

Reconstruction of the Limits of Criminalization of Unlawful Elements and Abuse of Authority to Achieve Legal Certainty in Enforcing Criminal Acts of Corruption

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Abstract: *This study aims to analyze the disharmony of norms and problems in the implementation of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, reconstruct the boundaries of criminal liability between administrative wrong and corruptive wrong, and formulate an ideal formulation of legal reform in the perspective of ius constituendum. The study uses a normative juridical method with a statutory and conceptual approach, through an analysis of laws and regulations, court decisions, criminal law doctrine, and government administrative law. The results of the study indicate that the main problem lies in the blurring of the boundaries between the elements of unlawfulness, abuse of authority, benefiting oneself or others, and state financial losses, which gives rise to overlapping crimes, disparity in decisions, and a tendency to criminalize administrative errors, official discretion, and business risks of BUMN/BUMD. This study found a reconstruction model in the form of a five-stage separation model, namely a tiered separation between procedural violation, administrative negligence, abuse of office, corrupt intent, and actual state loss as a normative threshold in determining the transformation of maladministration into criminal acts of corruption. Based on these findings, this study recommends a reformulation of Article 2 focused on unlawful enrichment based on wederrechtelijkheid, and Article 3 which is limited to abuse*

of authority based on deviation from the purpose of authority, elements of intent, and actual state losses, with harmonization with Law Number 30 of 2014 concerning Government Administration and strengthening safe harbor for official discretion and business decisions of State-Owned Enterprises/Regional-Owned Enterprises. The novelty of this study lies in the normative model of criminalization limitations that provides legal certainty in distinguishing administrative errors and criminal acts of corruption, while simultaneously strengthening the effectiveness of corruption eradication law reform in Indonesia.

Keywords: *Corruption Law, Administrative Wrong, Corruptive Wrong, Abuse Of Authority*

Introduction

Corruption in the Indonesian legal system is conceptually and normatively placed as an extraordinary crime because its destructive power not only attacks state finances but also undermines the legitimacy of power, the quality of public services, and the socio-economic rights of the community (Hartanti 2023). The legal basis rests on Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001, which specifically establishes a criminalization regime outside the Criminal Code

(Waluyo 2022). Within this framework, Article 2 paragraph (1) emphasizes that anyone who unlawfully commits an act of enriching themselves or others that is detrimental to state finances or the state economy shall be subject to severe penalties, while Article 3 focuses on abuse of authority due to office or position (Putra 2021). These two articles are the epicenter of corruption eradication because they cover a broad spectrum ranging from transaction-based corruption, procurement irregularities, fiscal policies, to abuse of official discretion (Pahlevi 2022). From a criminal law policy perspective, the dominance of these two norms indicates that lawmakers place state financial protection as the primary legal object, but simultaneously open up serious issues regarding the limits of criminalization of administrative policies and official actions.

In law enforcement practice, the centrality of Articles 2 and 3 is evident in the pattern of charges, which are almost always placed on a primary-subsidary basis, particularly in cases of goods and services procurement, regional financing, infrastructure projects, and state-owned enterprise/regional-owned enterprise governance (Rini 2018). The dominant use of these two articles is due to the relatively flexible nature of their elements, particularly the phrase "unlawfully" in Article 2 and "abusing the authority, opportunity, or means available to him due to his position or rank" in Article 3. Doctrinally, Article 2 covers all legal subjects without requiring a specific position, while Article 3 requires a close relationship between the position and the use of public authority (Sugiantari 2017). However, in litigation practice, these two articles often overlap because prosecutors tend to include the same facts in both offense constructions simultaneously. This overlapping problem is exacerbated by the tendency of public prosecutors to use the element of state loss as the primary point of the indictment without strictly distinguishing whether the core act is a general unlawful act or an abuse of power stemming from office. As a result, the scope for distinguishing between offenses becomes blurred and creates legal uncertainty in the application of evidentiary standards (Kumalaningdyah 2019).

