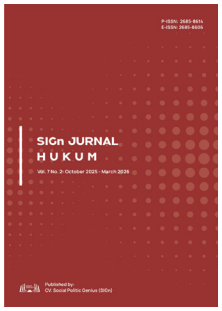

SIGn Jurnal Hukum

E-ISSN: 2685 – 8606 || P-ISSN: 2685 – 8614
https://jurnal.penerbitsign.com/index.php/sjh/article/view/v7n2-9

Vol. 7 No. 2: October 2025 - March 2026 Published Online: October 29, 2025

Article Title

A Juridical Demarcation: Reconstructing the Proof of Mens Rea to Differentiate Policy and Corruption by Public Officials

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How to cite:

Sutopo, R. B. P., & Panjaitan, H. (2025). A Juridical Demarcation: Reconstructing the Proof of Mens Rea to Differentiate Policy and Corruption by Public Officials. *SIGn Jurnal Hukum, 7*(2), 765-784. https://doi.org/10.37276/sjh.v7i2.525

ABSTRACT

The enforcement of anti-corruption law in Indonesia confronts a fundamental paradox. The vigorous campaign to eradicate corruption often results in an erosion of legal certainty and an increased risk of policy criminalization. This issue stems from the distortion and inconsistent application of the principle of a guilty mind (mens rea), as judicial practice frequently equates state financial loss or procedural errors with malicious intent. This research aims to reconstruct the principle of proving mens rea by proposing a clear and operational demarcation framework. Using a normative legal research method that integrates the statute, conceptual, and case study approaches, this study analyzes data through systematic and teleological interpretation, culminating in deductive reasoning. The findings indicate that jurisprudence empirically confirms a dangerous blurring of these concepts. As a solution, this study formulates a framework that strictly differentiates among administrative error, policy error, and intentional corruption. The fundamental line of demarcation among these categories is the presence of a valid and convincingly proven mens rea, defined as the intent to enrich oneself or others unlawfully. The primary contribution of this study is to provide a juridical parameter to enhance legal certainty and protect the legitimate discretionary space of public officials. Ultimately, this framework aims to restore criminal law to its function as a last resort (ultimum remedium), thereby making the fight against corruption more targeted, just, and legitimate.

Keywords: *Administrative Error; Criminalization of Public Officials; Intentional Corruption; Mens Rea; Policy Error.*

INTRODUCTION

The eradication of corruption in Indonesia represents a paradox within the concept of a state under the rule of law. As analyzed by Pawe et al. (2025), a strong normative discourse often clashes with the problematic realities of law enforcement. Amidst massive efforts to prosecute perpetrators of corruption, an underlying issue has emerged, threatening the very foundations of government administration and legal certainty. This issue is the blurring of the boundary between administrative error, policy error, and intentional corruption grounded in malicious intent (*mens rea*). The inability of the judicial system to draw a clear line of demarcation has triggered the serious risk of criminalizing the discretionary decisions of public officials. This phenomenon has the potential to paralyze the machinery of government, as officials tend to avoid making innovative, strategic decisions (Kurniawan, 2022).

Doctrinally, the Penal Code[1] rests upon the foundation of the principle of no punishment without guilt (*geen straf zonder schuld*), which asserts that there can be no penalty without fault (Moeljatno, 2008; Huda, 2011). This principle requires an internal element, or the perpetrator's mental state, as an absolute prerequisite for criminal liability (Ar et al., 2024). In practice, however, this fundamental principle is often distorted, particularly in the handling of corruption offenses. The elements of an unlawful act and state financial loss are frequently treated as sufficient to prove

[1]Law Number 1 of 1946 has been repealed by Law Number 1 of 2023, which will come into force after 2 January 2026.

criminal fault. Meanwhile, the proof of the *mens rea* element is frequently neglected or is merely inferred implicitly from the existence of an abuse of authority (Mallarangeng et al., 2023). Consequently, the conceptual boundaries between the realms of criminal law, administrative law, and public policy have become overlapping and indistinct.

