

Progressive Legal Approach In The Reconstruction Of Criminal Sanctions For Corporations Involved In Corruption

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Abstract

Corruption crimes committed by corporations have become a serious threat to the economy and public trust. The research method used is normative juridical with an approach to laws and regulations, concepts, and cases. The results of the study show that criminal sanctions for corporations are still formalistic and lack a deterrent effect. However, the corporate criminal sanctions system in corruption cases still has various weaknesses, one of which is **the lack of an optimal state financial recovery mechanism**. In many cases, even though companies are sentenced to fines, the funds from corruption that have been misused are not fully refundable. This is due to several factors, such as weak regulations related to asset recovery, difficulty in tracking the flow of funds that have been laundered, the length of the legal process, and the abuse of legal procedures by corrupt actors. This weakness has a direct impact on increasing state losses, weakening the deterrent effect for corporations, and decreasing public trust in the legal system. To address this problem, stricter legal reforms are needed in terms of asset seizure and recovery, increased international cooperation in tracking corruption proceeds, and the use of technology in financial investigations. By strengthening the state's financial recovery mechanism, it is hoped that corruption in the corporate sector can be suppressed more effectively, and state finances can be restored optimally

1. Introduction

Corporations are often the main actors in corruption crimes, either through bribery, embezzlement, or collusion with state officials. However, the regulation on corporate criminal liability in Indonesian law is still not fully effective in providing appropriate sanctions. Law No. 31 of 1999 jo. Law No. 20 of 2001 concerning the Eradication of Corruption Crimes has accommodated the responsibility of corporations, but the application of sanctions is often limited to administrative fines without touching the aspect of justice for the community.

The progressive legal approach, as developed by Satjipto Rahardjo, emphasizes the importance of a dynamic and substantive justice-oriented law, not just formal compliance with legal norms. In this context, the reconstruction of criminal sanctions for corporations involved in corruption needs to consider aspects of prevention, recovery, and stronger deterrent effects.

Corruption crimes involving corporations are increasingly becoming a serious concern in Indonesia. Corruption committed by companies not only harms the country's finances, but also damages the economic order and public trust in the legal system. Although there have been various regulations governing corporate criminal liability, the application of sanctions against companies proven to have committed corruption still faces various obstacles, including weak law enforcement and the lack of deterrent effects from the sanctions imposed.

In practice, the penalties given to corporations are often only in the form of relatively light fines compared to the impact caused. As a result, companies that commit corruption crimes can still operate without any significant changes in their governance systems. This shows that the legal approach used still tends to be formalistic and has not been able to provide substantive justice.

The progressive legal approach offers a solution by emphasizing the balance between punishment and rehabilitation. Progressive law is oriented towards broader justice, not only providing sanctions, but also ensuring systemic improvements in the management of companies. Therefore, the reconstruction of criminal sanctions for corporations involved in corruption cases is a must in order to provide a stronger deterrent effect and encourage change in the business world.

This research focuses on analyzing the implementation of criminal sanctions against corporations in corruption cases and formulating sanctions reconstruction based on the values of justice in progressive law. With this approach, it is hoped that the criminal law will not only take firm action against the perpetrators but also be able to prevent similar crimes in the future by emphasizing the aspects of reform and recovery of state finances.

Corruption is one of the biggest problems faced by many countries, including Indonesia. Corrupt practices are not only carried out by individuals, but also by corporations that have great economic and political power. Corporations are often involved in corrupt acts such as bribery, abuse of authority, contract manipulation, and money laundering. These crimes have a serious impact on **the country's finances, economic stability, and public confidence in the legal system.**

Although there are already regulations that regulate **corporate criminal liability in corruption cases**, the sanction system implemented still has many weaknesses. One of the most significant drawbacks is the **lack of an optimal state financial recovery mechanism.** Many corruption cases have led to fines for corporations, but the proceeds of crime are not fully returned to the state. This causes the state to continue to suffer huge losses, while the main actors in corporations can still benefit from these illegal actions.

