

## CRIMINAL LAW POLICY EXPIRES ON CRIMINAL ACTS OF CORRUPTION

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### Abstract

*This research is motivated by the increasing number of cases of criminal acts of corruption in Indonesia. One of the reasons behind this is the implementation of the statute of limitations, so that many corruptors remove traces of not taking responsibility for the criminal acts they have committed. The aim of this research is to determine and analyze criminal law regulations and policies regarding the statute of limitations in criminal acts of corruption. This research uses normative juridical methods. The results of this research are that the statute of limitations for criminal acts of corruption has not been specifically regulated in the Law on the Eradication of Corruption Crimes. So that in its implementation it is based on 2 regulations with provisions, namely a minimum state loss of IDR 1,000,000,000. Article 40 of Law Number 19 of 2019 applies, namely an expiry period of 2 (two) years. Meanwhile, losses resulting from criminal acts of corruption are below IDR 1,000,000,000, Article 78 of the Criminal Code applies, based on the Corruption Eradication Law, which states that the criminal threat consists of a minimum imprisonment of one years and a maximum of twenty years, as well as life imprisonment, then the applicable expiry times are six years, twelve years and eighteen years. Therefore, a new legal instrument is required to ensure legal certainty by specifically regulating expiration periods for corruption crimes. Furthermore, the loss of criminal liability due to expired provisions undermines justice and disadvantages both the state and society, which suffer losses from such acts. Therefore, a new legal instrument is required to ensure legal certainty by specifically regulating expiration periods for corruption crimes. Furthermore, the loss of criminal liability due to expired provisions undermines justice and disadvantages both the state and society, which suffer losses from such acts.*

**Keywords:** Criminal Law Policy, Expiration, Corruption Crimes.

### A. Background

Punishment is the imposition of punishment on perpetrators who have committed criminal acts. Basically, all perpetrators of a criminal act must be prosecuted before a court hearing, however, both generally and specifically, the law determines the elimination and/or abolition of prosecution in certain cases, one of which is expiration. Expiration is the expiry of the time limit which results in the invalidation or elimination of the right to sue or carry out punishment against someone who has committed a criminal act.<sup>4</sup>

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<sup>4</sup> E.Y. Kanter and Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Jakarta: Alumni, 2006).

The right to prosecute a criminal case is extinguished due to the lapse of time based on Article 78 paragraph (1) of the Criminal Code. The basis of this provision is the same as the basis of the provisions of Article 76 paragraph (1) of the Criminal Code concerning the principle of *nebis in idem*, namely for legal certainty for every criminal case so that the person who commits it is not forever disturbed indefinitely by the threat of prosecution by the state, in any case. time for such distractions must end. People who are guilty of committing criminal acts to avoid prosecution by the state require him to always be alert to everyone, hide, avoid open social interactions, all of which makes his life uneasy. The unease of living for a long time before the expiry date ends is basically mental suffering which is no different from the suffering resulting from undergoing a sentence imposed by a court.<sup>5</sup>

One of the cases of corruption is an extraordinary crime that has a negative impact on the lives of the wider community. Jakarta, CNN Indonesia -- Indonesia Corruption Watch (ICW) criticized the Corruption Eradication Commission's (KPK) performance under Agus Rahardjo's leadership, noting many major cases remain unresolved. ICW emphasized that criminal cases, including corruption, are subject to a statute of limitations. Article 78(1) point 4 of the Criminal Code sets an 18-year limit for crimes punishable by death or life imprisonment. In the BLBI case, the verdict against Syafruddin Arsyad Tumenggun, former BPPN Head, revealed involvement of other figures—Sjamsul Nursalim, Itjih Nursalim, and Dorodjatun—causing Rp 4.58 trillion in state losses. ICW urged KPK to act before the statute expires. Given the case's *tempus delicti*, the statute of limitations could lapse in 2022, risking impunity for those implicated.<sup>6</sup>

Corruption is a serious problem because it can endanger the stability and security of society, damage democratic values and morality, as well as endanger economic and social political development and create massive poverty, so it needs attention from the government, society and social institutions.<sup>7</sup> The criminal act of corruption is extraordinary because it is systemic, endemic and has a very broad impact and not only harms state finances but also violates the social and economic rights of the wider community so that action against it requires comprehensive extra ordinary measures.