Inconsistencies in judicial practice serve as clear evidence of this problem. The jurisprudence of the Supreme Court in the case of Akbar Tandjung established a crucial precedent that distinguished between a policy causing state loss and a criminal act of corruption. Supreme Court Decision Number 572 K/Pid/2003 affirmed that the absence of *mens rea* negated the criminal element in the Akbar Tandjung case (Putra, 2021). However, more recent rulings, such as in the case of Syahrul Yasin Limpo, indicate a paradigm shift. In the Central Jakarta District Court Decision Number 20/Pid.Sus-TPK/2024/PN Jkt.Pst, Syahrul Yasin Limpo's abuse of authority for personal or group interests was deemed to have inherently proven the existence of *mens rea*. This shift and lack of uniformity in rulings have created grave legal uncertainty, identified by Kharismadohan (2020) as judicial inconsistency in linking state financial loss to malicious intent.

This condition is not unique to Indonesia. Comparative literature shows that the criminalization of policy is a global phenomenon, often employed as a political instrument to sideline opponents or public officials who make unpopular decisions (Skolnik, 2017; Laila et al., 2025). Public officials acting within the framework of discretion—an essential authority for navigating dynamic and unforeseen situations—are confronted with a dilemma. They must choose between making necessary decisions at the risk of prosecution or remaining inactive for the sake of personal security, which ultimately sacrifices the public interest. This dilemma threatens the effectiveness of governance and undermines the principle of a state under the rule of law, which should offer protection, not a threat, to the legitimate exercise of authority (Jones, 2008).

Previous studies have highlighted individual aspects of this problem. Several studies have reaffirmed the importance of *mens rea* as a constitutive element in the crime of corruption (Ar et al., 2024; Wirawan et al., 2024). Other research has focused on the complexities of proving it in court (Mallarangeng et al., 2023). On the other hand, administrative law literature has extensively discussed the concepts of discretion and abuse of authority (Kurniawan, 2022; Wibowo, 2024). However, a significant research gap exists. There has been no comprehensive study that specifically formulates a conceptual framework to rigorously differentiate among these three categories of actions—administrative error, policy error, and intentional corruption—within the context of corruption trials in Indonesia.

The novelty of this research lies in its effort to fill this gap. While previous studies have tended merely to identify the problem, this research goes a step further by offering a conceptual solution. Rather than simply reaffirming the importance of *mens rea*, this study proposes its use as a fundamental demarcation parameter, or a dividing line. In other words, the presence or absence of a judicially provable *mens rea* is established as the primary criterion. This criterion serves to distinguish which actions fall into the domain of administrative law and which should be addressed through the mechanisms of criminal law.

Formulating this framework has become urgent, considering that the complexity of proving malicious intent is often the main challenge for public prosecutors (Mallarangeng et al., 2023). This phenomenon is exacerbated by systematic interpretative errors within the judicial system. As found by Ramadan and Mandala (2025), a majority of court decisions contain ambiguity in the construction of *mens rea*. Without a clear framework, law enforcement will remain trapped in a haphazard approach. Such an approach may succeed in convicting some perpetrators, but on the other hand, it also has the potential to sacrifice public officials who have acted in good faith.

Based on this foundation, this research is designed to answer three intertwined, fundamental questions. *First*, how has judicial practice in Indonesia historically treated the proof of the *mens rea* element in corruption cases involving public policy, and what inconsistencies have arisen from this practice? *Second*, how should the conceptual boundaries between administrative error, policy error, and intentional corruption be theoretically formulated based on the doctrines of criminal and administrative law? *Third*, how can the reconstruction of the principle of proving *mens rea* be formulated into an operational framework to prevent the criminalization of policy without weakening the integrity of corruption eradication efforts?

By exploring these questions, this research has a dual objective. Theoretically, it aims to enrich and sharpen the academic discourse on the doctrine of criminal liability for public officials in Indonesia. Practically, this research is expected to provide a significant contribution in the form of a reference framework that can be used by stakeholders. These include legislators, law enforcement officials, and judges in navigating the complexities of corruption cases. By doing so, law enforcement is expected to operate more justly, proportionally, and consistently, in line with the ideals of a state under the rule of law that provides both certainty and substantive justice.