Some of the factors that cause the weak state financial recovery mechanism in corporate corruption cases include:

1. **Regulations that are less effective** in regulating the confiscation and recovery of assets resulting from corruption.
2. **It is difficult to track the flow of proceeds of crime**, especially if it has been laundered through various financial transactions or stored abroad.
3. **The legal process is long and complicated**, so that the funds from corruption can be increasingly difficult to trace or have been diverted to other parties.
4. **Abuse of legal procedures by corporations**, such as counterclaims or attempts to obstruct asset confiscation.

The impact of this weakness is huge, especially for state finances and society. Without an optimal recovery mechanism, funds that have been misused cannot be reused for the public interest. In addition, the lack of asset recovery also makes the deterrent effect on corporations low, so that corrupt practices continue to be rampant. Therefore, it is necessary to **improve the legal system and more effective asset recovery strategies**, such as strengthening regulations related to asset confiscation, increasing international cooperation, and using technology in investigating the flow of corrupt funds

2. Result And Discussion

From the results of the analysis of several corruption cases involving corporations, it was found that the criminal sanctions imposed still tended to be light and did not provide a deterrent effect. Some of the weaknesses found include:

1. **Sanctions limited to fines without dissolution of the company or revocation of business licenses**Sanctions in the form of fines alone often do not provide a deterrent effect for corporations that commit corruption. Without the threat of dissolution or revocation of business licenses, companies can still continue to operate and potentially repeat similar actions. Therefore, there needs to be a stricter reconstruction of sanctions, such as the dissolution of companies proven to be systematically corrupt or the revocation of business licenses for those who repeatedly violate the law.

A. Lack of Deterrent Effect

The fines imposed are often not proportional to the profits obtained from acts of corruption, so corporations still benefit even if they have violated the law.

Corporations can consider fines as "operational costs" rather than serious penalties.

B.The main perpetrator remains free

The sanction of fines only burdens the company financially, while the individuals responsible for corruption, such as directors or managers, may not be sanctioned appropriately.

This opens up opportunities for individuals within the company to repeat similar

actions in the future.

C. Not Preventing Repeat Crimes

If the business license is not revoked or the company is not dissolved, then the corporation that has been proven to be corrupt can still operate and has the potential to repeat its crimes.

Corporations can devise legal or financial strategies to avoid the impact of heavier sanctions.

D. Unbalanced Social and Economic Impact

In some cases, large fines imposed on companies can have an impact on employees and other parties who are not involved in corruption crimes, while the main perpetrators remain untouched.

If it is not accompanied by revocation of permits or dissolution in severe cases, the community will still be harmed by companies that have been proven to have committed illegal acts.

E. Lack of Consistency in Law Enforcement

1. If corporations do not face severe sanctions such as revocation of permits or dissolution, there is an impression that the legal system favors large corporations and does not fully uphold justice.
2. This inconsistency can reduce public trust in the legal system in eradicating corruption.

Therefore, reforms are needed in the corporate criminal sanctions system, such as the application of stricter sanctions, including the revocation of business licenses, the dissolution of companies in serious cases, and criminal penalties for individuals responsible for acts of corruption.

In law enforcement against corruption crimes involving corporations, a progressive legal approach is considered relevant to encourage the reconstruction of fairer and more effective criminal sanctions. This approach provides space for the implementation of legal policies that are more responsive to social change and demands for substantive justice (Suparman, 2023).

Efforts to Improve the Corporate Criminal Sanction System in Corruption Cases

To overcome the weaknesses in the criminal sanctions system against corporations involved in corruption cases, it is necessary to make various improvements in regulations and the application of the law. Here are some steps that can be applied:

1. Implementation of Heavier and Proportionate Sanctions

- **Revocation of business licenses** for corporations proven to commit large-scale and repeated corruption. This is important to ensure that the company can no longer operate and harm society.
- **Dissolution of a corporation** in very serious cases, especially if the company is established with the primary purpose of committing corrupt practices or other economic crimes.
- **Larger fines** should be applied based on a percentage of the company's revenue or profits to provide a more deterrent effect.

