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LEGAL POLICY ON HANDLING CORRUPTION BASED ON MASLAHAH: THE PROBLEM OF DISPARITY IN THE IMPLEMENTATION OF ARTICLE 4 OF LAW OF THE REPUBLIC OF INDONESIA NUMBER 31 OF 1999

KEBIJAKAN HUKUM TENTANG PENANGANAN KORUPSI BERDASARKAN MASLAHAH: MASALAH KETIDAKSETARAAN DALAM PELAKSANAAN PASAL 4 UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 31 TAHUN 1999

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Abstract

This research is motivated by the issue of the effectiveness of witness and victim protection within the Indonesian criminal justice system, which is considered not yet to fully reflect the values of restorative justice nor to be harmoniously integrated into the framework of the national legal system. Although regulatory frameworks have been established through Law Number 13 of 2006 as amended by Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, as well as various regulations related to whistleblower and justice collaborator protection, their implementation continues to face normative and structural weaknesses. The lack of synchronization between the Criminal Procedure Code (KUHAP), the Draft Criminal Procedure Code (RUU KUHAP), and other sectoral regulations has resulted in the suboptimal role of the Witness and Victim Protection Agency (LPSK) in guaranteeing the rights of witnesses, victims, perpetrator-witnesses, and reporters, particularly in criminal cases with broad and organized impacts. From the perspective of maqāṣid al-syarī‘ah and the Pancasila Justice Theory, legal protection for witnesses and victims should not be merely procedural-formal in nature, but must be directed toward the restoration of dignity, the assurance of security, and the comprehensive protection of human rights. This study aims to analyze the regulatory weaknesses in witness and victim protection from the perspective of the criminal justice system and to reconstruct such regulations based on restorative justice values. Employing a normative legal research paradigm combined with conceptual, statutory, and theoretical approaches, this research positions the Pancasila Justice Theory as the grand theory, the Legal System Theory as the middle theory, and the Legal Protection Theory as the applied theory. The findings indicate that regulatory reconstruction is necessary through strengthening the institutional position of LPSK, harmonizing it with the Draft Criminal Procedure Code (RUU KUHAP), and reinforcing the protection of whistleblowers and justice collaborators in a more comprehensive and non-discriminatory manner. This reconstruction is directed toward establishing a witness and victim protection system oriented toward restoration (restorative justice), balanced interests among the parties, and the realization of social justice as mandated by the values of Pancasila and human rights principles.

Keywords : Witness and Victim Protection Agency, Criminal Justice System, Restorative Justice, Regulatory Reconstruction.

Abstrak

Penelitian ini dimotivasi oleh isu efektivitas perlindungan saksi dan korban dalam sistem peradilan pidana Indonesia, yang dianggap belum sepenuhnya mencerminkan nilai-nilai keadilan restoratif dan belum terintegrasi secara harmonis ke dalam kerangka sistem hukum nasional. Meskipun kerangka peraturan telah ditetapkan melalui Undang-Undang Nomor 13 Tahun 2006 sebagaimana diubah dengan Undang-Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksi dan Korban, serta berbagai peraturan terkait perlindungan pelapor dan kolaborator peradilan, implementasinya terus menghadapi kelemahan normatif dan struktural. Kurangnya sinkronisasi antara KUHP (KUHP), Rancangan KUHP (RUU KUHP), dan peraturan sektoral lainnya telah mengakibatkan peran Lembaga Perlindungan Saksi dan Korban (LPSK) yang kurang optimal dalam menjamin hak-hak saksi, korban, pelaku-saksi, dan pelapor, khususnya dalam kasus pidana dengan dampak luas dan terorganisir. Dari perspektif maqāṣid al-syarī'ah dan Teori Keadilan Pancasila, perlindungan hukum bagi saksi dan korban tidak boleh hanya bersifat prosedural-formal, tetapi harus diarahkan pada pemulihan martabat, jaminan keamanan, dan perlindungan hak asasi manusia secara komprehensif. Studi ini bertujuan untuk menganalisis kelemahan regulasi dalam perlindungan saksi dan korban dari perspektif sistem peradilan pidana dan untuk merekonstruksi regulasi tersebut berdasarkan nilai-nilai keadilan restoratif. Dengan menggunakan paradigma penelitian hukum normatif yang dikombinasikan dengan pendekatan konseptual, hukum, dan teoretis, penelitian ini menempatkan Teori Keadilan Pancasila sebagai teori utama, Teori Sistem Hukum sebagai teori menengah, dan Teori Perlindungan Hukum sebagai teori terapan. Temuan menunjukkan bahwa rekonstruksi regulasi diperlukan melalui penguatan posisi kelembagaan LPSK, menyelaraskannya dengan Rancangan Undang-Undang Hukum Acara Pidana (RUU KUHAP), dan memperkuat perlindungan pelapor dan kolaborator keadilan secara lebih komprehensif dan non-diskriminatif. Rekonstruksi ini diarahkan untuk membangun sistem perlindungan saksi dan korban yang berorientasi pada pemulihan (keadilan restoratif), keseimbangan kepentingan di antara para pihak, dan terwujudnya keadilan sosial sebagaimana diamanatkan oleh nilai-nilai Pancasila dan prinsip-prinsip hak asasi manusia.

