



Sociolegal Analysis of Corruption Crime in Indonesia from the Perspective of Rational Choice Theory

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Abstract

Corruption is a misuse of power for personal or partial gains by state officials. Corruption can cause poverty, create social inequality, or even reduce public trust toward public authorities. The question is, why do people commit corruption? Why does it continue to persist in our society? Using theoretical analysis method with the support of several existing legal norms and practices in Indonesia, this article tries to answer these questions based on the basic assumptions of rational choice theory. It assumes corruptor as a rational agent, who has the goal of maximizing personal profits, as well as awareness of the possibilities and preferences provided by the social structures to make rational choice to realize that goal (fortunes from corruption). This article will focus only on several legal preferences, in particular legally protected political rights of corruptors, and situational conditions in terms of weak liability sanctions that might be used as a basis for rational choice in corruption. The results of this study show that the rights possessed by corruption convicts contribute to rational preferences for corrupt candidates to commit acts of corruption. In addition, this study also shows that low punishment for corruptors, low morality of prison officers, and political opportunities after release from prison are rational preferences that increase the chances of corrupt candidates committing corruption. The article therefore recommends imposing stricter liability means by revoking political rights to hold office and rights to property in order maximize suffering and to minimize benefits that are always avoided by rational agents.

Keywords: *Corruption, Goals, Preference, Profit and Rational Choice.*

Abstrak

Korupsi adalah penyalahgunaan kekuasaan untuk keuntungan pribadi atau sebagian oleh pejabat negara. Korupsi dapat menyebabkan kemiskinan, menciptakan ketimpangan sosial, atau bahkan mengurangi kepercayaan publik terhadap otoritas publik. Pertanyaannya, mengapa orang melakukan korupsi? Mengapa itu terus bertahan di masyarakat kita? Dengan menggunakan metode analisis teoritis dengan dukungan beberapa norma dan praktik hukum yang ada di Indonesia, artikel ini mencoba menjawab pertanyaan-pertanyaan tersebut berdasarkan asumsi dasar teori pilihan rasional. Ini mengasumsikan koruptor sebagai agen rasional, yang memiliki tujuan untuk memaksimalkan keuntungan pribadi, serta kesadaran akan kemungkinan dan preferensi yang disediakan oleh struktur sosial untuk membuat pilihan rasional untuk mewujudkan tujuan itu (keberuntungan dari korupsi). Artikel ini hanya akan berfokus pada beberapa preferensi hukum, khususnya hak politik koruptor yang dilindungi secara hukum, dan kondisi situasional dalam hal sanksi pertanggungjawaban lemah yang mungkin dijadikan dasar pilihan rasional dalam korupsi. Hasil penelitian ini menunjukkan bahwa hak-hak yang dimiliki



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oleh terpidana korupsi berkontribusi pada preferensi rasional bagi calon koruptor untuk melakukan tindakan korupsi. Selain itu, penelitian ini juga menunjukkan bahwa rendahnya hukuman terhadap koruptor, rendahnya moralitas petugas lahan, dan peluang politik setelah dibebaskan dari penjara merupakan preferensi rasional yang meningkatkan kemungkinan caleg koruptor melakukan korupsi. Oleh karena itu, pasal ini merekomendasikan untuk memberlakukan tanggung jawab yang lebih ketat dengan mencabut hak politik untuk memegang jabatan dan hak atas properti untuk memaksimalkan penderitaan dan meminimalkan manfaat yang selalu dihindari oleh agen rasional.

Kata Kunci: Korupsi, Tujuan, Preferensi, Keuntungan dan Pilihan Rasional.

INTRODUCTION

Corruption is a globally condemned bad behavior and practice as it allows for the accumulation of personal fortunes by robbing public resources. The World Bank defines corruption as the use of public office for private gain.¹ Today, the definition of corruption has expanded. It involves not only personal actions by individuals, but also political institutions such as political parties.² Since its structures and involved parties become more complex, it tends to penetrate the whole economic and political system.³ In most cases of corruption, there is a tendency for the misuse of power, public office, and political influence that enable various forms of deceitful practices, such as bribery, extortion, fraud, embezzlement, nepotism, cronyism, appropriation of public assets and property for private gain, and trading influence.⁴

The World Bank has indicted that corruption is a problem that has severe harmful impacts on the poor and vulnerable.⁵ It deteriorates justice by increasing costs while reducing access to basic services and fundamental rights, such as right to health, education, and other social welfare programs.⁶ Corruption threatens all aspects of life in our society, and caused enormous material losses to state finances in the economic, social and cultural fields.⁷ Since it destroys the functioning of vital organs of our society and nation, some have called it a cancer that rots our culture and politics.⁸ Due to its

¹ World Bank, "Anticorruption Fact Sheet." (2020) <https://www.worldbank.org/en/news/factsheet/2020/02/19/anticorruption-fact-sheet#:~:text=Corruption—the abuse of public,to theft of public funds.> (accessed 12/11/2023)

² Maria Silva Wangga, "Pertanggungjawaban Pidana Partai Politik sebagai Badan Hukum dalam Tindak Pidana Korupsi." *Integritas, Jurnal Anti Korupsi* 4, no. 2 (December,10, 2018).

³ Maria Silva Wangga, et al., "Revocation of Political Rights of The Perpetrators of Criminal Acts of Corruption." *JILS (Journal of Indonesian Legal Studies)* 4, no. 2 (August 25, 2019).