Corruption has now become a serious problem because corruption cases are increasing. Based on data from Indonesia Corruption Watch (ICW), 579 corruption cases have been prosecuted in Indonesia throughout 2022. This number has increased by 8.63% compared to 2021 which was 533 cases.<sup>8</sup>

<sup>5</sup> Indah Febriani Kaligis, "Daluwarsa Penuntutan Pidana Ditinjau Dari Pasal 78 Kitab Undang-Undang Hukum Pidana (KUHP)," *Lex Crimen* VII, no. 1 (2018): 142–43.

<sup>6</sup> Rayhand Purnama, "ICW: 18 Kasus Besar Di KPK Terancam Kedaluwarsa," CNN Indonesia, 2019, <https://www.cnnindonesia.com/nasional/20190512164507-12-394154/icw-18-kasus-besar-di-kpk-terancam-kedaluwarsa>.

<sup>7</sup> Juni Sjafrein Jahja, *Say No To Korupsi!*, 1st ed. (Jakarta: Visi Media, 2012).

<sup>8</sup> ICW, "ICW: Penindakan Kasus Korupsi Meningkat Pada 2022," *DataIndonesia.id*, 2023, <https://dataindonesia.id/varia/detail/icw-penindakan-kasus-korupsi-meningkat-pada-2022>.

Meanwhile, in 2023, the Chairman of the Corruption Eradication Commission (KPK), Firli Bahuri, said that based on data as of September 11 2023, the total number of corruption cases discovered by the KPK reached 1,462 cases. This shows an increase in corruption cases in Indonesia, not a decline.<sup>9</sup>

According to Hans Kelsen, law enforcement means: the law is enforced for the sake of legal certainty. The law is used as the main source for judges in deciding cases, the law is not based on wisdom in its implementation, and the law is dogmatic.<sup>10</sup> The application of criminal law based on custom or judge's interpretation tends to give rise to legal uncertainty. However, the application of the principle of legality by law enforcers who tend to be rigid often gives rise to problems that occur as a result of the application of the law. So, in the case of reality on the ground, legal certainty cannot be achieved absolutely because the three legal objectives as above should be fulfilled in their entirety so that there is no turmoil in society.<sup>11</sup>

Implementing the elimination of prosecution in expired cases, especially criminal acts of corruption, does not create justice, considering that the impact of corruption is very broad. Justice has an important position in every society, both large and small societies, regardless of work and type of behavior, however in reality we will experience difficulties whether something is fair or not because of the many forms of justice.<sup>12</sup> Indonesian positive law of justice is not regulated implicitly in statutory regulations, especially in the Criminal Code. However, Indonesian law requires that law enforcement must continue to provide justice to society as regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that judicial power is an independent power to administer justice to uphold law and justice, and also in Article 6 paragraph (1) letter g of Law Number 12 of 2011 concerning the Formation of Legislative Regulations, namely that the content of statutory regulations must reflect the principles of justice.

Applying the statute of limitations principle is not the best solution to protect the rights of those accused of criminal acts of corruption, it will actually cause a lot of corruption to occur in society. Because many criminals think they will lose themselves or commit other acts that will result in the crimes they have committed expiring. So the state loses the right to prosecute perpetrators of criminal acts of corruption, which will have an impact on state stability and public security. Even though society is not directly affected, in reality corruption has made people's lives miserable.

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<sup>9</sup> Ujang Hasanudin, "Sampai September 2023, KPK Catat Jumlah Korupsi Di Daerah Capai 1.462 Kasus," *HarianJogja*, 2023, <https://news.harianjogja.com/read/2023/09/13/500/1148333/sampai-september-2023-kpk-catat-jumlah-korupsi-di-daerah-capai-1462-kasus>.

<sup>10</sup> Erdianto Efendi, *Hukum Pidana Indonesia Suatu Pengantar* (Bandung: PT. Refika Aditama, 2011).

<sup>11</sup> H. Zaeni Asyhadie and Arief Rahman, *Pengantar Ilmu Hukum* (Jakarta: PT. Raja Grafindo Persada, 2013).

<sup>12</sup> Asyhadie and Rahman.

## B. Identified Problems

Based on the background description above, the formulation of the problem of this study is as follows:

1. How is the regulation of the statute of limitations in criminal acts of corruption?
2. How is the criminal law policy on the statute of limitations in criminal acts of corruption reviewed from the theory of legal objectives?