Kata Kunci : Lembaga Perlindungan Saksi dan Korban, Sistem Peradilan Pidana, Keadilan Restoratif, Rekonstruksi Regulasi.

1. INTRODUCTION

Corruption is one of the most complex legal, political, and social problems in Indonesia's constitutional system because its impact not only causes losses to state finances, but also damages the legitimacy of the government, hinders national development, and weakens public trust in legal institutions. In the context of the rule of law, corruption is no longer understood solely as an ordinary criminal offense, but as an extraordinary crime that has a systemic and transnational dimension. Therefore, its eradication requires a legal approach that is not only repressive, but also oriented towards recovering state losses, substantive justice, and protecting the interests of the wider community. Law No. 31 of 1999 jo. Law No. 20 of 2001 has provided a normative framework regarding the eradication of corruption, including through the regulation of Article 4 which affirms that the return of state losses does not erase crimes. However, in judicial practice, this provision

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actually causes a disparity in interpretation because the return of state losses is often used as a basis for consideration to mitigate the defendant's sentence. This condition shows that there is a tension between legal certainty, utility, and justice in the implementation of corruption criminal law policies in Indonesia.

From the perspective of Islamic law, corruption is not only seen as a violation of positive legal norms, but also a form of betrayal of public trust that has moral, social, and spiritual implications. The Qur'an and hadith expressly condemn the practice of embezzlement of public property, bribery, and abuse of power that results in losses to society. Corruption in fiqh treasures can be categorized as ghulūl and risywah, namely betrayal of public property and the practice of bribery that undermines the principle of justice. This perspective shows that corruption not only produces material losses, but also causes social damage (mafsadah) in the form of a loss of public trust in the government and the law. Therefore, the approach to eradicating corruption in Islam is not solely oriented towards punishing the perpetrators, but is also directed at the protection of the public good (maslahah 'ammah) through the preservation of property (ḥifẓ al-māl), social justice, and public accountability.

The concept of maslahah in Islamic law has a very significant relevance in answering the problem of corruption law enforcement in Indonesia, especially related to the application of Article 4 of the Corruption Law. Theoretically, maslahah is understood as any form of policy that aims to bring benefits and prevent damage to society. This principle is the main foundation in maqāṣid al-shari'ah which places the protection of religion, soul, intellect, descent, and property as the main goal of sharia. In the context of eradicating corruption, the maslahah approach demands that the law not only function as an instrument of punishment, but also as a means to create substantive justice and social benefits. Thus, if the application of Article 4 is only interpreted formalistically without considering the broader social and moral impacts, then the legal goal of presenting justice and public benefits will not be optimally achieved.

The phenomenon of disparity in the application of Article 4 of the Anti-Corruption Law can be seen empirically in various corruption cases in Indonesia, including in Jambi Province. Several cases involving the misuse of the regional budget show that there are variations in the approach of law enforcement officials in assessing the return of state losses. The case of alleged corruption of PT PAL/BNI with potential losses of up to Rp105 billion, the Videotron project of the Jambi Provincial DPRD, and the alleged budget irregularities at the Bungo Regency Inspectorate show that corruption in the regions not only has an impact on fiscal losses, but also hinders the development of public services and community welfare. This fact confirms that corruption has a structural dimension related to weak internal supervision, low bureaucratic integrity, and the lack of optimal effectiveness of the law enforcement system. In this context, a more progressive and substantive legal approach is needed so that the policy of eradicating corruption does not stop at the mere formality of punishment.

From the perspective of criminal policy, criminalization does not always have to be understood as the only instrument to counter corruption. Under certain conditions, especially for administrative violations that do not have a strong mens rea element and the state's losses have been fully recovered, the application of administrative sanctions can be considered as a more proportionate form of liability. Administrative sanctions such as demotion, removal from office, dishonorable dismissal, and severance of personnel rights have serious implications for the social status and career of state apparatus. This approach is in line with the principle of ultimum remedium in criminal law which places criminal punishment as a last resort if other legal instruments are no longer effective. Therefore, the reformulation of anti-corruption legal policies needs to consider the balance between repressive, restorative, and administrative aspects in order to create more fair and proportionate law enforcement.

