

## Strategies for Handling Corruption Crime without Punishment through Proactive Recovering

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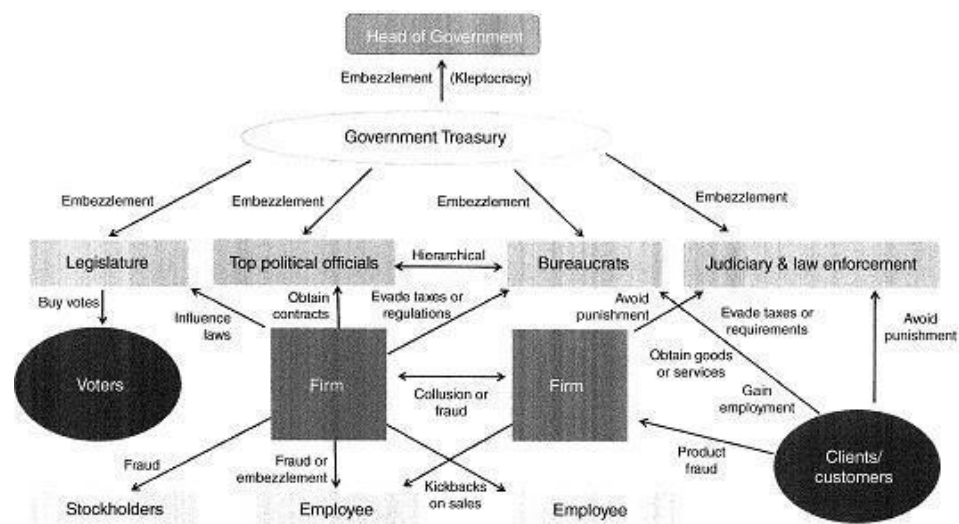
### Abstract

*This research discusses the strategy of handling corruption offences without punishment through proactive recovering. This research uses a qualitative approach with a literature review as well as from secondary data which shows that asset recovery has not been implemented effectively. Another factor is the lack of implementation of Indonesian regulations in an effort to prevent, prosecute, and minimise the amount of corruption in Indonesia. This research also discusses the legal analysis of efforts to return assets from corruption abroad and the role of the KPK in handling infrastructure corruption. The results show that the corruption environment faced by the KPK involves the legislative, executive, and private parties who have great power and authority. This research also discusses governance, political structure, and corruption in Indonesia as well as a review of public procurement corruption in Indonesia. The results show that corruption still occurs in areas that have obtained the best opinion and corruption eradication efforts in the first era of President Jokowi are better than the previous period. Therefore, it is important for BPK to think about more substantive good governance in the reporting mechanism so that it can effectively reduce corruption.*

## I. Introduction

The war on corruption is not an easy matter because corruption cases are sometimes very difficult to uncover. The perpetrators use various modus operandi and usually involve more than one person in a covert and organised situation, so crimes related to corruption are often called White Collar Crime or white collar crime. White collar crime is committed without direct physical violence, but is accompanied by fraud, misdirection, concealment of reality, subterfuge or circumvention of regulations so that the victim does not feel a direct threat. The main characteristics of white-collar criminals are intelligence, position and difficulty to detect.

Figure 1.1 Corruption Crime Interaction



Source: Susan Rose (2016:28)-*Corruption and Government*

The interaction of corruption crimes can be described as follows. Based on general statistical data on the prosecution of corruption cases by the Corruption Eradication Commission from 2004 to 2021, it can be explained as follows. In recapitulating corruption crimes, the KPK divides them into 5 categories. Namely the category of Corruption Crime based on Agency, Corruption Crime based on Case Type, Corruption Crime based on Profession / Position, Corruption Crime based on inkrah case and Corruption Crime based on region. This recapitulation aims to serve as a brief report on KPK's performance in the field of prosecution.

