



New Strategies in Handling Corruption Cases Under 50 Million Rupiah: A Review of Non-Criminal Policies

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Abstract. Corruption in Indonesia is a serious problem that has long hampered development and undermined public trust in the government. Although the penal approach, including prison sentences for perpetrators of corruption, has been applied for many years, significant results in reducing the level of corruption have not been achieved. This background encourages research to look for alternative solutions, namely the non-penal approach in handling corruption crimes with a loss value below 50 million rupiah. The formulation of the problem in this research is whether the non-penal approach can be effective in reducing the level of corruption and how this policy can be integrated with the existing legal system in Indonesia. This research uses a qualitative method by analyzing various non-penal programs and reviewing related literature and policies to understand the implementation and effectiveness of these approaches. The results show that the non-penal approach, which focuses on prevention, rehabilitation, and reintegration of offenders, offers various benefits such as reducing the burden on the criminal justice system and correctional institutions, as well as increasing awareness and education on integrity and ethics. However, this approach also faces legal and policy challenges. Therefore, this study suggests the development of clear regulations, training for law enforcement, collaboration between sectors, public campaigns to change perceptions, and proper allocation of resources to ensure the successful implementation of non-penal policies.

Keywords: *Corruption; Non-Criminal Policies; Restoration; Indonesia.*

1. Introduction

Corruption in Indonesia is a serious problem that has long hampered development and undermined public trust in the government. Over the years, the law enforcement approach to corruption has mostly used penal or punitive means, including prison sentences for perpetrators of corruption. However, this approach has not shown significant results in reducing the level of corruption. In an effort to find an alternative solution, an idea emerged from the Attorney General to apply a non-penal approach in handling corruption crimes with a loss value below IDR 50,000,000.[1] This idea is based on several reasons and contexts that need to be understood thoroughly.

On January 27, 2022, during a hearing with members of the House of Representatives Commission III, the Attorney General proposed that corruption crimes with a loss value below Rp50,000,000 should be resolved without imprisonment, but only with the return of state financial losses.[2] This idea emerged in response to criticism that law enforcement in Indonesia is often considered selective, sharp downward but blunt upward. In this context, a non-penal approach is considered as a way to avoid discrimination and provide fairer treatment to all perpetrators of corruption, regardless of the amount of losses incurred.

The Head of the Legal Information Center of the Attorney General's Office explained that in some cases, especially those involving the misuse of village funds with small losses, resolving through criminal channels is not always effective.[3] For example, the case of illegal levies in Pontianak with a state loss of two million two hundred thousand rupiah that is at the pre-prosecution stage is an important illustration.[4] Using a non-penal approach, the perpetrator was asked to return the loss and given guidance by the inspectorate to prevent repetition of similar actions in the future.

This approach is considered to be in line with the principles of speedy, simple and low-cost justice, as mandated in the Criminal Procedure Code (KUHAP). In practice, this approach focuses not only on punishment, but also on prevention and rehabilitation, providing offenders with the opportunity to correct their mistakes without having to go through a lengthy and complicated judicial process.

One important reason behind this proposal is the problem of overcapacity in correctional institutions. According to data from the Ministry of Law and Human Rights (Kemenkumham) in September 2021, the number of prisoners exceeded capacity in various regions of Indonesia. The three regions with the highest level of overcapacity are North Sumatra at 277.9%, East Java at 218.2%, and DKI Jakarta at 298.8% of the total prison capacity.[5]

This overcapacity poses a range of problems, including inadequate living conditions for prisoners and an increased risk of the spread of disease. In this context, non-penal approaches to corruption offenses with small losses can help reduce pressure on the prison system. By not putting petty corruption offenders in prison, the state can allocate existing resources to deal with more serious and urgent cases.

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In addition, this approach is also considered a solution to the problem of high costs associated with incarceration and sentencing. The operational costs of correctional institutions continue to rise as the number of inmates increases, and by releasing petty corruption offenders from prison sentences, the state can save budget and use the funds for corruption prevention and development programs.