METHOD

This research is fundamentally designed as a normative, or doctrinal, legal study. This approach positions law as a structured system of norms, principles, and rules

codified in legislation—or as law in the books (Qamar & Rezah, 2020). Furthermore, this approach recognizes that law also evolves through court decisions and the doctrines of legal scholars. The choice of this methodology is grounded in the research problem, which centers on the interpretation of concepts, the analysis of fundamental legal principles, and a critique of the application of norms in jurisprudential practice. Consequently, the research focus is not on social behavior or empirical phenomena—law in action—but instead on the coherence and logical consistency within the legal system itself, particularly concerning the proof of the *mens rea* element in corruption offenses.

To dissect the problem comprehensively, this research combines three approaches simultaneously. *First*, the statute approach is utilized to systematically examine the hierarchy and substance of relevant legal norms, from the Penal Code, Law Number 31 of 1999[2], to Law Number 30 of 2014[3]. *Second*, the case approach is applied by conducting an in-depth analysis of final and binding court decisions. These decisions are regarded as significant jurisprudence, such as the cases of Akbar Tandjung, Ari Askhara, Syahrul Yasin Limpo, Tom Lembong, and other relevant precedents. *Third*, the conceptual approach is used to connect the contemporary problem of policy criminalization with classical criminal law doctrines and principles, such as the principle of *geen straf zonder schuld* and the concept of law as a last resort (*ultimum remedium*).

Consistent with the nature of normative research, the data sources used are entirely secondary (Sampara & Husen, 2016). These sources comprise three tiers of legal materials. Primary legal materials include all legislation related to corruption and government administration, as well as copies of the court decisions serving as the objects of analysis. Secondary legal materials consist of authoritative academic literature, such as textbooks, monographs, and articles in national and international scholarly journals. This literature discusses theories of criminal liability, the concept of *mens rea*, discretion, and policy criminalization. Tertiary legal materials, such as legal dictionaries, encyclopedias, and news articles from credible media outlets, are used to provide context and terminological clarification. All data were collected through systematic library research, conducted both offline and online via legal and scholarly journal databases.

The data analysis technique employed in this study is a juridical qualitative analysis, which proceeds through a progressive and argumentative line of reasoning (Irwansyah, 2020). The initial stage involves inventory and classification, where all collected normative data and jurisprudence are mapped according to their relevance

[2]Law Number 31 of 1999, as amended by Law Number 20 of 2001.
[3]Law Number 30 of 2014, as amended by Article 175 of Government Regulation in Lieu of Law Number 2 of 2022.

to each research question. The subsequent stage is interpretation, where legal materials are not merely read literally but are analyzed in depth using several methods. Systematic interpretation is used to understand a norm within the constellation of the entire legal system. In contrast, teleological interpretation is used to uncover the legal objective (ratio legis) behind the formulation of a norm or the rendering of a decision. The culmination of the analysis is the argumentation stage, which utilizes deductive reasoning. In this stage, universal legal principles (such as *geen straf zonder schuld*) are established as the central premise. The findings from the case and norm analyses serve as the minor premise, from which a logical conclusion is drawn to construct the new conceptual framework that answers the research problem. Through this structured methodology, the research is expected to yield an analysis that is not only descriptive but also prescriptive and academically defensible.

RESULTS AND DISCUSSION

A. The Distortion of the *Mens Rea* Principle in Judicial Practice: A Comparative Analysis of Jurisprudence

The normative foundation for combating corruption in Indonesia, particularly concerning the abuse of authority, is stipulated in Article 2 and Article 3 of Law Number 31 of 1999. Both articles contain the key phrases "*can cause financial or economic loss to the state*" and the element of "*enriching oneself, another person, or a corporation*." Nevertheless, this formulation leaves a crucial interpretative gray area. Does the fulfillment of objective elements, such as state loss and abuse of authority, automatically prove the existence of a guilty mind (*mens rea*)? Or is *mens rea* a separate, subjective element that must be proven independently? This ambiguity is the root cause of the inconsistency and distortion in judicial practice, where the focus of proof often shifts from the perpetrator's intent to the consequences of the act (Bayuaji et al., 2018).