⁴ U Myint, "Corruption: causes, consequences, and control." *Asia-Pacific Development Journal* 7, no. 2 (December 2000).

⁵ The World Bank, "Combating Corruption." *Brief* (March 15, 2023). <https://www.worldbank.org/en/topic/governance/brief/combatingcorruption#:~:text=Corruption%20has%20a%20disproportionate%20impact,sub%2Dstandard%20or%20harmful%20products> (accessed 13/02/2024).

⁶ Ousmane Diagana and Mouhamadou Diagne, "Corruption is a Global Problem for Development. To Fight It, We All Have a Role to Play." *World Bank News* (June 13, 2023), <https://www.worldbank.org/en/news/opinion/2023/06/13/corruption-is-a-global-problem-for-development-to-fight-it-we-all-have-a-role-to-play#:~:text=Corruption is also a fundamental,social programs%2C and even justice.> (accessed 12/12/2023).

⁷ Nanda R. Putra dan Rosa Linda, Corruption in Indonesia: A Challenge For Social Changes. *Integritas: Jurnal Anti Korupsi* 8, no. 1 (June 25, 2022).

⁸ Inge Amundsen, "Political Corruption: An Introduction to the Issues." *Development Studies and Human Rights Working Paper* 7 (1999) <https://www.cmi.no/publications/file/1040-political-corruption.pdf>.

tremendous destructive power, corruption can threaten national and international security, weaken our social and political institutions, and undermine democracy, justice, and the rule of law. In turn it jeopardizes sustainable development.⁹ In addition, corruption can also destabilize public perceptions about a community life, undermine societal norms and values, and trigger a decline in public trust on our political system.

This condition can become an incubator for common crimes that distort competition and innovation.¹⁰ In the field of business and economics, these adverse impacts of corruption will obstruct business operations and economic growth, create inequality on income distribution and disrupt corporate governance and the overall business environment.¹¹ The question is that, despite its obvious criminal nature and tremendous risks and destructive impacts on our society and nations, why does corruption continue to become common practices in many countries including in Indonesia? To what extent social and legal aspects do have impacts on this practice of corruption? Focusing on the cases of corruption in Indonesia, this article aims at answering these questions by providing a sociolegal analysis on the corruption crimes from the view of rational choice theory.

RESEARCH METHODS

This article is developed based on theoretical studies using several legal regulations and practices. The theory employed in this article is rational choice theory with a sociological study approach. The legal regulations used as the basis for analyzing the rational choice theory are the penitentiary laws that encompass the rights of prisoners in corruption cases. In addition, the impact of the absence of a law on the confiscation of assets from corruption, light sentences, and low prison terms in punishment for corruption crime will also be analyzed.

RESULTS AND DISCUSSION

Facts about Corruption in Indonesia

According to Transparency International, Indonesia's corruption perception index score is 34 out of 100. It ranks Indonesia at 115 out of 180 countries in the world.¹² This is worse than the rank of the previous year which placed Indonesia at 110 out of 180 countries.¹³ The bigger the score the lower the level of corruption, conversely, the smaller the score the higher the level of corruption. This negative trend of corruption was confirmed in a report released by the Indonesia Corruption Watch (ICW) as indicated in the graph 1 below: the trend of corruption from 2018 - 2022 tends to increase both in terms of the number of cases and suspects.¹⁴

⁹ Ridwan Arifin, et al., "Misdemeanor of Corruption Within the Scope of International Law and the Legal Consequences." *Journal of Indonesian Legal Studies* 4, no. 2, (November 3, 2019), 299–314.

¹⁰ Eugen Dimant and Thorben Schulte, "The Nature of Corruption: An Interdisciplinary Perspective." *German Law Journal* 17, no. 1 (Marc 16, 2019), 53–72.

¹¹ Marie Chêne and Robin Hodess, Robin, "The Impact of Corruption on Growth and Inequality." *Transparency International Anti-Corruption Helpdesk* (March 15, 2014), 2–11. https://www.transparency.org/files/content/corruptionqas/Impact_of_corruption_on_growth_and_inequality_2014.

¹² Transparency International, "Transparency International Indonesia: Country Data." <https://www.transparency.org/en/countries/indonesia>.

¹³ Transparency International, "Corruption Perception Index 2022." (2022), https://www.transparency.org/en/cpi/2022?gclid=CjwKCAiA9ourBhAVEiwA3L5RFipfnrOqvS074PnKhDm6mYK0TMiQkO9uo68vLvqmRcYwQ6WNBRWp5hoCqAsQAvD_BwE&gad_source=1.

¹⁴ Anandya, Diki. and Easter, Lalola, "Laporan Hasil Pemantauan Tren Penindakan Kasus Korupsi Tahun 2022: Korupsi Lintas Trias Politika." *Indonesia Corruption Watch* (2023).

