

## RECONSTRUCTION OF BRIBERY SENTENCING REGULATIONS BASED ON JUSTICE AND LEGAL CERTAINTY VALUES

### REFORMA DA LEGISLAÇÃO SOBRE PENA DE SUBORNO COM BASE NOS VALORES DA JUSTIÇA E DA SEGURANÇA JURÍDICA

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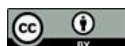
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#### Abstract

This study aims to analyze the implementation of bribery sentencing regulations, identify inhibiting factors in their application, and formulate a reconstruction model of bribery sentencing regulations based on justice and legal certainty. The research employs a socio-legal research design with an empirical approach, focusing on examining the operation of law within society, particularly in the jurisdiction of Makassar, South Sulawesi, Indonesia. Primary data were obtained through in-depth interviews with key informants, including corruption court judges, public prosecutors, investigators, legal practitioners, and legal academics. The sampling technique used purposive sampling, and the collected data were analyzed using descriptive qualitative methods through data reduction, data presentation, and conclusion drawing. The findings indicate that the current bribery sentencing regulations are ineffective due to normative ambiguity between bribery and gratification, procedural conflicts between sting operations (OTT) and reporting rights under Article 12C, and sentencing disparities caused by the wide range of criminal sanctions. These conditions are further influenced by weaknesses in legal substance, absence of nationally binding sentencing guidelines, and intervention of non-legal factors such as public opinion pressure and pragmatic considerations in asset recovery. As a

#### Resumo

*Este estudo tem como objetivo analisar a implementação das normas de determinação da pena em casos de suborno, identificar os fatores que inibem sua aplicação e formular um modelo de reformulação dessas normas com base na justiça e na segurança jurídica. A pesquisa emprega um desenho de pesquisa sociojurídica com abordagem empírica, com foco no exame do funcionamento da lei na sociedade, particularmente na jurisdição de Makassar, Sulawesi do Sul, Indonésia. Os dados primários foram obtidos por meio de entrevistas em profundidade com informantes-chave, incluindo juízes de tribunais de corrupção, promotores públicos, investigadores, profissionais do direito e acadêmicos do direito. A técnica de amostragem utilizada foi a amostragem intencional, e os dados coletados foram analisados utilizando métodos qualitativos descritivos por meio de redução de dados, apresentação de dados e formulação de conclusões. Os resultados indicam que as atuais normas de determinação de penas por suborno são ineficazes devido à ambiguidade normativa entre suborno e gratificação, aos conflitos processuais entre operações de flagrante (OTT) e os direitos de denúncia previstos no Artigo 12C, e às disparidades na determinação de penas causadas pela ampla gama de sanções penais. Essas condições são ainda influenciadas*



solution, this study proposes the "Integrative-Progressive Sentencing System" model through three main pillars: normative reconstruction via a Triple-Layer Delict classification, procedural synchronization through a Pre-OTT Filter mechanism, and strengthening sanctions through institutionalized sentencing guidelines and implementation of "economic and political death" sanctions for perpetrators. This reconstruction aims to shift the sentencing paradigm from merely punitive physical sanctions toward substantive justice restoration that aligns with the welfare state concept. Such regulatory reconstruction is expected to strengthen the effectiveness of anti-corruption law enforcement and enhance public trust in the justice system.

**Keywords:** Reconstruction. Bribery Sentencing. Corruption. Justice. Legal Certainty.

*por deficiências na substância jurídica, pela ausência de diretrizes de determinação de penas vinculativas em nível nacional e pela intervenção de fatores não jurídicos, como a pressão da opinião pública e considerações pragmáticas na recuperação de ativos. Como solução, este estudo propõe o modelo do "Sistema de Sentenças Integrativo-Progressivo" por meio de três pilares principais: reconstrução normativa via uma classificação de delitos em três camadas, sincronização processual por meio de um mecanismo de filtro pré-OTT e fortalecimento das sanções por meio de diretrizes de sentenciamento institucionalizadas e da implementação de sanções de "morte econômica e política" para os infratores. Essa reconstrução visa mudar o paradigma de sentenças de sanções físicas meramente punitivas para a restauração da justiça substantiva, alinhada com o conceito de Estado de bem-estar social. Espera-se que tal reconstrução regulatória fortaleça a eficácia da aplicação da lei anticorrupção e aumente a confiança do público no sistema de justiça.*

**Palavras-chave:** Reconstrução. Sentenças por Suborno. Corrupção. Justiça. Segurança Jurídica.

## 1 INTRODUCTION

Indonesia constitutionally affirms itself as a rule of law state (*rechtsstaat*), as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The constitutional objective is to achieve general welfare and social justice based on Pancasila values. However, the realization of these ideals continues to face significant challenges due to the persistence of corruption crimes, particularly bribery involving public officials and state administrators. Corruption has evolved into an extraordinary crime that not only undermines governance but also damages democratic institutions and weakens public trust in the legal system.