## C. Research Methodology

The type of research used is normative juridical. This type of normative juridical legal research is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that are considered appropriate.<sup>13</sup> The approaches in this research are: (1) The Legislative Approach is an approach that examines all laws<sup>14</sup> and regulations related to the research to be studied. (2) Conceptual approach, departing from the views and doctrines that have developed in legal science, thereby giving rise to legal understanding and legal principles that are relevant to the legal issues raised.<sup>15</sup> The legal materials used in this research are primary legal materials which are binding legal materials and consist of norms and statutory regulations, as well as secondary legal materials. After finding the legal materials used in this research, a collection technique is needed, namely through library research. Literature study is a written study of information from various sources that is widely published and is needed in normative legal research, then the results are reviewed and compiled systematically.<sup>16</sup> Meanwhile, the legal material analysis technique used in this research is descriptive qualitative, namely research that seeks to describe and interpret existing conditions or relationships, emerging opinions, ongoing processes and the consequences that occur and developing trends.

## D. Discussions

### 1. Expiration Settings in Corruption Crimes

Conflict between people gives rise to legal consequences, criminal acts, criminal liability and punishment.<sup>17</sup> Pound defines criminal liability as an obligation to pay retribution that the perpetrator will receive from someone who has been harmed. Criminal liability is intended to determine whether a person can be held criminally responsible or not for the actions they commit.

<sup>13</sup> Amiruddin and Zainal Asikin, *Pengantar Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2012).

<sup>14</sup> Bahder Johan Nasution, *Metode Penelitian Hukum* (Bandung: Mandar Maju, 2008).

<sup>15</sup> Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, 3rd ed. (Malang: Bayumedia Publishing, 2007).

<sup>16</sup> Ibrahim.

<sup>17</sup> Yudi Krismen, *Pengantar Sistem Hukum Indonesia* (Jakarta: Rajawali Press, 2019).

According to Pound, accountability does not only involve legal issues, but also concerns issues of moral values or decency that exist in a society.<sup>18</sup>

Perpetrators of criminal acts can be punished if they fulfill the requirements that the criminal acts they commit fulfill the elements specified in the law. Viewed from the point of view of the occurrence of prohibited actions, a person will be responsible for his actions, if the action is against the law and there is no justification or elimination of the unlawful nature of the criminal act he committed. Also seen from the perspective of responsibility, only someone who is capable of responsibility can be held accountable for their actions. In the case of a person who commits an act that is against the law, it depends on whether the act is guilty and if the person who commits the act is indeed against the law, then he or she will be punished.

In practice, not all perpetrators of criminal acts can be held accountable for their actions. The Criminal Code regulates the elimination of criminal liability, including: The death of the perpetrator of the criminal act as stipulated in Article 77 of the Criminal Code; The statute of limitations or expiration of time as stipulated in Articles 78-80 of the Criminal Code; Out-of-court settlement, namely the payment of the maximum fine and other costs if prosecution has commenced as stipulated in Article 82 of the Criminal Code, for offenses punishable only by a fine; The existence of justifying grounds, namely grounds that eliminate the unlawful nature of a criminal offense. Justifying grounds consist of: Article 48 of the Criminal Code: Emergency circumstances, Article 49 (1) of the Criminal Code: Necessary defense, Article 50 of the Criminal Code: Enforcement of laws and regulations, Article 51 (1) of the Criminal Code: Enforcement of lawful official orders; The existence of an excuse, which removes the fault from the perpetrator of the criminal act, while the act remains unlawful. Excuses consist of: Article 44 of the Criminal Code (Mental disability or disturbance, whereby a person who commits a criminal act but is ill, mentally impaired, or insane cannot be held accountable for their actions and cannot be punished), Article 49 (2) of the Criminal Code (Excessive self-defense, directly caused by severe mental disturbance due to an attack or threat of attack, is not punishable), Article 48 of the Criminal Code (Coercion).

The research conducted by the author focuses on examining the elimination of criminal liability due to the expiration of criminal acts of corruption. Corruption is a criminal act which, if defined, is an act that violates prohibitions regulated by legal regulations and is threatened with criminal sanctions. In this formulation, what must not be done is an act that causes prohibited consequences and is punishable by criminal sanctions for the person who commits the act.<sup>19</sup>

Even though everyone who commits a crime must be prosecuted, if the person who commits the crime, for example, runs away and the police have not been able to trace that person's whereabouts. So that for a certain number

<sup>18</sup> Kanter and Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya*.