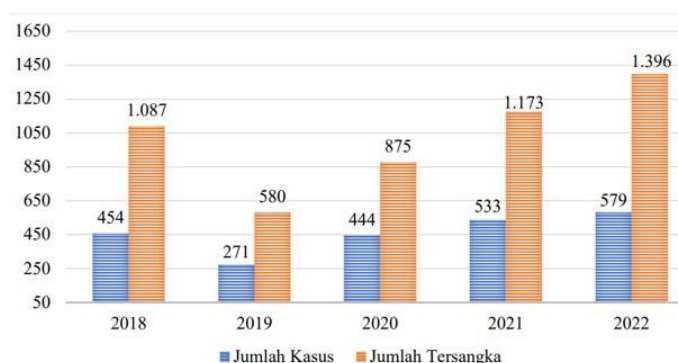


Figure 1. Graph of Corruption Trends in the Last Five Years (2018-2022)

There have been legal and formal efforts trying to mitigate and prevent such a negative trend of corruption in Indonesia. The efforts even have a long history from the Old Order, New Order and Reformation era.¹⁵ Corruption become a public discourse since the beginning of Indonesia independence aiming at combating corruptive practices between Indonesian elites and foreign powers and business. Between 1955-1957 at least 3 main attempts were made in terms of the formulation of anti-corruption laws, the establishment of special courts for the trial of corruptors.¹⁶

During the New Order period, this effort run backward as the Soeharto regime established a systematic corruption that benefits his families and allies,¹⁷ despite serious opposition and attempts to fights against corruption by international and national civil society and organizations. The regime's attempt to fight against corruption only targeted corruption in private sectors, not of its own, with the adoption of Law No. 11 of 1980 on the Criminal Act of Bribery. It was only after the fall of the New Order regime that several core anti-corruption laws were adopted, such as (1) Law No. 31 of 1999 on the Eradication of Criminal Act of Corruption as amended by Law No. 20 of 2001, (2) Law No. 30 of 2002 on the Commission for the Eradication of Corruption ("KPK Law", which outlines the specific duties and authority of the Corruption Eradication Commission), and (3) Law No. 8 of 2010 on the Prevention and Eradication of the Criminal Act of Money Laundering ("Anti-Money Laundering Law").

What is new in the approach to fight against corruption during this Reformation Era is the establishment of specific anti-corruption bodies, namely the Commission for the Eradication of Corruption ("KPK") and Indonesian Financial Transaction Reports and Analysis Centre ("PPATK"). As independent bodies, they work in conjunction with the Public Prosecutor Office ("Kejaksaan") and the Indonesian Police Office (Kepolisian) to ensure the effective implementation of these regulatory framework and to hold corruptors liable. Despite such a progressive approach to prevent and eliminate corruption through

[https://antikorupsi.org/sites/default/files/dokumen/Narasi Laporan Tren Penindakan Korupsi Tahun 2022.pdf](https://antikorupsi.org/sites/default/files/dokumen/Narasi_Laporan_Tren_Penindakan_Korupsi_Tahun_2022.pdf).

¹⁵ Wahyudi, Sugeng, "Penal Policy on Assets Recovery on Corruption Cases in Indonesia." *JILS (Journal of Indonesian Legal Studies)* 4, no. 1 (April 23, 2019), 45–72. <https://journal.unnes.ac.id/sju/index.php/jils/article/view/29176/13314>

¹⁶ Farabi Fakhri, "Strategies of Rent Seeking during The Sukarno Period: Foreigners and Corruption, 1950–1965." *Lembaran Sejarah* 13, no. 1 (April 2017), 91–108.

¹⁷ Hendi Prabowo and Katie Cooper, "Re-understanding corruption in the Indonesian public sector through three behavioral lenses." *Journal of Financial Crime* 23, no. 4 (October 3, 2016), 1028 - 1062.

legal accountability mechanism, anti-corruption behaviors and practices have not led to positive trends. Instead, as indicated earlier, they have been quantitatively and qualitatively getting worse over the years. The causes of this negative trend can be explained based on various factors. However, if corruption is perceived as a general phenomenon that can happen in almost all countries in the world, despite the levels is different, the general causes of corruption raised by the International Monetary Fund (IMF)¹⁸ can become preliminary general factors that are applicable for the roots of the persistence of corruption practices in Indonesia as well.

The first factor is direct in nature because of an abuse of public authority. It relates to the role of government officials in exercising their public mandate in the areas of regulation, public spending, tax policy, and political party finance. Many citizens' activities in relation to their rights and duties require supervision, verification, confirmation, or endorsement from public authority from various branches of government. In this process, public mandate is often directly misused and traded for various forms of corruptions.¹⁹ Such a direct corruption practices were centralized during authoritarian regime of Soeharto. Now they have become decentralized practices during this Reformation Era, as public services in different levels of government have more autonomy and opportunities to engage in corruption.²⁰

The second factor is indirect in nature as it relates to sociolegal conditions that encourage and allow public officials to commit corruption. These include (1) inadequate quality of bureaucracy, (2) low wages of public servants, (3) lack of accountability mechanism due to a weak punishment system that does not have a deterrent effect, (4) weak institutional control, (5) low transparency of legal and regulatory processes, and (6) leadership examples that are not in favors of fighting corruption.²¹ Even though corruption has been recognized as an extraordinary crime, the culture of immunity and weak imprisonment and financial sanctions have failed to discourage corruption behavior and practices. Instead, they have degraded corruption simply as an ordinary crime with light sanctions and imprisonment.

In addition to the above-mentioned factors, the Anticorruption Education Centre of the Corruption Eradication Commission (KPK) have focused on internal and external factors that encourage corrupt behavior. Internal factors relate to values and personal integrity, such as human greed, consumptive lifestyle, and the absence of morality. The external factors include (1) family and social relationships that encourage corruption (social element), (2) the use of money for political gains (political element), (3) regulatory gaps that nurture corruption practices (legal loopholes), and (4) economic opportunities to accumulate personal or family fortunes from public resources (economic).²²

There are multiple theories to explain the above-mentioned reality and causes of corruption. Gjalte de Graaf categorizes them into 6 theories. (1) *Public choice theory*. This theory focuses on agent (public official) as a free individual who can make rational decisions and choices to maximize personal utility. If an individual perceives the potential

¹⁸ Tanzi, Vito, "Corruption Around the World: Causes, Consequences, Scope and Cures." *IMF working Papers* WP/98/63 (May 1, 1998), <https://www.imf.org/external/pubs/ft/wp/wp9863.pdf>.