Corruption often starts with maladministration, which is a mistake in administrative management that then develops into unlawful actions. Many corruption cases begin with non-compliance with regulatory procedures, which then lead to state losses. In this context, a non-penal approach that involves coaching and mentoring to perpetrators of petty corruption can be an effective preventive measure.

Coaching aims to provide actors with a better understanding of budget management and the appropriate use of funds. Assistance by the inspectorate or financial supervision department can prevent officials from taking arbitrary actions or using discretion beyond their given authority. Thus, this approach can cut the chain of maladministration that often serves as an entry point for corruption.

In addition, this approach can help change the paradigm of handling corruption from mere punishment to prevention and rehabilitation. Through education and coaching, perpetrators can understand their mistakes and commit not to repeat similar actions in the future. This can create a deterrent effect that is more effective than punishment alone.

Despite its potential benefits, this non-penal idea faces legal and policy challenges. Article 4 of Law No. 31/1999 on the Eradication of Corruption states that the return of state losses does not erase the criminalization of the perpetrator, but can only be used as a basis for mitigating the sentence by the Judge. This means that, legally, restitution is not a reason to exempt the perpetrator from criminal liability.

In this case, the Attorney General's proposal contradicts the existing provisions, both in terms of the formulation of the article and its explanation. Corruption is still categorized as an extraordinary crime that requires special and firm handling. Given its broad impact and harm to society, providing exceptions based on the amount of loss needs to be considered carefully to avoid the impression of tolerance towards perpetrators of corruption.

In addition, the implementation of this non-penal approach is at risk of abuse, especially in a law enforcement system that is still prone to intervention and vested interests. In practice, the determination of whether a case qualifies for non-penal resolution can be subjective and potentially lead to injustice. Therefore, a clear and transparent mechanism is needed in the implementation of this policy so that the main objective of eradicating corruption is still achieved.

Experience from other countries also shows that harsh penal approaches are not always effective in reducing corruption levels. For example, China has adopted a tough approach to corruption, including the death penalty for grand corruption cases. Since 2012, President Xi Jinping embarked on an anti-corruption campaign known as the "Fly and Tiger Extermination Campaign" that targets corrupt officials of various levels.[6]

In 2018, China established the National Supervisory Commission with extensive investigative powers and strict anti-corruption laws. However, despite the harsh penal approach, China's corruption perception index (CPI) ranges from 41-45, indicating that there is no significant positive correlation between the penal approach and a decrease in corruption levels.[7]

China's experience shows that a tough legal approach alone is not enough to eradicate corruption. A more holistic approach is needed, which includes prevention, education and rehabilitation. In this context, a non-penal approach can be one of the alternatives to tackle corruption, especially for cases with small losses that do not involve complex corruption networks.

Although it is still an initial idea, the non-penal approach to handling corruption crimes with a loss value below 50 million rupiah can be an interesting alternative for further study. This approach has the potential to reduce pressure on the correctional system, prevent acts of corruption early on, and prioritize the principle of restorative justice. However, the implementation of this policy requires in-depth studies and clear regulations to ensure that the goal of eradicating corruption is still achieved without creating loopholes for abuse. Therefore, this paper aims to examine the feasibility of a non-penal approach to corruption crimes with a loss value below 50 million rupiah so that this policy can be integrated with existing legal principles in Indonesia to achieve a more comprehensive and fair eradication of corruption.

This research was conducted using a qualitative method by analyzing various non-penal programs and reviewing related literature and policies to understand the implementation and effectiveness of these approaches. The analysis is carried out by examining the concepts of non-penal in the settlement of criminal offenses specifically related to corruption crimes with the qualification of state losses of less than 50 million rupiah.

2. DISCUSSION

Corruption is a scourge that has long hampered Indonesia's progress, undermined government institutions, and harmed public trust.[8] In this context, non-penal approaches are emerging as innovative alternatives to tackle corruption in a more humane and sustainable way. This approach focuses on prevention, rehabilitation and recovery, rather than simply punishing perpetrators with imprisonment. This article will take an in-depth look at

the role, challenges, and potential of non-penal policy reforms in addressing corruption crimes in Indonesia, especially those involving losses below IDR 50 million.

