IUS POENALE
Volume 6 Issue 1, January 2025: pp.25-36.
Faculty of Law, Universitas Lampung, Bandar Lampung, Indonesia.
http://jurnal.fh.unila.ac.id/index.php/ip
P-ISSN: 2723-2638 E-ISSN: 2745-9314

The Harm Principle as a Basis for the Criminalization of Match Fixing in Football Competitions

Emmilia Rusdiana[1], Abdul Madjid[2], Milda Istiqomah[3]

[1]*Faculty of Law, Universitas Negeri Surabaya, Indonesia, Email: emmiliarusdiana@unesa.ac.id*
[2]*Faculty of Law, Universitas Brawijaya, Malang, Indonesia, Email: majid@ub.ac.id*
[3]*Faculty of Law, Universitas Brawijaya, Malang, Indonesia, Email: milda.istiqomah@ub.ac.id*

Submitted: July 24, 2025 ; Reviewed: September 8, 2025 ; Accepted: September 25, 2024

Article's Information

Keywords:
Football competition; bribery, loss principle; criminalization; match fixing.

DOI :
https://doi.org/10.25041/ip.v6i1.4423

Abstract

The credibility of football has been repeatedly questioned due to allegations of bribery and related violations, as reflected in judicial decisions such as Case No. 51/Pid.Sus/2019/PN.Bnr, which established bribery as the initial act in match fixing. This study, employing normative legal research with legislative and conceptual approaches and analyzed through philosophical interpretation, examines match fixing through the principle of loss as the basis for its criminalization. The findings show that bribery constitutes a mala in se offense, inherently wrongful in nature, and that the principle of loss satisfies the indicators of criminalization by recognizing both material and immaterial harm to society. These results confirm that bribery, with identifiable victims in the community, underlies the complexity of match fixing and provide new insights to raise public awareness..

A. Introduction

Legal issues in sport have become a specialized topic of study both nationally and globally.[1] In the United Kingdom, the New National Standards for Child Protection in Sport require the documentation and monitoring of abuse allegations, yet only a limited number of sports organizations maintain adequate systems for recording and managing such cases.[2] Corruption has also emerged as a major challenge in sport, including in Taiwan, where the influence of cultural traditions has contributed to widespread match-fixing[3] in professional baseball.

[1] Lisa A. Kihl, James Skinner, and Terry Engelberg, "Corruption in Sport: Understanding the Complexity of Corruption," *European Sport Management Quarterly* (Routledge, January 1, 2017), https://doi.org/10.1080/16184742.2016.1257553.
[2] Celia Brackenridge, Joy D. Bringer, and Daz Bishopp, "Managing Cases of Abuse in Sport," *Child Abuse Review* 14, no. 4 (July 2005): 259–74, https://doi.org/10.1002/car.900.
[3] Ping-Chao Lee, "Understanding the Match-Fixing Scandals of Professional Baseball in Taiwan: An Exploratory Study of a Confucianism-Oriented Society," *European Sport Management Quarterly* 17, no. 1 (January 12, 2017): 45–66, https://doi.org/10.1080/16184742.2016.1225111.

Addressing this issue requires reforms that prioritize both moral and legal education to counteract the socio-cultural factors that perpetuate such practices.[4]

The development of modern sport has yielded many benefits, but it has also created complex risks of corruption. These risks combine those common to other sectors with sport-specific vulnerabilities, highlighting the urgent need for reform in sports governance. Indonesia faces similar problems, including doping violations, bribery, and match-fixing in football competitions. Match-fixing often involves bribery and is addressed either through litigation or through the disciplinary mechanisms of the Indonesian Football Association (PSSI).

PSSI enforces its Disciplinary Code, which regulates the conduct of the term "football family" that described the close relationships among players, coaches, officials, and supporters. The PSSI Disciplinary Committee has the authority to impose sanctions for match-fixing and related offenses. Recent cases, such as those involving Johan Ibu and Djafar Umar, demonstrate that bribery remains a serious issue, with PSSI imposing fines and penalties over the past year to uphold the integrity of competition.