¹⁹ *Ibid.*, 10-15.

²⁰ Maira, Martini and Chêne, Marie, "Causes of Corruption in Indonesia." *AntiCorruption Resource Center & Transparency International U4 Expert Answer* (August 7, 2012), 1-11.

²¹ Tanzi, Vito, "Corruption Around the World... 16-19.

²² Pusat Edukasi Antikorupsi, "Kenapa Masih Banyak yang Korupsi? Ini Penyebabnya!" *Aksi Informasi* (April 7, 2022) <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20220407-kenapa-masih-banyak-yang-korupsi-ini-penyebabnya>.

benefits exceed the cost, he or she is likely to carry out corruption. (2) *Bad apple theories*. This theory highlights the role of an individual's bad character due to personal weaknesses and immorality as the main impulse for corruption. (3) *Organizational culture theories*. This theory pinpoints the operational structure of an organization as a condition that helps to create a culture or common behavior of corruption. (4) *Clashing moral values theories*. This theory emphasizes the role of a society in which its values and norms affect the character of individuals in that society to involve in corruption. In a society where courtesy is highly valued, bribes might be seen as a form of courtesy or reward. (5) *The ethos of public administration theories*.

The main concern of this theory is the administrative function of a society or organization that drives its members to engage in corruption practices for the purpose of efficiency or effectiveness of certain policy. Bribes can become the most effective and efficient approach to getting a license. (6) *Correlation' theories*. This theory looks at corruption as a logical consequence of certain variables that provides causal links to the act of corruption. For instance, low income and poverty is seen as a causal link for corruption in poor countries.²³ The extent to which these theories are also applicable for explaining the causes of corruption in Indonesia is very much dependent on the context of each case of corruption. Due to space limit, this article will not examine all these theories, but focus only on the first one. Since public choice theory is one aspect of rational choice theory,²⁴ we will equate the two and use the rational choice theory as an umbrella expression for the purpose of this paper.

Rational Choice Theory in Sociolegal Research on Corruption Crime

Derived from the British utilitarian tradition, rational choice theory which initially an economic discourse has been applicable in the fields of political science, anthropology, organizational theory, and sociology.²⁵ In the field of social science, rational choice theory is also used to understand human behavior.²⁶ In the area of law, it is reflected in the Cesare Beccaria's *On Crimes and Punishments* (1764) and Jeremy Bentham's *An Introduction to the Principles of Morals and Legislation* (1789). Both focus on the significance of rational calculation of the benefits, or utility and costs or punishment of a potential crime made by self-interested agent in order to maximize pleasure and minimize pain.²⁷

Such a notion of rational choice theory has influenced the understanding about the process of decision-making in committing crimes in the field of criminology as well. It

²³ de Graaf, Gjal, "Causes of Corruption: Towards a Contextual Theory of Corruption." *Public Administration Quarterly* 31, no. 1 (Spring-Summer 2007), 46-61.

²⁴ Juraev, Javlon, "Rational choice theory and demand for petty corruption." *Journal of Eastern European and Central Asian Research* 5, no. 2 (November 29, 2018), <https://doi.org/10.15549/jeeecar.v5i2.219>; Gandhi, Devadatta, "Rational Choice Theory in Political Science: Interesting, But Flawed in Implementation" (July 2006). <https://ssrn.com/abstract=902943> or <http://dx.doi.org/10.2139/ssrn.902943>.

²⁵ Martinelli, Alberto, "Rational Choice and Sociology." *Encyclopedia of Life Support Systems (EOLSS)* 1 (September 2004), <https://www.eolss.net/sample-chapters/c04/E6-99A-10.pdf>.

²⁶ Özdemir, Pinar, G., at al., "Rational Choice Theory in Psychiatry." *Psikiyatride Güncel Yaklaşımlar* 10, no. 4 (2018), 494-505 https://doi.org/10.1007/978-3-319-50530-5_13.

²⁷ Bill Mccarthy and Ali R. Chaudhary, "Rational Choice Theory and Crime." In Bruinsma, G., Weisburd, D. (eds) *Encyclopedia of Criminology and Criminal Justice* (New York, NY: Springer, 2014, 4307-4315.

argues that self-interest motivates the commission of a crime because it is often perceived as the easiest way to get what one wants in life.²⁸

Rational choice theory assumes that criminal acts are the result of a rational decision-making process in which the costs and benefits associated with crime are consciously weighed. A person may decide to commit a criminal activity if it brings greater benefits. Conversely, if the criminal act potentially causes greater harm, then it is a rational choice to avoid it.²⁹ Thus, in rational choice theory, self-interest can be seen both as a motivation as well as a deterrence not to commit crime. Rational calculation of the pain imposed in a legal punishment may discourage an agent from committing a crime. If the pain calculation of punishment is greater, then the punishment may deter criminal activity. People are reluctant to commit a crime, if the pain outweighs the benefits.³⁰

Given that an agent committing a crime prefers the outcome he wants to achieve, gathering information and making decisions based on the calculation of the benefits and risks is central in this process. An agent may rank the benefits, the risks and the costs from highest to lowest before making a rational choice.³¹