Table 1.1  
Recapitulation of Corruption Cases in 2004-2021

| Year         | Investigation | Indictment | Prosecution | Sentencing | Execution  | Total       |
|--------------|---------------|------------|-------------|------------|------------|-------------|
| 2004         | 23            | 0          | 2           | 0          | 0          | 27          |
| 2005         | 29            | 5          | 17          | 0          | 4          | 74          |
| 2006         | 36            | 14         | 23          | 5          | 13         | 113         |
| 2007         | 70            | 19         | 19          | 19         | 23         | 155         |
| 2008         | 70            | 23         | 35          | 23         | 24         | 199         |
| 2009         | 67            | 37         | 32          | 37         | 37         | 210         |
| 2010         | 54            | 40         | 32          | 34         | 36         | 196         |
| 2011         | 78            | 39         | 40          | 34         | 34         | 225         |
| 2012         | 77            | 48         | 36          | 28         | 32         | 221         |
| 2013         | 81            | 70         | 41          | 40         | 44         | 276         |
| 2014         | 80            | 56         | 50          | 40         | 48         | 281         |
| 2015         | 87            | 57         | 62          | 38         | 38         | 282         |
| 2016         | 96            | 99         | 76          | 71         | 81         | 423         |
| 2017         | 123           | 121        | 103         | 84         | 83         | 514         |
| 2018         | 164           | 199        | 151         | 104        | 113        | 736         |
| 2019         | 142           | 145        | 153         | 142        | 136        | 718         |
| 2020         | 111           | 91         | 75          | 92         | 108        | 477         |
| 2021         | 41            | 22         | 34          | 16         | 18         | 131         |
| <b>Total</b> | <b>1429</b>   | <b>831</b> | <b>981</b>  | <b>831</b> | <b>872</b> | <b>5258</b> |

Source: <https://www.kpk.go.id/id/statistik>

From the data table above, it can be seen that the total number of corruption cases handled by the KPK from 2004 to 2021 is 5,258 cases. Meanwhile, the highest handling of corruption cases occurred in 2018 with a total of 731, with details of the investigation process of 164 cases, investigation of 199 cases, prosecution of 151 cases, final judgement of 104 and execution of 113 cases. Based on this data, the perpetrators are mostly public officials, leaders in the government bureaucracy who are expected to be the pioneers of corruption eradication in their respective regions, in fact, they are caught in corruption cases.

The misuse of the State Budget (APBN), based on the researchers' initial observations, is the most vulnerable point for corruption involving public officials. There are at least three vulnerable points for corrupt practices that commonly occur, including: the planning and budgeting stages, the public service stage and the procurement of goods and services.

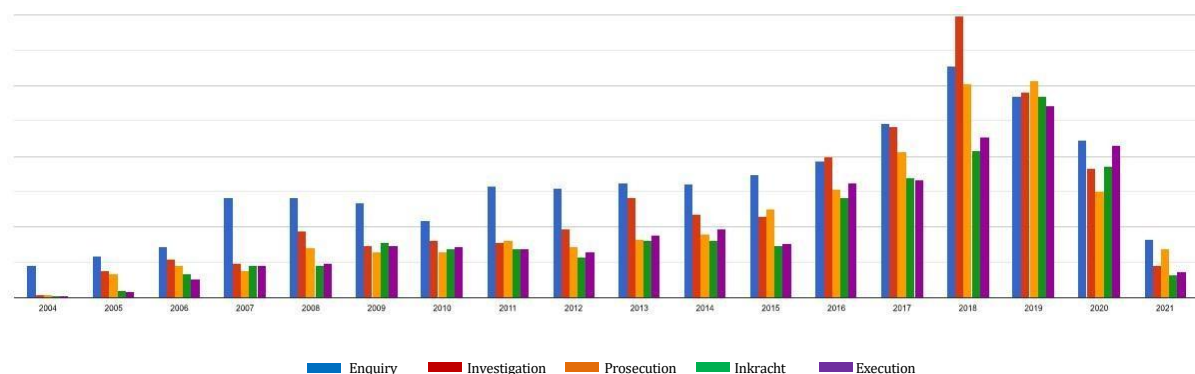
By looking at the complexity of the problem of corruption as a white-collar crime, there are two views on the crime of corruption, including; The first view argues that corruption is an ordinary crime that is massive and endemic, so it requires special handling to overcome it. The second view argues that corruption is an extraordinary crime, this is based on the KPK Law, especially the General Elucidation of Law Number

30 of 2002 concerning the Corruption Eradication Commission, which states that corruption is an extraordinary crime.

Efforts to minimise corruption in Indonesia have also been made, not only through formal juridical aspects, but also through various anti-corruption campaigns in various media. As a common enemy, it is natural that corruption must always be fought and eradicated to its roots. However, the above approach has not shown satisfactory results. Every time a corrupt person is arrested, although it is considered an achievement of law enforcement, but from a cultural perspective, this is a tragic side of an unstoppable corrupt mentality. There are cultural constraints as to why corruption remains so massive, so the eradication of corruption is never complete.

