



Regulations on Recidivism in Corruption Crimes and Their Implications for the System of Aggravated Sentencing

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Abstract

Regulations regarding recidivism in corruption offenses are a key aspect of the system of aggravated penalties, which aims to deter repeat offenders. However, Indonesian positive law still faces normative challenges regarding the regulation of recidivism in corruption offenses. This study aims to analyze the issues surrounding the regulation of recidivism in corruption crimes from the perspective of criminal law policy and its implications for the system of aggravated penalties. This study employs a normative legal research method with a qualitative approach, utilizing both a legislative and a conceptual framework. The findings indicate that Law No. 31 of 1999 as amended by Law No. 20 of 2001 does not explicitly regulate the concept, requirements, and mechanisms for applying recidivism. This situation creates a legal vacuum that leads to legal uncertainty, potential conflicts of law, and disparities in sentencing within the judicial system. Furthermore, the regulations on corruption were last updated in 2001, meaning that, in substance, they have been in effect for more than two decades without significant changes, even though social and economic dynamics and the methods of corruption continue to evolve. This situation has the potential to create various legal loopholes that can be exploited to commit acts of corruption. Therefore, it is necessary to explicitly reformulate the recidivism provisions in the Law on the Eradication of Corruption in order to strengthen the system of aggravated penalties and enhance the effectiveness of anti-corruption policies.

Keywords : *Corruption, Punishment, Criminal Law Policy, Recidivism, Criminal Punishment System.*



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INTRODUCTION

Corruption constitutes an extraordinary crime that causes substantial losses to state finances while simultaneously undermining social, economic, and political structures. Consequently, the state seeks to address this issue through various criminal law policies, both repressive and preventive in nature. One of the key instruments within criminal law policy is the implementation of sentence enhancement mechanisms for offenders who repeat criminal acts, commonly referred to as recidivism. The concept of recidivism in criminal law is grounded in the assumption that repeat offenders demonstrate a higher degree of culpability and pose a greater threat to society. Therefore, the regulation of recidivism forms an essential component of the penal system in creating a deterrent effect and preventing the recurrence of criminal acts (Agung et al., 2025; Winarno, 2022).

The concept of recidivism in corruption offenses is implicitly recognized in the Elucidation of Article 2 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. The elucidation states that the repetition of corruption offenses may serve as one of the conditions justifying the imposition of the death penalty as an aggravated form of punishment. However, the provision does not clearly regulate the requirements, limitations, or criteria of recidivism in corruption offenses. As such, the norm merely provides conceptual recognition without establishing an operational regulatory mechanism. This condition gives rise to juridical issues concerning legal certainty in the application of sentence enhancement for repeat corruption offenders (Edita Elda, 2023; Alghifari & Elvany, 2025).

The regulation of recidivism in corruption offenses once had a legal basis under Article 486 of the Criminal Code (Wetboek van Strafrecht), in conjunction with Articles 415, 417, and 425 of the same code. These provisions were later adopted as corruption offenses under Law Number 3 of 1971 and

subsequently incorporated into several provisions of Law Number 31 of 1999. However, legislative developments indicate that through Law Number 20 of 2001, these Criminal Code provisions were declared no longer applicable as the legal basis for corruption offenses. This was explicitly affirmed in Article 43B of Law Number 20 of 2001, which revoked the applicability of the aforementioned provisions. Consequently, the normative basis for applying recidivism through Article 486 of the Criminal Code to corruption offenses has become irrelevant (Halfis Gusnadi et al., 2024).

This condition has resulted in a normative vacuum concerning the regulation of recidivism in corruption offenses. Normatively, the Corruption Eradication Law does not provide clear provisions regarding the concept, requirements, or mechanisms for enhancing penalties against repeat offenders. In judicial practice, judges often merely consider an offender's criminal history as an aggravating factor without a specific normative basis. This creates the potential for inconsistency in legal application and opens the possibility for disparities in sentencing practices. Thus, the issue of recidivism in corruption offenses emerges as a significant problem from the perspective of legal certainty (Mahmud, 2021; Oktavia & Sahetapy, 2025).

The regulation of recidivism should ideally form part of the state's criminal policy in effectively combating corruption. Criminal law policy fundamentally relates to the direction of state policy in formulating legal norms aimed at protecting societal interests. In the context of corruption eradication, regulating repeated offenses is essential in ensuring a stronger deterrent effect. The absence of clear regulation on recidivism reflects a weakness in the formulation of criminal law policy in the field of anti-corruption efforts. This condition raises questions regarding the consistency of the state's legal policy in designing an effective penal system for corruption offenders (Agung et al., 2025; Winarno, 2022).