Table 1.
PSSI sanctions for bribery offenses during the year 2024

Basis for punishment	violation	Form of punishment
Article 64, paragraph 1, paragraph 2, paragraph 3, and Article 141 of the PSSI Disciplinary Code of 2023 on PSS Sleman	November 6, 2018, PSSI Disciplinary Committee, temporary disciplinary violation of the Sleman District Court decision dated April 25, 2024	001/SK/KD-PSSl/VIII/2024 a deduction of three points from PSS Sleman's standings in the BRI Liga 1 2024/25 season and a fine of Rp150 million.
Article 64(1) of the PSSI Disciplinary Code and betting as referred to in Article 65(1) of the PSSI Disciplinary Code on Dimas Yopi Perwira Nusa	On November 12, 2021. Namely, attempted bribery in the Liga 3 competition between NZR Sumbersari and Gresik Putra FC	Nomor: 001/KOMDIS/PSSI-JTM/XI/2021 PSSI Disciplinary Committee of East Java Dimas Yopi was fined Rp 100 million and banned from football activities for 10 years.

Source: author (edited, 2025)

Table 1 shows that the PSSI Disciplinary Commission classifies violations by players, referees, or other members of the football community under Article 64(1)–(2) in conjunction with Article 65 of the PSSI Disciplinary Code. Sanctions have been imposed for bribery as part of match-fixing offenses, with punishments based on evidence of bribery and gambling in line with the 2023 Code. These cases indicate violations of Article 64(1) and Article 65(1).

This study does not focus on PSSI's decisions but on judicial rulings that treat match-fixing as criminal bribery under Indonesian law. Decision No. 43/Pid.Sus/2024/PN Smn concerning the PSS Sleman team illustrates Indonesia's dualism in law enforcement. While lex sportiva has been applied to disciplinary and legal violations in football, the criteria for punishment remain inconsistent, with no clear alignment between offense and sanction.

[4] UNODC, "Evolutions in Sport Related to Corruption Global Report on Corruption in Sport," 2021, www.pexels.com.

P-ISSN 2723-2638
E-ISSN2745-9314

Previous studies also discuss corruption, bribery regulation, and judicial disparities in football. Tutuko Wahyu Minulyo's dissertation, for instance, critiques the application of bribery provisions, noting that enforcement often overlooks Article 12C of Law No. 20 of 2001 on the Eradication of Corruption. He argues that Operasi Tangkap Tangan (OTT) risks injustice due to substantive flaws, particularly the lack of obligation to consider the good faith of officials who report gratuities as stipulated in Article 28C of the same law.

Rusel Butar Butar[5] examined corporate patterns of bribery, the motivations and objectives of corporate corruption, and the legal formulation of bribery in Indonesia. Unlike the author's previous work, this article focuses on bribery involving individual rather than corporate legal subjects. It does not analyze specific judicial decisions but instead conceptualizes bribery as a distinct offense linked to the notion of loss.

The study finds that the qualification of bribery in value manipulation is regulated under Law No. 11 of 1980. The key distinction between bribery provisions in the Criminal Code, the Corruption Eradication Law, and Law No. 11 of 1980 lies in the definition of the legal subject. The application of substantive criminal law in Verdict No. 51/Pid.Sus/2019/PN Bnr was deemed inappropriate, as the court failed to consider several relevant aspects. Unlike this study, the present research focuses not on the legal subject but on the relationship between bribery, the element of victimization, and the concept of loss.

This research therefore seeks to validate match-fixing accompanied by bribery in football competitions within the framework of criminal law. Specifically, it emphasizes the need to classify match-fixing as a criminal act based on the element of loss and to recognize it as *mala in se*.

This study employed normative juridical research with statutory, conceptual, and comparative approaches to achieve its objectives. Compared to other methods, this approach made it easier to identify legal arguments and produce preliminary findings. Primary legal materials were considered more precise and capable of generating stronger results than secondary sources.[6]

Foreign laws were also used as primary references to construct the elements of the crime of match-fixing. The statutory approach relied on primary legal materials such as Law No. 11 of 2022 on Sports, Law No. 1 of 1946 on Criminal Law Regulations, and Law No. 11 of 1980 on Bribery, supplemented by secondary materials including the United Nations Convention Against Corruption (UNCAC). The conceptual approach drew on key notions such as lex sportiva and the principle of harm. Finally, the comparative approach examined relevant provisions in the French Criminal Code and the German Criminal Code (Strafgesetzbuch, StGB).