Normatively, the disharmony between Articles 2 and 3 stems from the unclear boundary between the elements of "enriching oneself or another person" and "benefiting oneself or another person," even though both have different legal consequences in proving mens rea and the quality of culpability. Article 2 is classically understood as an offense based on legality, while Article 3 focuses on *détournement de pouvoir*, or deviation from the purpose of authority in administrative law (Amrullah 2024). The problem is that judicial practice often interprets every violation of administrative procedures as a form of abuse of authority, without first examining whether there has been a deviation from the purpose, a conflict of interest, or the use of office for personal gain. It is at this point that the boundaries between maladministration, administrative errors, and criminal acts of corruption become blurred (Manihuruk 2022). Theoretically, this situation contradicts the principles of *lex certa* and *lex stricta* in criminal law, which require clear formulation of norms and avoid multiple interpretations. Therefore, the need for norm reconstruction is urgent, so that Article 2 focuses on general unlawful enrichment, while Article 3 is strictly limited to abuse of official authority that meets the legal parameters of government administration, particularly as enshrined in Law Number 30 of 2014 concerning Government Administration (Sayogaramasatya 2021).

The next problem lies in the element of state financial loss, particularly following Constitutional Court Decision Number 25/PUU-XIV/2016, which removed the phrase "can" from Article 2 paragraph (1) and Article 3, shifting the crime of corruption from a formal crime to a material crime that requires actual loss. This shift has significant implications for the evidence, as law enforcement is no longer sufficient to base charges on potential losses, but must instead demonstrate the existence of real and measurable losses (Saputra 2018). In practice, problems arise when the alleged losses stem from business policies, unrealized losses, opportunity losses, or a decline in investment value that is economically recoverable. Investigative audits by the Supreme Audit Agency (BPK) or the Financial and Development Supervisory Agency (BPKP) are often positioned as the sole basis for proof, whereas from a criminal law perspective, the more crucial element is the causal nexus between the defendant's actions and the state losses (Syamsuddin 2020). Without rigorous causal evidence, administrative losses or business losses have the potential to be simplistically transformed into criminal losses. This situation demonstrates the urgency of normative reforms that clearly differentiate state losses due to fraud, state losses due to administrative negligence, and state losses due to public policy risks.

In the case of public officials, Article 3 often raises serious issues in the form of criminalization of discretion and official policies, particularly against regional heads, PPK (Regional Apparatus Empowerment Agency) officials, directors of state-owned enterprises (BUMN), and budget users. From an administrative legal perspective, discretion is a legal instrument to address governmental stagnation, as stipulated in Articles 22 to 32 of the State Administration Law, as long as it is exercised in good faith, proportionally, and in the public interest. However, in the practice of corruption law enforcement, policy failures are often reduced to abuse of authority simply because they result in state losses (Tryana 2024). This approach is dangerous because it creates a chilling effect, where officials are afraid to make strategic decisions due to the threat of criminal penalties. In the context of state-owned enterprises (BUMN) and regionally-owned enterprises (BUMD), this problem is further complicated by the often-ignored business judgment rule principle in corporate governance. However, not every failed business decision can be classified as corruption, unless a conflict of interest, self-dealing, or the intention to benefit a particular party can be proven (Shintawulan 2024). Therefore, the reconstruction of Article 3 needs to be directed at clarifying the parameters of abuse of authority, which require a deviation from the purpose of authority, malicious intent, and personal or corporate gain, not simply a detrimental policy outcome.

The inconsistency of court decisions demonstrates that the main problem lies not only in the text of the law, but also in the inconsistent ratio decidendi of judges in interpreting Articles 2 and 3. In many cases with similar legal facts, one panel of judges qualifies a case as Article 2 because it emphasizes the unlawful element, while another panel overturns Article 3 on the grounds of the defendant's formal position. This disparity indicates the absence of usable normative parameters for judges, prosecutors, and legal counsel in distinguishing administrative wrongs from corruptive wrongs (Halawa 2020). Herein lies a significant research gap at the research level: the absence of an integrative reformulation model for Articles 2 and 3 that synergizes criminal law, administrative law, state loss audits, and the theory of abuse of authority. Therefore, this research is crucial for formulating ius

constituendum in a more precise update to Articles 2 and 3 of the Corruption Law, ensuring legal certainty, preventing overcriminalization, and maintaining the effectiveness of corruption eradication within the framework of a state based on the rule of law.