Recent developments in Indonesia's criminal law system indicate efforts toward reform through Law Number 1 of 2023 concerning the new Criminal Code. Within this new code, provisions on recidivism are regulated more systematically under Article 23, which provides definitions and criteria for recidivism. The article stipulates that recidivism occurs when a person commits another criminal offense within five years after serving a prior sentence or when the obligation to serve the previous sentence has not yet expired. Furthermore, the provision also applies to offenses punishable by a special minimum sentence or imprisonment of four years or more. Nevertheless, the relevance of this provision to corruption offenses requires further examination, given that corruption is categorized as an extraordinary crime (Yudistira et al., 2025).

Based on the foregoing background, it can be understood that the regulation of recidivism in corruption offenses continues to generate various issues, both from juridical and criminal policy perspectives. The absence of clear regulation concerning repeated corruption offenses has the potential to affect the effectiveness of sentencing enhancement mechanisms as well as the overall objectives of corruption eradication. From the perspective of criminal law policy, this condition indicates the need to evaluate the direction of legislative policy in regulating sentencing systems for corruption offenders. Therefore, a study on the problematics of recidivism regulation in corruption offenses is of considerable importance. This research is expected to provide a critical analysis of the implications of such regulation on sentencing enhancement within the Indonesian criminal law system.

RESEARCH METHODS

This study constitutes normative legal research employing a qualitative approach, aimed at examining the regulation of recidivism in corruption offenses and its implications for the system of sentencing enhancement. The approaches utilized include the statutory approach and the conceptual approach, by analyzing provisions contained in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, as well as provisions on recidivism in the new Criminal Code. Data sources were obtained through library research, encompassing primary legal materials in the form of statutory regulations, secondary legal materials such as scholarly books and academic journals, and tertiary legal materials as supporting references. The analysis of legal materials was conducted qualitatively using a descriptive-analytical method to systematically examine the problematics of recidivism regulation in corruption offenses from the perspective of criminal law policy (Agung et al., 2025).

RESULTS AND DISCUSSION

Problematics of Regulating Recidivism in Corruption Offenses from a Criminal Law Policy Perspective

Corruption offenses within the Indonesian legal system are classified as crimes that have systemic impacts on state governance. Therefore, they require extraordinary criminal law policies. Law Number 31 of 1999 concerning the Eradication of Corruption provides room for aggravated punishment through the provisions of Article 2 paragraph (2), which states: "In the event that the corruption offense as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed." This provision indicates that under certain conditions, corruption offenses may be punishable by death. Normatively, the elucidation of this article associates these "certain conditions" with the possibility of repeated corruption offenses or recidivism. However, the norm does not provide a definition or juridical criteria for such repetition, thereby creating problems in the construction of legal norms (Sanjaya & Nail, 2026).

From the perspective of criminal law policy, the regulation of recidivism should form part of the state's criminal policy in designing an effective sentencing system. According to the doctrine proposed by Sudarto, criminal law policy relates to the state's policy in determining which acts should be punished and how criminal sanctions should be properly formulated. Article 2 paragraph (2) of Law Number 31 of 1999 reflects an orientation toward aggravating punishment for offenders who commit corruption under certain conditions. However, this norm does not systematically regulate the requirements for recidivism as commonly found in criminal law systems. This lack of clarity creates legal uncertainty in applying aggravated punishment to repeat offenders of corruption (Winarno, 2022).

From a historical perspective, the concept of recidivism in offenses related to abuse of office was previously regulated in the old Criminal Code (WvS). This is reflected in the relationship between Article 486 of the Criminal Code and several official misconduct offenses such as Articles 415, 417, and 423. Article 415 regulates embezzlement by officials of money or securities entrusted to them due to their position, punishable by up to seven years' imprisonment. Article 417 regulates the destruction or removal of documents under an official's control, punishable by up to five years and six months' imprisonment. Meanwhile, Article 423 regulates abuse of power by officials to coerce someone into giving something, punishable by up to six years' imprisonment (Hikmah & Sopoyono, 2019).

These provisions were initially linked to recidivism through Article 486 of the Criminal Code, which regulated aggravated punishment for repeat offenders of certain crimes. Over time, these offenses were incorporated into corruption offenses through evolving criminal policies in anti-corruption legislation. This reflects the state's initial integrative approach between official misconduct offenses in the Criminal Code and anti-corruption policies. However, this construction later changed through legislative reforms in the field of corruption eradication, which affected the normative basis of recidivism in corruption offenses. (Munawar et al., 2025)

This change is explicitly regulated in Article 43B of Law Number 20 of 2001 amending Law Number 31 of 1999, which declares that several provisions of the Criminal Code, including Articles 415, 417, and 423, are no longer valid. This revocation aims to emphasize that these offenses have been fully integrated into the corruption law regime. However, it also creates juridical consequences regarding the applicability of recidivism provisions previously linked to Article 486 of the Criminal Code, resulting in a normative vacuum concerning the application of recidivism in corruption offenses within the positive legal system (Ariska, 2024).