A comparative analysis of jurisprudence reveals a broad spectrum of interpretation, moving from one extreme pole to the other. On one side, there are precedents that still firmly uphold the principle of explicitly proving *mens rea*. The Supreme Court's ruling in the Akbar Tandjung case stands as a landmark in this regard. In its reasoning for Supreme Court Decision Number 572 K/Pid/2003, the Supreme Court affirmed that although state losses occurred, the act could not be criminalized. It was because the defendant was merely carrying out an official order and was not proven to have the will or intent (*opzet*) to commit the act (Putra, 2021). This decision implicitly acknowledges the potential for a policy error that, despite causing losses, does not automatically constitute a crime.

However, on the other side of the spectrum, there is a growing tendency to equate the abuse of authority with *mens rea*. Central Jakarta District Court Decision Number 20/Pid.Sus-TPK/2024/PN Jkt.Pst against the former Minister of Agriculture, Syahrul Yasin Limpo, is representative of this paradigm. In that case, the judge ruled that the practice of abusing power—such as demanding payments from echelon I officials for personal and family interests—inherently contained malicious intent (Artadi & Dewi, 2024). The proof no longer focused on the defendant's internal state at the time of the act, but rather on the fact that authority had been improperly used for personal gain. This shift from "proving intent" to "inferring intent from the act" fundamentally weakens the position of the principle of no punishment without guilt (*geen straf zonder schuld*).

This dilemma becomes more acute in cases that lie at the intersection of disguised personal gain and problematic public policy. For instance, in the Tangerang District Court Decision Number 192/Pid.Sus/2021/PN.Tng regarding the smuggling of Harley Davidson components and Brompton bicycles using a Garuda Indonesia Airbus A330-900 NEO aircraft. The smuggling by Ari Askhara, as the former President Director of Garuda Indonesia, demonstrated a clear element of personal gain through the misuse of official facilities (Netlje et al., 2023). In this case, it was relatively more straightforward for the court to conclude the existence of malicious intent because the goal of self-enrichment was apparent.

However, what if the gain is not direct but systemic, as in the Central Jakarta District Court Decision Number 34/Pid.Sus-TPK/2025/PN Jkt.Pst involving the former Minister of Trade, Tom Lembong? In that case, a policy decision made in a complex market situation was drawn into the criminal realm. It was done under the assumption that the policy benefited certain parties and therefore caused state losses (Mustopa et al., 2025).

Herein lies the greatest danger of blurring the concept of *mens rea*: the potential criminalization of policy error. Every policy decision, especially in the economic sector, carries risks and uncertainties. A policy designed in good faith may result in losses due to factors beyond the policymaker's control. If every such loss is interpreted as evidence of corruption without concrete proof of malicious intent, public officials will be trapped by a chilling effect. They will be inclined to avoid making decisions altogether to evade legal risks (Kurniawan, 2022). This phenomenon is also evident in the alleged corruption case involving hajj quotas, where a quota allocation policy deemed unfair was prosecuted, even though the argument of policy error versus intentional corruption remained highly debatable (Gunawan, 2025).

This inconsistency is not merely a difference of opinion among judicial panels but a systemic problem identified across various convictions. Kharismadohan (2020) highlights explicitly how judges are often inconsistent in linking the fact of state financial loss to the proof of malicious intent. Furthermore, Behuku et al. (2025) identified a disparity in the professional capacity of judges, leading to a judicial dualism. Rulings are sharp in simple individual cases but blunt when dealing with complex corporate or policy-related crimes.

This situation is exacerbated by the complexity of the proof itself. As detailed by Mallarangeng et al. (2023), proving intent is an intricate task because it concerns a person's invisible mental state. Consequently, law enforcement officials and judges tend to take a shortcut. They focus on objective elements that are easier to prove, such as procedural violations or state financial losses. It is this shortcut that is slowly but surely eroding the centrality of the *mens rea* principle in criminal justice.

Moreover, even mid-level technical officials like Commitment-Making Officials are not immune to this threat of criminalization. Wirawan et al. (2024) found cases where Commitment-Making Officials were prosecuted for overpayments in the procurement of goods and services, despite no evidence of malicious intent for self-enrichment. This finding indicates that the distortion in interpreting *mens rea* has permeated various levels of the bureaucracy, creating a counterproductive climate of fear for development.