Acting rationally in this context means that an agent has certain reasons for taking an action. Having a reason for an action characterizes a rational action to maximize pleasure and to avoid pain that rule an agent's life as human being.³² This presumes that several different possible courses of action are available. An agent in this context chooses one of these possibilities.³³ The criterion used for the choice is a utility function that has a real value to achieve the goal or maximize the expected profit.³⁴ It is assumed that all outcomes are known with certainty before a choice is made through a process of assessment, it is clear enough that a behavior can optimally achieve goals in accordance with what has been determined, an agent may change his or her choice to achieve that goals.³⁵

Using Talcott Parson's scheme of social action, rational choice can be illustrated in the following figure:³⁶

²⁸ Paternoster, Ray, et al., "Rational Choice Theory and Interest in the "Fortune of Others"." *Journal of Research in Crime and Delinquency* 54, no. 6, (May 19, 2017), <https://doi.org/10.1177/0022427817707240>.

²⁹ Beaudry-Cyr, Maude, "Rational Choice Theory." In W.G. Jennings, et al., (eds), *Encyclopedia of Crime & Punishment* (Malden, MA: Wiley-Blackwell, 2016).

³⁰ Akers, Ronald. L., "Rational Choice, Deterrence, and Social Learning Theory in Criminology: The Path Not Taken." *Journal of Criminal Law and Criminology* 81, no. 6, (Fall 1990).

³¹ Bill Mccarthy and Ali R. Chaudhary, "Rational Choice Theory and Crime."... 4307-4315.

³² Hayward, Keith, "Situational Crime Prevention and its Discontents: Rational Choice Theory versus the 'Culture of Now.'" *Social Policy and Administration*, 41, no.3 (June 2007), 232-250; Hodgson, Geoffrey. M, "On the Limits of Rational Choice Theory." *Economic Thought* 1, No. 1 (July 17, 2012), 94-108.

³³ Lovett, Frank, "Rational Choice Theory and Explanation". *Rationality and Society* 18, no. 2 (May 2006), 237-272. <https://doi.org/10.1177/1043463106060155>

³⁴ Levin, Jonathan and Milgrom, Paul, "Introduction to Choice Theory." *Stanford University*, (2004), 1-25. <https://web.stanford.edu/~jdlevin/Econ 202/Choice Theory.pdf>.

³⁵ Herrnstein, Richard. J., "Rational choice theory: Necessary but not sufficient." *American Psychologist* 45, no. 3 (Marc 1990), 356-367, <https://doi.org/10.1037/0003-066X.45.3.356>.

³⁶ Richard. J Herrnstein, "Rational choice theory: Necessary but not sufficient." *American Psychologist* 45, no. 3 (Marc 1990), 356-367, <https://doi.org/10.1037/0003-066X.45.3.356>.

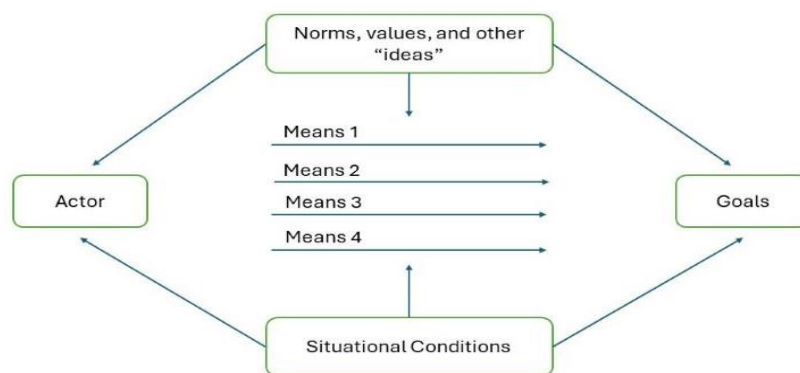


Figure 2. Agent's Scheme of Rational Choice in Social Action

In the social action scheme, an agent is described as an actor who is aware of the goals, values, norms, and situations that influence actions, and various possibilities for alternative choices to achieve goals. An agent as an actor in this scheme is assumed to have knowledge of the relevant circumstances that influence his or her actions when determining goals and choices for actions to achieve them.³⁷ Given that choices are made within a social structure, the way a choice is made is very much influenced by the surrounding situational conditions and norms. These external conditions and norms help to shape a preference for an agent's rational choice for expected benefits.³⁸

Therefore, under Parson's scheme a rational choice is not purely an independent personal action of a passive agent, but a social action as it is formed and carried out within a social structure.³⁹ As an active rational agent, an actor is aware of the surrounding situational condition and norms within the reach of his or her knowledge.⁴⁰

Such a relationship between an agent with his or her surrounding environment can be very well explained within the frame of Anthony Giddens' agent and structure relationship, which postulates the constraining and enabling (two faces) functions of a social structure over an agent (1984).⁴¹ On the one hand, structure prevents or hinders an agent from doing what is prohibited by society. On the other hand, it can also enable an agent to do what it might otherwise be able to do independently for the best of his or her interests. Having a good knowledge about the situational conditions and norms within the social structure becomes determining factors either to choose an action for the former or the latter.⁴²

Following the above line of arguments, rational choice theory can explain corruption as a social action of a rational agent who chooses it as a very efficient and convenient way to obtain predetermined fortunes, which cannot otherwise be achieved

³⁷ Helbert, A. Simon, "A Behavioral Model of Rational Choice." *The Quarterly Journal of Economics* 69, no. 1 (February 1955), 99-118.