This indicates that the disharmony between Article 2 and Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes is not merely a normative issue but also reflects inconsistencies in legal communication among investigators, prosecutors, auditors, and judges. The overlapping concepts of “unlawful acts” and “abuse of authority” often generate different interpretations regarding whether a particular conduct constitutes an administrative violation or a corruption offense. In practice, auditors may classify certain actions as maladministration causing state losses, while investigators and prosecutors may interpret the same conduct as criminal corruption, with judges subsequently applying varying interpretative approaches in assessing liability. The absence of harmonized legal communication and shared interpretative standards among these institutions contributes to disparities in case qualification, evidence assessment, prosecution strategies, and judicial decisions. Consequently, similar cases may receive different legal treatment, creating legal uncertainty and undermining consistency in corruption law enforcement. Therefore, the harmonization of Articles 2 and 3 should be accompanied by strengthened inter-institutional communication, coordinated legal interpretation, and unified enforcement guidelines to ensure greater legal certainty, consistency, and effectiveness in combating corruption.

Methodology

The method employed in this research is normative juridical research, namely legal research that places law as a norm, rule, principle, principle, and doctrine that lives in the system of legislation and court decisions, with the main focus on examining the problem of disharmony of norms in Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001, especially regarding the boundaries between elements of unlawfulness, abuse of authority, and state financial losses. The approach used is the statute approach and the conceptual approach. The legislative approach is carried out by systematically inventorying, reviewing, and analyzing all relevant regulations, both primary and sectoral, including the Corruption Law, Law Number 30 of 2014 concerning Government Administration, Law Number 17 of 2003 concerning State Finance, Law Number 1 of 2004 concerning State Treasury, as well as decisions of the Constitutional Court and the Supreme Court relating to the elements of state losses, abuse of authority, and discretion of public officials, to find vertical and horizontal synchronization and the possible need for norm reformulation. Meanwhile, the conceptual approach is used to examine various legal concepts and doctrines that have developed in the science of criminal law and administrative law, such as the concept of *wederrechtelijkheid*, *detournement de pouvoir*, abuse of authority, *mens rea*, actual loss, business judgment rule, and the distinction between administrative wrong and corruptive wrong, which are obtained from literature, opinions of scholars, reputable scientific journals, and relevant legal theories. Through a combination of these two approaches, this research is aimed at building prescriptive arguments regarding the ideal legal reform model (*ius constituendum*) for the formulation of Article 2 and Article 3 of the

Corruption Law to better guarantee legal certainty, prevent overcriminalization of official policies, and remain effective in eradicating criminal acts of corruption.

Result and Discussion

Analysis of the Disharmony of Norms and Problems in the Application of Article 2 and Article 3 of the Corruption Law in Judicial Practice

Analysis of the disharmony of the norms of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, must begin from the basic construction of the two crimes as core norms in criminal acts of corruption based on state losses. Article 2 paragraph (1) formulates the crime for any person who unlawfully commits an act of enriching himself or another person or a corporation that is detrimental to state finances or the state economy, while Article 3 formulates the crime for any person who, to benefit himself or another person or a corporation, abuses the authority, opportunity, or means available to him due to his position or position that is detrimental to state finances. Textually, lawmakers have distinguished the basis for criminalization between general unlawfulness in Article 2 and abuse of office in Article 3. However, in judicial practice, this distinction is often inconsistent, as law enforcement tends to place both articles in subsidiary charges based on the same facts, without methodologically analyzing whether the core offense lies in a general unlawful act or in a deviation from the purpose of official authority. This situation raises serious issues for the principle of *lex certa* and legal certainty, as the boundary between the two regimes of wrongdoing becomes blurred, particularly in cases of procurement of goods and services, grants, capital expenditures, and financing of state-owned enterprises (Ginting 2024).