Traditionally, law enforcement against corruption in Indonesia has relied heavily on a penal approach that emphasizes severe punishments, such as imprisonment and high fines.[9] However, this approach often does not provide a significant deterrent effect, as well as causing overcapacity problems in correctional institutions. By adopting non-penal policies, it is hoped that a more efficient, fair and recovery-oriented legal system will be created.

The non-penal approach is recognized as a way to address the problem of injustice in a legal system that tends to be selective.[10] In this context, the non-penal approach seeks to reduce discrimination in the application of the law, provide equal treatment for perpetrators of corruption with small scale losses, and encourage faster and cheaper settlements.

The Corruption Eradication Commission (KPK) plays a crucial role in the implementation of non-penal policies in Indonesia. KPK not only functions as a law enforcement agency that takes action against perpetrators of corruption, but also as an institution that promotes anti-corruption education and prevention from an early age. In this regard, KPK can initiate training programs, workshops and seminars aimed at raising public awareness about the dangers of corruption and how to prevent it.

Collaboration between KPK and government agencies and civil society organizations is key in strengthening the implementation of the non-penal approach. With this collaboration, KPK can ensure that corruption prevention strategies are effective and efficient, and reach all levels of society. In addition, KPK can play a role in developing more inclusive policies, such as providing incentives for agencies that successfully implement corruption-free practices and apply high standards in public financial management.

Indonesia's corruption courts have operated with a mandate to fairly and strictly enforce the law against perpetrators of corruption.[11] However, an evaluation of the performance of these courts shows the need for deeper reforms to improve the effectiveness and efficiency of law enforcement. The evaluation highlighted various challenges faced, such as disparities in the application of penalties, non-uniformity in judicial procedures, and the potential for outside intervention.

To overcome these problems, corruption courts need to strengthen the application of the principle of due process of law, where all parties involved in the legal process receive fair and equal treatment.[12] Courts also need to emphasize the prevention aspect, by paying attention to cases that have the potential to provide a broader deterrent effect. In addition, courts can play a role in advocating for broader legal reform, by identifying weaknesses in the justice system and providing recommendations for improvement.

Corporations or business entities are often involved in corruption scandals that harm the state and society. To address this, a non-penal approach can be applied by emphasizing social responsibility and business ethics. Corporations should be empowered to play an active role in preventing corruption through strong internal policies, such as the implementation of compliance programs and strict internal audits.

The application of administrative and civil sanctions can also be part of the non-penal approach to corporate corruption.[13] For example, companies involved in corruption cases can be required to pay compensation or implement social programs that have a positive impact on society. Thus, corporations are not only subject to financial penalties but are also encouraged to contribute to recovery efforts.

In addition, regulations must be designed to close loopholes that allow corrupt practices in the business world. Clear arrangements regarding corporate liability in corruption cases, as well as the establishment of effective oversight mechanisms, will ensure that business entities act in accordance with the principles of good governance.[14] Corruption has long been known to undermine the foundations of politics and democracy in Indonesia. Corrupt practices cause distortions in the public policy-making process, reduce the efficiency of the bureaucracy, and generate public distrust of the government. In this context, non-penal approaches can serve as a tool to restore political integrity and democracy.

The first step is to strengthen democratic institutions to make them more transparent and accountable. This can be done by tightening election regulations, improving campaign finance monitoring systems, and ensuring that public officials are held accountable for their actions. Reforms in the bureaucracy are also necessary to reduce opportunities for corruption and improve efficiency in public services.

Comparisons with other countries such as Singapore show that a strong legal system and strict anti-corruption policies can significantly reduce corruption levels. Singapore is known for its transparent and efficient government system, which can be used as a reference for Indonesia in developing more effective anti-corruption policies.

State administrative law plays an important role in regulating clean governance and integrity. In the context of non-penal approaches, administrative law can be used to prevent corrupt practices through strict supervision and proper enforcement of regulations. For example, the implementation of a transparent and accountable reporting system can reduce opportunities for corruption by minimizing direct interaction between public officials and the public.