One way to prevent corruption offences is to investigate alleged corruption crimes and conduct asset forfeiture. Given that the Law on the Return of State Assets from Corruption Crimes has not yet been passed, the current mechanism for returning assets is based on Conviction Based (Court Decision), this is in accordance with Law No.8 of 1981 concerning the Criminal Procedure Code (KUHP). Due to the fact that the Draft Law (RUU) on asset forfeiture of criminal offences has not yet been passed, the non-conviction based mechanism cannot be applied in the asset recovery process based on the current legal framework. Asset forfeiture, in accordance with Law No.8 of 1981 on the Criminal Procedure Code (KUHP), can only be carried out with a conviction-based mechanism. In fact, the application of the principle of asset recovery in the management of state assets due to Corruption Crime is only carried out on assets that have been declared seized by the state based on a court decision that has permanent legal force, and its implementation follows the prosecutor's execution of the judge's decision.

Figure 1.2 KPK Corruption Case Prosecution Data 2004-2021



Source: <https://www.kpk.go.id/id/statistik/penindakan/tpk-berdasarkan-instansi>

Therefore, to achieve maximum results, it is necessary to strengthen regulations in the form of a separate law that specifically regulates asset recovery mechanisms comprehensively. Not only does it guarantee legal certainty but it can also have a deterrent effect on the perpetrators of corruption crimes. According to the author, it is interesting to study more deeply by conducting research entitled Integrative model of state asset recovery in corruption offences with a proactive recovering approach.

From the description, it appears that the prosecution of corruption since 2004 has not had a significant impact on reducing the level of corruption, indicating that the theoretical explanation of the symptoms of corruption in Indonesia is not adequate in controlling corruption. The reason, possibly, is that the prosecution of corruption does not understand the multi-faith roots of the problem, especially in the case of corruption of public officials. To effectively prevent corruption, a deep understanding of the root of the problem is needed, by formulating an asset forfeiture model based on a proactive recovering approach, so as to produce an integrative model of multi-causal asset forfeiture in the future. The research questions are, why the handling of corruption has regressed based on the Corruption Perception Index (CPI), and how the model of handling corruption with a proactive recovering approach can be applied.

The scope of this research examines the integrative model of returning state assets in the crime of corruption with a proactive recovering approach, limiting the research locus to asset recovery cases by the Police, Prosecutors' Office, and KPK in 2018-2020.

## **2. Research Method**

### **Type and Type of Research**

This research uses a qualitative approach, which involves analysing the social and cultural symptoms of the community concerned to obtain an overview of generally accepted patterns. The qualitative approach is relevant to be used as an analysis to uncover case studies related to asset returns researched by researchers. Researchers are required to have strategies and abilities as an investigator to obtain data.

### **Data Collection Technique**

Researchers need primary data and secondary data that can provide descriptions and information. Primary data is data collected by researchers from data collected by other parties involved as well as the results of interviews with several informants or sources who are competent with the case study. Meanwhile, secondary data is supporting data such as various theoretical studies and literature related to the problem under study. In an effort to collect data, the techniques and methods used in the research consist of interviews and document studies.

## Data Analysis Technique

Data analysis is an effort made by working with data, organising data, sorting it into manageable units, synthesising, looking for and finding patterns, finding what is important and what is learned, and deciding what can be described to others. This research uses qualitative data analysis, namely data collected in the form of notes, documents, literature and recordings of interviews then transferred in the form of neat and orderly writing. By researchers, the data is combined so that it becomes more accurate and has a clear picture of the problem under study.

## Data Testing Technique

The data that has been collected needs to be validated so that the results of this research are more accurate. To do this, a researcher can use methods such as triangulation techniques, key informant review and member check. This method directs the researcher to use a variety of different data sources in collecting data. In qualitative research, the definition of reliability is different from quantitative research. This happens because there are differences in paradigms in seeing reality. Qualitative research considers that reality is multiple, always changing / dynamic so that nothing is consistent and repeats as before. Reliability in qualitative research is influenced by the definition of concepts.

## 3. Results and Discussion

Based on the research theme "Strategy for Handling Corruption Crime Without Punishment Through Proactive Recovering", the following is an analysis of social and cultural symptoms related to corruption in Indonesia:

### 1. Culture of Tolerance towards Corruption

The concept of tolerance towards corruption is closely related to the culture of society, which views corruption as a common practice and part of the culture. Phenomena such as bribery, nepotism, and abuse of power are considered as ways to solve problems or achieve goals. This culture is reinforced by the lack of strict and consistent law enforcement against perpetrators of corruption. The public sees that corruptors are rarely punished or the punishment given is not commensurate with the crime committed.

