



Community service for corruptors: A solution to prison overcrowding or the weakening of law enforcement?

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Abstract

This study analyzes the effectiveness of implementing community service as an alternative sanction for corruption convicts. The traditional prison-centric approach has proven to cause overcrowding and fail to maximize the restoration of social losses. Utilizing a normative-juridical method, this article examines the integration of restorative justice principles into corruption eradication frameworks. The research findings indicate that community service effectively reduces state expenditures on inmate maintenance while providing direct, tangible contributions to public facility development. However, current regulations in Indonesia still restrict the execution of this alternative sanction for grand corruption cases. Rigorous evaluation and public transparency are imperative to maintain a potent deterrent effect.

Keywords: Community service, corruption convict, restorative justice, deterrent effect, penal reform

Introduction

Corruption in Indonesia has long been categorized as an extraordinary crime due to its destructive impacts that destabilize the economic order, degrade the quality of public services, and erode public trust in state institutions. For decades, the national criminal law enforcement system has heavily relied on a prison-centric approach, where imprisonment is deemed the sole primary instrument to punish corruptors^[4]. However, this excessive reliance on isolation sanctions has triggered an acute crisis of overcrowding in correctional facilities^[10]. Beyond the issue of physical capacity, the detention of corruption inmates creates a financial paradox; the state must allocate a substantial budget from the State Revenue and Expenditure Budget (APBN) for their sustenance, security, and medical care. This condition demonstrates that traditional imprisonment fails to maximize the restoration of social and economic losses suffered by the broader public as indirect victims of corrupt practices^[5]. The momentum for a paradigm shift in national criminal law was marked by the enactment of Law Number 1 of 2023 concerning the New Criminal Code (KUHP). This regulation introduces a fundamental reorientation from retributive justice, which is vengeance-based, toward restorative and rehabilitative justice^[9]. A concrete manifestation of this shift is the recognition of community service as an alternative form of principal punishment. The introduction of this new instrument opens a scholarly debate regarding its effectiveness when applied to white-collar criminals, such as corruptors^[12]. On one hand, community service offers a progressive solution to reduce the state's financial burden and convert punishment into direct benefits for public facilities^[13]. On the other hand, public concerns arise that this alternative sanction will weaken the deterrent effect, which has historically been the pillar of corruption prevention^[11]. Therefore, this study aims to normatively analyze the regulatory synchronization of community service in the New Criminal Code and the extent to which this social sanction can maintain a deterrent effect without neglecting the principles of restorative justice.

Problem Statement

Based on the explanation above, the main issues in this study are:

1. How is the regulatory synchronization of community service as a punishment under Law Number 1 of 2023 (the New Criminal Code) aligned with the minimum statutory sanctions stipulated in the existing Law on Corruption Eradication?
2. To what extent can the reconstruction of restorative justice principles through community service effectively restore the social and economic losses inflicted upon society by corruption offenses?
3. How can the deterrent effect of community service sanctions be measured against corruption convicts who are categorically classified as white-collar criminals?

Discussion

1. Regulatory Synchronization of Community Service: Disentangling the Antinomy of Norms Between the New Criminal Code and the Corruption Law Regime

The enactment of Law Number 1 of 2023 concerning the New Criminal Code (the New Criminal Code) normatively marks a radical milestone in the Indonesian criminal justice system by institutionalizing community service as an alternative principal punishment (Article 65 paragraph (1) letter c). Normatively, Article 85 paragraph (1) of the New Criminal Code grants the judicial discretion to impose community service as a substitute for imprisonment, provided that the limitative condition is met: the impending prison sentence does not exceed 6 (six) months^[9]. This institutionalization reflects the state's strategic effort to alleviate the critical crisis of prison overcrowding and reduce the fiscal burden incurred from funding inmate logistics^[10]. Nonetheless, the normative efficacy of this provision directly collides with the robust statutory framework of the existing anti-corruption regime regulated under Law Number 31 of 1999 as amended by Law Number 20 of 2001 on the Eradication of Corruption Crimes (UU Tipikor).

This antinomy of norms emerges because the Corruption Law was fundamentally engineered with an extraordinary enforcement philosophy that heavily relies on a special minimum sentencing system. For instance, Article 2 paragraph (1) of the Corruption Law mandates a minimum prison sentence of 4 (four) years, whereas Article 3 mandates a minimum of 1 (one) year (Republik Indonesia, 2001). This dogmatic clash has ignited intense debates among jurists regarding the application of the principles of *lex posterior derogat legi priori* (newer law overrides older law) and *lex specialis derogat legi generali* (specific law overrides general law). Traditionally, the Corruption Law operates as a *lex specialis* to the Criminal Code. However, the New Criminal Code enacted in 2023 is identified as an open national codification that also claims the status of a newer law (*lex posterior*).

If judges rigidly dismiss the New Criminal Code to preserve the special minimum boundaries of the Corruption Law, community service will inevitably become a dead letter law, rendering it impossible to apply to corruption cases. To resolve this legal impasse, a progressive framework of interpretation is paramount. Based on modern criminal law doctrine, community service within the anti-corruption context possesses full legal legitimacy when applied to petty corruption typologies, accessories (*accessoir*), or defendants granted justice collaborator status. Judges are legally justified in bypassing the special minimum boundaries of the Corruption Law by invoking Article 85 of the New Criminal Code to achieve substantive justice, particularly if the state financial loss is relatively minimal and the defendant has fully restituted the stolen assets ^[13].