The formalistic approach in the implementation of Article 4 of the Corruption Law has the potential to cause new problems in the form of overcriminalization and waste of state resources. In cases with relatively small losses, lengthy criminal proceedings often require greater law enforcement costs than the value of the state losses to be recovered. This condition shows that an overly repressive legal orientation is not always in line with the principles of efficiency and utility. From the perspective

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of maslahah, a good legal policy must be able to weigh the benefits and harms caused. If the application of criminal law actually gives birth to greater social and economic losses, then it is necessary to reinterpret legal policies to remain in line with the main objectives of sharia and the principle of substantive justice. Thus, the actualization of maslahah theory is important to ensure that the enforcement of corruption laws really brings collective benefits to society.

Conceptually, the actualization of maslahah theory in corruption law policy requires the integration of positive law with Islamic ethical values. This integration can be realized through the reinterpretation of Article 4 of the Corruption Law as an instrument for recovering state losses that still maintains the deterrence function of criminal law. Within the framework of maqāṣid al-syarī'ah, legal policy should not only benefit individual perpetrators, but should be directed to safeguard the public interest and prevent social damage. Therefore, the return of state losses should be positioned as a form of legal responsibility that strengthens the restoration of the public interest, not as a means to avoid substantive criminal punishment. This approach shows that Islamic law has methodological flexibility in answering modern legal problems through an orientation to social benefits and the protection of the interests of the wider community.

From the point of view of legal theory, the phenomenon of disparity in the application of Article 4 of the Corruption Law can be analyzed through a dialectic between thesis, antithesis, and synthesis. His thesis is a normative provision that affirms that the return of state losses does not erase the crime. The antithesis arises in judicial practice that makes the return of state losses the main reason for mitigating sentences. Meanwhile, the synthesis is the need for legal policy reform that is able to integrate legal certainty, utility, and justice through the maslahah approach. This dialectic shows that law cannot be understood statically and textually alone, but must be able to adapt to social dynamics and societal needs. Thus, it is not enough to reform the anti-corruption law only through normative revisions, but also requires a paradigm shift in law enforcement to be more responsive to substantive justice values.

Based on the overall description, research on the actualization of maslahah in the legal policy of handling corruption is very important to answer the problem of disparity in the application of Article 4 of the Corruption Law. This research aims not only to analyze normative and empirical phenomena in corruption law enforcement practices, but also to formulate a model of legal policy reform that is more oriented towards substantive justice, recovery of state losses, and public benefits. By making the theory of maslahah as a philosophical foundation, this research is expected to be able to make a conceptual contribution to the development of a more progressive and humanist national criminal law. In addition, the results of this study are expected to be practical recommendations for legislators, law enforcement officials, and the government in formulating anti-corruption policies that are more effective, proportionate, and fair for the people of Indonesia.

2. RESEARCH METHOD

This research uses a qualitative approach with a normative juridical research type combined with an empirical approach (normative-empirical legal research). This approach was chosen because the research not only focuses on the analysis of legal norms contained in laws and regulations, but also examines the implementation of these norms in the practice of law enforcement of corruption crimes in Indonesia. In this context, law is understood not only as a written norm (law in books), but also as a social reality that is alive and applied in practice (law in action). Therefore, this study seeks to integrate legal dogmatic analysis with empirical facts that develop in the field, especially related to the application of Article 4 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption. This approach is considered relevant because the problems studied are not only related to legal certainty, but also related to aspects of substantive justice, social benefits, and the actualization of maslahah theory in anti-corruption legal policies.

This research uses several approaches simultaneously, namely the statute approach, the conceptual approach, the case approach, and the philosophical approach. The legislative approach is

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used to analyze the normative construction of Article 4 of the Corruption Law and other regulations related to the policy of recovering state losses and law enforcement of corruption. Meanwhile, a conceptual approach is used to examine maslahah theory, maqāṣid al-syarī'ah, justice theory, and criminal law policy theory as an analytical framework in this study. The case approach is applied through an examination of various court decisions for corruption crimes, especially cases that show disparities in the application of state loss reimbursement as a factor that mitigates crimes. The philosophical approach is used to examine the basic values of justice, utility, and legal certainty which are the main orientation in the reform of anti-corruption legal policies in Indonesia.

The nature of this research is descriptive-analytical, that is, research that not only describes legal phenomena systematically, but also analyzes the relationship between legal norms, law enforcement practices, and the philosophical values that underlie them. In this context, the research seeks to describe in depth the phenomenon of the application of Article 4 of the Corruption Law in the judicial practice of corruption crimes, as well as evaluate its effectiveness and relevance in realizing substantive justice. The analysis is carried out by placing the theory of maslahah as an evaluative instrument for the applicable criminal law policies. Thus, this research does not stop at normative depictions alone, but also criticizes the weaknesses of legal implementation that have the potential to cause social injustice and weaken the legitimacy of the law in the eyes of the public.