Although Indonesia has enacted Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, the effectiveness of bribery sentencing remains problematic. There is a significant gap between normative legal

provisions and judicial practices, particularly in terms of sentencing consistency and legal certainty.

One of the fundamental issues lies in the ambiguity between bribery and gratification norms. Article 12B of the Anti-Corruption Law regulates gratification, while Article 12C provides a reporting mechanism for recipients within 30 working days. However, the interpretation of these provisions often overlaps with bribery elements, creating legal uncertainty. This ambiguity leads to inconsistencies in law enforcement and creates a grey area between lawful gratification and criminal bribery.

Furthermore, procedural conflicts arise due to the frequent use of sting operations (Operasi Tangkap Tangan/OTT) conducted before the expiration of the 30-day reporting period. This situation raises concerns regarding procedural justice and due process of law, as individuals may be deprived of their right to report gratification voluntarily.

Another critical issue is sentencing disparity. The wide range of minimum and maximum penalties grants excessive discretion to judges, leading to inconsistent sentencing outcomes. In the absence of national sentencing guidelines, judges rely on subjective considerations, resulting in unequal punishment for similar offenses.

This research seeks to address these issues by proposing a reconstruction of bribery sentencing regulations based on progressive legal theory. The objective is to harmonize legal norms, procedures, and sanctions to achieve substantive justice and legal certainty.

## **2 RESEARCH METHOD**

This study employs a socio-legal research design with an empirical approach. The socio-legal approach is used because it enables the researcher to examine law not only as a normative framework but also as a social phenomenon that operates dynamically within society. In this perspective, law is understood not merely as written rules or statutory provisions, but also as a social institution that interacts with human behavior, legal culture, and institutional practices. Therefore, this research focuses on examining how bribery sentencing regulations are implemented in practice, particularly in relation to law enforcement institutions, judicial decision-making processes, and the application of legal norms within corruption cases. The empirical approach is utilized to analyze real

conditions in law enforcement practices and to identify the gap between normative legal provisions (*das sollen*) and empirical reality (*das sein*), especially regarding sentencing disparities, legal ambiguities, and procedural conflicts in bribery cases.

The research was conducted in Makassar, South Sulawesi, Indonesia, considering its strategic role as a legal hub in Eastern Indonesia. Makassar hosts several major law enforcement institutions involved in handling corruption cases, including judicial, prosecutorial, and investigative bodies. Additionally, the region has experienced a number of corruption cases that provide relevant empirical data for this study. The accessibility of institutions and availability of key informants also contributed to the selection of Makassar as the research location. Data collection was carried out over a period of six months, from July 2025 to December 2025, allowing sufficient time for in-depth interviews, document analysis, and validation of findings.

The institutions involved in this research include the Corruption Court at Makassar District Court, the South Sulawesi High Prosecutor's Office, the Makassar District Prosecutor's Office, and the Anti-Corruption Sub-Directorate of the South Sulawesi Regional Police. These institutions were selected because they play crucial roles in the investigation, prosecution, and adjudication of corruption cases, particularly bribery offenses. By examining these institutions, the research seeks to understand the dynamics of bribery sentencing practices from multiple perspectives within the criminal justice system.

The data used in this research consist of primary data and secondary data. Primary data were obtained through in-depth interviews with key informants selected using purposive sampling techniques. This sampling technique was chosen to ensure that informants possess relevant experience, knowledge, and expertise related to bribery sentencing practices. A total of ten key informants participated in this research, consisting of two corruption court judges at the Makassar District Court, two public prosecutors specializing in corruption cases, two investigators from the Anti-Corruption Sub-Directorate of the South Sulawesi Regional Police, two legal practitioners experienced in corruption defense cases, and two legal academics specializing in criminal law and anti-corruption studies. The interviews were conducted using semi-structured interview guidelines to allow flexibility in gathering information while maintaining research focus. The interviews explored issues related to sentencing considerations, regulatory

challenges, legal ambiguities, procedural practices, and recommendations for regulatory reconstruction.

Secondary data were obtained through document analysis and literature review. These data include primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, Law No. 20 of 2001 amending the Anti-Corruption Law, and the United Nations Convention Against Corruption (UNCAC) 2003. Secondary legal materials include legal textbooks, scientific journals, academic publications, and previous research findings related to bribery regulations and corruption law enforcement. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references relevant to this study.

The data analysis method used in this research is descriptive qualitative analysis. This method aims to provide a comprehensive and systematic description of legal phenomena related to bribery sentencing regulations. The analysis process involves selecting and simplifying data obtained from interviews and documents, organizing the data into structured narratives, identifying patterns and relationships, and drawing conclusions based on empirical findings supported by legal theories. The conclusions were then verified using theoretical frameworks such as legal certainty theory, justice theory, and progressive legal theory to ensure consistency between empirical findings and theoretical perspectives.