In addition, administrative law can be used to educate public officials on the importance of transparency and accountability in carrying out their duties.[15] Training and workshops on good governance practices can help strengthen the capacity of state officials to perform their duties with integrity. With clear regulations and effective oversight, the government can prevent corruption before it becomes a bigger problem.

In dealing with corruption with a loss value below 50 million Rupiah, a non-penal approach can be an efficient and proportional solution. This policy emphasizes administrative resolution and a restorative approach that focuses more on restoring losses and reconciliation between perpetrators and victims.[16] For example, perpetrators of corruption with small losses can be given the opportunity to repay state losses, receive guidance, and participate in anti-corruption education programs. This approach not only reduces the burden on the already overcrowded criminal justice system but also gives offenders the opportunity to correct their mistakes and return to contributing positively to society. Thus, non-penal approaches can create a more effective deterrent effect compared to prison sentences which often do not have a long-term impact.

Restorative approaches emphasize the importance of active participation of all parties involved in the process of resolving criminal cases.[17] In the context of corruption, this approach can be used to promote the recovery of losses and reconciliation between perpetrators, victims and affected communities. By involving various parties, such as community leaders and local stakeholders, restorative approaches can strengthen social relations and encourage more holistic recovery.

Restorative approaches can also reduce the stigma against perpetrators of corruption and help them reintegrate into society. In this process, it is important to ensure that all parties understand and respect the principles of restorative justice, and are committed to achieving fair and sustainable solutions. As such, restorative approaches can be an effective tool in creating positive behavior change and promoting more sustainable recovery. While non-penal approaches offer various benefits, there are several challenges that must be overcome to ensure their success. One of the main challenges is ensuring transparency and accountability in policy implementation, as well as ensuring active participation from all relevant parties. Close supervision and continuous evaluation are needed to ensure that non-penal policies are not misused or exploited by certain parties.

In addition, it is important to build public trust in these policies so that people can accept and support an approach that focuses more on prevention and recovery. By involving the public in the process of policy formulation and implementation, the government can create a more conducive environment for the fight against corruption.

From an economic perspective, non-penal policies can reduce reliance on costly and often ineffective penal systems. The state can allocate resources to more efficient prevention and rehabilitation programs, including anti-corruption education, training programs for corrupt actors, and economic empowerment initiatives. By integrating economic aspects in non-penal policies, Indonesia can create a more conducive environment for holistic corruption eradication.

Non-penal policy is an approach that does not rely on punitive sanctions or imprisonment in handling social problems or conflicts.[18] This approach emphasizes prevention, rehabilitation, and reintegration of individuals involved in criminal behavior or social conflict. The focus is on understanding the underlying factors that lead to crime and trying to address the root causes.

One example of a non-penal policy is rehabilitation programs for prisoners. These programs are designed to help prisoners change their criminal behavior through rehabilitative approaches, such as counseling, education, skills training, and reintegration programs into society. This approach is based on the belief that by giving prisoners the opportunity to improve themselves and develop positive skills, they have the potential to return to being contributing members of society.

In addition to rehabilitation for prisoners, non-penal policies also include recovery programs for offenders. Instead of punishing offenders with imprisonment, non-penal approaches are more likely to pay attention to rehabilitative punishment. An example is the rehabilitation program for drug abusers. This program involves providing medical treatment, psychological support, group therapy, and life skills training to assist addicts in their recovery and prevent involvement in drug-related criminal activities.

In addition to individual rehabilitation programs, non-penal policies also include efforts to reduce poverty and social inequality. In some cases, poverty and social inequality can be factors that influence crime rates. Therefore, non-penal policies seek to improve social and economic conditions through poverty reduction programs, economic empowerment, access to education, and the creation of employment opportunities. In this way, non-penal policies hope to reduce the risk factors associated with criminal behavior.