<sup>19</sup> RM. Soeharto, *Hukum Pidana Materiil, Unsur-Unsur Objektif Sebagai Dasar Dakwaan* (Jakarta: Sinar Grafika, 2002).



of years that person cannot be arrested, during that time if criminal prosecution has expired, then the right to criminal prosecution against that person will be removed. In other words, according to E.Y. Kanter & Sianturi that basically all perpetrators of a criminal act must be prosecuted before a criminal court, however, either in general or specifically, the law determines the elimination and/or elimination of prosecution in certain cases, for example because it has expired.<sup>20</sup>

Expiration is the passage of time which is the reason for the cessation or elimination of the right to sue or carry out punishment against someone who has committed a criminal act. In the perspective of the Criminal Code, basically all perpetrators (in the broadest sense) of a criminal act must be prosecuted before a criminal court trial, however, both in general and specifically, the law determines the elimination or abolition of prosecution in certain cases, for example because it has expired. as regulated in Article 78 of the Criminal Code.<sup>21</sup>

Expiration is basically the state's effort to provide protection and legal certainty so that criminal prosecutions will not be carried out beyond the specified time limit. Black's Law dictionary defines expiration as expiration, which means "a formal termination on a closing date". The term closing date in date expiration is defined as "the date on which an offer, option, or the like ceases to exist". It is then concluded that when the expiry date has arrived there will no longer be any offers, options or the like that can be used. The expiration date aborts the authority to act against perpetrators of criminal acts.<sup>22</sup>

The expiration period in cases of criminal acts of corruption is not materially contained in the provisions of the Law on the Eradication of Corruption Crimes. However, provisions for terminating investigations and prosecutions of criminal acts of corruption can be found in Article 40 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission (hereinafter referred to as the Corruption Eradication Commission Law). Article 40 paragraph (1) of Law Number 19 of 2019 states that: *"The Corruption Eradication Commission can stop investigating and prosecuting cases of criminal acts of corruption whose investigation and prosecution are not completed within a maximum period of 2 (two) years."*

In substantial material terms, the expiration period for criminal acts of corruption refers to two legal bases, namely the Corruption Eradication Committee Law and the Criminal Code. The expiry period refers to the Corruption Eradication Commission Law considering that the criminal act of corruption is a special criminal act so that the principle of *lex specialis*

<sup>20</sup> Kaligis, "Daluwarsa Penuntutan Pidana Ditinjau Dari Pasal 78 Kitab Undang-Undang Hukum Pidana (KUHP)."

<sup>21</sup> Kanter and Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya*.

<sup>22</sup> Fina Rosalina, "Daluwarsa Tindak Pidana Korupsi Melalui Sudut Pandang Teori Hukum: Optimalisasi Pengembalian Kerugian Keuangan Negara," *Yustisia Merdeka: Jurnal Ilmiah Hukum* 8, no. 2 (2022): 31.

derogate *legi generalis* (laws that are specific, overriding general laws) applies. So the rules used are special rules. However, not all criminal acts in the Corruption Eradication Law have expired according to the provisions of the Corruption Eradication Committee Law. Until now, the expiry period has not been regulated in the Corruption Eradication Law, so that the expiry period for criminal acts of corruption that do not meet the requirements of the Corruption Eradication Commission Law is the Criminal Code that applies.

The parties who can carry out inquiries, investigations and prosecutions in criminal acts of corruption are not only the Corruption Eradication Commission, but also the Police and Prosecutor's Office. The following are the limitations of the authority to investigate, investigate and prosecute criminal acts of corruption carried out by the Corruption Eradication Commission, Police, and Prosecutor's Office:

(1) Authority of the Corruption Eradication Commission

Article 6 of Law Number 19 of 2019 is the main legal regulation that states the tasks of Corruption Eradication Commission. Article 11 paragraphs (1) and (2) of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission that: Paragraph 1 states that in carrying out the duties referred to in Article 6(e), the Corruption Eradication Commission is required to hand over the investigation, inquiry, and prosecution to the Police and/or the Prosecutor's Office.

(2) Police Authority

The police can carry out inquiries and investigations into criminal acts of corruption provided that state losses are below IDR 1,000,000,000.00 (one billion rupiah), refers to Article 16 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

(3) Authority of the Prosecutor's Office

The Prosecutor's Office has the authority to prosecute Police Investigators for criminal acts of corruption with a loss of IDR 1,000,000,000.00 (one billion rupiah) which is not under the authority of the Corruption Eradication Commission. Apart from that, the Prosecutor's Office also has the authority to conduct investigations as regulated in Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

Based on the description of authority above, the author draws the conclusion that the authority to investigate, investigate and prosecute criminal acts of corruption with state losses of at least IDR 1,000,000,000 (one billion rupiah) is the authority of the Corruption Eradication Commission. Meanwhile, losses from criminal acts of corruption are under IDR 1,000,000,000 (one billion rupiah), investigations and investigations are the authority of the Police and prosecutions are the authority of the Prosecutor's Office.