³⁸ Hanno, Scholtz, "Rational Choice Theory in Comparative Sociology." *Comparative Sociology* 14, no. 4, (April 2015), 587-608 <https://doi.org/10.1163/15691330-12341359>

³⁹ Ruth A. Wallace and Alison Wolf, *Contemporary Sociological Theory: Expanding the Classical Tradition (Sixth Edit)* (Upper Saddle River, N.J: Pearson Prentice Hall, 2006).

⁴⁰ Turner, Jonathan. H, *The Structure of Sociological Theory* (Sixth Edit). (Belmont, CA: Wadsworth Publishing Company, 1998).

⁴¹ Anthony Giddens, *The Constitution of Society* (Berkeley and Los Angeles: University of California Press, 1984).

⁴² Whittington, Richard, "Giddens, Structuration theory and Strategy as Practice." In Golsorkhi, D., et al., (eds), *Cambridge Handbook of Strategy as Practice*, Second Edition (Cambridge: Cambridge University Press, 2015), 145-164.

through conventional means. In some societies, this might be the only way to accumulate fortunes, due to the lack of opportunities for income-producing entrepreneurial activities. In such a condition, corruption might be perceived as a rational choice of an individual agent to serve self-interest objectives,⁴³ despite the way the choice may be consciously made based on norms, values and other situational conditions such as legal loopholes, cultural influences, family pressure, caste or religious belief.⁴⁴

While there are both constraining and enabling functions of a structure that helps to determine the preference of an agent's rational choice in corruption, this section limits the discussion only on the latter functions in analyzing corruption in Indonesia. Hypothetically, two structural factors are raised as determinants that influence the rational choice to commit acts of corruption. They are laws on corruption (legal norms) and socio-political conditions of punishment and accountability (situational conditions). In general, the relationship between an agent (corruptor) and the structure (rules and situational conditions) can be illustrated as follows.

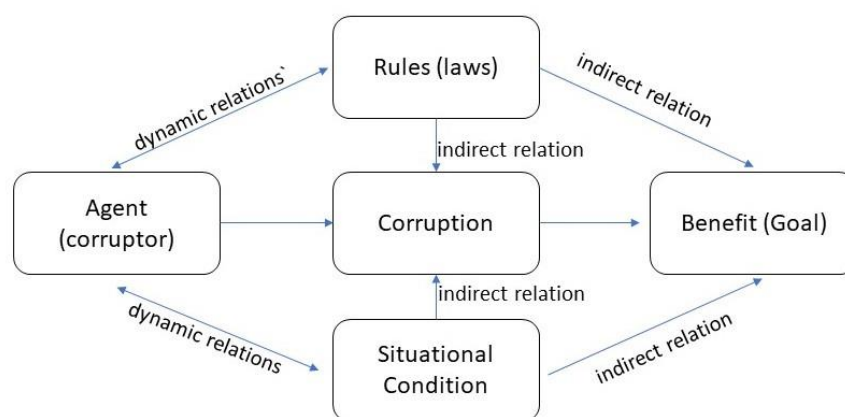


Figure 3. The flow of rational preferences for corruption

The relationship between an agent (corruptor) and the goals (indirect) in an act of corruption occurs in a structure in which there is a dynamic relation between an agent and the laws and situational conditions. It is in this dynamic relation with the structure that an agent obtains knowledge about laws and situational conditions necessary to make rational choice for committing the crime of corruption in order to achieve goals (fortunes). These may include knowledge about regulatory gaps and legal loopholes to avoid punishment and accountability, the possibility for obtaining immunity, light or severe risks of punishment, the socio-political prospect in the aftermath of a punishment, or morality and professionalism of law enforcement agencies and so on.

The following are some factors in the agent-structure relationships that may explain the rational choice for the persistent of corruption in Indonesia.

⁴³ Gritmot Nane, "Does Rational Choice Explain Corruption and its Persistence Adequately?" *Association for Heterodox Economics 9th Annual Conference*, Bristol, England (June 6-8, 2007) <https://www.hetecon.net/wp-content/uploads/2019/11/Nane.pdf>.

⁴⁴ Mason Hoadley and Neelambar Hatti, "Rational Choice and the morality of corruption." *Social Science Spectrum* 2, no. (September 2016), 164–170. http://lup.lub.lu.se/search/ws/files/30000478/74_268_1_PB.pdf.

Legal Factor 1: Law No 22 of 2022 on Corrections⁴⁵

Articles 7, 9 and 10 of this law regulate humane treatment toward detainees and prisoners, which may be perceived as a form of light punishment for corruption. Articles 7 and 9 provide legal protections on the basic human rights of prisoners, such as right to worship, health, education, care, nutritious food, obtaining information, legal aid, complaints, reading books, watching news broadcasts, protection from physical and mental violence, social services, and family visits. This article prohibits law enforcement officials from arbitrarily treating or detain prisoners, including those who are imprisoned for corruption crimes. Some may perceive this simply as a form of light punishment that affects his or her rational choice to carry out corruption, as the financial benefits outweigh the harm from punishment (imprison). Others, especially government officials may see this as an opportunity for privilege treatment due to their financial power and influence, as the implementation of rights in this article are preferentially organized by the state through its law enforcement agencies.