This phenomenon can be understood through Durkheim's anomie theory,

which states that the weakening of social norms and values in society causes individuals to no longer be bound by rules and morality, thus opening up space for corruption. In this context, the high tolerance for corruption can be seen as a manifestation of anomie, where the weakness of social norms and values has created a moral vacuum that allows corruption to flourish, (Durkheim, 1893).

The lack of effective law enforcement and the perception that the corrupt are rarely punished or the punishment given is not commensurate with the crime committed can be seen as a reflection of anomie in society. When laws are not consistently and effectively enforced, the message is that corruption is accepted, which in turn reinforces a culture of tolerance towards corruption.

In addition, the prevalence of corruption in society can also be seen as a result of anomie, where individuals are no longer bound by morality and are more likely to participate in corrupt practices as a means to an end. The weakness of social norms and values has created an environment where individuals are more likely to prioritise self-interest over the well-being of society, thus creating a culture of corruption.

The culture of tolerance towards corruption in society is strongly linked to the anomie that exists in society. The lack of effective law enforcement and the perception that corrupt people are rarely punished or that the punishment given is not commensurate with the crime committed are all reflections of anomie in society. Addressing a culture of tolerance towards corruption requires addressing the anomie that exists in society, which can be achieved by strengthening social norms and values, as well as effective law enforcement.

## 2. Weak Moral and Ethical Values

A society that lacks strong moral and ethical values, such as integrity, honesty and accountability. This makes individuals easily tempted to commit corruption for personal gain. The weakness of moral values can also be seen from phenomena such as materialism, hedonism, and individualism that are increasingly prevalent in society.

The Rational Choice theory, proposed by Gary Becker in 1968, also explains that individuals commit corruption because they consider the benefits and costs associated with such actions. If individuals feel that the benefits of corruption outweigh the costs, they are more likely to do so, (Becker, 1968).

In this context, Rational Choice theory can be linked to the concept of individualism, which can be seen as a value that allows individuals to maintain self-interest and seek individualised benefits. However, in situations of

corruption, individualism can turn into a value that allows individuals to defend personal interests in ways that are unethical and incompatible with strong moral values.

In some theories, individualism can be seen as a value that allows individuals to defend their personal interests and seek individualised benefits. However, in corruption situations, individualism can turn into a value that allows individuals to defend personal interests in ways that are unethical and incompatible with strong moral values.

Examples of individualism theory can be seen in the works of several philosophers and social theorists, such as Rousseau, Marx, Hayek, and Gramsci. They explain that individualism can be a value that allows individuals to defend their personal interests and seek individual benefits, but it can also be a value that allows individuals to defend their personal interests in ways that are unethical and incompatible with strong moral values.

Weak moral and ethical values in society can be seen as a factor that allows corruption to flourish. Rational Choice Theory explains that individuals engage in corruption because they consider the benefits and costs associated with such actions. In this context, individualism can be seen as a value that allows individuals to maintain self-interest and seek individualised benefits, but it can also be a value that allows individuals to maintain self-interest in ways that are unethical and incompatible with strong moral values. Individuals engage in corruption because they weigh the benefits and costs associated with the act. If individuals feel that the benefits of corruption outweigh the costs, they are more likely to do so, (Becker, 1968).

### 3. Lack of Legal Awareness

People still lack adequate legal awareness, especially in relation to corruption offences. This causes them to not understand the dangers and consequences of corruption, both for themselves and for society as a whole. This lack of legal awareness can also be seen from phenomena such as people who are easily manipulated by corrupt actors to commit acts of corruption.

Agency theory explains that corruption can occur when agents (officials) have more information than principals (society), so they can abuse their power for personal gain. In this context, a lack of legal awareness can allow corrupt actors to abuse their power in ways that are unethical and incompatible with strong moral values, (Michael C. Jensen, William H. Meckling, 1976).

Legal awareness includes an understanding of the consequences of breaking

the law, both personally and as a member of society. Legal awareness encourages people to participate in elections and the democratic process. They realise the importance of their voting rights and their responsibilities in electing leaders who are responsible and represent the interests of the community. With legal awareness, people can respect the democratic process, avoid corrupt practices, and contribute to the formation of public policies.

The characteristics of high legal awareness in society include knowledge of legal regulations, knowledge of the content of legal regulations, attitudes towards legal regulations, patterns of legal behaviour, and assessment of legal awareness which involves several factors, such as whether the legal provisions are known, understood, obeyed and respected. Legal awareness is needed by every community, from children to adults, to create order, peace, justice, and peace that can be realised in life or even interactions between communities.

In conclusion, the lack of legal awareness in society can allow corruption to flourish. Agency theory explains that corruption can occur when agents have more information than principals, so they can abuse their power for personal gain. Legal awareness is necessary for society, to understand the dangers and consequences of corruption, as well as to respect the democratic process and avoid corrupt practices.