To ensure the validity and reliability of the research findings, triangulation techniques were applied. Triangulation was conducted by comparing information from different informants, combining interview data with document analysis, and applying multiple theoretical perspectives. This approach ensures that the research findings are credible, objective, and comprehensive. Through this methodology, the study aims to produce reliable findings regarding the reconstruction of bribery sentencing regulations based on justice and legal certainty, while also providing recommendations for improving anti-corruption law enforcement in Indonesia.

### 3 RESULTS AND DISCUSSION

#### 3.1 The dialectics between regulation and reality: a theoretical review of articles 12B and 12C

The ambiguity between bribery and gratification offenses under Indonesia's Anti-Corruption Law (Law No. 31 of 1999 as amended by Law No. 20 of 2001) is not merely a technical issue but represents a fundamental structural problem within the legal framework itself. This ambiguity creates uncertainty regarding the boundaries between lawful conduct and criminal acts, thereby weakening the effectiveness of anti-corruption law enforcement. When analyzed through H.L.A. Hart's theory of legal certainty, law must provide clear rules of recognition that enable legal subjects to predict the legal consequences of their actions. Without clarity, legal norms become open-textured, allowing excessive discretion for law enforcement authorities.

In the context of Articles 12B and 12C, the ambiguity arises from the unclear distinction between "gratification considered as bribery" and the "right to report gratification." Article 12B categorizes gratification as bribery if it relates to official duties and contradicts obligations, whereas Article 12C provides a mechanism allowing public officials to report gratification within 30 working days. However, this regulatory construction creates overlapping interpretations, as law enforcement authorities may interpret gratification as bribery even before the reporting period expires. Consequently, this situation creates legal uncertainty and raises concerns about procedural fairness.

Empirical findings from interviews with corruption court judges and public prosecutors in Makassar indicate that sting operations (Operasi Tangkap Tangan/OTT) frequently occur before the expiration of the 30-day reporting period stipulated in Article 12C. This practice creates tension between rapid law enforcement measures and procedural justice principles. On the one hand, sting operations are considered effective in capturing perpetrators and preventing corruption. On the other hand, these operations may undermine the legal right of public officials to report gratification voluntarily, thus potentially violating due process principles.

From the perspective of Satjipto Rahardjo's progressive legal theory, law should prioritize substantive justice rather than rigid adherence to procedural formalities.

Progressive law emphasizes that legal enforcement should aim to achieve human welfare and fairness, rather than merely implementing legal provisions mechanically. In bribery cases involving sting operations, the application of rigid procedural enforcement may neglect the possibility of good faith from public officials who intend to report gratification. Therefore, progressive legal theory suggests that law enforcement authorities should carefully evaluate the presence of *mens rea*, or criminal intent, before conducting coercive actions.

Furthermore, the conflict between legal certainty and law enforcement efficiency illustrates the need for regulatory reform. Without clear guidelines, law enforcement authorities may rely heavily on discretion, which increases the risk of inconsistent legal decisions. The absence of standardized procedures also contributes to differences in interpretation among investigators, prosecutors, and judges, ultimately affecting sentencing outcomes.

The ambiguity between Articles 12B and 12C also raises broader concerns regarding the principle of legality (*nullum crimen sine lege*). If legal norms are unclear, individuals cannot reasonably predict whether their conduct constitutes a criminal offense. This condition undermines the rule of law and creates uncertainty in anti-corruption enforcement. Therefore, a reconstruction of bribery sentencing regulations is necessary to ensure legal certainty, fairness, and consistency in law enforcement practices.

### **3.2 Inhibiting factors: from legalistic-formal paradigm to substantive justice**

The ineffectiveness of bribery sentencing in the Makassar jurisdiction is largely influenced by the dominance of a legalistic-formal paradigm in law enforcement. This paradigm emphasizes strict adherence to statutory provisions without adequately considering broader justice principles. As a result, judicial decisions often focus on procedural compliance rather than substantive justice.

Legal academics interviewed in this research emphasized that sentencing disparity remains a major problem in bribery cases. The absence of nationally binding sentencing guidelines allows judges to exercise broad discretion in determining penalties. This situation leads to inconsistent sentencing outcomes, where perpetrators with similar

offenses receive significantly different punishments. Such disparities undermine public trust in the judicial system and weaken the deterrent effect of anti-corruption laws.

This phenomenon aligns with H.L.A. Hart's critique of legal systems that rely solely on primary rules without sufficient secondary rules. Primary rules define prohibited conduct, while secondary rules regulate how legal decisions should be made. In the absence of secondary rules such as sentencing guidelines, judicial decisions become inconsistent and unpredictable.