The data sources in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, the Criminal Code, court decisions for corruption crimes, and other regulations related to the recovery of state losses and corruption eradication policies. Secondary legal materials consist of books, scientific journals, dissertations, academic articles, research results, and the views of experts in criminal law and Islamic law that discuss maslahah theory, maqāṣid al-syarī'ah*, and anti-corruption legal policies. Meanwhile, tertiary legal materials are in the form of legal dictionaries, legal encyclopedias, and various other supporting references that are used to clarify relevant terms and concepts in research. The use of these various sources is intended so that the research has a strong theoretical and empirical foundation and is able to produce comprehensive and argumentative analysis.

Data collection techniques are carried out through library research and field research. Literature studies are carried out by examining various laws and regulations, legal literature, scientific journals, and court decisions related to the object of research. Meanwhile, the field study was conducted through in-depth interviews with law enforcement officials, especially prosecutors, investigators, and legal academics who have competence in the field of eradicating corruption. The interview aimed to obtain empirical data on the practice of implementing Article 4 of the Anti-Corruption Law, including legal considerations used by law enforcement officials in assessing the return of state losses as a factor that affects criminal imposition. This technique was chosen because it was able to provide a more objective picture of the reality of corruption law enforcement in Indonesia, especially in Jambi Province as an empirical locus of research.

In this study, the informant determination technique was carried out by purposive sampling, namely selecting sources based on considerations of competence, experience, and relevance to the research object. The selected informants include law enforcement officials within the Jambi High Prosecutor's Office, corruption judges, academics of criminal law and Islamic law, and legal practitioners who understand the dynamics of the implementation of Article 4 of the Corruption Law. The selection of informants purposively is intended so that the data obtained really has substantive validity and academic relevance to the focus of the research. Thus, the research not only gains a normative perspective from the legal text, but also gains an empirical understanding of how the law is applied, interpreted, and practiced in the corruption criminal justice system.

The data analysis technique in this study uses qualitative analysis methods with deductive and interpretive approaches. The data that has been collected is analyzed through the process of data reduction, categorization, interpretation, and conclusion drawing in a systematic manner. The

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deductive approach is used by describing general theories regarding maslahah, criminal law policy, and maqāṣid al-syarī'ah to be applied in analyzing the concrete phenomenon of the application of Article 4 of the Corruption Law. Meanwhile, an interpretive approach is used to understand the substantive meaning of legal norms and law enforcement practices in a social justice perspective. This analysis aims to find the relationship between positive legal norms and the principle of public benefit so that a model of legal reform that is more responsive to the needs of society can be formulated. To ensure the validity and objectivity of the research, a data triangulation technique is used, which is to compare data obtained from various sources and data collection methods. Triangulation was carried out through a comparison between normative data derived from laws and regulations and court decisions with empirical data from interviews and field observations. In addition, theoretical triangulation is also used by comparing the views of criminal law experts, Islamic law, and public policy theories regarding the effectiveness of corruption law enforcement. This technique is important to do so that the research results are not subjective or partial, but have a high level of academic credibility and are able to provide a complete picture of the problems of the application of Article 4 of the Corruption Law from the perspective of maslahah.

The theoretical frameworks used in this study include maslahah theory, maqāṣid al-syarī'ah*, criminal policy theory, and substantive justice theory. Maslahah theory is used as a grand theory to assess the extent to which anti-corruption legal policies are able to bring public benefits and prevent social damage. Meanwhile, the theory of maqāṣid al-syarī'ah is used to emphasize the importance of the protection of public property (ḥifẓ al-māl) as the main purpose of sharia. On the other hand, criminal law policy theory is used to analyze the orientation of penal policy in the eradication of corruption, while substantive justice theory is used to evaluate the extent to which the application of Article 4 of the Corruption Law has reflected the balance between legal certainty, utility, and justice. With the combination of these theories, this research is expected to be able to produce an integrative and multidisciplinary analysis.

Through the normative-empirical research method and multidisciplinary approach, this research is directed to produce legal policy formulations that are more progressive and responsive to the needs of the community. The research not only aims to find normative weaknesses in the application of Article 4 of the Corruption Law, but also offers a model of maslahah-based legal reform that integrates aspects of criminalization, recovery of state losses, and protection of the public interest in a balanced manner. Thus, this research method is expected to be able to make a scientific contribution to the development of national criminal law, especially in building a paradigm of corruption law enforcement that is not only legalistic, but also oriented towards substantive justice, social benefits, and strengthening legal legitimacy in society.