This condition demonstrates disharmony between legislative policy and the sentencing system. Although lawmakers integrated various official misconduct offenses into the corruption regime, this integration was not accompanied by explicit recidivism norms in anti-corruption laws. This differs from the Criminal Code system, which clearly regulates mechanisms for aggravating punishment for repeat offenders. Consequently, a normative gap arises, potentially causing legal uncertainty in sentencing corruption recidivists (Odetunde & Olaoni, 2025).

According to Barda Nawawi Arief, criminal law policy encompasses the stages of formulation, application, and execution. At the formulation stage, lawmakers are responsible for clearly and systematically drafting criminal norms. The lack of clarity regarding recidivism in anti-corruption law indicates a weakness at this stage, which may lead to difficulties in legal application by law

enforcement. Therefore, the issue of recidivism in corruption offenses must be critically analyzed within the framework of criminal law policy (Bakrie & Sodikin, 2025).

The absence of recidivism regulation can also be analyzed through systematic interpretation of existing laws. Article 2 paragraph (2) of Law Number 31 of 1999 suggests that repeated offenses may justify severe punishment, even the death penalty. However, the provision lacks parameters such as time limits, types of offenses, or other criteria typically used in recidivism concepts. This contrasts with the Criminal Code, which generally requires a certain time interval between offenses. Thus, juridically, the norm fails to provide certainty regarding sentencing mechanisms for corruption recidivists (Agbor, 2024).

This issue becomes more complex when viewed in light of developments in national criminal law. The new Criminal Code, through Article 23, provides a more systematic regulation of recidivism, defining it as the commission of another offense within five years after serving a prior sentence or while the prior sentence has not yet expired. This provision establishes clear parameters for recidivism in national criminal law (Rustamaji et al., 2025). However, the application of Article 23 of the new Criminal Code to corruption offenses remains debated. Corruption is regulated under a special law (*lex specialis*), which should override general provisions under the principle of *lex specialis derogat legi generali*. This raises a juridical question as to whether recidivism provisions in the new Criminal Code can be directly applied to corruption offenses, indicating potential normative conflict within the Indonesian legal system. (Tomaz et al., 2023)

According to Johannes Andenaes, recidivism reflects a higher degree of culpability. Therefore, criminal law systems generally impose harsher penalties on repeat offenders. In corruption cases, this principle is crucial due to the significant impact on state finances and public interests. However, without clear normative regulation, such aggravation cannot be consistently applied, revealing structural weaknesses in the sentencing system for corruption offenses (Bulan et al., 2025). This problem can also be examined through the principle of legal certainty. Criminal law requires norms to be clearly formulated and not open to multiple interpretations. The implicit mention of recidivism in Article 2 paragraph (2) fails to meet this requirement, as it does not provide operational criteria for determining corruption recidivism. As a result, sentencing becomes highly dependent on judicial discretion (Daulay, 2025).

Reliance on judicial discretion in determining recidivism may lead to inconsistencies in judicial practice. In some decisions, prior offenses are merely treated as aggravating factors without explicit normative basis. This differs from systems where recidivism is clearly regulated as a formal ground for enhanced punishment. Such irregularities may lead to sentencing disparities in corruption cases and weaken the effectiveness of anti-corruption efforts. From a criminal law policy perspective, this reflects inconsistency in legislative policy: corruption is treated as an extraordinary crime, yet recidivism is not clearly regulated. This inconsistency highlights weaknesses in policy design and underscores the urgent need to reformulate recidivism regulation in corruption law (Sanjaya & Nail, 2026).

Anti-corruption law was last amended through Law Number 20 of 2001 and has remained largely unchanged for approximately twenty-five years. During this period, significant social, economic, and technological developments have occurred, along with increasingly complex corruption schemes, creating potential legal loopholes. Therefore, comprehensive legislative reform is needed, including clear regulation of the concept, requirements, and mechanisms of recidivism in corruption offenses, so that sentencing policies can function more effectively (Munawar et al., 2025).

This analysis shows that the problem of recidivism regulation in corruption offenses is not only about normative gaps but also about inconsistent criminal law policy direction. The lack of clarity affects legal certainty and the effectiveness of sentencing. Lawmakers should explicitly regulate recidivism in anti-corruption law, including definitions, requirements, and mechanisms for aggravated punishment. Such reform would enable a more consistent and effective sentencing system for corruption offenders.