2. Criminal Liability for Company Leaders

- Not only companies are fined, but company **leaders (directors, commissioners, or major shareholders)** who are directly involved in corruption must also be subject to criminal sanctions, including imprisonment.
- This will prevent company executives from taking refuge behind corporate legal entities and remain free even if the company is sanctioned.

3. Improvement of Monitoring and Prevention Mechanisms

- Implement a **periodic independent audit system** for companies that have projects with the government or the public sector to detect potential corruption at an early stage.
- Require large companies to have an **anti-corruption compliance program (corporate compliance program)** supervised by the competent authorities.

4. Encouraging Whistleblowers and Witness Protection

- Provide legal protection and incentives for **employees or external parties** who report alleged corruption in the company.
- Ensure a secure system for whistleblowers to report corrupt practices without fear of threats or intimidation.

5. International Cooperation in Law Enforcement

- Corporations involved in corruption often have international networks, so there needs to be **cooperation between countries** to freeze assets and pursue perpetrators who flee abroad.

- Adopt international standards such as the **United Nations Convention Against Corruption (UNCAC)** to make sanctions against corporations more effective.
2. **Lack of accountability of corporate management, so that individuals in the company often escape punishment**In many cases, corporations as legal entities are sanctioned, but individuals responsible for decision-making are rarely touched by the law. This causes corrupt practices to continue to occur because there is no accountability to the company's management. Therefore, there needs to be a clearer legal mechanism to ensnare the individuals involved, both in the form of criminal and administrative sanctions.

One of the main weaknesses in the criminal sanctions system against corporations in corruption cases is **the lack of accountability of corporate management**. This causes individuals who are behind corrupt decisions to often **escape punishment**, while only companies are subject to sanctions in the form of fines. Here are some of the reasons and impacts of this weakness

The implementation of criminal sanctions for corporations needs to consider aspects of collective responsibility and protection of public interests. Several studies have shown that the implementation of criminal sanctions against corporations involved in corruption still faces various obstacles, both in terms of regulation and implementation in the field (Nurhadi & Pratama, 2022; Widodo, 2021). In a broader study, a progressive approach is also applied to the international legal system. According to Smith (2023), this approach can be applied by adopting a stricter policy against corporations involved in cross-border corruption. In addition, Chen (2021) emphasized that policy reform needs to be directed at establishing a more adaptive and dynamic legal framework. However, the main challenge in implementing this progressive approach is integrating progressive legal theory with the provisions of

positive law applicable in each country. As explained by Rahman (2020), there is a need for collaboration between law enforcement agencies and policy makers in realizing an effective criminal sanction system for corporations. In addition, efforts to reconstruct criminal sanctions for corporations involved in corruption must also consider fair and proportional legal principles, in order to provide an optimal deterrent effect and prevent the repetition of the same criminal acts (Lestari, 2019; Martinez, 2020).

1. Causes of Lack of Accountability of Corporate Management

a. Loopholes in Regulation

- Many legal systems place **more emphasis on sanctions on legal entities (corporations) than on individual managers**. As a result, it is difficult to ensnare directors, commissioners, or major shareholders responsible for corruption.
- Some regulations only regulate **administrative or civil liability**, so that the main perpetrator can escape criminal punishment.

b. Complex Corporate Structure

- Many large corporations have **complex structures**, with various subsidiaries and international networks. This makes it difficult to determine who the individual should be directly responsible for.
- Administrators may shift responsibility to subordinates or other parties, making it difficult to prove their involvement in acts of corruption.

c. Difficulty of Proof

- In the case of corporate corruption, it is often difficult to find **direct evidence** linking illegal acts to specific individuals.