In terms of elements, the most prominent point of disharmony lies in the difference between the phrase "enriching oneself or others" in Article 2 and "benefiting oneself or others" in Article 3. Doctrinally, the element of enrichment implies a more concrete and measurable increase in wealth, while the element of benefit can be broader, including non-material benefits, corporate benefits, or benefits that have not yet been converted into assets. In practical decisions, judges often fail to establish a clear *ratio decidendi* to distinguish between these two elements, resulting in actions that factually only demonstrate a deviation from administrative procedures still being treated as acts of self-enrichment. Consequently, Article 2, which should be the core offense for unlawful enrichment, is instead treated as an act of self-enrichment. This ambiguity is further exacerbated when the defendant is a public official, as almost any official action that results in an advantage for another party is immediately referred to Article 3, even though there may not necessarily be a deviation from the purpose of authority as recognized in administrative law doctrine (Nahariah 2024).

The issue of state financial loss has become increasingly complex, particularly following Constitutional Court Decision No. 25/PUU-XIV/2016, which removed the word "may" from Article 2 paragraph (1) and Article 3, transforming both articles from formal offenses into material offenses requiring actual state loss. The Court considered the phrase "may" to create legal uncertainty and open up too broad a scope for criminalization,

requiring the element of loss to be proven in actual and measurable terms. The legal implications of this ruling are significant for the practice of proving the law, as prosecutors are not merely required to allege potential losses or policy risks; they must also prove actual losses of state assets, cash, collection rights, or economic value. However, judicial practice shows that many decisions still use the potential loss, opportunity loss, or audit price difference approach as the sole basis for determining state losses without further examining the causal relationship between the defendant's actions and the losses. It is a weakness of the norm and its application, as there are no guidelines distinguishing between administrative losses, business losses, and criminal losses (Kristanto 2019).

The next disharmony arises in the relationship between Article 3 of the Corruption Law and Law Number 30 of 2014 concerning State Administration, particularly regarding the concepts of abuse of authority and discretion. In the State Administration Law, abuse of authority is limited to actions that exceed authority, mix up authority, and act arbitrarily, while discretion exercised in good faith in the public interest is legally legitimized. When Article 3 isn't read in harmony with the government's administrative regime, any procedural error by an official has the potential to be entangled in the realm of corruption. It is particularly evident in cases involving regional heads, PPK (Regional Apparatus Empowerment Officers), budget users, and state-owned enterprise directors who make quick decisions under urgent policy circumstances. However, conceptually, not every administrative wrong can be transformed into a corruptive wrong. This inconsistency between legal regimes indicates that Article 3 remains a formulation flaw, as it does not provide rigid parameters to distinguish administrative misconduct from corrupt abuse of authority (Ariwafa 2023).

In judicial practice, the disparity in the application of the two articles is particularly evident in cases involving the procurement of goods and services, fiscal policies of regional heads, and investment decisions by state-owned enterprises (BUMN/BUMD). In procurement cases, for example, deviations from technical specifications or changes in supplier selection methods are often treated as Article 2 if the judge focuses on the violation of regulations. However, in other cases with nearly identical factual patterns, they are often treated as Article 3 because the defendant holds a formal position as a PPK (approved budget user). Similarly, in regional head policies, grants or budget allocations that are administratively flawed can be treated differently by different judges. In the context of state-owned enterprises (SOEs), failed business decisions are sometimes considered business risks protected by the business judgment rule, but in other cases, they are interpreted as abuse of authority under Article 3. These differing outcomes based on similar facts indicate that the real problem lies not only in the formulation of the articles but also in the inconsistent ratio decidendi of judges in linking facts to elements of the offense (Amiarsa 2021).

