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Corruption: Is it a Moral Issue or a Legal Issue?

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Abstract

The objective of this research is to examine the discourse surrounding corruption, with a particular focus on whether it is perceived as a legal issue or a moral issue. This research was conducted in response to the shortcomings of scholars' analysis in discussing the issue of corruption. Furthermore, in light of the considerable number of corruption cases globally, particularly in Indonesia, it is imperative that the government and relevant stakeholders reframe corruption as a national concern. This research is a descriptive qualitative study, employing data collection techniques through literature studies and analysis using deductive syllogism tools. The research concluded that corruption has become a social disease that continues to spread from upstream to downstream of human life. Currently, corruption is only focused on legal reform, whereas the root or heart of corruption is morality. Corruption is a moral issue, not a legal issue; therefore, it must be addressed through a moral, ethical, and transcendental approach.

A. Introduction

The evolution of the concept of corruption can be understood by examining the shift in the scope of the complex meaning of the degenerative characteristics of society from a broad to a narrow perspective. This shift can be attributed to the misuse of power and position. The shift in the meaning of corruption is recorded very clearly in the 19th century to the 20th century. Scholars observed that there was a gradual development of corruption studies, which grew



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rapidly since the 17th century and matured until the 18th century.¹ Today, our understanding of corruption has been clearly defined and detailed.

However, if we dissect the existing developments one by one, the notion of corruption not only raises new notions, but also old conceptions that survive with the argument that the concept is still relevant to be maintained.² The argument postulates that the concept of corruption was formed because of the clash of moral and morality issues.³ The advancement of various disciplines such as economics, politics, law, sociology-anthropology, has helped to explain the various complexities of corruption symptoms in a comprehensive manner.⁴ The legal foundation in this case is a tool that helps to understand more closely what is called corrupt,⁵ but the heart of the understanding of corruption is not a legal issue. The economic value format is very helpful in projecting losses due to corruption,⁶ but the heart of corruption is not an economic issue. Similarly, corruption is often considered as an act of abuse of power mandated by the people to the ruler or an act of misappropriating the public interest,⁷ but the reason why the mandate and the misappropriated/misused public interest are called corruption cannot be understood from the conception of mandate and public interest?

¹ Corruption in the 18th-19th centuries was a widespread problem in many regions, including Europe and Asia. In Europe, electoral corruption was rampant in the young democracies of the time, where politicians often engaged in practices such as vote-buying and the use of state resources to influence elections. This was especially true in France and Germany, where candidates would design their own ballots, making it easier to detect how people were voting, and representatives of the candidates would crowd polling stations to observe the ballots being used by voters. In China, bureaucratic corruption is still widespread throughout the Empire, and corrupt practices by the people are more common than those by the government. This corruption is often attributed to the lack of professionalization and reform in government, which allows for the exploitation of power by officials for personal gain. In Indonesia, corruption is also a problem. *Read*, Gerd Stratmann, 'Representations of Political Corruption in 18th-Century Literature', *Anglia*, 125.3 (2007), 484–500 <<https://doi.org/10.1515/ANGL.2007.484>>; Will Atkinson, 'The Space of Political Position-Takings', *Class in the New Millennium*, 38 (2018), 66–86 <<https://doi.org/10.4324/9781315628615-4>>; Sandra Damijan, 'Corruption: A Review of Issues', *Economic and Business Review*, 25.1 (2023), 1–10 <<https://doi.org/10.15458/2335-4216.1314>>.

² Jonathan Rose, 'The Meaning of Corruption: Testing the Coherence and Adequacy of Corruption Definitions', *Public Integrity*, 20.3 (2017), 220–33 <<https://doi.org/10.1080/10999922.2017.1397999>>.