Implications of the Problematics in Regulating Recidivism in Corruption Offenses on the System of Aggravated Sentencing

The problematics of regulating recidivism in corruption offenses have significant implications for the system of aggravated sentencing in Indonesian criminal law. The concept of repeat offending generally serves as a normative basis for imposing harsher penalties on offenders. This principle is

grounded in the assumption that individuals who reoffend demonstrate a higher degree of culpability and reflect the failure of prior punishment to produce a deterrent effect. In corruption offenses, the aggravation of punishment for recidivists becomes even more crucial given that corruption is categorized as a crime that broadly harms public interests. However, the absence of clear normative regulation regarding recidivism in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 creates juridical implications for the implementation of aggravated sentencing (Sanjaya & Nail, 2026).

The first implication is the emergence of legal uncertainty in applying aggravated sentencing to repeat offenders of corruption. Article 2 paragraph (2) of Law Number 31 of 1999 does indeed open the possibility for the imposition of the death penalty if corruption is committed under certain circumstances. However, the provision does not provide clear parameters regarding what constitutes such “certain circumstances,” including whether it encompasses recidivism. This lack of clarity leaves law enforcement authorities without definitive normative guidance in determining the status of corruption recidivists, making the application of aggravated punishment heavily dependent on judicial interpretation in each individual case (Winarno, 2022).

This uncertainty becomes more evident when analyzed through a systematic interpretation of statutory provisions. Under the old Criminal Code (WvS), recidivism was regulated through Article 486, which linked several official misconduct offenses such as Articles 415, 417, and 423 to mechanisms of aggravated punishment. However, through Article 43B of Law Number 20 of 2001, these provisions were declared no longer applicable as the basis for corruption offenses. This revocation effectively severed the connection between corruption offenses and recidivism mechanisms under the Criminal Code, thereby rendering the normative basis for applying aggravated punishment to corruption recidivists unclear within the current positive legal system. (Hikmah & Sopoyono, 2019)

Another implication is the potential disharmony between the provisions of the Anti-Corruption Law and the new Criminal Code. The new Criminal Code, through Article 23, provides a clear definition of recidivism. Article 23 paragraph (1) states that recidivism occurs when an individual commits another offense within five years after serving a previous sentence. Furthermore, paragraph (2) extends this provision to offenses punishable by special minimum penalties or imprisonment of four years or more. However, applying this provision to corruption offenses raises questions regarding the relationship between general criminal law and special criminal law (Munawar et al., 2025).

In criminal law doctrine, the principle of *lex specialis derogat legi generali* establishes that specific laws override general laws. The Anti-Corruption Law constitutes a special legal regime governing corruption offenses, and thus its provisions should take precedence over the general provisions of the Criminal Code. However, in the case of recidivism, the Anti-Corruption Law fails to provide clear regulation. This creates ambiguity as to whether Article 23 of the new Criminal Code can serve as a legal basis for aggravating sentences against corruption recidivists (Ariska, 2024).

Another implication is the potential emergence of sentencing disparities in corruption cases. In the absence of clear normative provisions on recidivism, judges possess broad interpretative discretion in determining aggravated punishment. In some cases, an offender’s prior criminal record is merely treated as an aggravating factor without explicit normative grounding, while in others, repeat offending is not significantly considered in sentencing. Such inconsistencies may result in sentencing disparities that contradict the principles of justice and legal certainty (Odetunde & Olaoni, 2025).

From the perspective of sentencing theory as articulated by Herbert L. Packer, a sentencing system must balance societal protection with the guarantee of legal certainty. Aggravated punishment for recidivists is one mechanism to achieve this balance. If the legal system does not provide a clear normative basis for recidivism, the objective of preventing repeat offenses becomes difficult to attain. This also weakens the function of criminal law as a tool of social control. Therefore, the normative gap in regulating recidivism in corruption offenses directly affects the effectiveness of the sentencing system (Bakrie & Sodikin, 2025).

Another implication relates to the weakening of deterrent effects for corruption offenders. According to Johannes Andenaes’ theory of recidivism, aggravated punishment for repeat offenders plays a crucial role in achieving special deterrence. Offenders who have previously been punished should face more severe consequences if they reoffend. However, if the legal system does not clearly regulate this mechanism, the deterrent effect of prior punishment diminishes, thereby increasing the risk of repeated corruption (Agbor, 2024).