Based on this overall analysis, it can be emphasized that the main weaknesses of Articles 2 and 3 lie in three fundamental aspects: the unclear differentiation of the core elements of the offense, the lack of rigidity in the parameters of state financial losses, and the lack of harmony between the concept of abuse of authority and government

administrative law. These weaknesses are exacerbated by disparities in application in court decisions, indicating the absence of a usable standard of interpretation for judges, prosecutors, and legal counsel. Academically, these findings confirm that the problems with Articles 2 and 3 are not merely legislative but also problematic in interpretative methodology in judicial practice. Therefore, this sub-chapter produces an important conclusion that future norm reformulation must clarify the boundaries between unlawful enrichment, abuse of authority, and administrative negligence, while simultaneously establishing parameters for proving state losses that are consistent with Constitutional Court Decision Number 25/PUU-XIV/2016 in order to assemble legal certainty and prevent overcriminalization in corruption cases.

Reconstructing the Boundary of Criminal Liability between Administrative Wrongs and Corruption Wrongs in Articles 2 and 3

Reconstructing the boundary of criminal liability between administrative wrongs and corrupt wrongs in Article 2 paragraph (1) and Article 3 of the Corruption Law must begin with a theoretical underpinning of the distinction between administrative errors and criminal errors. From an administrative law perspective, every procedural deviation, administrative error, or violation of operational standards does not automatically qualify as a criminal act of corruption, as it remains within the normative framework of Law Number 30 of 2014 concerning State Administration, specifically Article 71 paragraph (1), which stipulates that decisions or actions can be overturned if there are procedural or substantive errors. Meanwhile, criminal law demands a higher level of error, including an unlawful nature, intent, and a connection to illicit gains and actual state losses. Therefore, the novelty of the reconstruction in this sub-chapter lies in placing procedural violations and administrative negligence primarily within the domain of administrative law, while criminal corruption law only enters the picture when the deviation develops into abuse of office, accompanied by corrupt intent. With this model, Article 2 is directed as a crime of unlawful enrichment based on legality, while Article 3 is positioned as a crime of abuse of authority, which can only be imposed after the threshold of administrative error has been qualitatively exceeded.

Theoretically, the concept of legality serves as the primary foundation for distinguishing unlawful conduct from mere administrative error. In the context of Article 2 paragraph (1), the element of "unlawfully" is not simply interpreted as a formal violation of regulations; it must be materially tested to determine whether the act violates the objectives of the law, the principle of propriety, and the principle of prohibition on unlawful enrichment. Therefore, not every deviation from procurement procedures, document verification errors, or payment administration errors can be directly qualified as an Article 2 violation unless there is evidence of an illegitimate increase in wealth for the perpetrator, another person, or a corporation. This reconstruction is important to prevent the reduction of the unlawful element to a mere regulatory breach. Within the research framework, the normative model offered is a three-layer unlawfulness test: the test for violation of written norms, the test for deviation from the purpose of the use of authority, and the test for the

existence of private gain arising from the action. Only if these three layers are met can maladministration be elevated to corruption under Article 2.

For Article 3, the central concept that must be reconstructed is *detournement de pouvoir*, namely, deviation from the purpose of authority. This is where Article 17 of the State Administration Law becomes highly relevant, as it explicitly prohibits officials from exceeding their authority, mixing up their authority, or acting arbitrarily. The proposed theoretical reconstruction is that not all abuses of administrative authority automatically meet Article 3. An action can only constitute abuse of authority in the criminal sense if it meets four cumulative parameters: first, the authority is used deviating from its intended purpose; second, there is a conflict of interest or an orientation toward private gain; third, the official is aware of the deviant nature of their actions; and fourth, the action results in a real state loss. Under these parameters, errors in the form of administrative delays, misinterpretation of regulations, or technical deviations from policy remain classified as administrative negligence, while abuse of office directed toward a specific benefit falls under the category of abuse of office. This model provides a clear boundary for when maladministration becomes corruption. The most important aspect of this research's novelty is the placement of *mens rea* in abuse of authority as the distinguishing point between good faith error and corruptive wrong. So far, law enforcement practices have focused too much on the consequences in the form of state losses, even though Article 3 explicitly requires the element "to benefit oneself or another person or a corporation," which means there is specific intent. Therefore, it is recommended to develop a public policy bad-faith test model consisting of the following indicators: the existence of a conflict of interest, communication or intervention with the beneficiary, deviation from the AUPB without rational justification, and concealment of the decision-making process. If these indicators are not met, then the policy error is more appropriately qualified as a job risk or administrative error. This model is crucial for issues involving regional heads, PPK (Commissioners for Public Order), or budget users, who are often convicted solely for failed policies without adequate proof of *mens rea*.