B. Discussion

1. Match fixing violations in soccer competitions in Indonesia.

Several criminal law violations occurred in football, such as the bribery cases involving Johan Ibu and Djafar Umar.[7] One notable outcome of the criminal justice process was Decision No. 51/Pid.Sus/2019/PN Bnr, which sentenced the defendant, Dwi Irianto (also known as Mbah Putih). The following section presents the court's ruling on match-fixing.

[5] Russel Butarbutar, "Modus Operandi Dan Pertanggungjawaban Pidana Suap Korporasi," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 1 (August 28, 2017): 181–203, https://doi.org/10.22304/pjih.v4n1.a10.
[6] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Group, 2011).
[7] Eko Noer Kristiyanto, "Pengaturan Skor Sepak Bola Dan Ketidakmampuan Penegak Hukum," in *Jurnal Rechtsvinding Online*, 2015, 1–3.

Table 2.
The judge's decision on match fixing

Judge's Decision Profile	Indictment	Prosecutor's Indictment	Dictum of Judgement
Number 51/Pid.Sus/ 2019/PN Bnr Dwi Irianto, S.H., alias Mbah Putih	First. Article 378 of the Criminal Code jo. Article 55, paragraph (1) to 1 of the Criminal Code Or, Second. Article 3 The Law No. 11 Year 1980 on Bribery jo. Article 55 paragraph (1) to 1 of the Criminal Code and Article 5 of The Law Number 8 Year 2010 on the Prevention and Eradication of ML jo. Article 55, paragraph (1) to 1 of the Criminal Code.	• Article 3 of The Law Number 11 Year 1980 on the Crime of Bribery jo. Article 55, paragraph (1) to 1 of the Criminal Code • Article 2 paragraph (1), namely bribery, as stipulated in Article 5 of The Law Number 8 Year 2010 on the Prevention and Eradication of ML/TF • imprisonment for one year and six months	Proven guilty of committing the crime of Participation in bribery, and not guilty of committing the criminal offense of money laundering (second charge).

Source: primary data (author, 2023)

Table 2 shows that the charges included Article 378 of the Criminal Code, Article 3 of Law No. 11 of 1980 on Bribery in conjunction with Article 55(1) of the Criminal Code, and Article 5 of Law No. 8 of 2010. The public prosecutor sought a sentence of one year and six months' imprisonment based on Article 3 of Law No. 11 of 1980 in conjunction with Article 55(1) of the Criminal Code, and Article 2(1) of Law No. 8 of 2010 on bribery. The judgment declared the defendant guilty of participating in bribery.

Judicial reasoning in this case was particularly significant with respect to the mens rea element. The prosecution attempted to establish intent to conceal or disguise the proceeds of crime as money laundering. However, the inability to prove this element was decisive, leading to the conclusion that the defendant was guilty of bribery but not guilty of money laundering. This verdict is an important precedent for both competitive football and the broader application of criminal law.

2. Bribery and match fixing are crimes committed in sports competitions.

Law No. 11 of 1980, commonly referred to as the Anti-Bribery Law, marked a regulatory breakthrough by encompassing bribery offenses in the private (non-government) sector.[8] Bribery directly undermines the legal interest of property protection and is closely linked to fraudulent acts that cause harm to others.[9]

The dynamics of bribery vary depending on bargaining power. In systems where citizens or companies hold greater bargaining power than officials[10], bribes tend to be lower than in

[8] Jack Dorminey et al., "The Evolution of Fraud Theory," *Issues in Accounting Education* 27, no. 2 (May 1, 2012): 555–79, https://doi.org/10.2308/iace-50131.