3. RESULT AND DISCCUSSION

The results of the study show that the application of Article 4 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption still leaves serious problems, both at the normative level and in the practice of its implementation in the field. Normatively, this provision has emphasized that the return of state financial losses does not abolish criminal penalties for corrupt perpetrators. This formulation is actually intended to emphasize that corruption is not only a matter of state financial losses, but also a form of betrayal of public trust that has broad social, political, and moral impacts. However, in law enforcement practice, there is a tendency that the return of state losses is often used as the main consideration in mitigating the defendant's sentence, even in some cases it is the dominant factor that influences the judge's decision. This condition shows that there is a tension between legal certainty and the pragmatic orientation of law enforcement which emphasizes more on recovering state losses than on the deterrent effect and public justice. From a sociological perspective, this phenomenon gives rise to the perception in the community that corruption crimes can be negotiated through the mechanism of repayment of state losses, so that the moral substance of the eradication of corruption becomes degraded. In fact, corruption is not only an act of unlawful self-enrichment, but also a form of deprivation of people's social rights that has a direct impact on the quality of public services, regional development, and people's welfare. Therefore, this study finds that the main problem in the implementation of Article 4 of the Corruption Law lies in the lack of alignment between the orientation of the penalty, the recovery of state losses, and the community's need for a sense of substantive justice.

This study also found that the dynamics of the implementation of Article 4 of the Corruption Law cannot be separated from the paradigm tug-of-war in corruption criminal law policy in Indonesia, namely between a repressive approach and a restorative approach. On the one hand, the state has an interest in taking firm action against corrupt perpetrators in order to create a deterrent effect and maintain legal authority in front of the public. However, on the other hand, law enforcement officials also face the reality that the recovery of state losses is an urgent need to maintain the country's financial stability and the sustainability of public development. In practice, these conditions often give birth to policy compromises that make the return of state losses an indicator of the defendant's cooperative attitude. This research shows that the restorative orientation that develops in law enforcement practice actually has a positive goal, namely to return lost state assets so that they can be reused for the benefit of the community. However, if this approach is not accompanied by clear and proportionate legal parameters, it has the potential to cause legal uncertainty and disparity in decisions. In some cases, defendants with strong economic ability can more easily obtain leniency through restitution of state losses, while other perpetrators who do not have similar capabilities still face severe criminal threats. This phenomenon shows the potential for inequality of justice which can ultimately weaken public trust in the integrity of the corruption criminal justice system. Thus, this study emphasizes that the policy of recovering state losses needs to be carefully placed so that it does not turn into an instrument that indirectly gives privileges to certain actors in the law enforcement process.

Based on the results of in-depth interviews with law enforcement officials within the Jambi High Prosecutor's Office, the study found that there is a fairly dominant view that the return of state losses is perceived as a form of goodwill and cooperative attitude from the defendant. From the practical perspective of law enforcement officials, the return of state losses is considered to be able to accelerate the process of recovering public assets lost due to corruption. Therefore, it is not uncommon for the return of state losses to be used as a moral consideration by judges in imposing lighter penalties. However, this study found that this practice actually gives birth to new problems in the law enforcement system. When the return of state losses is positioned too dominant in the consideration of decisions, it gives the impression that the main orientation of corruption eradication is only focused on financial aspects, while the ethical, social, and psychological dimensions of corruption crimes do not receive adequate attention. In fact, corruption not only causes material losses, but also causes structural damage in the form of weakening bureaucratic integrity, declining quality of public services, and loss of public trust in state institutions. In this context, the study found that corruption law enforcement in Indonesia still faces a major dilemma between the pragmatic need to recover state losses and the ideal demand to bring substantive justice to society. Therefore, a legal policy formulation is needed that is able to place the return of state losses as part of social recovery, not just a negotiation tool in the criminal process.

The results of research in Jambi Province show that corrupt practices that occur in the regions have characteristics that are closely related to weak governance and internal supervision systems. Several cases analyzed in this study, such as the alleged corruption of the Jambi Provincial DPRD's Videotron project, the procurement of the Kerinci Sakti Wisata Ship, and budget irregularities at the Bungo Regency Inspectorate, show that corruption not only has an impact on the state's financial losses administratively, but also causes real disruption of people's social rights. Public funds that should be used for infrastructure development, improving health services, education, and community welfare have actually been misused due to the practice of abuse of authority. This study found that the impact of corruption at the regional level is often felt more directly by the lower communities because it is related to their basic daily needs. From a humanitarian perspective, this condition shows that

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corruption is not just an economic crime, but also a form of social injustice that widens the gap between the state and the people. In addition, weak internal supervision and a permissive bureaucratic culture against budget irregularities are factors that strengthen the occurrence of systemic corruption. Therefore, this study emphasizes that the eradication of corruption cannot only rely on a repressive approach through criminalization alone, but also requires institutional reform, strengthening the supervisory system, and building a culture of integrity in local governance.