So there are two outdated regulations that are applied in criminal acts of corruption, namely:

- (1) State losses of at least IDR 1,000,000,000 (one billion rupiah) apply Article 40 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission, which states that investigations and prosecutions can be stopped at the latest 2 (two) years if the investigation and prosecution process is not completed.
- (2) Losses resulting from criminal acts of corruption under IDR 1,000,000,000 (one billion rupiah) apply Article 78 of the Criminal Code:

**Table 1. Expiration Time According to Article 78  
of the Criminal Code**

No	Classification of Crimes	Expired Provisions
1	All criminal offenses committed with printing	1 (one) years
2	Crimes that are punishable by a fine, imprisonment or imprisonment for a maximum of 3 (three) years	6 (six) years
3	Crimes that are punishable by imprisonment for more than 3 (three) years	12 (twelve) years
4	Crimes that are punishable by the death penalty or life imprisonment	18 (eighteen) years
5	For perpetrators of criminal acts who are not yet 18 (eighteen) years old	Each of the expiry grace periods above is reduced to 1/3

Based on the Corruption Eradication Law, the criminal threat consists of imprisonment for a minimum of 1 (one) and a maximum of 20 (twenty years), as well as life imprisonment, so the applicable expiry time is 6 (six) years, 12 (twelve) years, and 18 (eighteen) years.

The provisions expiring in 2026 will apply new provisions as in Article 624 of Law Number 1 of 2023 concerning the Criminal Code that this law comes into force after 3 (three) years from the date of promulgation, namely January 2 2023. Meanwhile Expiry time provisions in Law Number 1 of 2023 as in Article 136:

**Table 2. Expiration Time According to Article 136 Law  
Number 1 of 2023**

No	Classification of Crimes	Expired Provisions
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1	A criminal offense that is punishable by imprisonment for a maximum of 1 (one) year and/or only a fine of a maximum of category III	3 (three) years
2	A criminal offense punishable by imprisonment for a term of more than 1 (one) year and a maximum of 3 (three) years	6 (six) years
3	A criminal offense punishable by imprisonment for a term of more than 3 (three) years and a maximum of 7 (seven) years	12 (twelve) years
4	A criminal offense punishable by imprisonment for a term of more than 7 (seven) years and a maximum of 15 (fifteen) years	18 (eighteen) years old
5	A criminal offense punishable by a maximum imprisonment of 20 (twenty) years, life imprisonment or the death penalty	20 (twenty) years
6	Criminal acts committed by children	Each of the expiry grace periods above is reduced to 1/3

Based on table 3 and table 4, it can be seen that there is a difference in the expiry period in the Criminal Code and Law Number 1 of 2023. Where in the Criminal Code the expiry period is determined based on 5 classifications of criminal acts, while Law Number 1 of 2023 is based on 6 classifications of criminal acts. criminal. The difference in the expiry period in the Criminal Code and Law Number 1 of 2023 lies in the criminal threat. If the expired Criminal Code is intended for crimes involving printing, crimes which are punishable by a maximum imprisonment of 3 (three) years, crimes which are punishable by a prison sentence of more than 3 (three) years, crimes which are punishable by the death penalty or life imprisonment.

Meanwhile, in Law Number 1 of 2023 there are additional classifications, including: expiry date for criminal acts which are punishable by imprisonment for a maximum of 1 (one) year and/or a category III fine (Article 79 paragraph (1) letter c)) namely Rp. 50,000,000,- (fifty million rupiah); expiry date for criminal acts punishable by imprisonment of more than 1 (one) year and a maximum of 3 (three) years; expiry date for criminal acts punishable by imprisonment of more than 3 (three) years and a maximum of 7 (seven) years; expiry date for criminal acts punishable by imprisonment of more than 7 (seven) years and a maximum of 15 (fifteen) years; expiry date for criminal offenses which are punishable by a maximum imprisonment of 20 (twenty) years, life imprisonment or the death penalty. The expiry period

is calculated from the next day after the criminal act is committed, but there are exceptions both in the Criminal Code and Law Number 1 of 2023.

Based on these two regulations regarding different statutes of limitations, this has legal implications where the old Criminal Code is less flexible and potentially open to multiple interpretations, particularly for medium-term criminal offenses (e.g., 4–7 years). The old Criminal Code has more general and limited provisions on the statute of limitations, potentially causing uncertainty in determining the statute of limitations for certain cases. Meanwhile, Law No. 1 of 2023 addresses this weakness by providing a more detailed classification, not only based on the type of criminal offense and the length of the criminal penalty, but also taking into account fines as a measure.