[9] Sofiia Ya. Lykhova et al., "Criminal Liability for Corruption Offenses," *Informatologia* 55, no. 1–2 (2022): 76–97, https://doi.org/10.32914/i.55.1-2.7.

[10] Dmitry Ryvkin and Danila Serra, "How Corruptible Are You? Bribery under Uncertainty," *Journal of Economic Behavior and Organization* 81, no. 2 (February 2012): 466–77, https://doi.org/10.1016/j.jebo.2011.07.004.

P-ISSN 2723-2638
E-ISSN2745-9314

systems dominated by officials.[11] Criminal law therefore must account for attitudinal and mental states when distinguishing degrees of culpability. The maxim actus non *fit reus nisi mens sit rea* underscores the role of *mens rea*, yet fault cannot be reduced solely to intent.[12]

In bribery cases, if the perpetrator knowingly commits the act, guilt need not be further established, rendering bribery a perfect offense.[13] The United Nations Convention Against Corruption (UNCAC) reinforces this approach by criminalizing bribery in both public and private sectors. Specifically, Article 12 obliges states to adopt measures consistent with their legal principles to impose effective, proportionate, and dissuasive civil, administrative, or criminal sanctions on offenders in the private sector[14].

Active and passive participants constitute the objective elements of bribery. In sports competitions, this typically involves at least two actors: the active participant (the bribe-giver) and the passive participant (the bribe-taker), who is often a player, referee, or coach. Cases documented by the UOC and UNODC illustrate how bribes may be given directly or through intermediaries. Similar dynamics occur beyond sport, such as when government officials abuse power in public procurement, which undermines fair competition and weakens Indonesia's investment climate.

Scholars have debated the distinction between mala in se and *mala prohibita*, with some arguing for its abandonment. From the perspective of justice theory, however, incorporating intent and harm provides a more coherent framework for identifying mala in se. This approach offers a contextual and offense-specific basis for classification.[15]

Bribery inherently reflects intent to influence another to act, or refrain from acting, in violation of their obligations. It is therefore prohibited whether it harms state finances, as set out in Article 12 of the Corruption Eradication Law, or occurs in the private sector under the Anti-Bribery Law, targeting legal entities or individuals who are not public officials.

Pangestu argued that the scope of punishable legal subjects should be as broad as the French approach to private-sector corruption, which encompasses not only individuals and legal entities in the public sector but also private, commercial, and non-commercial actors. This broad scope is essential for capturing match-fixing perpetrators who employ diverse methods. As in French law, heavier financial penalties are also important, since personal financial gain is the primary motivation behind match-fixing.

Bribery consists of three elements: (1) receiving a gift or promise; (2) linked to an inherent position; and (3) contrary to obligations or duties. Although these elements apply to all corruption offenses under the Corruption Eradication Law, bribery remains one of the most difficult offenses to prove. In such cases, both the giver (active bribery) and the recipient (passive bribery) are recognized as corruption offenders, and their status as subjects is not mutually exclusive.

Bribery and fraud require a causal link between the fraudulent act and the resulting harm. Fraud deprives the victim of the ability to exercise free will concerning their interests or integrity in the activity concerned.[16]

The crime of bribery under Law No. 11 of 1980 is consistent with the United Nations Convention Against Corruption (UNCAC), which covers both public- and private-sector

[11] Luis E Chiesa, "Mens Rea in Comparative Perspective," *Law Journal Articles Faculty Scholarship Winter*, vol. 12, 2018, https://doi.org/https://doi.org/10.30596/konstitusi.v1i2.6948.
[12] Winnie Chan and A. P. Simester, "Four Functions of Mens Rea," *Cambridge Law Journal* 70, no. 2 (2011): 381–96, https://doi.org/10.1017/S0008197311000547.
[13] Indra Kurniawan, "Suap Di Sektor Swasta Sebagai Suatu Tindak Pidana Korupsi Di Indonesia Berdasarkan United Nations Convention Against Corruption (UNCAC)," in *Bulletin Konstitusi*, vol. 4, 2021, 6.
[14] Hartini Atikasari, Btari Amira, and Ridwan Arifin, "Law Enforcement in the Practice of Bribery in Business and Trade in Indonesia: Between Theory and Practice," *Jurnal Ilmu Syari'ah Dan Hukum* 54, no. 2 (2020), https://doi.org/https://doi.org/10.14421/ajish.v54i2.
[15] Agus Budianto, *Delik Suap Korporasi Di Indonesia* (Bandung: Putra Darwati, 2012).
[16] Shannon Hoctor, "Kidnapping by Deceit R v Cort," vol. 137 (Pietermaritzburg, 2004).