Another inhibiting factor is the wide range of criminal sanctions provided in the Anti-Corruption Law. The broad minimum and maximum penalties create significant room for judicial discretion. While discretion is necessary to consider case-specific circumstances, excessive discretion without guidelines increases the risk of sentencing disparities. Furthermore, non-legal factors such as public pressure, media attention, and political considerations may influence judicial decisions.

The legalistic-formal paradigm also limits the application of restorative and asset-based approaches in corruption sentencing. Current sentencing practices primarily emphasize imprisonment, while asset recovery is treated as an additional penalty. This approach may not effectively address the economic harm caused by corruption. Therefore, a shift toward substantive justice is necessary, emphasizing proportional punishment, asset recovery, and prevention of future corruption.

### **3.3 Reconstruction model: integrative-progressive sentencing system**

To address these weaknesses, this research proposes a reconstruction of bribery sentencing regulations through an Integrative-Progressive Sentencing System. This model integrates normative reform, procedural improvement, and sanction restructuring to achieve justice and legal certainty.

The proposed reconstruction emphasizes the Triple-Layer Delict classification, which distinguishes between administrative gratification, bribery, and public trust betrayal. This classification aims to eliminate ambiguity and provide clearer legal boundaries. Additionally, the model introduces a Pre-OTT Filter mechanism, which requires verification of criminal intent through electronic evidence before conducting

sting operations. This mechanism ensures procedural fairness and protects good-faith officials.

The reconstruction also includes the establishment of sentencing guidelines to reduce disparity in judicial decisions. These guidelines provide a structured matrix for determining penalties based on the severity of the offense, value of gratification, and impact on public trust. Furthermore, asset confiscation is proposed as a primary punishment rather than an additional penalty, emphasizing economic recovery.

The following table illustrates the comparison between the existing system and the proposed reconstruction:

**Table 1**

*Comparison of Existing Regulations and Reconstruction Model*

<b>Aspect</b>	<b>Existing Condition</b>	<b>Reconstruction Model (Integrative-Progressive)</b>
Norm Structure	Ambiguity between transactional bribery and gratification (Article 12B)	Triple-Layer Delict: Clear distinction between administrative gratification, bribery, and public trust betrayal
Procedural Certainty	Sting operations conflict with 30-day reporting right (Article 12C)	Pre-OTT Filter: Verification of criminal intent and good faith objection period
Criminal Sanctions	Wide sentencing range; imprisonment-centered punishment	Sentencing Guidelines: Structured sanction matrix
Asset Recovery	Compensation as additional punishment	Asset-Primary Punishment based on illicit enrichment principle
Political Impact	Temporary revocation of political rights	Permanent Political Death: Permanent ban from public office

Through this reconstruction, the Integrative-Progressive Sentencing System aims to create a more balanced approach between legal certainty and substantive justice. The model is expected to strengthen anti-corruption enforcement, reduce sentencing disparities, and enhance public trust in the judicial system.

#### **4 CONCLUSION AND RECOMMENDATIONS**

The current bribery sentencing system in Indonesia demonstrates significant weaknesses in ensuring justice, legal certainty, and consistency in law enforcement. The ambiguity between bribery and gratification provisions, particularly under Articles 12B

and 12C of the Anti-Corruption Law, has created legal uncertainty and allowed excessive discretion among law enforcement authorities. Furthermore, the absence of nationally binding sentencing guidelines has contributed to disparities in judicial decisions, resulting in unequal treatment of similar offenses and weakening the deterrent effect of anti-corruption law enforcement. In addition, the dominance of imprisonment-oriented punishment, limited focus on asset recovery, and procedural conflicts in sting operations have further undermined the effectiveness of the current sentencing framework. These structural weaknesses highlight the need for comprehensive reform to ensure that anti-corruption law enforcement aligns with principles of substantive justice, legal certainty, and proportional punishment.

To address these challenges, this study proposes the Integrative-Progressive Sentencing System as a comprehensive reconstruction model designed to harmonize normative regulations, procedural mechanisms, and sanction structures. This model emphasizes the importance of revising the Anti-Corruption Law to clarify the distinction between bribery and gratification offenses and to eliminate normative ambiguity that may lead to inconsistent interpretation. In addition, the establishment of nationally binding sentencing guidelines is essential to reduce disparities in judicial decisions and promote consistency in punishment. The implementation of a Pre-OTT Filter mechanism is also recommended to ensure procedural fairness by verifying the presence of criminal intent before conducting sting operations, thereby protecting individuals acting in good faith. Furthermore, asset recovery should be prioritized as a primary punishment rather than merely an additional sanction, ensuring that corruption crimes are addressed not only through imprisonment but also through the restoration of state financial losses. Through these reforms, the proposed Integrative-Progressive Sentencing System aims to strengthen anti-corruption law enforcement, enhance public trust in the judicial system, and promote a more just and legally certain framework for bribery sentencing in Indonesia.

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