³ Kreikebaum explores corruption in Germany, which is believed to be a moral problem by confronting institutional, legal, and economic approaches. Kreikebaum found that corruption as a moral problem can be eradicated through tools, namely law through policies with a legal compliance approach and an integration management approach. Kreikebaum's argument that postulates corruption as a moral issue but uses a legal and policy approach actually refutes the premises. Kreikebaum found that preventing corruption requires a new way of thinking based on the loyalty and personal commitment of each person. In contrast to Kreikebaum, Herzfeld & Weiss actually state that the law is the key to the problem of corruption. Herzfeld & Weiss through their study found that there is a significant reciprocal relationship between (effective) law and various acts of corruption. They both also revealed that in the Russian transition period corruption occurred as a result of weak legal development (laws), legislative procedures, and inconsistencies between laws. The essence of Herzfeld & Weiss' research states that an effective legal system is the key to reducing corruption, because corruption is a complex legal issue. *Read more*, Hartmut Kreikebaum, 'Corruption as a Moral Issue', *Social Responsibility Journal*, 4 (2008), 82–88 <<https://doi.org/10.1108/17471110810856857>>. , and Thomas Herzfeld and Christoph Weiss, 'Corruption and Legal (in)Effectiveness: An Empirical Investigation', *European Journal of Political Economy*, 19.3 (2003), 621–32 <[https://doi.org/10.1016/S0176-2680\(03\)00018-1](https://doi.org/10.1016/S0176-2680(03)00018-1)>.

⁴ Rustamjon Urinboyev and Tolibjon Mustafoev, *Law, Society, and Corruption: Exploring (Anti-) Corruption from Interdisciplinary and Multilevel Perspectives* (Lund: Media-Tryck, 2023).

⁵ Issa Luna-Pla and José R. Nicolás-Carlock, 'Corruption and Complexity: A Scientific Framework for the Analysis of Corruption Networks', *Applied Network Science*, 5.1 (2020) <<https://doi.org/10.1007/s41109-020-00258-2>>.

⁶ Miao Zhang and others, 'Corruption, Anti-Corruption, and Economic Development', *Humanities and Social Sciences Communications*, 10.1 (2023) <<https://doi.org/10.1057/s41599-023-01930-5>>.

⁷ Medani P Bhandari, 'The Corruption a Chronic Disease of Humanity: Causes, Effects and Consequences', *Scientific Journal of Bielsko-Biala School of Finance and Law*, 27.1 (2023), 5–17.

This paper will try to examine the discourse of corruption as a moral issue and corruption as a legal issue. Why tracing the moral heart of corruption can find reasons why abuse of power is called a corrupt act? Likewise, why does the law postulate the misuse of public interest as a corrupt act? Is then corruption illegal because it is immoral, or is it immoral because it is illegal? This paper will try to answer the aforementioned question, which has become a theoretical debate in corruption studies in order to encourage the resolution of increasingly complex corruption.

In an effort to answer the question above, the author will successively describe the meaning of corruption as a moral issue and how moral philosophy views corruption as a moral issue. Furthermore, the author will describe the institutional (normative) patterns or characteristics at the heart of the moral issue of corruption and their implications for understanding corruption. In the midst of the struggle to respond to and eradicate corruption through policies, laws, management and social governance schemes, understanding corruption as a moral issue has the potential to fall into moral discourse and morality preaching.

This research is qualitative research, according to Sugiyono qualitative research is a method that focuses on in-depth observation.⁸ Therefore, the use of qualitative methods in research can produce a more comprehensive study of a phenomenon. This research is descriptive in nature where in the analysis the author will reveal facts, circumstances, phenomena, variables and conditions that occur when the research is running and present them as they are. Qualitative descriptive research interprets and tells data related to the current situation, attitudes and views that occur in society, conflicts between two or more conditions, relationships between variables, differences between facts, influence on a condition, and so on.⁹

B. Discussion

Any reflection on natural phenomena is called natural philosophy, and any reflection on human actions is called moral philosophy. 'morals' comes from the Latin *mos* (plural: *mores*), which means customs, habits, ways of life of a group of people, and the nature of a person. Systematic reflection on *ethos* is called *ethike*, and from that word we come to know the word 'ethics', moral philosophy is parallel to ethics, which means systematic reflection on character, habits, ways of life both descriptively-analytically-and normatively.¹⁰

In its development, moral philosophy consists of three focuses of study.¹¹ *First, descriptive ethics* investigates character, way of life, and customs, which aims to describe or explain the symptoms of morality or compile a system of human nature for one's behavior, but does not propose the tendency of good-bad judgments. *Second, the normative* study of behavior (*normative ethics*) which focuses on tracing what is right-unright, good-ungood, and must-do-not-do, all of which lead to a judgment. *Third, foundation inquiry (meta-ethics)* which refers to the fundamental questions of what is good, right, obligatory, and why they are done.