bribery. In the private sector, Article 12 of UNCAC obliges states to adopt measures, consistent with their legal systems, to impose effective, proportionate, and dissuasive civil, administrative, or criminal sanctions on offenders.[17]

The expert emphasized the need for a causal link between corruption, fraud, and loss, noting that "the nature and execution of the fraud has deprived the plaintiff of the ability to exercise her will regarding her physical integrity in the activity concerned." This connection demonstrates that bribery constitutes a form of fraud against the state, society, and individuals.[18]

In principle, the state may compel action only when such action prevents harm to others. If every adverse effect were classified as loss, the Harm Principle would not provide adequate protection for individual liberty. Its role is better understood as a guide for decision-making rather than a strict criterion of correctness.[19]

Philosophically, bribery is mala per se, meaning an act that is inherently wrong, rather than *mala prohibita*, which refers to conduct considered wrongful solely because the law prohibits it.[20] While *mala prohibita* reflects disobedience to state authority, mala per se captures acts that are intrinsically harmful and universally condemned.[21]

Bribery is prohibited both as a criminal offense that harms state finances under Article 12 of the Corruption Eradication Law and as an offense committed by private companies directed toward legal entities or individuals who are not civil servants, as regulated in the Bribery Law. Corruption causes significant economic losses through abuse of power, bribery, embezzlement, and collusion. It discourages investment, slows economic growth, increases unemployment, and exacerbates poverty. Law Number 31 of 1999 prescribes sanctions for actions that damage state finances and the economy. Its broader consequences include budget waste, declining quality of public services, and inefficient resource use. Corruption also erodes public trust in government, which further deters foreign investment. Eradicating corruption is therefore essential for sustainable development and long-term economic growth.[22]

Another element of justice in bribery cases is justice for victims. In the context of football, bribery serves as a means of manipulating match results. The victims of such crimes are the state and the general public.[23] A comparative perspective shows that bribery regulations play a central role in addressing match-fixing in Indonesia, France, and Germany. The regulation of bribery in this context can be summarized in the following table:

Table 3
Regulation of bribery as an element of match-fixing in Indonesia, France, and Germany

Aspect	Indonesia	France	Germany
Criminal act	Pasal 2 dan 3 UU Number 11 Year 1980	Articles *445-1-1, 445-2-1, 445-3,* dan *445-4 France Penal Code*	German Criminal Code Article 265c s 265d

[17] Indra Kurniawan, "Suap Di Sektor Swasta Sebagai Suatu Tindak Pidana Korupsi Di Indonesia Berdasarkan United Nations Convention Against Corruption (UNCAC)."
[18] Hoctor, "Kidnapping by Deceit R v Cort."
[19] Nils Holtug, "The Harm Principle," *Ethical Theory and Moral Practice* 5, no. 4 (2002): 357–89, https://doi.org/10.1023/A:1021328520077.
[20] Davis Brown, ed., *The Just War Tradition: Applying Old Ethics to New Problems* (Routledge, 2017), https://doi.org/10.4324/9781315086125.
[21] Youngjae Lee, "Mala Prohibita and Proportionality," *Criminal Law and Philosophy* 15, no. 3 (October 1, 2021): 425–46, https://doi.org/10.1007/s11572-021-09576-7.
[22] Harly Clifford Jonas Salmon, "Hubungan Antara Tindak Pidana Korupsi Dan Kerugian Ekonomi Negara," *LUTUR Law Journal* 5, no. November (2024): 97–104, https://doi.org/10.30598/lutur.v5i2.16218.
[23] Jevons Pangestu and Indra Jaya Gunawan, "IMPLIKASI HUKUM TERHADAP MATCH FIXING SEPAKBOLA INDONESIA: ANALISIS PERBANDINGAN ANTARA HUKUM PERANCIS DAN JERMAN," *Yustika*, 2023, http://journal.ubaya.ac.id/index.php/yustika.