The quantitative findings from Ramadan and Mandala (2025) paint a more alarming picture. In their study of hundreds of court decisions, they found that a majority of rulings contained ambiguity in the construction of *mens rea*. It is no longer a matter of anomaly or isolated incidents but a systematic pattern. This pattern demonstrates that Indonesia's criminal justice system currently lacks a uniform and robust conceptual framework for addressing the dilemma between policy and corruption.

Based on a synthesis of this comparative jurisprudential analysis, a key finding can be drawn. A severe distortion of the *mens rea* principle has occurred in the practice of corruption trials in Indonesia. This distortion manifests in the form of inconsistent rulings, a shift in the focus of proof from intent to consequence, and the expanding risk of policy criminalization. This finding serves as the primary justification for why a conceptual reconstruction of the principle of proving *mens rea* is not only academically relevant but also practically urgent to safeguard legal certainty and the effectiveness of governance.

B. The Theoretical Foundations of Criminal Liability: Dissecting the Concepts of Discretion and Abuse of Authority

To reconstruct a principle of proof that has been distorted, a fundamental step is to return to the theoretical roots of criminal liability itself. Modern criminal law is built upon the adage that the act does not make a person guilty unless the mind is also guilty (*actus non facit reum, nisi mens sit rea*) (Budiman, 2023). This principle affirms that criminal liability cannot be imposed based solely on the resulting consequences or the criminal act (*actus reus*). Instead, it requires the presence of a culpable mental state, or *mens rea*, on the part of the perpetrator. Ar et al. (2024) assert that, without intent, a criminal offense is essentially considered incomplete, as the law demands an internal fault as the basis for punishment.

This concept of *mens rea* becomes even more central in a subject-centered legal system like the one adopted in Indonesia (Opit & Frans, 2025). As analyzed by Suhartono and Panjaitan (2025), all actions for the sake of justice (*pro justitia*) within the Penal Code are intrinsically tied to the process of proving individual fault. It means that before the state can impose a criminal sentence, it bears the burden of proving not only that the perpetrator committed a forbidden act, but also that they did so with a culpable mental state, whether in the form of intent (*dolus*) or negligence (*culpa*). In the context of corruption, which is an act wrong in itself (*mala in se*), the element of intent becomes a non-negotiable component.

However, a problem arises when this criminal law concept intersects with the realm of state administrative law, particularly concerning discretionary power. Discretion is an instrument inherently attached to public office, intended to enable officials to make decisions in situations not rigidly governed by legislation. Wibowo (2024) even views discretion as a form of innovation in government policy. Without discretionary space, government administration would become rigid, mechanical, and incapable of responding to complex and rapidly changing social dynamics.

This discretionary authority, though essential, is often misunderstood and considered a primary source of corruption. The famous formula from Klitgaard (1999), cited by Wibowo (2024)—"Corruption = Monopoly + Discretion - Accountability"—is frequently interpreted simplistically, as if discretion itself were something negative. In reality, the problem is not discretion itself, but its abuse. Herein lies the crucial intersection that often confuses legal practice.

To clarify this confusion, it is vital to dissect the concept of "abuse of authority" more deeply. Hiariej (2012) emphasizes that the law of evidence must be cautious in assessing malicious intent, as *mens rea* cannot be automatically assumed merely from an abuse of authority but must be proven with valid and

convincing evidence. In his incisive analysis, Putra (2021) offers a highly relevant conceptual distinction. According to him, a distinction must be made between the misuse of authority and the abuse of power. A misuse of authority occurs when an official commits an administrative error in exercising their authority, such as overstepping their limits (a circumvention of power, or *detournement de pouvoir*) or acting arbitrarily. Such errors fall within the realm of administrative law, and their sanctions are administrative in nature.

On the other hand, an abuse of power occurs when an official intentionally diverts the purpose of their granted authority for personal or group interests (Harefa et al., 2020). It is in this context that the element of *mens rea*—the malicious intent to seek personal gain—becomes a constitutive element that transforms an act from a mere administrative error into a criminal offense. This analysis aligns with the view of Latif and Halim (2023) that abuse of authority in administrative law is preventive. In contrast, in criminal law, it is repressive and requires a resulting state loss grounded in malicious intent.