From the above approach, today the study of moral philosophy is then recognized only in the second layer, namely *normative ethics* and the third layer of *meta-ethics*, while contemporary social science studies adopt descriptive moral philosophy. This changes the color

⁸ Nasir Nasir and Sukmawati Sukmawati, 'Analysis of Research Data Quantitative and Qualitative', *Edumaspul: Jurnal Pendidikan*, 7.1 (2023), 368–73.

⁹ Patrik Aspers and Ugo Corte, 'What Is Qualitative in Qualitative Research', *Qualitative Sociology*, 42.2 (2019), 139–60 <<https://doi.org/10.1007/s11133-019-9413-7>>.

¹⁰ Khatibi Khormaei, 'Morality and Ethics: A Brief Review', *Journal Homepage: Journal of Life Science and Biomedicine J. Life Sci. Biomed.*, 6.3 (2016), 66–70.

¹¹ William K. Frankena, *Ethics*, 2nd edn (New Jersey: Prentice-Hall, 1973).

of studies in each discipline, especially studies related to corruption. Through this layer of moral philosophy, we will distinguish the moral characteristics of corruption as described below;

1. Understanding Corruption as a Legal Issue and a Moral Issue

The most basic question as an introduction to this discussion, is corruption illegal because it is immoral, or immoral because it is illegal? Is corruption unlawful because it is morally wrong, or is corruption morally wrong because it is unlawful? If it is agreed that breaking the law is based on the moral wrongness characteristic of corrupt acts, then what determines illegality is the immorality of corruption, because it is immoral that corruption is determined to be illegal. So, what does corruption mean as immorality? Conversely, if corruption is believed to be morally wrong because it violates the law, then it can be said that violation of the law is the premise on which corruption is believed to be immoral.

The fact that acts that are seen as corrupt are usually believed to be violations of the law does not necessarily mean that the heart of corruption is a legal issue.¹² Likewise, the fact that the handling of corrupt acts is handled through legal processes does not mean that the core of corruption is a legal problem, because the handling of corruption cases in a civilized order is carried out through law (*rule of law*).¹³ In fact, efforts to understand corruption as a legal problem will only dwarf the problem, even at the policy level it will also experience a narrowing of solutions if it only relies on law enforcement alone. Because, although law and morality are closely related, law categorically needs to be placed in a different place from morality. As explained by Hart as well as refuting the argumentation of Austin's legal concept which postulates that law and morality have an absolute relationship.

Hart asserts that there is a necessary or absolute relationship between law and morality that has many important insights but not all of them are clear.¹⁴ It is from this lack of clarity that Hart seeks to demonstrate and evaluate the reasons underlying this view. According to him, none of the reasons put forward to show the absolute relationship is adequate although he admits that some aspects of the arguments put forward have truth, in accordance with

¹² See, description of bribery cases in *footnote 1*.

¹³ "Rule of law" is the principle that clear laws and legal frameworks should be applied fairly and to all parties in society, without arbitrary use of power. According to the European Commission, "Under the rule of law, all public powers always act within the limits set by law, in accordance with democratic values and fundamental rights, and under the control of independent and impartial courts. The rule of law encompasses principles such as legality, which implies a transparent, accountable, democratic and pluralistic law-making process; the rule of law; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law." The rule of law ensures that the legal framework is applied fairly to all businesses, regardless of ownership and/or ties to government officials. As such, the rule of law also helps ensure human rights violations are effectively prevented, addressed and remedied. Major impediments to the rule of law include: poor governance, abuse of power, organized crime, arbitrary application of the law, authority's disregard for the law, and authoritarianism. Corruption is another major challenge to the effective rule of law. Corruption has a significant negative impact on human rights, especially in relation to business and commercial interests. Companies involved in corruption are less likely to receive accountability and justice for human rights violations, as states parties are often 'persuaded' to investigate, punish and prevent rights violations committed by these companies. Human rights violations are therefore often allowed to continue unabated and unaddressed. Read, Laurent Pech, *The Rule of Law as a Well-Established and Well-Defined Principle of EU Law*, *Hague Journal on the Rule of Law* (Springer International Publishing, 2022), xiv <<https://doi.org/10.1007/s40803-022-00176-8>>.