From a criminal law policy perspective, the weak regulation of recidivism indicates deficiencies in the legislative design of anti-corruption policy. The state has classified corruption as an extraordinary crime requiring special handling, as reflected in various provisions on aggravated punishment in Law Number 31 of 1999 and Law Number 20 of 2001. However, this policy is not accompanied by systematic regulation of recidivism in corruption offenses, resulting in an aggravated sentencing system that cannot function optimally (Rustamaji et al., 2025).

Another implication that must be considered is the potential inconsistency in applying the death penalty as stipulated in Article 2 paragraph (2) of Law Number 31 of 1999. While the provision allows for the death penalty under certain circumstances, the absence of a clear definition of recidivism as one of those circumstances makes consistent application difficult. This may give rise to criticism regarding the legitimacy of sentencing policies in corruption cases, thereby underscoring the importance of normative clarity (Tomaz et al., 2023). Within the framework of national legal development, the new Criminal Code offers an opportunity to harmonize recidivism regulation within Indonesia's criminal law system. Article 23 provides clear parameters for the concept of repeat offending, which can serve as a reference in reformulating sentencing policies for corruption offenses. However, such harmonization requires adjustments through revision or reformulation of anti-corruption legislation. Without such measures, the potential for normative conflict will persist. The principle of legal certainty demands that recidivism regulation be clearly formulated to ensure consistent application of criminal law. (Bulan et al., 2025)

The lack of clarity in regulating recidivism in corruption offenses indicates that this principle has not yet been fully realized. This may undermine public trust in the criminal justice system. Consequently, reform of criminal law policy becomes essential. Moreover, clear recidivism regulation also has implications for the overall effectiveness of anti-corruption strategies. A sentencing system that fails to impose harsher penalties on repeat offenders may weaken the deterrent power of criminal law. In corruption cases, which often involve networks of power and economic interests, such weaknesses may be exploited by offenders to continue their conduct. Therefore, reformulating recidivism regulation is a crucial component of anti-corruption policy, aligned with the fundamental objective of criminal law to protect societal and state interests (Daulay, 2025).

Based on the foregoing analysis, the problematics of regulating recidivism in corruption offenses have broad implications for the system of aggravated sentencing. The normative gap leads to legal uncertainty, potential normative conflicts, and sentencing disparities in judicial practice. From a criminal law policy perspective, this condition highlights the need for comprehensive legislative reformulation. Such reform should include clear regulation regarding the concept, requirements, and mechanisms for applying recidivism in corruption offenses, enabling the aggravated sentencing system to function more effectively in supporting anti-corruption efforts.

CONCLUSION

The regulation of recidivism in corruption offenses within the Indonesian positive legal system demonstrates normative problems that lead to legal uncertainty in the application of aggravated sentencing. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 does provide the possibility of enhanced punishment through Article 2 paragraph (2), which allows for the imposition of the death penalty under certain circumstances. However, this provision does not provide a clear definition or juridical criteria regarding recidivism. Furthermore, the legal basis for recidivism that was previously linked to official misconduct offenses in the Criminal Code such as Articles 415, 417, and 423 can no longer be applied following their revocation under Article 43B of Law Number 20 of 2001. This situation creates a normative vacuum in the regulation of recidivism in corruption offenses. Although the new Criminal Code, through Article 23, provides a more systematic regulation of repeat offenses by establishing a five-year time limit after the offender has served a prior sentence, its application to corruption offenses remains problematic within the framework of the principle of *lex specialis derogat legi generali*. Moreover, anti-corruption law was last amended through Law Number 20 of 2001 and has remained in force for approximately twenty-five years without significant revision, despite continuous developments in social, economic, and technological conditions, as well as increasingly sophisticated modes of corruption that may create legal loopholes.

From the perspective of criminal law policy, this condition indicates that legislative policy in combating corruption has not consistently integrated the concept of recidivism as an instrument for aggravated sentencing within the penal system. Based on these conditions, it is necessary to reformulate the regulation of recidivism explicitly within the Anti-Corruption Law. Such reformulation is required to fill the existing normative gap and to strengthen the system of aggravated sentencing for offenders who repeat corruption offenses. This reformulation should clearly define the concept, requirements, and legal consequences of recidivism in corruption cases, including the establishment of a specific time frame after the offender has served a prior sentence, as reflected in Article 23 of the new Criminal Code. In addition, the regulation should explicitly affirm that recidivism constitutes a legal basis for aggravated punishment, allowing for increased penalties against corruption offenders who reoffend. This normative clarity is essential to provide a solid juridical foundation for judges in imposing harsher sentences on corruption recidivists. Accordingly, the reformulation of recidivism norms is expected to enhance legal certainty, sentencing consistency, and the overall effectiveness of anti-corruption policy within the framework of national criminal law policy.

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