This theoretical distinction provides a powerful analytical tool for dissecting the cases previously discussed. For example, Tom Lembong's actions in the sugar import case could more accurately be categorized as a misuse of authority or a policy error, which should be tested through administrative law mechanisms if it is proven to be merely a flawed decision without the intent of self-enrichment. Conversely, Syahrul Yasin Limpo's actions of actively soliciting payments from his subordinates clearly demonstrate a diversion of authority's purpose for personal gain, placing it firmly in the category of an abuse of power or intentional corruption.

Although this distinction appears clear in theory, its implementation is often hindered in practice. Siahaan (2021) highlights how the instrument for testing the element of abuse of authority in Law Number 30 of 2014 is often distorted and even used as a shield by perpetrators of corruption to evade criminal liability. It demonstrates that merely having two different legal regimes (administrative and criminal) is insufficient without a clear framework for when an act should be drawn from one regime into the other.

Perspectives from other disciplines also enrich this understanding. In a political-economic study, Decarolis et al. (2025) found that discretion correlates strongly with corruption only when control mechanisms like competition are limited. This implies that the solution to the abuse of discretion is not solely punitive but can also be structural, by improving oversight mechanisms. Similarly, Wei (2022) found that clear rules regarding the use of reserve funds can reduce corruption, once again affirming the importance of normative clarity over mere repression.

Therefore, it can be concluded that the theoretical foundation for distinguishing between punishable and non-punishable acts is already available in legal doctrine. The key differentiator lies in two areas: *first*, the ability to distinguish between an administrative misuse of authority and a criminal abuse of power; and *second*, the reinstatement of *mens rea* as the central element that serves as the bridge for moving an act from the administrative to the criminal law domain. Without a firm grasp of this theoretical foundation, any attempt at reconstruction will be merely patchwork and will fail to address the root of the problem.

C. Conceptual Reconstruction: The Demarcation between Administrative Error, Policy Error, and Intentional Corruption

Building upon the diagnosis of jurisprudential problems and the theoretical foundations already dissected, the next step is to formulate a framework for conceptual reconstruction. This framework is not an entirely new legal invention. Instead, it is an effort to reaffirm, systematize, and operationalize principles that have long existed in criminal law doctrine but are often neglected in practice. The core of this reconstruction is the drawing of a clear line of demarcation among three categories of actions by public officials: administrative error, policy error, and intentional corruption.

First, administrative error. This category encompasses actions that violate established administrative procedures or standards but are not based on malicious intent to enrich oneself or others. It is the domain of a misuse of authority, where an error occurs in the manner of exercising authority. Examples can vary, from negligence in verifying documents in a tender process and technical errors in budget preparation, to a failure to comply with specific standard operating procedures (SOPs). Although such actions may cause state losses, the fault is procedural, not intentional. The most appropriate sanctions for this category are administrative, such as reprimands, demotions, or claims for damages, as regulated under the state administrative law regime.

Second, policy error. This category exists at a higher level than mere procedural mistakes. A policy error occurs when a public official, in exercising their discretionary authority, makes a policy decision that, upon implementation, proves to be a failure, ineffective, or even causes losses to the state. It is crucial to underscore that every policy inherently contains elements of speculation and risk. For example, a minister deciding on an import policy must contend with global market volatility, data uncertainty, and political pressure. Suppose the decision made turns out to be flawed. In that case, it does not automatically mean a crime has been committed, as long as the decision was based on reasonable

considerations at the time. There is no evidence of personal gain from the policy. Criminalizing policy error is tantamount to killing innovation and courage within the bureaucracy.

Third, intentional corruption. It is the only category that should fall within the purview of criminal law. This category includes actions that fulfill two cumulative elements: the existence of a criminal act (*actus reus*) and the presence of a guilty mind (*mens rea*) to enrich oneself, another person, or a corporation. It is the domain of abuse of power, where authority is not merely exercised incorrectly but consciously diverted from its intended purpose. Examples include an official rigging a tender to receive a kickback, a minister creating a policy specifically designed to benefit their own company, or a regional head demanding payments from subordinates.