In addition to offender prevention and rehabilitation efforts, non-penal policies also promote an approach that focuses on victims of crime. This can involve recovery and support programs for victims of crime, as well as reconciliation efforts between offenders and victims. This approach aims to restore victims, promote peace and justice, and encourage offenders to take responsibility for their actions and participate in the reconciliation process. In non-penal policies, collaboration between various parties is very important. The government has a key role in designing and implementing effective non-penal policies. They can provide funding and resources for

rehabilitation programs, education, skills training, and poverty reduction programs. The government can also work with law enforcement agencies, correctional institutions, and the justice system in implementing these programs. In addition, non-profit organizations, civil society organizations, and advocacy groups also play an important role in promoting non-penal policies. They are often the providers of rehabilitation, counseling, and support services for prisoners, drug addicts, and crime victims. They can also advocate for policy changes that focus more on rehabilitation and prevention rather than prison sanctions.

Community participation in designing and implementing non-penal policies is also important. This approach recognizes that communities have an active role in creating safe and supportive environments. Communities can engage in community programs aimed at reducing crime, such as domestic violence reduction programs, neighborhood safety patrols, and youth empowerment programs.

Education is also an important component of non-penal policies. By increasing public awareness and understanding of the root causes of crime, as well as the importance of prevention and rehabilitation, we can build a more responsive and engaged society in addressing social problems. Education can also play a role in reducing social inequality and gaps in access to opportunities.

Non-penal policies in tackling corruption are a comprehensive approach and involve various preventive strategies, transparency, and community empowerment to prevent and reduce acts of corruption. The goal is to not only rely on law enforcement actions and criminal sanctions, but also encourage cultural and system changes that encourage corruption.

One important aspect of non-penal policies is increased transparency. This involves providing greater public access to public financial information, public contracts, and government policies. By increasing transparency, governments and public institutions become more open in carrying out their duties, thereby increasing their accountability to society. Independent oversight mechanisms can also be strengthened to ensure greater transparency and accountability.

Strengthening anti-corruption institutions is also an important part of non-penal policies. These institutions play a role in investigating and prosecuting corruption cases, providing policy recommendations, and conducting corruption prevention campaigns. Independent and strong anti-corruption institutions are essential to effectively tackle corruption.

Education and awareness is also a focus in non-penal policies. Anti-corruption education can be introduced in schools to form a strong understanding of the negative consequences of corruption. Training programs can also be provided to public servants on ethics, integrity and appropriate anti-corruption measures. In addition, public campaigns and social media can be used to raise public awareness of corruption, provide information on how to report acts of corruption, and encourage active public participation in corruption prevention.

The utilization of information technology is also an important part of non-penal policies. The use of electronic systems for procurement of goods and services, online financial reporting, and mobile applications to report acts of corruption can improve efficiency, transparency and accountability in government administrative processes. Technology can also be used to strengthen public complaint systems that are easily accessible and maintain the confidentiality of whistleblowers.

Community empowerment is also a key component of non-penal policies. Civil society, non-profit organizations, the media and the private sector can be involved in corruption detection, reporting and prevention efforts. An educated and empowered public has a strong role to play in monitoring corruption, pushing for policy changes, and demanding accountability from the government.

International cooperation is also important in non-penal policies. Countries can share information, experiences and best practices in tackling corruption across borders. This cooperation can include data exchange, training, and coordination in law enforcement and recovery of corruptly acquired assets. Through international cooperation, countries can support each other in efforts to prevent and prosecute corruption.

Looking at practices in other countries, non-penal approaches have been successfully applied in various contexts. In Norway, for example, rehabilitative and restorative approaches are applied in the criminal justice system, which emphasize the rehabilitation and reintegration of prisoners into society. This approach has proven effective in reducing recidivism rates and improving community safety.

Similarly, in the Netherlands, the legal system promotes restorative justice, which prioritizes healing and reconciliation over imprisonment. This practice involves the active participation of victims, offenders and the community in the process of resolving criminal cases, and focuses on sustainable and equitable solutions.

Indonesia can learn from the experiences of these countries in developing non-penal approaches that suit its social, cultural and political context. By adopting best practices and adapting them to local needs, Indonesia can create a more inclusive legal system that focuses on prevention, recovery and rehabilitation.

The non-penal approach to corruption offers a great opportunity to create a more inclusive and sustainable law enforcement system. With a focus on prevention, recovery and rehabilitation, this policy can provide a fairer and more effective alternative in dealing with corruption cases, especially those involving small losses. However, achieving this goal requires a strong commitment from all relevant parties, including the government, law enforcement agencies, civil society and the private sector.