¹⁴ Bakti Bakti and M. Arfan Tarigan, 'Law And Morality: The Hart And Fuller Debate', *Syiah Kuala Law Journal*, 6.2 (2022), 242–53 <<https://doi.org/10.24815/sklj.v6i2.29123>>.

some of the facts that can be found in the legal system.¹⁵ So it can be said that it is not the illegality that makes corruption morally wrong, but the immoral feature that makes it believed to be unlawful. However, it cannot be denied that 'illegality may be a supporting reason why corruption is seen as a moral evil', but what substantively 'determines corruption as evil is not illegality, but its immoral characteristics'.

As Underkuffler points out, while the designation of illegality helps understand what constitutes a corrupt act, it is not illegality itself that determines an act as corrupt.¹⁶ There are other, more specific reasons on which the act is judged; earlier reasons that are not accommodated by the notion of illegality, not the fact of illegality that underlies the judgment of being corrupt, not all illegal acts are corrupt, and not all corrupt acts are necessarily illegal either.¹⁷ Corruption is clearly a moral sense. Although what substantively makes corruption seen as a crime is moral reasons, in fact not every immoral act is corruption. Similarly, Seumas Miller said that corrupt acts are immoral acts, but not all immoral acts are corrupt acts, because corruption is only a particular species of immorality.

The above explanation can be concluded that, *first*, not all violations of the law are corruption, and not or not all corrupt acts are believed to violate the law. *Second*, corruption is an immoral act, but not all immoral acts are corruption. *Third*, the immorality of corruption is formed not from the characteristics of the act itself, but from the status of the act in which the standard of institutional integrity is contained.

The word 'corruption' has been a cultural tradition used for so long in human development to indicate that certain actions are naturally a special species of crime such as 'theft of the state budget' which is different from the theft of electronics, motorcycles, and so on. So, it can be concluded that corruption is basically not a legal issue, corruption is a special species of immorality, and the immorality of corruption is institutionally characterized.

Corruption is a moral concept that refers to *normative ethical* claims rather than positivistic claims. This means that corruption refers to symptoms, actions or practices that *should not be*. If we borrow Kant's opinion that morality will be aligned with good will, where good will that appears and serves as a person's moral foundation will analogously give rise to moral goodness because good will is unconditional, it can be said that the idea of goodness that should occur underlies the central conception of corruption. Without the idea of goodness as the opposite of corruption, it is impossible to understand why the looting of the social assistance budget is seen as a crime, why money politics is seen as damaging democracy, why bribed judges' decisions damage the image of the judiciary, and so on. Any attempt at legal reasoning, calculation of state financial losses, proof of the mode and actors involved would be required. If postulating corruption as a moral issue rather than a legal issue, then how to distinguish between the two when they are interconnected?

¹⁵ Sonali Banerjee, 'The Relevance of the Hart Fuller Debate Relating To Law and Morality-a Critical Analysis', *International Journal of Law and Legal Jurisprudence Studies*, 4.2 (2018), 122–33.

¹⁶ Laura S. Underkuffler, 'Captured by Evil: The Idea of Corruption in Law', *Duke Law School* (Duke University, 2013) <<https://doi.org/10.5860/choice.51-4137>>.

¹⁷ *Ibid.*

The fundamental difference between the definitions of *normative ethics* and *positivistics* can be summarized in table 1. The first definition, refers to actions that absolutely have the characteristics and properties of *normative ethics*, the second, refers to the consequences of the act of corruption committed, although there are some *positivistic* claims, because it refers to the public interest which is the basis of *positivistic* understanding, but this second definition is rooted in *normative ethics* claims. Understanding corruption from the lens of consequences is also problematic as this would negate favorable cases of corruption. Meanwhile, the *positivistic* definition of corruption often uses economic and sociological premises. Through these premises, the definition of corruption is then formulated in the standard of legal norms to justify that an action is deviant.¹⁸ In another sense, understanding through the *positivistic* definition, corruption is defined as a deviation from the formal rules governing the allocation of authoritative officials in response to offers of financial or political support.