Article 10 guarantees additional rights of prisoners, such as right to have remission, assimilation, leave to visit or be visited by family, conditional leave, leave before release, parole, and other rights if they meet certain requirement set up in the provisions of laws and regulations. As elaborated in the “Guidelines for the Implementation of the Fulfilment of Conditional Rights for Prisoners in accordance with Law Number 22 of 2022, concerning Corrections”, article 10 provides (1) a reduction in the period of serving a sentence with conditions, a program of reintegration in community life, (2) a visitation to and from family members (3) a short period for conditional leave to encounter with the public, and (5) a conditional release to integrate with family and society.⁴⁶

While these legal provisions correctly protect the human rights of prisoners as dignified human beings, they can create impression about how light and easy a punishment for criminal corruption really is. Let alone the impression about having privilege for public officials who often get special treatment while serving their terms of punishment in prison often simply as a formality. When this impression influences the rational choice that the burden for the harm is very low compared to the profits that can be achieved from corruption, an agent is likely to commit corruption crime.

Legal Factor 2: The Corruption Asset Confiscation Law

Indonesia does not yet have a law on the confiscation of corruption assets. This indicates the weakness of legal policies related to the eradication of corruption. In fact, the draft law on the confiscation of corruption assets has been under formulation for a long time. However, up until now, the draft law has not been ratified to become a law. The law on the confiscation of corruption assets is crucial, as it can recover the state losses caused by corrupt individuals. Unfortunately, legal policies related to asset confiscation have not been a focus for legislators in Indonesia.

The Indonesian Corruption Watch notes that the draft law on asset confiscation has been discussed and formulated since the early 2010s. During the National Legislation Program period of 2015-2019, this draft law was included in the national legislative program but was never discussed as it did not make it into the priority list of bills.

⁴⁵ Undang-Undang Republik Indonesia Nomor 22 Tahun 2022 tentang Pemasarakatan, 03 Agustus 2022.

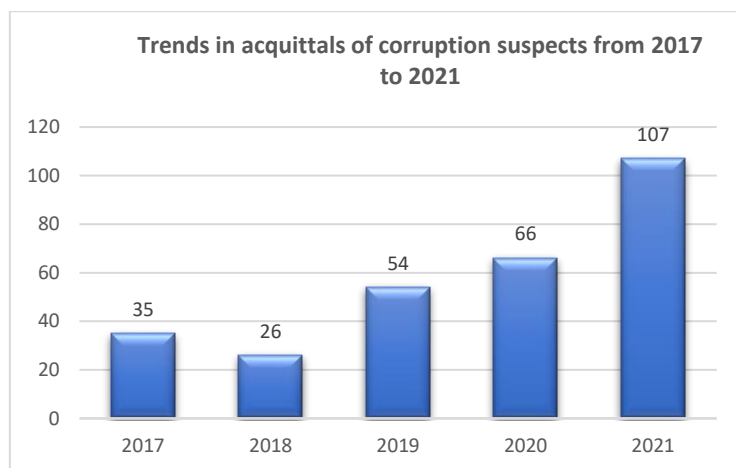
⁴⁶ Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, Direktorat Jenderal Pemasarakatan, Pentunjuk Pelaksanaan Pemenuhan Bersyarat Terhadap Narapidana sesuai dengan Undang-Undang Nomor 22 Tahun 2022 tentang Pemasarakatan, NOMOR PAS-20.OT.02.02 TAHUN 2022.

Subsequently, in the National Legislation Program period of 2020-2024, the draft law on asset confiscation was reintroduced, and the government proposed its inclusion in the 2020 National Legislation Program. However, this proposal was not approved by the Indonesian Parliament (DPR RI). In 2023, the government and the DPR RI reached an agreement to include the draft law on asset confiscation in the 2023 National Legislation Program. Until now, the draft law on corruption asset confiscation has not become law.⁴⁷ This fact indicates that legislators do not yet have a strong legal and political commitment to eradicate corruption in Indonesia.

Potential corruptors realize that they can maximize their gains by choosing to engage in corruption. One of the preferences they use to increase the likelihood of corruption is the absence of punishment and other liability mechanism related to the confiscation of their corrupt assets. In this situation, if they consider that the profit from corruption outweighs the punishment, they may choose to engage in corruption. This is particularly true if they know that the likelihood of assets from corruption being returned to the state or legal proceedings for liability and punishment is very low, or unlikely.

Situational Conditions 1: Sentencing Trends for Corruptors in Indonesia

Civil society organizations in Indonesia such as the ICW reported that the trend of convictions for corrupt behavior in Indonesia tends to be very low. The organization released an average sentence for corruption defendants of 3 years and 4 months in prison. Since 2005, the ICW has monitored the verdicts of judges in the Corruption Court, High Court, and Supreme Court, and the results have always been disappointing. The average sentence handed down is always light. In addition to lenient sentences, there is a trend that the number of corruption defendants acquitted by the courts continues to increase from year to year as can be described in the following graph.⁴⁸



Source: <https://databoks.katadata.co.id/>

⁴⁷ Draft Undang-Undang Republik Indonesia Nomor ... Tahun...Tentang Perampasan Aset Terkait Dengan Tindak Pidana
https://jdih.ppatk.go.id/storage/dokumen_produk_hukum/Draft%20Final%20RUU%20Perampasan%20Aset%20.pdf

⁴⁸ Annur, Cindy. M, "Terdakwa Korupsi yang Divonis Bebas Melonjak pada 2021." *Databoks - Politik* (May 23, 2022) <https://databoks.katadata.co.id/datapublish/2022/05/23/terdakwa-korupsi-yang-divonis-bebas-melonjak-pada-2021#:~:text=Menurut laporan Indonesia Corruption Watch,41 orang dibandingkan tahun sebelumnya.>

The leniency of punishment for corruptors on the one hand and the high value of corruption on the other are very important preferences for potential corruptors. They can weigh the huge benefits of corruption against the light punishment. If the value of corruption (benefit) is higher than the cost of their time spent in prison, then it is rational that they will tend to choose corruption. To illustrate, if an agent must work for decades to earn a billion, he or she may choose a sentence of 4 years when there is an opportunity for corruption to gain a similar amount of money.