In the context of state-owned enterprises (BUMN) and regionally-owned enterprises (BUMD), the reconstruction of criminal boundaries must incorporate the business judgment rule as a normative safeguard to prevent actual loss from being equated with corruption. Following Constitutional Court Decision No. 25/PUU-XIV/2016, the elements of state losses in Articles 2 and 3 must be proven to be actual losses, not merely potential ones. However, in BUMN business decisions, actual losses do not necessarily arise from fraud; they can be a normal consequence of business risk, market volatility, or business miscalculations that remain within the scope of corporate fairness. Therefore, the normative model offered is the loss qualification model, which distinguishes between actual loss by fraud, actual loss by negligence, and actual loss by business risk. Only the first category is directly relevant to Articles 2 or 3, while the second and third categories must first be tested using the directors' fiduciary duty standard and the business judgment rule. This approach is crucial to prevent SOE directors from experiencing fear of decision-making, which could ultimately harm the state in the long run.

Based on these constructs, the reconstruction model at the heart of this research's novelty is the five-stage separation model, which involves a tiered separation between procedural violations, administrative negligence, abuse of office, corrupt intent, and state loss by fraud. In the first and second stages, resolution must be within the administrative regime through decision correction, administrative remedies, or compensation for office losses, as stipulated in the State Administration Law. The third and fourth stages serve as entry points for Article 3 when there is a deviation from the purpose of authority accompanied by the intention to benefit a particular party. Meanwhile, Article 2 is positioned more restrictively, only for general unlawful enrichment that is not always position-based. The academic output of this model is a normative threshold against overcriminalization, a usable parameter for limiting criminalization for judges, prosecutors, auditors, and legal counsel in determining when maladministration remains within the administrative domain and when it escalates into corruption. With this model, this research offers a new theoretical contribution in the form of a standard of legal certainty in distinguishing administrative wrongs from corruptive wrongs within the regime of Articles 2 and 3 of the Corruption Law.

The proposed five-stage separation model can effectively prevent overcriminalization only if it is supported by clear and consistent communication among law enforcement institutions. Although the model provides a normative framework for distinguishing procedural violations, maladministration, abuse of office, corrupt intent, and actual state loss, differences in interpretation among investigators, prosecutors, auditors, and judges may still occur in practice. Therefore, the model should be communicated through standardized interpretative guidelines, inter-institutional coordination mechanisms, joint training programs, and integrated case assessment procedures. Such communication instruments would promote a common understanding of the legal thresholds applicable at each stage and reduce the risk that administrative errors or maladministration are prematurely classified as corruption offenses.

Furthermore, effective communication of the model should emphasize its function as a shared reference for determining the transition from administrative liability to criminal liability. By establishing uniform terminology, consistent assessment criteria, and regular communication between supervisory and law enforcement agencies, the model can enhance legal certainty and ensure proportional law enforcement. In this way, the five-stage separation model serves not only as a theoretical framework for distinguishing administrative wrongs from corruptive wrongs but also as a practical communication tool that guides legal actors in applying Articles 2 and 3 of the Corruption Law in a more consistent, predictable, and accountable manner.