It is known that so far, the statute of limitations for corruption crimes has been regulated by the Corruption Eradication Commission Law and the Criminal Code or Law Number 1 of 2023. There are no specific provisions in the Corruption Eradication Law. The statute of limitations is very important because it relates to legal certainty, both for individuals suspected of involvement and for the handling of corruption cases. The time limit for handling corruption cases needs to be clearly defined, given that corruption is a crime that is committed systematically and covertly, thus requiring time to uncover. Therefore, to protect the state's right to prosecute corruption perpetrators without violating the individual rights of corruption perpetrators, a clear and definite statute of limitations is necessary.<sup>23</sup>

## **2. Criminal Law Policy on Expiration in Corruption Crimes Viewed from the Theory of Legal Objectives**

The phenomenon of corruption has taken place in various forms and exists in various societies or nations. Historically, society has considered corruption as something normal and common in everyday life. The problem of corruption is a phenomenon that is very difficult to resolve anywhere. Various efforts to eradicate the culture of corruption, rather than just efforts to reduce as little corrupt behavior as possible can occur. However, the opportunity for corruption to emerge and spread in every system and bureaucratic structure in the world always exists. As Mochtar Lubis said, "corruption is not something that absolutely must exist, and cannot be avoided in a developing society. The possibility of a bureaucracy being infected by the disease of corruption always exists, both in developing and advanced societies."<sup>24</sup>

The uncontrolled increase in criminal acts of corruption will bring disaster, not only to the life of the national economy but also to the life of the nation and state in general. Widespread and systematic criminal acts of corruption constitute a violation of the social and economic rights of the community. Therefore, criminal acts of corruption are no longer classified as

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<sup>23</sup> Siska Dwi Andini, Muhammad Jafar Shodiq, and Ananda Fia Asyisyifa, "Locus : Jurnal Konsep Ilmu Hukum Daluwarsa Tindak Pidana Korupsi Dalam Masa Penyidikan," *Locus: Jurnal Konsep Ilmu Hukum* 5, no. July (2025): 64.

<sup>24</sup> R. Nazriyah, "Kewenangan Komisi Pemberantasan Korupsi Dalam Menyikapi Penyidikan Kasus Simulator SIM (Kapolri vs KPK)," *Jurnal Hukum IUS QUIA IUSTUM* 19, no. 4 (2012): 590.

ordinary crimes, but have become extraordinary crimes. Likewise, efforts to eradicate it can no longer be carried out normally, but are required to use extraordinary methods.<sup>25</sup>

Corruption as a serious crime is a common enemy, both for society and state institutions such as the Corruption Eradication Commission and other institutions. Therefore, efforts to strengthen institutions that are given the authority to prevent and eradicate corruption must be carried out, one of which is through statutory regulations. With statutory regulations, the goal of law is certainty.<sup>26</sup> Law enforcement and the judicial process are important elements of legal certainty. However, these two things are not sufficient to achieve legal certainty, let alone guarantee the fulfillment of needs and satisfaction of the legal interests of justice seekers or the wider community in general.<sup>27</sup>

In connection with this research, the author believes that one way to achieve legal certainty is to establish a punishment system in statutory regulations as a means of overcoming the problem of crime. This is one part of criminal law policy or criminal law politics. Implementing criminal law politics means making plans for the future in facing or overcoming problems related to crime. Included in this planning is that apart from formulating what actions should be considered criminal acts, it also determines the punishment system that should be applied to convicts while still paying attention to their rights.<sup>28</sup>

The criminal system itself is oriented towards the individual perpetrator or what is usually called individual responsibility, where the perpetrator is seen as an individual who is capable of taking full responsibility for the actions he or she commits. The legal regulations in cases of criminal acts of corruption are regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001.

Punishment in cases of criminal acts of corruption does not appear to have been successful in reducing the number of corruption cases in Indonesia, one of the reasons for this is due to the implementation of the statute of limitations. The impact of the passage of time means that a criminal act committed by a person cannot be prosecuted. In this way, perpetrators of criminal acts cannot be brought to justice, so that perpetrators can move freely. Criminal acts committed are no longer investigated or processed.

Determining the expiration period for criminal acts of corruption has not been specifically regulated in substantial juridical regulations, namely in the Corruption Eradication Law. So a legal instrument is needed to obtain a

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<sup>25</sup> Nazriyah.