Situational Conditions 2: Morality of prison officials and other legal enforcement agencies

Studies on the degree of morality among prison staff show that they can easily accept bribes given by corruptors in exchange of having special treatments in prison. These can be in the form of special facilities and services for corruptors such as security services, granting permission to leave prison, granting remission and levies for guests or visitors.⁴⁹ Information about the low morality of prison staff is widely reported by various media. On the one hand, the news is part of the civil society's control system for prison governance. But on the other hand, it provides information for potential corruptors that can increase their confidence to commit corruption. They may think that if prison staff can be bribed for special treatment during punishment period in prison, some person may choose to engage in corruption for huge fortunes if they know that such fortunes from corruption can be used for a comfortable life in prison and finance their life for years after imprisonment.

Situational Conditions 3: Political opportunities after release from prison

Having been punished for corruption crimes does not mean the end of a person's social and political career and prospects. As stipulated in the International Covenant on Civil and Political Rights (ICCPR),⁵⁰ of which Indonesia is a party, the political rights are still attached equally to all citizens unless the laws state otherwise. These include the right to political participation by becoming political leaders, members of political parties and government officials (ICCPR: Article 25). Under Indonesian Constitution (1945), they are recognized in Article 27 and 28.

In Indonesia the Constitutional Court in its decision number MK No 4/PUU-VII/2009⁵¹ has ruled that former convicted criminals still have the above-mentioned political rights with conditions: (1) not subject to deprivation of political rights, (2) valid for five years after completing the sentence, (3) there is honesty regarding his background as a former convict, and (4) not a repeat offender. For some public officials and potential corruptors, this ruling can be seen only as a temporal barrier for their political career, which can otherwise encourage them to accumulate fortunes through corruption if the opportunities to do so in their official position is available. The fact that around 56 former corruption convicts run as legislative candidates at various levels of government in 2024 general elections,⁵² reaffirm the truth of such trend of perception. Punishment might be

⁴⁹ Hariadi, Agus, "Suatu Dilema Dalam Pembinaan Narapidana Koruptor di Lembaga Pemasyarakata." *Jurnal Legislasi Indonesia* 13, no. 3 (September 2016), 297 - 308.

⁵⁰ International Covenant on Civil and Political Rights, United Nations General Assembly Resolution 2200A (XXI) adopted on 16 December 1966. As of 23 February 2006, Indonesia has ratified, and subsequently became a state party to the International Covenant on Civil and Political Rights.

⁵¹ Putusan Mahkamah Konstitusi No. 4/PUU-VII/2009, 24 Maret 2009.

⁵² Indonesia Corruption Watch, "Temuan ICW dalam Daftar Calon Tetap Calon Anggota Legislatif: 56 Mantan Terpidana Korupsi Mencalonkan Diri pada Pemilu 2024 Mendatang." *Siaran Pers*, 6 November 2023 <https://antikorupsi.org/id/temuan-icw-dalam-daftar-calon-tetap-calon-anggota-legislatif-56-mantan-terpidana-korupsi>.

perceived simply as an ordinary crime that has no significant impact of a person's political rights. This might be different if corruption is treated as extraordinary crime that otherwise has legal ramification on the deprivation of the corruptor's political rights. The political rights granted to former corruption convicts can undoubtedly be one of the significant preferences utilized by potential corruptors to engage in corruption. On one hand, they are aware of the substantial benefits of corruption, and on the other hand, they also recognize the lenient punishments and political rights equivalent to those of other citizens. In such a situation, it is rational for them to engage in corruption.

CONCLUSION

Rational choice theory views corruptors as rationally capable agents, who tends to maximize the benefits he wants to obtain as a goal. In this process, an agent will consider various preferences from its relationship with the social structure to decide how he can achieve such a goal. This article has raised two main preferences as basis for rational choice in corruption: legal preferences and situational conditions.

Firstly, legal preferences can be seen in the rights possessed by corruption convicts and the absence of legal policies that can seize assets owned by an agent from corruption. Knowledge and recognition of regulatory gaps and loopholes that corruption will not take away political rights and rights over fortunes from corruption (right to property) provide preferences for a rational choice of an agent or a public official to commit corruption crime. Secondly, situational preferences can be identified in (1) the low amount of punishment for corruptors, (2) the poor morality of prison officials and other legal enforcement agencies, and (3) the availability of political opportunities after release from prison. Having consideration that the cost and harms form punishment are so low compared to the benefits despite having committing corruption is very likely to encourage a rational agent and a public official to pursue corruption.

Having said that, the complex reality and causes of corruption cannot be explained by rational choice theory alone. There are other factors, such as character, culture, history, lifestyle, that encourage an agent to commit corruption. This is why other theories as mentioned earlier are relevant in this regard. For this paper, however, as corruption is a rational act, it is reasonable to recommend the significance for imposing stricter liability mechanisms, for instance by revoking the political rights, and legally freezing the assets of corruption convicts. In doing so, not only will the preference to commit corruption be smaller. The opportunity to maximize pleasure through corruption will also be reduced or even abolished.

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