- Corporate administrators usually **use intermediaries or third parties** in carrying out corrupt acts, so that legal traces are difficult to trace.

d. Weak Law Enforcement

- Law enforcement officials sometimes face **political or economic obstacles** in cracking down on corporate executives, especially if the company has great influence.
- In some cases, there are indications **of political intervention or pressure from interest groups**, which makes legal proceedings against individuals within the company not run optimally.

2. The Impact of Minimal Accountability of Corporate Management

a. No Deterrent Effect

- If only the company is subject to sanctions, while the individual management passes, then corrupt practices in the business world will continue.
- Administrators may go back to building new companies or use other means to commit similar crimes.

b. Financial Burden Only Borne by the Company

- The fine sanctions imposed on companies often do not burden the main perpetrator personally, but are instead paid from the company's treasury.
- This is detrimental to shareholders, employees, and other parties who are not involved in corrupt acts.

c. Creating a Bad Business Culture

- The lack of individual accountability in corporations makes corruption considered a "commonplace" thing in the business world.
- If there is no strict punishment for administrators, the practice of bribery, embezzlement, and financial manipulation could become more widespread.

3. Solutions to Increase Corporate Management Accountability

To address this problem, there needs to be reforms in the legal system and the enforcement of criminal sanctions against individuals within companies. Some of the steps that can be taken include:

a. Implementation of the Principle of Stronger "Corporate Criminal Liability"

- Ensuring that **criminal liability is not only imposed on the company, but also the individuals who make decisions within the company.**
- Adopting the **"piercing the corporate veil" approach**, which is to open the company's legal structure so that the individuals who are actually responsible cannot hide behind the company's name.

b. Ensnaring the Company's Board of Directors and Management with Criminal Sanctions

- Changing regulations so that **directors, commissioners, and major shareholders** involved in corruption can be subject to **direct criminal penalties**, including imprisonment.
- If evidence is found that the company's management **knowingly** condoned or ordered corrupt acts, they should be **subject to the same punishment as the main perpetrator.**

c. Requiring an Anti-Corruption Compliance System in the Company

- Every company, especially those that collaborate with the government or the public sector, is required to have an **anti-corruption compliance program**.
- If the company fails to implement this system, then the management may be subject to personal sanctions.

d. Law Enforcement Capacity Building

- Legal officials need to be given **special training** in handling corporate corruption cases to be more effective in ensnaring responsible individuals.
- Strengthen cooperation with international institutions to **track the assets and flow of funds from corruption hidden abroad**.

e. Protection against whistleblowers

- Provide **legal protection and incentives** for employees or other parties who dare to report acts of corruption within the company.
- With a **secure whistleblower system**, it is hoped that more evidence can be collected to ensnare the individuals responsible.

3. **Lack of an optimal state financial recovery mechanism from corporate crime proceeds**State finances harmed by corporate corruption are often difficult to recover due to the lack of an effective mechanism in confiscating assets proceeds of crime. In addition, the fines imposed are often not proportional to the value of the losses incurred. Therefore, a stronger system is needed to ensure that all

profits from corruption can be returned to the state, including through asset confiscation, restitution, and proportionate fines.

As a solution, a progressive legal approach can be an alternative in building a more effective and fair sanctions system. By balancing the aspects of punishment and recovery, it is hoped that law enforcement against corporations that commit corruption crimes can be more optimal

One of the weaknesses in the corporate criminal sanctions system in corruption cases is **the lack of an optimal state financial recovery mechanism**. In many cases, even if the corporation or the individual concerned is found guilty, the state still suffers significant losses because the proceeds of crime are not fully recoverable. Here are some of the main reasons and impacts of these problems:

1. Causes of Lack of State Financial Recovery in Corporate Corruption Cases

a. Weak Regulation in Asset Recovery

- Many legal systems are more focused on **imposing criminal sanctions** such as fines and prison sentences, but do not have **effective mechanisms for returning state money that has been stolen**.
- **Not all forms of corruption can be punished by asset confiscation**, especially if regulations do not expressly regulate the recovery of funds from crime.

b. Difficulty in Tracking the Flow of Corruption Funds

- Corporations involved in corruption often use **money laundering techniques**, such as hiding funds in various offshore accounts or through shell companies.