P-ISSN 2723-2638
E-ISSN2745-9314

Sanctions	Imprisonment for 3-5 (three to five) years and a fine of up to Rp 15,000,000 (fifteen million Rupiah)	• 5 (five) years imprisonment and a fine of 500,000 (five hundred thousand) Euros • deprivation of civil rights and the right to hold public office • revocation of legal entity status and seizure of goods used to commit the crime	3 (three) years imprisonment and a fine Law Enforcement Authority
Law Enforcement Authority	Indonesian National Police and Indonesian Attorney General's Office	*Parquet National Financier*	Public Prosecutor General at the Federal Court of Justice (GBA) and Federal Court of Justice (GBH)

Source: from various sources (2025)

Table 3 demonstrated that France and Germany had specific regulations addressing bribery in sports competition violations. Uniquely, they also had law enforcement agencies specifically responsible for regulating these offenses.

The next vital aspect that required regulation was the scope of prohibited acts related to match-fixing, such as receiving, giving, or soliciting gifts, rewards, or advantages for oneself or others that could influence the outcome or process of a match that should remain fair and reasonable, as reflected in French and German law. These prohibitions were expected to ensnare match-fixing offenders through various methods. As in French law, heavier penalties in terms of fines were also significant, given that the primary motivation for match-fixing was personal financial gain.

Finally, from an institutional perspective, a specialized unit could be established to enforce the law more effectively, with authority to handle major economic crimes, particularly match-fixing, taking inspiration from the French Parquet National Financier. Such a unit could focus on combating match-fixing, which had highly destructive and complex impacts involving various stakeholders.

Pangestu opined that another important aspect that needed regulation was the scope of legal subjects who could be punished, which should be as broad as the concept of corruption in the private sector under French law. This scope encompassed not only individuals and legal entities in the public sector but also those in the private sector, both commercial and non-commercial.

3. Elements of match fixing criminalization with the harm principle

Law enforcement has developed mechanisms to address bribery by considering the element of loss. According to Budi Suhariyanto[24], effective and efficient restitution of state financial losses, along with the need to prevent the negative consequences of corporate criminalization on workers, economic stability, and public welfare, requires reforming criminalization policy. He argues that restoring the ultimum remedium principle and applying a restorative justice approach constitute an appropriate solution. The normative application of restorative justice in cases of corporate criminalization finds strong legal support in Article 26 of the UNCAC and Article 52 of the Criminal Code, particularly in the context of eradicating corruption effectively and efficiently.

Another dimension of justice in bribery cases is the protection of victims. In the context of football match-fixing, bribery is a means to manipulate outcomes. The primary victims of such

[24] Budi Suhariyanto, "Restoratif Justice Dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara," in *Rechsvinding*, vol. 5, 2016, 421–38, http://rechtsvinding.bphn.go.id/artikel/ART 2 JRV 3 NO 2 PROTECT.pdf.

offenses are the state and society at large, as recognized in the French Penal Code (KUHP Perancis) and the German Criminal Code (Strafgesetzbuch, StGB).

Experts emphasize that corruption requires a demonstrable causal link between fraudulent conduct and resulting losses. Fraud deprives victims of their autonomy, particularly regarding decisions that affect their interests and integrity. Within this framework, corporate crime is often associated with large-scale enterprises and is not typically linked to small businesses. From the standpoint of justice theory, intent and loss are essential components: bribery causes direct financial harm to the state, and indirectly harms the public, including football fans and the broader community.[25]

These harms implicate the public interest. Moreover, intent is evident from the outset of bribery, which qualifies as a formal offense. Once the elements of the act are fulfilled, the offense is considered complete.

