularly judges.
2. Judges apply progressive legal reasoning in interpreting statutory provisions, with the primary goal of achieving substantive justice. This reasoning is not solely oriented toward formal justice as outlined in the text of the law, but also considers the values of justice inherent in society, social benefits, and the protection of state finances and interests.
3. The legal reasoning model used in resolving corruption cases includes several interpretation and legal construction techniques, including: first, Extensive interpretation, which broadens the meaning of a norm to encompass modes of corruption not explicitly regulated in law. Second, Teleological interpretation, which interprets legal provisions based on the objectives of the Corruption Law, namely to effectively eradicate corruption, protect state finances, and maintain the integrity of state administrators. Third, Legal construction in evidence, which is used to fill the gap in the law of evidence, including in the assessment of indicative evidence, investigative audits, and financial analysis. Fourth, Application of the principle of proportionality in criminal punishment, which ensures that the punishment imposed is proportional to the level of culpability, the impact of state losses, and the role of the perpetrator in the crime.

**Suggestion**

1. Judges and law enforcement officers need to improve their competence in legal reasoning, especially in corruption cases, so that they are able to interpret and construct the law appropriately in accordance with the increasingly complex developments in corruption crimes.
2. Legislation governing the eradication of criminal acts of corruption needs to be updated and adjusted periodically to address the emergence of various new *modus operandi* that are no longer covered by existing legal norms.
3. Legal education, both at undergraduate and postgraduate levels, needs to strengthen studies on the theory and practice of legal discovery in the context of criminal acts of corruption (*Tipikor*) in order to produce graduates who have analytical skills and are responsive to developments in positive law.

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