- **The lack of international access and cooperation** in asset tracking makes it difficult for countries to recover money that has been stolen.

c. Long and Complicated Legal Process

- Corruption cases often require a lengthy legal process, and during that time the misused funds can become increasingly difficult to trace or have been transferred to various other parties.
- In some cases, assets resulting from corruption that have been confiscated are not **immediately returned to the state treasury**, but through a protracted bureaucratic process.

d. Abuse of Legal Procedures by Corrupt Actors

- Corrupt actors from corporations usually have a **strong legal team** and can take advantage of legal loopholes to avoid asset confiscation.
- **Counterclaims or delays in the execution of asset confiscation** are often carried out to hinder the state's financial recovery.

2. Impact of Lack of State Financial Recovery

a. Prolonged State Financial Losses

- If the funds from corruption cannot be recovered, then the state budget will still experience a deficit, which will ultimately burden the community in the form of taxes or public budget cuts.
- State-financed development programs can be disrupted because funds that should have been used have been stolen by corporations.

b. No Deterrent Effect for Corporations

- If companies are only fined without the obligation to return all the proceeds of crime, then they still benefit from the illegal act.
- This could encourage more companies to commit corruption, as the risk of financial penalties is considered smaller than the profits gained.

c. Weakening Public Trust in Law Enforcement

- When the public sees that corruption funds are difficult to return, trust in law enforcement officials and the judicial system can decrease.
- Corruption that is not accompanied by fund recovery also worsens the image of the government and legal entities in dealing with economic crimes.

3. Solutions to Improve State Financial Recovery from Corporate Corruption Cases

To overcome this problem, various reforms are needed in the legal system and law enforcement related to the recovery of assets from corruption proceeds. Here are some solutions that can be implemented:

a. Application of "Follow the Money" in Corruption Investigation

- Any corruption case involving a corporation must be accompanied by **an investigation into the company's financial flows**, including transactions with third parties.
- The use of technologies such as **big data analytics and artificial intelligence (AI)** in tracking suspicious transactions can help in finding funds resulting from corruption faster.

b. Strengthening Regulations on Asset Confiscation and Recovery

- Regulations must ensure that **assets resulting from corruption can be immediately confiscated and returned to the state treasury**, without the need to wait for a protracted court decision.
- Develop a **mechanism for asset forfeiture without waiting for a criminal verdict (non-conviction based asset forfeiture)** for cases that already have strong evidence.

c. Increasing International Cooperation

- Optimizing cooperation with agencies such as **Interpol, the Financial Action Task Force (FATF), and the United Nations Office on Drugs and Crime (UNODC)** to track funds hidden abroad.
- Implementing extradition treaties and exchanging information with countries that are often used as hiding assets resulting from corruption.

d. Strengthening the Confiscated Asset Management Institution

- Ensure that assets resulting from corruption that have been confiscated can be immediately **managed or sold to recover state losses**.
- Increase transparency in the process of managing confiscated assets so that leakage or abuse does not occur.

e. Application of Tougher Financial Penalties for Corporations

- In addition to fines, companies proven to have committed corruption must **return all profits obtained from illegal actions**.

- If the company is unable to return the funds, then its assets can be **frozen or auctioned** to cover state losses

Progressive Legal Approach in the Reconstruction of Corporate Criminal Sanctions

The progressive legal approach offers a solution in the form of a **more comprehensive reconstruction of criminal sanctions**, namely:

1. Implementation of Layered Sanctions

- The penalty of the fine is **calculated based on the illegal profits** obtained by the corporation.
- Revocation of business licenses for corporations that repeatedly commit violations.
- Dissolution of a company if it is proven that a corporation was formed for criminal purposes.