The fundamental line of demarcation among these three categories is the existence of an explicitly proven *mens rea*. It is the core of the proposed reconstruction. *Mens rea* must no longer be automatically inferred from the existence of state losses or procedural violations. Instead, the public prosecutor bears the burden of proving, and the judge has the obligation to assess, that the defendant possessed the will (*willens*) and knowledge (*wetens*) at the time of the act, with the objective that their actions would unlawfully benefit themselves or others. Without proof of this internal element, a case should remain within the administrative law domain or be considered a non-punishable policy risk.

Using *mens rea* as this line of demarcation is not a foreign idea in corruption law. In his analysis of gratuity and bribery offenses, Huda (2023) shows that what distinguishes the two is the presence or absence of *mens rea* at the time of receipt. If there is a malicious meeting of minds, the act constitutes bribery. If not, it falls into the category of gratuity, which can still be reported. This analogy reinforces the argument that *mens rea* has consistently been used as a differentiating element within corruption offenses themselves (Rompegading, 2022).

By applying this demarcation framework, the analysis of existing cases becomes clearer. The cases of Ari Askhara and Syahrul Yasin Limpo, where evidence of personal gain and the abuse of authority for personal interests was robust, clearly fall into the category of intentional corruption. Conversely, the Tom Lembong case and the Hajj Quota case, which centered on controversial policy decisions, must be analyzed with extreme care. The burden of proof lies with the public prosecutor to demonstrate that a concealed malicious intent existed behind the policy, not merely incompetence or miscalculation. If such malicious intent cannot be proven, the case should be classified as a policy error.

This conceptual framework also aligns with the views of experts who emphasize the complexity of proving intent. Mallarangeng et al. (2023) underscore that mental elements such as purpose, awareness, and knowledge are inherently attached to the human person and must be proven concretely at trial. With three clear categories, the process of proof becomes more focused. The first task is to identify the category of the act. If it points toward intentional corruption, the subsequent task is to focus all evidentiary energy on the element of *mens rea*.

Ultimately, this conceptual reconstruction offers a rational middle ground. It does not deny that administrative errors and detrimental policies must be addressed, but through the appropriate mechanism: administrative law. At the same time, it reaffirms the rigor of criminal law in prosecuting acts that are genuinely malicious and reprehensible. Criminal law can thus be restored to its dignified position as a sharp sword of justice, not a net cast indiscriminately, catching all fish, both the guilty and the merely unfortunate.

D. Implications of the Reconstruction for Legal Certainty and the Prevention of Policy Criminalization

The formulation of a demarcation framework that strictly differentiates among administrative error, policy error, and intentional corruption is not merely a theoretical exercise. On the contrary, the implementation of this framework carries profound and transformative implications for the legal ecosystem and governance in Indonesia. Its primary implication is the strengthening of legal certainty, a fundamental prerequisite for a state under the rule of law (*rechtstaat*) that has been eroded by inconsistent interpretations. By providing a transparent and predictable standard, this framework offers a conceptual safeguard that protects public officials from the arbitrary threat of criminalization for actions that genuinely belong in the administrative or policy domains.

This protection is crucial because the threat of policy criminalization is not an isolated phenomenon in Indonesia. In his broader study, Skolnik (2017) demonstrates that the criminalization of policy in various countries is often used as a political weapon to weaken opponents or remove officials who make unpopular decisions. A similar pattern was identified by Laila et al. (2025) in other developing nations, where the instruments of criminal law are hijacked for political ends rather than for substantive justice. This global context underscores the urgent need for a solid juridical fortress in Indonesia, ensuring that the fight against corruption is not tainted by interests outside of law enforcement itself. The proposed demarcation framework functions as this fortress, affirming that the only legitimate basis for prosecuting an official is evidence of malicious intent, not the unpopularity of a policy.