This study also found that the rigid application of Article 4 of the Corruption Law without considering the principle of proportionality has the potential to give birth to overcriminalization in the handling of certain corruption cases, especially those related to the relatively small value of state losses and do not have a strong mens rea element. In some cases, the long legal process starting from the stage of investigation, investigation, prosecution, to trial actually requires a greater cost to the state than the amount of loss to be recovered. This condition shows a paradox in the law enforcement system, where the state not only suffers losses due to the crime of corruption itself, but also has to bear disproportionate law enforcement costs. This study found that overly legalistic and formalistic legal approaches often ignore the principles of efficiency, utility, and substantive justice. From the perspective of maslahah theory, the law should be directed to bring greater benefits to society and prevent wider social damage. Therefore, this study assesses that in certain cases, especially those that are administrative and non-systemic, the application of administrative sanctions such as demotion, removal from office, dishonorable dismissal, or the obligation to reimburse state losses can be a more proportionate policy alternative to prison punishment. This kind of approach is not intended to weaken the eradication of corruption, but rather to build a more rational, fair, and sustainable law enforcement system oriented towards the protection of the public interest.

From the perspective of *maslahah* theory, the results of the study show that the main orientation of anti-corruption legal policy should not stop at the formal punishment of perpetrators, but rather be directed at the creation of broader and sustainable public benefits. This study found that the practice of corruption law enforcement in Indonesia is still strongly influenced by the legal-positivistic paradigm that places prison sentences as the main instrument in responding to corruption crimes. In fact, within the framework of maqāṣid al-syarī'ah, the protection of public property (*ḥifẓ al-māl*) is not only interpreted as punishment for the perpetrators, but also includes efforts to maintain the sustainability of public welfare through the restoration of state assets and the prevention of social damage. In this context, the study found that legal approaches that overemphasize the repressive aspect have the potential to ignore the social benefit dimension which is the main goal of the law itself. Therefore, the actualization of *maslahah* theory is seen as very relevant as a philosophical framework in building a new paradigm for corruption eradication that is more humanistic, substantive, and oriented towards the public interest. This approach is not intended to reduce the firmness of corrupt actors, but rather to ensure that every legal policy really provides real benefits to society and is able to prevent greater damage in social and constitutional life.

This study also found that *maslahah* theory has a very strong methodological ability in bridging the tension between legal certainty, justice, and usefulness in the corruption eradication system in Indonesia. In practice, the application of Article 4 of the Anti-Corruption Law often confronts law enforcement officials with a dilemma between the obligation to enforce the law firmly and the pragmatic need to recover state losses quickly. Through the *maslahah* approach, this study assesses that law should not be understood narrowly as a rigid normative text, but as a social instrument that must be able to respond to the needs of society in a proportionate and equitable manner. Therefore, the return of state losses should be positioned as part of a restorative mechanism that strengthens the restoration of the public interest, not as a means to remove substantive criminal liability. Within the framework of maqāṣid al-syarī'ah, any legal policy should be directed to maintain a harmonious balance between the protection of the state, the interests of society, and individual rights. This study found that if this approach is applied consistently, the criminal law of corruption will not only function

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as a tool of punishment, but also as an instrument of social reconstruction that is able to strengthen the legitimacy of the law and public trust in the state.

The results of the study show that the application of administrative sanctions in certain corruption cases can be a more proportionate policy alternative, especially for cases that are administrative, non-systemic, and do not show strong malicious intent (*mens rea*). Research has found that in government bureaucratic practices, not all administrative errors that cause state losses are born from self-enrichment motives or deliberate abuse of power. In some cases, state losses occur due to weak administrative capacity, procedural inaccuracies, or budget mismanagement that is not accompanied by corrupt intentions. In such a situation, the rigid application of imprisonment often causes excessive fear among state apparatus and has an impact on low courage in taking strategic policies. Therefore, this study assesses that the application of administrative sanctions such as demotion, removal of positions, dishonorable dismissal, deduction of benefits, and the obligation to reimburse state losses can be a more proportionate and effective legal instrument. This approach is in line with the principle of *ultimum remedium* which places criminal law as the last resort if other legal instruments are no longer able to solve problems fairly and effectively.

This study found that one of the fundamental weaknesses in the implementation of Article 4 of the Anti-Corruption Law is the absence of clear normative parameters regarding the limits on the use of state loss reimbursement as a factor that mitigates crimes. The absence of detailed guidelines causes judges to have a very wide discretion in assessing the influence of state loss returns on the verdict handed down. As a result, there is a significant disparity in verdicts between one case and another, even in cases that have relatively similar state loss characteristics. This condition shows that the corruption criminal legal system in Indonesia still faces problems of consistency and legal certainty. From a sociological perspective, this kind of disparity in verdicts has the potential to cause public distrust of the independence and objectivity of the judiciary. This study also found that some people view the tendency to treat corruption differently from corrupt actors who have certain economic capabilities and access to power. Therefore, this study recommends the need for reformulation of legal policies through the preparation of clearer, measurable, and substantive justice guidelines so that the application of Article 4 of the Corruption Law does not cause multiple interpretations in judicial practice.