2. State Financial Recovery Mechanism

- Return of assets obtained from corruption crimes.
- The obligation to compensate for losses caused to the state or society.

3. Criminal Liability of Corporate Administrators

- Ensnare directors or commissioners who are proven to play an active role in corruption crimes.
- Provide a protection mechanism for whistleblowers who report corruption

The reconstruction of this sanction is in line with the principle of progressive law that prioritizes **the substance of justice** above just formal compliance with rigid laws.

To strengthen law enforcement against corporations involved in corruption crimes, concrete steps are needed that include the implementation of layered sanctions, state financial recovery mechanisms, and criminal liability for corporate administrators. Here's the explanation:

1. Implementation of Layered Sanctions

This approach aims to ensure that the sanctions imposed on corporations are proportionate and have a strong deterrent effect. Some forms of sanctions that can be applied include:

- **Criminal fines calculated based on illegal profits obtained by corporations**
The fines imposed must reflect the amount of profits obtained illegally so that there is no incentive for companies to commit corruption crimes. This system will be more effective than fixed fines that large companies may consider light.
- **Revocation of business licenses for corporations that repeatedly commit violations**
If a corporation is proven to have repeatedly committed corruption crimes, the revocation of business licenses must be a sanction option so that the company can no longer operate and commit similar crimes in the future.
- **Dissolution of a company if it is proven that the corporation was formed for criminal purposes**
In cases where a corporation is deliberately established to commit a criminal act, such as money laundering or systematic bribery, the most decisive step that must be taken is the legal dissolution of the company.

2. State Financial Recovery Mechanism

In addition to providing sanctions, the legal system must ensure that state finances harmed by corruption can be optimally restored through the following mechanisms:

- **Return of assets obtained from corruption crimes**Corporations that are proven guilty must be required to return all assets obtained from the proceeds of corruption crimes, including assets that have been transferred or hidden.
- **Obligation to compensate for losses caused to the state or society**In addition to the return of assets, the company must also pay compensation to the aggrieved parties, both the state and the community affected by the act of corruption.

3. Criminal Liability of Corporate Management

In order for the law to be enforced comprehensively, not only corporations must be held responsible, but also individuals who play a role in the crime. Mechanisms that can be applied include:

- **Ensnaring directors or commissioners who are proven to have played an active role in corruption crimes**Directors, commissioners, or other high-ranking officials involved in corrupt decision-making must be criminally processed, so that they cannot take refuge behind the legal status of the corporation.
- **Providing a protection mechanism for whistleblowers who report corruption within the corporation**To increase transparency and prevent corrupt practices in the company, a protection system for whistleblowers is needed so that they do not experience threats or retaliation from the company.

3. Conclusion

Criminal sanctions against corporations involved in corruption crimes still have many weaknesses, especially in providing a deterrent effect and restoring state finances. The progressive legal approach offers a solution by restructuring the sanctions system to be more adaptive and oriented towards substantive justice. This reconstruction includes the implementation of layered sanctions, optimization of state financial recovery, and stricter criminal liability of corporate management.

The reconstruction of criminal sanctions against corporations in corruption cases is a crucial step to increase the effectiveness of law enforcement. The current legal system still has weaknesses in providing a deterrent effect and ensuring optimal state financial recovery. Therefore, a progressive legal approach is needed so that the sanctions applied are more adaptive, not only focusing on punishment, but also encouraging improvements in corporate governance. The application **of layered sanctions** through fines based on illegal profits, revocation of business licenses, and the dissolution of companies for serious violations, will ensure that corporations can no longer enjoy the results of the crimes committed. **Optimizing the state's financial recovery** is also an important element in the reconstruction of sanctions, with an emphasis on the confiscation of assets resulting from corruption and compensation obligations to the state and society. In addition, **the enforcement of criminal liability for corporate administrators** must be stricter, by ensnaring individuals who play a role in crimes and protecting whistleblowers who dare to report corruption within the company.

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