The harm principle alone is insufficient to safeguard individual freedoms, particularly when incorporated into decision-making as a substitute for the truth criterion. It struggles to address offenses that do not cause direct harm. A more robust approach is to recognize that individuals possess rights that function independently of the harm principle and require respect in virtue of their humanity.

Interference with personal freedom is legitimate only to prevent unconsented harm or unconsented effects. The permissibility of such interference should depend on whether those affected have consented, not on the identity of the victim.[26] A comprehensive analysis of these criteria must extend beyond intent and the interests of others, including collective interests.[27] Emphasizing crime as the basis of legitimate criminalization challenges the view that harm and violation should serve as independent, principled grounds for criminalization.[28] Moreover, people are generally unwilling to justify harming some individuals to benefit others, even when the harm is outweighed by the potential benefits.[29]

If individuals are to be treated as ends in themselves rather than as mere means to the ends of others, it is unjustifiable to impose public condemnation and punishment solely to prevent potential harm that might occur if certain conduct were not criminalized. Although the harm principle struggles with crimes that lack direct victims, some argue for criminalization of conduct that generates fear, anxiety, or insecurity among the public. However, this risks diluting the danger principle by legitimizing preventive measures that extend beyond actual harm.

The most defensible approach is to affirm that individuals have rights independent of the harm principle, which serve both to protect human dignity and to define the boundaries of criminalization. These rights can justify the criminalization of certain behaviors even in the absence of direct harm, while also shielding other conduct from criminalization regardless of its consequences.[30]

The harm principle faces significant limitations when applied to crimes that do not produce direct harm. It often justifies the criminalization of conduct based on the fear, anxiety, or insecurity it causes to individuals who are not direct victims. Such an approach risks weakening

[25] Achmad Subandi and Yana Indawati, "Tindak Pidana Suap Pengaturan Skor (Match Fixing) Dalam Pertandingan Sepak Bola Di Indonesia," in *Simposium Hukum Indonesia*, vol. 1 (Fakultas Hukum Universitas Trunojoyo Madura, 2019), 45–50, http://journal.trunojoyo.ac.id/shi.

[26] Ben M. Saunders, "Reformulating Mill's Harm Principle," *Mind* 125, no. 500 (October 1, 2016): 1005–32, https://doi.org/10.1093/mind/fzv171.

[27] Nina Peršak, "Harm Principle -- A Comparative Analysis," in *Criminalising Harmful Conduct: The Harm Principle, Its Limits and Continental Counterparts* (New York, NY: Springer New York, 2007), 35–94, https://doi.org/10.1007/0-387-46404-2_4.

[28] John Stanton-Ife, "What Is the Harm Principle For?," *Criminal Law and Philosophy* 10, no. 2 (June 1, 2016): 329–53, https://doi.org/10.1007/s11572-014-9311-8.

[29] Jonathan Baron, "Blind Justice: Fairness to Groups and the Do-no-harm Principle," *Journal of Behavioral Decision Making* 8, no. 2 (June 2, 1995): 71–83, https://doi.org/10.1002/bdm.3960080202.

[30] Andrew Ashworth and Lucia Zedner, "Prevention and Criminalization," *New Criminal Law Review* 15, no. 4 (October 1, 2012): 542–71, https://doi.org/10.1525/nclr.2012.15.4.542.

P-ISSN 2723-2638
E-ISSN2745-9314

the danger principle by legitimizing preventive measures that extend beyond actual harm. A stronger foundation lies in recognizing that individuals possess rights independent of the harm principle, which require them to be treated with dignity as human beings. These rights establish a framework for both criminalizing certain behaviors and limiting the scope of criminalization, since they identify conduct that should remain permissible regardless of its effects and conduct that may warrant prohibition even in the absence of direct harm.[31]

The harm principle is compatible with other principles that restrict the reach of criminal law. Nevertheless, several objections have been raised. First, the principle is too narrow. Second, it misrepresents the reasons why certain conduct should be legally prohibited. Third, it risks reducing individuals to mere means for achieving broader ends.[32] Fourth, it is overly broad when relied upon exclusively to determine the scope of criminalization. Liberal critiques also contend that the harm principle is inadequate because it emphasizes negative obligations to avoid harm while neglecting positive obligations.[33]

Recognition of rights independent of the harm principle is therefore essential. Indicators of infringement include any conduct that alters the outcome or course of a competition, including acts that directly or indirectly compromise fairness. One important criterion is the severity of the offense, as reflected in rulings of the European Court of Human Rights (ECHR) and disciplinary regulations. This criterion considers the nature of the offense, the degree of culpability, and the sanctions prescribed within the legal system. Based on these considerations, standards of proof may vary, and the conditions under which a legal system addresses specific offenses can be determined.