<sup>26</sup> Ahmad Faruq Al Iqbal, Budi Parmono, and Hisbul Luthfi Ashsyarafi, "Kewenangan Komisi Pemberantasan Korupsi (KPK) Mengeluarkan Surat Perintah Penghentian Penyidikan (SP3) Dalam Perkara Tindak Pidana Korupsi," *Dinamika* 28, no. 17 (2022): 5990.

<sup>27</sup> Bagir Manan, *Sistem Peradilan Berwibawa (Suatu Pencarian)*, 1st ed. (Yogyakarta: FH UII Press, 2005).

<sup>28</sup> Mhd. Teguh Syuhada Lubis, "Reformulasi Hukum Penanganan Tindak Pidana Kekerasan Di Lingkungan Pendidikan Dalam Upaya Perlindungan Profesi Guru," *Jurnal De Legata* 6, no. 1 (2021): 197.

good and correct understanding of the concept of expiry of criminal acts of corruption. The implementation of a statute of limitations for criminal acts of corruption has given rise to polemics and concerns regarding the success of resolving corruption cases in Indonesia. Theoretically, determining the statute of limitations for prosecution in criminal law is established as an effort to protect and ensure legal certainty. However, there are pros and cons to determining the expiration period for criminal acts of corruption. Several legal experts who are in favor of imposing a statute of limitations give the following reasons: Pompe is of the opinion that, in fact, there are two important reasons for the existence of a statute of limitations in the process of prosecuting criminal acts. First, the long time dimension weakens the memory of the legal violation that occurred and reduces the principle of expediency (*doelmatigheid*) of the punishment. Second, the long time dimension complicates the evidentiary process and limits the success of prosecution. Van Bamelén added that the statute of limitations was set in anticipation of case evidence that had been lost or had become unclear. Apart from that, the length of the expiry date is considered sufficient to cure people's suffering caused by the commission of a criminal act.<sup>29</sup>

Meanwhile, several legal experts who oppose the implementation of an expiration date for criminal acts explain as follows: stating that the human element in criminal law requires ending and closing a criminal case. However, Jan Remelink also stated that, of course, this would be easier to do in a case involving a minor crime than a serious crime. Van Hamel proposed placing no limits on the prosecution of serious crimes and professional criminals. Meanwhile, Van Bamelén stated that there are several categories of criminal acts for which the expiration date should not be applied, namely for dangerous criminal acts and recidive criminal acts. The rejection of the expiration date for dangerous criminals was put forward by the criminal anthropology and national sociological schools.<sup>30</sup>

Several legal experts who oppose the determination of the expiration period for criminal acts, agree that the expiration period should not be applied to serious crimes involving professional criminals. Furthermore, regarding the characteristics of criminal acts of corruption, Romli Atmasasmita stated that the crime of corruption does not have different characteristics from conventional crimes and that criminal acts of corruption should be categorized as white collar crimes. These crimes originate from highly intellectual groups who are able to carefully calculate the possibility of crimes being committed. The main goal is to obscure the act so that it is not discovered by law enforcement. So when referring to the opinions of legal experts who oppose the determination of the expiration period, the expiration period cannot be applied to criminal acts of corruption.<sup>31</sup>

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<sup>29</sup> Rosalina, "Daluwarsa Tindak Pidana Korupsi Melalui Sudut Pandang Teori Hukum: Optimalisasi Pengembalian Kerugian Keuangan Negara."

<sup>30</sup> Rosalina.

<sup>31</sup> Rosalina.

Leer van het gevolg or the theory of consequences opens up space to interpret when a criminal act of corruption can be calculated through when it begins to arise from state financial losses due to criminal acts committed. The applicability of this theory can also be used as a basis for answers to the pros and cons of corruption cases in Supreme Court Decision No. 545/K/Pid.Sus/2013 in the case of Miranda Swaray Goeltom which imposed a prison sentence of 3 (three) years on her. Several parties stated that the indictment made by the Prosecutor's Office at that time had passed the expiration date as stipulated in Article 78 of the Criminal Code. So the Miranda Swaray Goeltom case should not be allowed to continue. However, it is known that Miranda Swaray Goeltom is still subject to criminal sanctions for 3 (three) years. The Supreme Court in its ratio decidendi was of the opinion that the deviation from the expiration date in the provisions of Article 78 of the Criminal Code refers directly to the UNCAC provisions due to the extraordinary character of the criminal act of corruption. The Supreme Court is of the opinion that extending the expiration period for criminal acts of corruption as stipulated in Article 29 of UNCAC is a step towards compliance with international norms.<sup>32</sup>

Apart from that, if the perpetrator of a criminal act of corruption does not take responsibility for his actions just because they have expired, this does not realize the goal of the law, namely justice. As the mandate of the 5th principle of Pancasila states "Social justice for all Indonesian people", meaning that all individuals regardless of status or power are treated equally before the law. If perpetrators of general crimes can be easily processed to be held accountable for their actions, why does the process for solving criminal crimes of corruption take so long, until they expire. Imposing a punishment that is appropriate to the level of error and the impact of the corrupt act is a fair consequence. This can also be a lesson to the public that perpetrators of criminal acts of corruption will be dealt with firmly, so that they will be afraid to commit corruption. By committing criminal acts of corruption, this also provides protection to people who are harmed by acts of corruption, in addition to the state suffering losses.