Ideal Legal Reformulation of Articles 2 and 3 of the Corruption Law from the Perspective of *Ius Constituendum*

The formulation of legal reform of Articles 2, paragraph (1), and 3 of the Corruption Law from the perspective of *ius constituendum* must begin with the recognition that the main problem with current positive law lies in the formulation of norms that are too elastic, thus opening up room for overlapping offenses, disparity in decisions, and

overcriminalization of official policies. Therefore, the need for legislative reform is not limited to judicial interpretation, but must be realized through concrete actions to amend Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. The first action recommended in this research is the preparation of an academic paper on limited amendments to the Corruption Law by the House of Representatives (DPR) and the Government, with a sole focus on the reconstruction of Articles 2 and 3. This reformulation must adopt the principle of differentiated corruption offenses, namely a clear separation between the offense of unlawful enrichment and the offense of abuse of office. In the draft reform, Article 2 is directed only at general acts of unlawful enrichment, while Article 3 is strictly limited to abuse of official authority that meets the parameters of administrative law. This legislative measure is a strategic measure to close the gap between interpretations that have arisen in the practice of subsidiary charges and disparities in the ratio decidendi.

Concretely, the proposed redrafting of Article 2 can be formulated as follows: "Any person who intentionally commits an unlawful act to enrich themselves, another person, or a corporation, resulting in actual state financial loss, shall be punished...". This formulation contains three precise reforms: first, the addition of the element "intentionally" to strengthen mens rea; second, the affirmation of actual state losses as an implementation of Constitutional Court Decision No. 25/PUU-XIV/2016; and third, the limitation on unlawful enrichment that actually results in an increase in illicit wealth. With this redrafting, prosecutors must, in practice, conduct a more disciplined evidentiary process, namely proving a link between the unlawful act, the intention to enrich, and the measurable actual loss. This represents a concrete improvement over the current weakness of positive law, which often conflates potential loss with criminal damage. In addition to normative changes, recommended implementative actions include the issuance of Attorney General Guidelines and a Supreme Court Regulation requiring the use of actual loss and causal nexus parameters before Article 2 is implemented.

For Article 3, the reformulation must be more prescriptive, fully harmonizing with Law Number 30 of 2014 concerning State Administration, particularly Article 17, which prohibits the abuse of authority. The ideal formulation offered in the research is, "Any official or person who, due to their office or position, possesses public authority and who intentionally uses that authority in a manner that deviates from the purpose for which it was granted to obtain personal, other, or corporate gain, and causes actual state financial loss, shall be punished..." A concrete action would be to integrate the element of deviation from the purpose of authority as a primary requirement for the crime, so that not every procedural error can be classified as Article 3. Therefore, investigators and prosecutors must first conduct an ex ante administrative review based on the parameters of exceeding authority, mixing authority, or arbitrary actions as recognized in administrative law. For national implementation, action is needed to establish a harmonization forum between the Corruption Eradication Commission (KPK), the Prosecutor's Office, the Police, the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), and the State Administrative Court (PTUN) to develop common standards for when abuse of authority is administrative and when it becomes corrupt.

Legal reforms must also provide normative protection for legitimate officials' discretion to prevent a chilling effect on governance. A concrete action recommended by the research is the addition of a safe discretion clause to Article 3, for example, "Any official who exercises discretion in accordance with statutory regulations, general principles of good governance, good faith, and no conflict of interest shall not be punished, even if the decision subsequently results in state financial losses." This clause provides a legal safeguard for regional heads, Commitment-Making Officials (PPK), budget users, and other strategic officials, ensuring that swift decisions made in the public interest are not automatically criminalized. A follow-up step is policy action in the form of developing national guidelines for discretionary review by the Government Internal Supervisory Apparatus (APIP) and the State Administrative Court (PTUN) before escalating cases to the corruption investigation stage, so that the administrative regime serves as an effective initial filter.

In the context of state-owned enterprises (BUMN) and regionally-owned enterprises (BUMD), the update to Articles 2 and 3 must incorporate a safe harbor model for business decisions, adopting the business judgment rule principle as developed in comparative law in the Netherlands, Singapore, and Hong Kong. In the Netherlands, the abuse of office approach places a strong emphasis on the deviation from the purpose of authority; in Singapore, corrupt intent is the central element of evidence; while in Hong Kong, the ICAC prioritizes conflict of interest and private gain as key indicators. This benchmark can be translated into concrete action in the form of adding safe harbor provisions to the Corruption Law or the State-Owned Enterprises Law, which emphasize that directors cannot be punished for business losses as long as decisions are made based on adequate information, without conflict of interest, and within the framework of fiduciary duty. A proposed normative formulation is, "State losses arising from business decisions of state corporations are not subject to criminal penalties as long as the decisions are made in good faith, with prudence, and without the intention of unlawfully benefiting oneself or another party." It is crucial for fostering courage in strategic business decision-making.