Inter-agency cooperation and coordination are key to the successful implementation of non-penal policies. In addition, there needs to be strict evaluation and monitoring mechanisms to ensure that these policies are fit for purpose and not misused. With a more holistic approach, focusing on prevention and recovery, Indonesia can strengthen its law enforcement system and create a more just, prosperous and integrity society.

Overall, non-penal policies can be an integral part of corruption eradication efforts in Indonesia. By adopting a more inclusive and recovery-focused approach, the state can create a more transparent, accountable and effective legal system in the face of complex corruption challenges. This will not only improve the integrity of the law enforcement system but also strengthen public trust in state institutions, thereby creating a more conducive environment for development and the overall welfare of society.

Non-penal policies are approaches that do not rely on criminal sanctions or imprisonment in dealing with criminal acts. In the context of corruption, this policy can be applied to cases with a relatively small loss value, which is below 50 million rupiah. This policy aims to effectively prevent corruption, reduce the burden of imprisonment, and promote recovery and rehabilitation for perpetrators.

The non-penal approach to petty corruption cases aims to reduce the burden on the criminal justice system and prisons, provide opportunities for offenders to improve themselves through rehabilitation programs, minimize the negative impact of imprisonment that can exacerbate criminal behavior, and increase awareness and education about the importance of integrity and ethics.

Non-penal policies can include various strategic measures to prevent and deal with corruption with a small loss value. First, awareness-raising and education can be carried out by integrating anti-corruption education in school curricula and educational institutions and implementing awareness campaigns through mass and social media. Second, training and codes of conduct through providing specialized training for public and private sector employees on the importance of ethics and integrity and implementing clear codes of conduct and principles of behavior. Third, increasing transparency in public financial management and procurement processes can be done by using information technology to facilitate transparency. Fourth, strengthening supervision and complaint mechanisms by increasing the independence of supervisory institutions and strengthening the public complaint system. Fifth, community empowerment through active participation in corruption prevention efforts and facilitating the participation of civil society organizations. Sixth, inter-sectoral cooperation by involving the private sector in corruption prevention and promoting business practices with integrity. Seventh, the application of non-criminal sanctions such as fines or restrictions on certain rights to provide a deterrent effect and encourage behavior change.

Non-penal policies for petty corruption cases have several benefits, including reducing the workload of courts and prisons, enabling more efficient resource allocation, providing opportunities for offenders to improve themselves and return to being productive members of society, increasing public awareness and understanding of the dangers of corruption, and encouraging a culture of integrity and ethics in the public and private sectors.

However, the implementation of non-penal policies also faces challenges, such as resistance from law enforcers who may be reluctant to adopt this approach because it is perceived as less assertive. The solution is to involve law enforcement in the planning and implementation of non-penal programs and provide training on the benefits of this approach. Limited resources are also a challenge, which can be addressed by allocating a special budget for rehabilitation programs and seeking support from the private sector and non-profit organizations. Social stigma against corruption offenders can also hinder the rehabilitation and reintegration process, which can be addressed by public campaigns to change community perceptions and support the reintegration of offenders.

Reassessing non-penal policies for corruption offenses with a loss value below 50 million rupiah is an important step in creating a more effective and equitable justice system. This approach not only reduces the burden on the criminal justice system and correctional institutions, but also promotes rehabilitation and social reintegration for offenders. By involving various parties and increasing transparency and education, non-penal policies can be an effective tool in preventing and handling corruption in Indonesia.

3. CONCLUSION

The non-penal approach in dealing with corruption crimes with a loss value below IDR 50 million offers various benefits, such as reducing the burden on the criminal justice system and correctional institutions, providing opportunities for offenders to improve themselves through rehabilitation programs, and minimizing the negative impact of imprisonment which can exacerbate criminal behavior. It can also increase awareness and education on the importance of integrity and ethics. However, this approach faces legal and policy challenges, such as potential abuse and resistance from law enforcement. In addition, this approach requires a clear and transparent mechanism for implementation to ensure that the main objective of fighting corruption is still achieved.

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