Table 1. Claims Definition of Corruption

<i>Normative ethics definition</i>	<i>Positivistics definition</i>
(1) Deviation from ethical norms within social institutions;	Actions deviate from legal norms.
(2) the act is detrimental to the public interest and is systemic in nature.	

Source: author's analysis.

Arguments that postulate that acts of corruption are naturally violations of formal rules rather than ethical norms show that ethical standards believed by everyone have never reached a unanimous consensus even at the level of lawmakers. Formal rules (*positivistic definition*) that add that corruption is committed by public officials result in distinguishing the meaning of corruption from theft which is illegal but exclusively involves decisions by private individuals (immoral and illegal acts will be explained below). This is the basis for countries around the world, including Indonesia, to apply or identify corruption as a reality or situation that violates formal rules so that it must be resolved formally as well; on the one hand ignoring that acts of corruption are moral issues that must be resolved morally as well.

2. Purpose, Actions, and Implications of Corruption

Jeremy Betham through his postulate argued that the greatest possible benefit for many people is the measure of right and wrong, which was later developed by Stuart Mill that good and bad actions are those that are beneficial and useful to others. This is what is known as Utilitarianism. Utilitarianism measures the impact of actions by the criterion of benefits, and the assessment refers to the above postulate that the greater the benefit or usefulness for many people, the more an action has high moral value; and *vice versa*.

This raises the question that if the good and bad of an action is understood from its beneficial impact, what is the measure of benefit? The amount of benefit is understood

¹⁸ Muhammad Rahjay Pelengkahu and Indirwan Indirwan, 'Formulation Of The Application Of Restorative Justice To Offenders Of Corruption In Indonesia', *Corruptio*, 3.2 (2022), 123–34 <<https://doi.org/10.25041/corruptio.v3i2.2756>>.

from the ability of an action to bring as much happiness as possible, and the low benefit brings the impact of mudharat. In the perspective of utilitarianism, corruption is understood as bad or morally wrong not because of the motives and actions that are considered corrupt themselves, but because of their damaging impact on the common good. For example, the amount of funds disbursed for the purpose of social assistance to the poor is corrupted by officials for themselves. Corruption is then said by Pelengkahu & Kasim as a social pathology because it is a disease that can damage society to the grassroots.¹⁹ In addition to utilitarian understanding, the moral characteristics of corruption can be seen from deontological understanding, which views that the moral characteristics of corruption are not in the impact caused, but in the absolute nature of the obligation inferred from the universal postulate of its applicability.

As for teleology, it can show moral characteristics through beneficial effects and the absoluteness of obligations that help. The corrupt characteristic of the act lies through the perversion of the reason because of the institution, and the moral characteristic of corruption lies in the perversion that makes the institution away from the reason. For example, a judge who makes a decision based on the influence of a bribe is called corrupt (and his decision is also considered corrupt) because he circumvents the reason and the judicial system by taking refuge in the standard of integrity and the principle of impartiality. So, the moral characteristic of corruption lies in the enforceability of humans in an institutional position, not humans in a vacuum. That is what distinguishes why the act of lying to a colleague is not called corruption, but testifying falsely in court is corruption; stealing money on the street is not corruption, but stealing state money is corruption. Aren't both characterized as moral? Why is stealing at one moment not called thief, while at another moment it is called corruption? This shows that corruption is a species of immorality. Corruption is a moral concept that performs to maintain the demarcation between the organized and the chaotic, between the clean and the dirty, the sick and the healthy, the meaningful and the absurd.

Departing from the theoretical view above, the empirical level may help explain the implications of corruption more specifically. The search for literature evidence factually proves that corruption affects people's lives widely to the grassroots, the influence caused is nothing but a negative influence. Where Krastev et al., concluded that corruption today is a disease for a better and more sustainable future.²⁰ How can corruption be a disease for a sustainable future? Aidt's research can help answer this question. Aidt carefully studied the relational relationship between corruption and sustainable development in 100 countries from 1996 to 2007 empirically. The conclusion of Aidt's research found that there is a negative correlation between corruption and national growth, where corruption puts a country on an unsustainable path due to the erosion of the country's capital base.²¹

¹⁹ Muhammad Rahjay Pelengkahu and Fajri M Kasim, 'Phenomena of Corruption as A Social Pathology: A Review on Legal Sociology', *Jurnal Hukum Prasada*, 10.2 (2023), 130–38 <<https://doi.org/10.22225/jhp.10.2.2023.130-138>>.