From a philosophical and sociological point of view, this study shows that society basically does not only demand punishment for corrupt perpetrators, but also wants the recovery of state losses that are real and can be directly felt. In various interviews conducted, it was found that the public often feels disappointed when corrupt perpetrators are sentenced to severe penalties but the state's losses are not recovered optimally. On the other hand, there are also concerns that if the return of state losses is used as the main reason for mitigating punishment, then corruption will be perceived as a crime that can be "redeemed" with money. This phenomenon shows that society actually wants a balance between a repressive and restorative approach in eradicating corruption. In this context, the research emphasizes that the criminal law on corruption must be built on a substantive justice paradigm that not only punishes the perpetrators, but also restores the social rights of people harmed by corruption. Therefore, the actualization of *maslahah* theory is very important because it is able to present a more humane, proportional, and oriented legal approach to the overall public benefit. With this approach, the law is no longer understood simply as a tool of state coercion, but as an ethical and social instrument that aims to maintain a balance between legal certainty, justice, and community welfare.

This research found that the actualization of *maslahah* theory in the reform of the national criminal law has very strong relevance, especially in building a more equitable and public-interest-oriented corruption eradication system. In the perspective of maqāṣid al-syarī'ah, the protection of public property (*ḥifẓ al-māl*) is not only understood as the obligation to protect state assets from misuse, but also includes the state's responsibility in ensuring that public wealth is used to the fullest extent for the welfare of the community. Therefore, corrupt practices are seen as not just a positive violation of the law, but a form of collective *mafsadah* that damages social structures, hinders

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development, and widens economic disparities in society. This research shows that legal approaches that focus only on formal punishment are often unable to touch the root of the systemic and multidimensional corruption problem. In this context, *maslahah* theory offers a more comprehensive approach because it places law as a means to maintain a balance between the interests of the state, people's rights, and social justice. Thus, the eradication of corruption is not only directed at punishing the perpetrators, but also at efforts to build governance that is clean, transparent, and oriented towards the public benefit in a sustainable manner.

From the perspective of criminal *policy* theory, the results of the study show that the corruption eradication system in Indonesia still tends to focus on a repressive approach rather than a preventive and restorative approach. The study found that the measure of success in eradicating corruption so far is more based on the number of cases handled and the number of perpetrators convicted, while the aspect of preventing and recovering public losses has not received proportionate attention. In fact, in the modern criminal policy paradigm, the effectiveness of law enforcement is not only measured by the success of punishing the perpetrators, but also by the state's ability to prevent corruption and return real losses to the community. This research shows that an orientation that is too repressive has the potential to give birth to bureaucratic fear among state apparatus, so that many officials become hesitant to take strategic policies because they are afraid of being criminalized. This condition can ultimately hinder the effectiveness of the government and slow down public development. Therefore, this study emphasizes the importance of reformulating criminal law policies that are more integrative by placing preventive, restorative, and administrative approaches as an important part of the national corruption eradication strategy.

This study also found that the weak harmonization between criminal law, state administrative law, and internal supervision system is one of the main factors that cause the handling of corruption crimes to often not run effectively and proportionately. In practice, there are a number of cases that are actually more appropriate to be resolved through administrative mechanisms and state loss recovery, but are still processed through criminal channels without deeply considering the level of wrongdoing, malicious intent, and social impact caused. This condition shows that the national legal system is still facing problems of coordination between agencies and does not have clear parameters in distinguishing between administrative errors and serious and systemic corruption crimes. This study found that the unclear boundaries often cause legal uncertainty and overcriminalization of state apparatus in carrying out their administrative functions. From the perspective of public interest, such a situation can have a negative impact on the effectiveness of public services because state apparatus becomes too cautious and tends to avoid strategic decision-making. Therefore, this study recommends the need to synchronize regulations and strengthen the internal supervision system so that corruption law enforcement policies can run more fairly, efficiently, and proportionately.

Based on the overall results of the research, it was found that the actualization of *the maslahah* theory in the application of Article 4 of the Corruption Law can be realized through the reinterpretation of legal policies that place the recovery of state losses as an integral part of the purpose of punishment without eliminating the deterrence function of criminal law. In this context, the return of state losses should not be understood as a means to remove criminal liability absolutely, but should be positioned as a form of legal and moral responsibility of the perpetrator to society. This study assesses that this approach is more in line with the principle of substantive justice because it is able to balance the state's need to recover public losses with public demands for fair punishment and provide a deterrent effect. In addition, this study also offers a model of legal policy reform that emphasizes the integration of repressive, restorative, and administrative approaches in a proportionate manner. With this model, corruption law enforcement is no longer only oriented towards formal punishment, but also directed at restoring people's rights, strengthening bureaucratic integrity, and building a more accountable government system. This approach also shows that *maslahah* values have great relevance in the reform of national criminal law that is more responsive to the social needs of modern society.