2. Reconstruction of Restorative Justice Principles: Converting Public Losses into Substantive Social Utility

In traditional criminal law doctrines centered on retribution, corruption is frequently perceived abstractly as an offense against the state or mistakenly classified as a victimless crime because it lacks immediate, localized physical harm against a specific individual. However, when dissected through the lens of legal sociology, corruption is a systemic crime whose actual victim is the broader public (public at large) ^[5]. Every single rupiah embezzled from state funds is directly proportional to the degradation of social security systems, stagnant public infrastructure projects, and widening economic inequality. Consequently, prison sentences that merely isolate corruptors behind bars never truly address the essence of justice restoration; instead, incarceration prolongs public loss as citizens are forced to subsidize the perpetrators' livelihoods throughout their detention.

Through community service, the concept of restorative justice espoused by the New Criminal Code is systematically reconstructed to transcend the boundaries of conventional bilateral conflict resolution. Community service shifts the penal paradigm from state retribution inflicted upon the perpetrator's physical body (corporal punishment) to a civic obligation requiring the perpetrator to perform concrete moral and material restitution directly to the aggrieved community ^[8]. Corruption convicts are no longer permitted to remain passive economic burdens on the state budget; rather, they are legally repositioned as subjects mandated to repay their social debts through non-profit labor.

The operational formulation of community service for corruption convicts must be rigorously tailored to yield substantive social utility. Convicts can be legally ordered to perform manual labor such as cleaning public facilities, assisting administrative public services in underdeveloped regions, or serving as daily laborers in state-run orphanages or nursing homes. This conversion of sanctions not only restores the public social capital damaged by the perpetrator's corrupt acts but also imparts a profound educational-rehabilitative effect. White-collar criminals are forced out of their comfortable zones of social exclusivity and brought face-to-face with the socio-economic hardships of the marginalized public, who have historically been the indirect casualties of the policies or budgets they embezzled ^[6].

3. Measuring the Deterrent Effect Through Social Sanctions: A Criminological Perspective on White-Collar Crimes

The primary critique raised by legal traditionalists argues that substituting prison sentences with community service for corruptors would invariably erode the deterrent effect, thereby undermining the overarching anti-corruption agenda in Indonesia. This premise stems from the classical view that legal compliance can only be engineered through the severity of physical suffering in prison (severity of punishment). However, modern criminological analysis initially developed by Jeremy Bentham demonstrates that deterrence calculations do not rest solely on severity, but on a strategic combination of the certainty of punishment and the celerity of execution ^[10]. Furthermore, this approach must be precisely calibrated against the psychological characteristics of the specific legal subjects being prosecuted.

Corruption convicts are typologically categorized as white-collar criminals ^[10]. Unlike conventional street criminals who often act out of spontaneous economic desperation, corruptors are rational actors who engage in meticulous cost-benefit analyses (rational choice theory). They generally possess highly educated backgrounds, occupy strategic positions of authority, and are deeply dependent on their social status, prestige, and reputation within society. For rational actors like corruptors, prison sentences occasionally lose their coercive threat due to systemic anomalies within penitentiaries, which sometimes allow them to purchase illicit privileges or manage external business operations from inside their cells.

Conversely, community service aggressively targets the single most valuable asset of a white-collar criminal: their social reputation. The legal obligation to execute manual labor in open public spaces while wearing distinct convict garments triggers a highly potent mechanism of public stigmatization and social shame ^[6]. Sociologically, this public humiliation inflicts a psychological toll that is vastly more feared by corruptors than physical isolation within a prison cell, which is frequently compromised by exclusive amenities. Nonetheless, to ensure that this deterrent effect operates optimally and does not devolve into a weak political compromise, enforcement mechanisms must be stringently fortified. Implementing regulations in the form of Government Regulations (PP) must definitively seal any transactional loopholes in community service execution. This study strongly recommends the integration of digital tracking systems—such as GPS-enabled ankle bracelets and

daily biometric verifications—alongside publishing the convicts' service schedules to the general public to guarantee absolute transparency and maximize the function of community oversight as a direct form of social control ^[11].

Conclusion

The institutionalization of community service under Article 85 of Law Number 1 of 2023 (the New Criminal Code) normatively signifies a fundamental reconstruction of the penal paradigm, shifting from retributive vengeance to restorative justice. Nonetheless, its law enforcement efficacy within the corruption cluster still collides with an antinomy of norms due to the presence of special minimum sentencing frameworks in the existing Corruption Eradication Law (UU Tipikor). From a dogmatic perspective, the synchronization of these two regulations positions community service as a legally valid and applicable instrument only for petty corruption cases, accessories (*accessoir*), or convicts holding justice collaborator status. Through a restorative justice approach, this alternative sanction successfully converts what was originally physical isolation into concrete material and moral restitution, thereby restoring the public's socio-economic losses without expanding the state's financial burden within correctional facilities. Furthermore, from the perspective of white-collar criminology, community service is proven to preserve an optimal deterrent effect. This instrument directly attacks the perpetrators' most valuable assets—their reputation and social status—by engineering mechanisms of public social shame that are psychologically far more feared than conventional incarceration.

Recommendations

Based on the conclusions articulated above, the policy recommendations proposed in this study are as follows:

- The House of Representatives (DPR) and the Government, as lawmakers, are strongly urged to promptly initiate harmonization and a partial revision of the Corruption Eradication Law to align its special minimum statutory boundaries with the alternative sentencing matrix introduced by the New Criminal Code, specifically for corruption offenses yielding minor state financial losses.
- The Government (the Ministry of Law) is recommended to formulate a rigorous implementing regulation in the form of a Government Regulation (PP) that effectively seals any transactional loopholes. This regulation must adopt integrated digital tracking frameworks, including GPS-enabled devices and biometric verification, and mandate the publication of the convicts' work schedules to guarantee absolute transparency during execution.
- Law enforcement officials, particularly corruption court judges, are expected to embrace a progressive juridical mindset by moving away from traditional prison-centric approaches and courageously optimizing the imposition of community service sanctions to achieve substantive justice and genuine public utility.

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