The direction of national penal policy reform must shift from broad criminalization to precision criminalization, where punishment is only imposed for actions that clearly meet the threshold of corruption. Concrete actions must be implemented at three levels of reform simultaneously: revision of the Corruption Law by legislators, harmonization of sectoral regulations with the State Administration Law and the State-Owned Enterprises Law, and the development of joint interpretation guidelines by the Supreme Court and law enforcement agencies. The recommendations for changes to the Corruption Law offered do not stop at redrafting articles, but also include institutional design in the form of a pre-criminal review mechanism by the APIP/PTUN for policy and discretionary disputes before entering criminal proceedings. Thus, this research produces concrete, futuristic, and implementable reform actions, namely a more rigid formulation model for Articles 2 and 3, based on actual loss, mens rea, measurable abuse of authority, discretionary protection, and business safe harbor, thereby ensuring legal certainty while maintaining the effectiveness of corruption eradication in Indonesia's rule of law.

Conclusion

The conclusion of this study confirms that the main problem of Article 2 paragraph (1) and Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption lies in the blurring of the boundaries between administrative wrong and corruptive wrong, which in practice has given rise to disharmony of norms, overlapping elements, disparity in decisions, and a tendency towards overcriminalization of official actions and public policy decisions. The formulation of the elements of unlawful conduct, abuse of authority, benefiting oneself or others, and state financial loss has not provided rigid parameters to differentiate between administrative errors, maladministration, business risks, and actual corrupt acts. This condition has become increasingly complex following the development of the implementation of Constitutional Court Decision Number 25/PUU-XIV/2016, which requires actual loss, but has not been fully followed by uniform standards of proof in judicial practice. Based on the normative analysis and conceptual reconstruction conducted, this study found a model for limiting criminalization through a tiered separation of procedural violations, administrative negligence, abuse of office, corrupt intent, and actual state loss. Therefore, Article 2 should focus on unlawful enrichment based on legality, while Article 3 is limited to abuse of authority that fulfills the elements of deviation from the purpose of authority, intent to gain unlawful gain, and actual state loss. Thus, the main novelty of this dissertation lies in the emergence of a normative model for the threshold of criminal liability for corruption, which provides legal certainty for law enforcement officers, public officials, and directors of state-owned enterprises (BUMN/BUMD) in determining the point of transformation from administrative error to criminal corruption.

The research's recommendations are directed at concrete and implementable legal reform measures. First, to lawmakers, it is necessary to immediately conduct a limited revision of the Corruption Eradication Law, particularly Articles 2 and 3, by adopting more precise formulations regarding the elements of mens rea, actual loss, deviation from the purpose of authority, protection of official discretion, and safe harbor for BUMN/BUMD business decisions, so that they are in line with Law Number 30 of 2014 concerning Government Administration and the principles of sound corporate governance. Second, to the Supreme Court, the Attorney General's Office, the Corruption Eradication Commission (KPK), the Police, the Supreme Audit Agency (BPK), and the Financial and Development Supervisory Agency (BPKP), it is necessary to formulate joint interpretation guidelines regarding the parameters for distinguishing between administrative losses, business losses, and criminal losses, including the obligation to conduct an initial administrative test through the APIP or PTUN before a public policy or official discretion is escalated to criminal proceedings. Third, to legal practitioners and academics, the reconstruction model offered in this study needs to be further developed through testing on concrete decisions, especially in cases of procurement of goods and services, regional head policies, and BUMN investment decisions, so that it can become a national operational doctrine in enforcing the anti-corruption law. With this direction of reform, corruption eradication can still be carried

out effectively without sacrificing the principles of legal certainty, the principle of *ultimum remedium*, and the courage of public officials in making strategic decisions for the benefit of the state.

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