A deeper analysis of these criteria, extending beyond intent, harm, and the scope of affected interests including collective ones, suggests that reliance on the harm principle alone is insufficient. A more robust justification for criminalization requires the integration of other principles of justice and rights, which calls into question the feasibility of treating harm as an independent and exclusive basis for criminalization.

One important criterion in criminalization is the severity of the offense. This criterion, reflected in rulings of the European Court of Human Rights (ECHR) and disciplinary regulations, considers the nature of the criminal offense, the degree of culpability, and the sanctions prescribed within the legal system. Based on these factors, the standard of proof can be differentiated, and the conditions under which a particular legal system addresses the outcome of a match can be determined. An in-depth analysis of these criteria, which extends beyond intent, harm, and the scope of affected interests including collective ones, suggests that relying on harm and offense as independent principles is insufficient to explain legitimate criminalization.

The underlying principle is the prevention of serious offenses against persons other than the offender. While criminalization cannot eliminate harm in pursuing this goal, it often produces harm of its own. Nonetheless, it is justified in circumstances such as the prevention of moral rights violations. Even if an act does not pose a direct risk of harm, its prohibition may be justified in part because it prevents future harm. In this sense, the wrongdoing in question is partly derived from the harm it seeks to avert. Preventing harm is more reasonable than avoiding criminalization on the grounds that criminalization itself can cause harm, and this rationale underpins the regulation of match fixing.[34]

[31] Stewart, "The Limits of the Harm Principle."
[32] James Edwards, "HARM PRINCIPLES," *Legal Theory* 20, no. 4 (December 4, 2014): 253–85, https://doi.org/10.1017/S135232521500004X.
[33] Andrew Linklater, "The Harm Principle and Global Ethics," *Global Society* 20, no. 3 (July 22, 2006): 329–43, https://doi.org/10.1080/13600820600816340.
[34] Suhariyanto, "Restoratif Justice Dalam Pemidanaan Korporasi Pelaku Korupsi Demi Optimalisasi Pengembalian Kerugian Negara."

Heavier criminal penalties have been recommended because of the potential for irreparable harm to the sports industry. Match fixing is not a matter of private ethical violations but belongs to the public domain, as it undermines public order and the authority of sport. The main justification for addressing match fixing lies in the risks it poses to the credibility of the sport, the state, and match officials.[35]

In addressing bribery, law enforcement has provided mechanisms based on financial loss. To ensure efficient recovery of state financial losses and to mitigate the negative effects of corporate criminalization on workers, economic stability, and public welfare, reforming criminalization policy is necessary. Budi Suhariyanto argues that restoring the ultimum remedium principle and applying a restorative justice approach offer the most effective solution. The normative application of restorative justice to corporate criminalization has a solid foundation in Article 26 of UNCAC and Article 52 of the Criminal Code, particularly in the context of efficient and effective corruption eradication. In the case of bribery, individuals remain the primary legal subjects of criminal liability.[36]

C. Conclusion

Based on Decision Number 51/Pid.Sus/2019/PN.Jkt.Pst, match fixing involves two parties, namely the giver and the recipient of bribes. This establishes bribery as the underlying criminal act in match fixing. The primary indicator of criminalization in such cases is the principle of loss, both material and immaterial. From a philosophical perspective, the legal interest at stake in match fixing accompanied by bribery can be classified as a criminal offense under the principle of mala in se, since the act is inherently wrongful. The determination of loss in bribery is grounded in the harm suffered by the victim.

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