²⁰ Vladislav Krastev, Blagovesta Koyundzhiyska-Davidkova, and Irina Atanasova, 'The Impact of the Corruption on the Sustainable Development of the Businesses in South-West Bulgaria', *SHS Web of Conferences*, 74 (2020), 06015 <<https://doi.org/10.1051/shsconf/20207406015>>.

²¹ Toke S. Aidt, *Corruption and Sustainable Development, International Handbook on the Economics of Corruption, Volume Two*, 2011 <<https://doi.org/10.4337/9780857936523.00007>>.

The analogous erosion of the state capital base results in losses and inefficiencies in the national economy which in turn leads to underdevelopment and fiscal disparities. In line with Aidt, Amundsen states that political and economic systems held by corrupt actors, state capital will be distributed to parties who do not need it, although the mechanisms of political representation and economic efficiency still work but corruption can find more intimate avenues such as secret exchanges and patronage-clientalism transactions.²² Under these conditions, the inappropriate distribution of state capital accumulation has real implications for poverty and inequality of opportunity.²³

In addition to the evidence of empirical implications above, various studies also show that corruption has relational implications for the dysfunctionality of the public sector, whereria that the argumentation about ethics and morals if it is related to the character of the bureaucracy or civil servants who cause public service corruption through maladministration, can be read as behavior that is contrary to ethics and morals.²⁴ In this case, public service corruption can be referred to as immoral behavior, which is contrary to good morality or as an act that is morally bad or unethical, while from another point of view, acts of public service corruption can be stimulated by a trait called hedonism, which is only looking for pleasure in life as a person without any grip on moral values that these actions can harm society. When state officials are plagued by hedonistic behavior, they will only pursue happiness or material or external interests without paying attention to spiritual interests. His happiness is determined by how much material he gets. The consequence of such behavior is the emergence of the desire to live luxuriously without being supported by a strong work ethic and honesty.²⁵

Furthermore, corruption has far-reaching implications for the development of society, exacerbating social polarization and unrest and delegitimizing justice. Pelengkahu & Kasim's research postulates that corruption has become a banality of crime, meaning that the community/public views corruption as a common crime and a normal act of public officials.²⁶ Sociologically, this has resulted in accelerated polarization of society and/or groups in society with different views.²⁷ There are groups of people who support the corruption regime vs. those who support anti-corruption values. The presence of these two groups due to polarization has the potential to cause disputes and injustice to public policies, that at the judicial level, judges' decisions for this group of people cause delegitimization of justice. Where policies and decisions are formed no longer based on the ideology of benefits for the wider community, but on who supports the policy and what benefits can be obtained.

²² Inge Amundsen, *Political Corruption: An Introduction to the Issues, The Many Faces of Corruption: Comparative Approaches to the Theory and Practice* (Ramallah, 1999).

²³ *Ibid.*

²⁴ H S Satria, 'Kebijakan Kriminal Pencegahan Korupsi Pelayanan Publik', *Integritas: Jurnal Antikorupsi*, 6.2 (2020), 169–86 <<https://doi.org/10.32697/integritas.v6i2.660>>.

²⁵ *Ibid.*

²⁶ Muhammad Rahjay Pelengkahu & Fajri M. Kasim, *Phenomena of Corruption as a Social Pathology...*, *Op. Cit.*, p. 133

²⁷ Nicholas Apergis and Mehmet Pinar, 'Corruption and Partisan Polarization: Evidence from the European Union', *Empirical Economics*, 64.1 (2023), 277–301 <<https://doi.org/10.1007/s00181-022-02247-z>>.

C. Conclusion

Departing from the above discussion, it can be concluded that corruption is a moral concept which means that corruption refers to the assessment of right-wrong and good-bad as a quality of people, actions or conditions. Corruption designates what should not happen, because it is also the opposite of what should not happen. That there is a relationship between morality and law, but the two must categorically be placed in two different places because they do not have an absolute relationship.

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