The aim of beneficial law is to ensure that the law can provide benefits for all parties. If the perpetrator of a criminal act of corruption does not take responsibility for his actions, this does not provide benefits to the state and society for the losses incurred. Criminal accountability by perpetrators of criminal acts of corruption aims at effective law enforcement and it is hoped that public trust will increase in the government and public agencies, as well as encouraging the public to play an active role in monitoring and reporting acts of corruption.

Criminal law policies arise due to conflicting regulations. In this case, criminal policies regarding the statute of limitations are unclear in terms of regulations and provisions in corruption cases. Many consequences arise from the lack of clarity in the statute of limitations rules in corruption cases. The

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<sup>32</sup> Rosalina.



statute of limitations is not a new topic in criminal law, but criminal law policies regarding corruption have not explicitly addressed the statute of limitations in corruption cases. Therefore, it is important that the consequences of the statute of limitations from the provisions of the statute of limitations itself must be regulated in the eradication of corruption, where it is known that corruption is not an ordinary criminal offense but a crime that is classified as an extraordinary crime.<sup>33</sup>

The general reason for setting a statute of limitations is to provide legal certainty because the longer a criminal act goes unprosecuted, the more difficult it becomes for law enforcement to prove the case. Witnesses may find it difficult to recall the events they experienced. Evidence may become damaged or lost. Similarly, the concept of “The trial as a reconstruction of the past” implies that the longer a criminal case goes unprosecuted, the more challenging it becomes to prove the case when it finally goes to trial.<sup>34</sup>

Based on the above description, the criminal law policy proposed by the author is that it is necessary to formulate new regulations or at least amend the existing regulations, namely the Law on Eradication of Corruption Crimes, which specifically regulates the statute of limitations for corruption crimes. Since corruption-related criminal offenses are special criminal offenses, their procedural laws are also specifically regulated under Law No. 46 of 2009 on the Corruption Criminal Court. Thus, the legal objective of certainty can be achieved, as law enforcement authorities will not be confused when applying the statute of limitations to corruption-related criminal offenses.

## E. Conclusions

The statute of limitations for criminal acts of corruption has not been specifically regulated in the Law on the Eradication of Corruption Crimes. So that in its implementation it is based on 2 regulations with provisions, namely a minimum state loss of IDR 1,000,000,000 (one billion rupiah) applies Article 40 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Crime Eradication Commission Corruption has an expiration date of 2 (two) years. This means that losses resulting from criminal acts of corruption are less than IDR 1,000,000,000 (one billion rupiah), Article 78 of the Criminal Code applies. The new legal instrument related to criminal acts of corruption aims to create legal certainty so that law enforcement officials no longer experience difficulties in applying statutes of limitations on criminal acts of corruption. This also does not provide benefits for the country and society. If criminal accountability is not

<sup>33</sup> Said Akbar Parlindungan Rambe, Muhammad Arifin, and Mhd Teguh Syuhadah Lubis, “Analisis Hukum Tentang Daluarsa Dalam Perkara Tindak Pidana Korupsi Ditinjau Sari Hukum Positif Indonesia,” *IURIS STUDIA: Jurnal Kajian Hukum* 5, no. 2 (2024): 415–24, <https://doi.org/10.55357/is.v5i2.632>.

<sup>34</sup> I Putu Oko Sapta Juliantara and I Nyoman Suyatna, “Pengaturan Daluwarsa Delik Tindak Pidana Korupsi Dan Penerapannya Dalam Hukum Positif Indonesia,” *Jurnal Kertha Semaya* 11, no. 5 (2023): 1145–56.

enforced, people will easily commit acts of corruption because there is no deterrent effect. It is necessary to carry out a review to extend the expiry period for criminal acts of corruption because criminal acts of corruption are extraordinary crimes. Apart from that, in order to create legal certainty, the statute of limitations is specifically regulated in the Corruption Eradication Law or the Corruption Crime Court Law.

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