#### 4. Weak Political and Bureaucratic Structures

**Weak Political and Bureaucratic Structures:** Indonesia's political and bureaucratic structures are weak and prone to corruption. This is due to factors such as nepotism, patronage, and lack of transparency and accountability. These weak structures make it easy for officials to commit corruption without being detected or prosecuted.

Durkheim's Anomie Theory explains that the weakening of political and bureaucratic structures creates an opening for corruption to flourish. In this context, the weak political and bureaucratic structures in Indonesia allow corruption to flourish due to the lack of transparency and accountability, as well as the existence of nepotism and patronage, (Durkheim, 1893).

The lack of transparency and accountability in the bureaucracy allows corruption to occur. A non-transparent and unaccountable bureaucracy allows officials to commit corruption without being detected or prosecuted. Nepotism and patronage also allow corruption to occur, as officials who have relationships with other officials can commit corruption easily.

The weakness of the political structure and bureaucracy in Indonesia is also

caused by the lack of professionalism and integrity in the bureaucracy. Unprofessional bureaucracy and lack of integrity allow corruption to occur. Officials who lack competence and integrity allow corruption to occur.

The weak political and bureaucratic structures in Indonesia allow corruption to flourish. Lack of transparency and accountability, as well as nepotism and patronage allow corruption to occur. The weak political and bureaucratic structures in Indonesia are also caused by the lack of professionalism and integrity in the bureaucracy.

#### 5. Culture of Impunity:

In Indonesia there is still a culture of impunity, where officials and political elites feel immune to the law and cannot be punished for their acts of corruption. This further exacerbates the culture of tolerance towards corruption and weakens efforts to eradicate corruption.

Rational Choice Theory explains that a culture of impunity incentivises officials to commit corruption because they feel safe from punishment. In this context, a culture of impunity allows corruption to occur because officials feel that they will not be punished or that the punishment given is not commensurate with the crime committed, (Becker, 1968).

Lack of legal awareness and weak political and bureaucratic structures also allow corruption to occur. Legal awareness includes an understanding of the consequences of breaking the law, both personally and as a member of society. Legal awareness encourages people to participate in elections and the democratic process. They realise the importance of their voting rights and their responsibility in electing leaders who are accountable and represent the interests of the community.

Weak political and bureaucratic structures in Indonesia allow corruption to occur. A bureaucracy that is unprofessional and lacks integrity allows corruption to occur. Officials who lack competence and integrity allow corruption to occur.

The culture of impunity in Indonesia allows corruption to occur. Lack of legal awareness and weak political and bureaucratic structures allow corruption to occur. The culture of impunity incentivises officials to commit corruption as they feel safe from punishment. To tackle corruption, further efforts are needed to raise legal awareness and strengthen political and bureaucratic structures.

#### 4. Conclusion

The handling of corruption offences in Indonesia has a long history. The government has taken steps to tackle corruption, but these efforts have failed. Corruption has become a complex problem and requires a more effective approach.

Law No. 31/1999 and Law No. 20/2001 are the legal basis that regulates the handling of corruption offences in Indonesia. Law No. 31/1999 distinguishes between corruption and official crimes, and increases the criminal penalties for perpetrators of corruption. Law No. 20/2001 replaced Law No. 31/1999 and established the Corruption Eradication Commission.

The strategy for handling corruption offences in Indonesia includes several steps, such as:

1. Recovery of state loss assets through a soft power approach.
2. Internal and external factors of corruption offences.
3. New policy breakthroughs to handle corruption cases in Indonesia.
4. Models of successful return of state assets by other countries.
5. The economic benefits of returning state assets are maximised.

Handling corruption offences in Indonesia still requires a more effective and strategic approach. In an effort to overcome corruption, the government must strengthen the legal basis and improve the ability of law enforcement institutions. In addition, the strategy for handling corruption must focus more on recovering state assets and increasing transparency in state financial management.

#### Suggestions

1. The government should improve the capabilities of law enforcement institutions by providing better training to officers and improving their technical capabilities.
2. Improve transparency in state financial management by ensuring that all state financial transactions are conducted in an open and transparent manner.
3. Improve the ability of the public to combat corruption by providing better education and awareness about corruption and the importance of combating it.
4. The government should increase co-operation with other countries in combating corruption by sharing better information and technology.
5. Provide criminal sanctions for perpetrators of corruption by increasing harsher penalties and ensuring that they are applied fairly and transparently.

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