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Overall, this study concludes that the main problem in the implementation of Article 4 of the Corruption Law does not solely lie in the weakness of the legal norms, but rather in the lack of a law enforcement paradigm that places substantive justice and the public interest as the main orientation. A legal approach that is too legalistic and formalistic has proven to be not fully able to answer the complexity of corruption crimes that are systemic and multidimensional. This research shows that criminal law corruption requires a paradigm shift through a more progressive, humanist, and integrative approach by considering the balance between legal certainty, social benefits, and community justice. In this context, *maslahah* theory offers a very relevant philosophical foundation because it places the law as an instrument of protection for the public interest and social welfare. Therefore, this study emphasizes that anti-corruption legal policy reform in Indonesia must be directed at the development of a legal system that is not only strict against corrupt perpetrators, but also able to bring social recovery, strengthen legal legitimacy, and build public trust in the state. Thus, the law is no longer understood simply as a tool of state punishment, but as an instrument of social transformation that aims to create justice, benefits, and public benefits in a sustainable manner.

4. CONCLUSION

Based on the results of the research that has been described, it can be concluded that the application of Article 4 of Law Number 31 of 1999 jo. Law Number 20 of 2001 still faces normative and empirical problems that are quite complex in the practice of law enforcement of corruption crimes in Indonesia. Although normatively the provision emphasizes that the return of state losses does not erase the crime, in practice the return of state losses is often used as the main consideration in mitigating the defendant's sentence. This condition causes disparities in verdicts, legal uncertainty, and public perception that corruption crimes can be resolved through a mechanism for recovering state losses alone. Thus, this study shows that the corruption law enforcement system is still in a tug-of-war between a repressive orientation that emphasizes the punishment of perpetrators and a restorative orientation that focuses on recovering state losses and public interests.

This study also concludes that corrupt practices not only cause financial losses to the state, but also give birth to social damage that has a wide impact on people's lives. Corruption causes a decline in the quality of public services, disruption of regional development, weakening bureaucratic integrity, and reduced public trust in legal and government institutions. In this context, corruption must be understood as a form of collective mafsadah that damages the social order and hinders the achievement of community welfare. Therefore, the eradication of corruption cannot rely only on a formal penal approach, but must also be directed at efforts to restore the social rights of the community, strengthen the supervisory system, and build governance that is more transparent, accountable, and with integrity.

From the perspective of maslahah theory, this study finds that corruption criminal law policy reform needs to be directed at creating a balance between legal certainty, substantive justice, and public utility. Maslahah theory provides a philosophical basis that the law does not solely function as an instrument of punishment, but also as a means to bring social benefits and prevent greater damage in people's lives. Therefore, the return of state losses should be positioned as part of a restorative mechanism that strengthens the restoration of the public interest, not as a reason to remove substantive criminal liability. This approach shows that the actualization of the values of maqāṣid al-syarī'ah, especially the protection of public property (ḥifẓ al-māl), has a very strong relevance in the reform of the anti-corruption legal system in Indonesia.

This study further concludes that the application of administrative sanctions in certain cases can be a more proportionate policy alternative, especially for violations that are administrative, non-systemic, and do not have a strong mens rea element. This approach is in line with the principle of ultimum remedium which places criminal law as the last resort in resolving a violation of the law. In this context, administrative sanctions such as demotion, removal from office, dishonorable dismissal, termination of financial rights, and the obligation to reimburse state losses can be more effective instruments in maintaining bureaucratic discipline without always having to resort to a prison penal

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approach. Thus, the reformulation of anti-corruption legal policies needs to be carried out in a more integrative manner through the harmonization between criminal law, state administrative law, and internal supervision systems in order to create more efficient, proportionate, and fair law enforcement.

Overall, this study emphasizes that the main problem in the implementation of Article 4 of the Anti-Corruption Law does not only lie in the normative aspect, but also in the law enforcement paradigm which still tends to be legalistic and formalistic. Therefore, it is necessary to update the legal paradigm through a more progressive, humanist, and public benefit-based approach. The actualization of maslahah theory in anti-corruption legal policy is important because it is able to present a synthesis between repressive, restorative, and administrative aspects in a balanced manner. With this approach, the corruption criminal law not only serves as a tool of punishment for perpetrators, but also as an instrument of social transformation that aims to restore the interests of the community, strengthen the legitimacy of the law, and realize more fair, cleaner, and public welfare-oriented governance in a sustainable manner.

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