Furthermore, this conceptual reconstruction fundamentally challenges the flawed assumption that aggressive law enforcement automatically equates to effective law enforcement. Instead, this framework has the potential to enhance the effectiveness of anti-corruption efforts by sharpening their focus. It frees law enforcement agencies from the burden of investigating every administrative error or policy that results in state losses. Consequently, limited resources can be concentrated on dismantling genuine cases of intentional corruption, which are often more complex and concealed. This approach aligns with the interdisciplinary findings of Gans-Morse et al. (2018), who conclude that the most successful anti-corruption policies are often systemic—such as clarifying rules and increasing transparency—rather than relying solely on repressive, individual-level solutions.

Therefore, applying this demarcation framework will not weaken but instead legitimize and strengthen the anti-corruption movement. This legitimacy grows from public confidence that the judicial system can fairly distinguish between truly malicious officials and those who may have simply been incompetent or unfortunate in their policymaking. A legal system capable of making such a distinction will be respected, whereas a system that indiscriminately criminalizes every error will be feared, while simultaneously losing its authority and legitimacy.

Ultimately, the most profound implication of this reconstruction is the effort to restore a healthy balance among three key pillars: robust law enforcement, practical government function, and the just supremacy of law. Without clear boundaries, the pillar of government function will be perpetually threatened by the pillar of law enforcement, creating a bureaucracy paralyzed by a chilling effect. The proposed demarcation framework is the bridge that connects these three pillars. It ensures that the eradication of corruption can proceed at full force without sacrificing the dynamism and courage required to run the machinery of government effectively. In this way, criminal law can return to its proper function as a last resort (*ultimum remedium*)—a sacred final option, not a frontline instrument used to resolve every administrative and policy issue of the state.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that the fundamental problem in the law enforcement of corruption offenses against public officials in Indonesia is rooted in the distortion and inconsistent application of the principle of a guilty mind (*mens rea*). Judicial practice, as reflected in the analysis of contradictory jurisprudence, reveals a dangerous tendency to equate state financial loss and procedural errors with malicious intent. This blurring of concepts has systematically eroded legal certainty, opened the door to the criminalization of policy, and ultimately created a paralyzing dilemma: how to combat corruption decisively

without undermining the principles of a state under the rule of law and the effective functioning of government. This research asserts that the solution to this impasse lies not in weakening legal instruments, but in restoring the essential character of criminal law through conceptual refinement.

The primary conclusion drawn from this research is that the reconstruction of the principle of proving *mens rea* is an absolute necessity. This reconstruction is realized through a demarcation framework that operationally and strictly differentiates among three categories of actions by public officials: administrative error, policy error, and intentional corruption. The fundamental dividing line among these is not the presence or absence of state loss, but rather the existence of a legally and convincingly proven *mens rea*, defined as the intent to enrich oneself or others unlawfully. By making *mens rea* the analytical axis, this framework provides an explicit parameter to restore criminal law to its function as a last resort (*ultimum remedium*), while simultaneously protecting the legitimate discretionary space for policymakers.

Based on these conclusions, several normative and practical suggestions are formulated for stakeholders involved in legal reform and anti-corruption efforts in Indonesia. *First*, for the legislature, it is recommended to amend Law Number 31 of 1999. This amendment should not be merely partial, but should substantively adopt a formulation of the offense that explicitly includes and defines the parameters for distinguishing between state losses arising from policy error and those stemming from corrupt intent, thereby providing more explicit normative guidance for law enforcement officials.

Second, to the Supreme Court, as the guardian of jurisprudential consistency, it is suggested that it issue a Supreme Court Regulation or a Supreme Court Circular Letter that governs explicitly the guidelines for judges in assessing and proving the element of *mens rea* in corruption cases involving public policy. Such a guideline is urgently needed to end the long-standing disparity in court rulings and to ensure that every judicial consideration is based on a consistent and academically defensible doctrinal interpretation. In doing so, precedents like the Akbar Tandjung case can be revitalized as a bulwark against the criminalization of policy.

Third, for law enforcement agencies, particularly the Corruption Eradication Commission, the Attorney General's Office, and the National Police, it is recommended to strengthen the analytical capacity of investigators and public prosecutors. This strengthening must be interdisciplinary, integrating a deep understanding of state administrative law and public policy science, not just criminal law. With this enhanced capacity, it is hoped that these agencies can conduct a more careful triage of cases at the investigation stage. The goal is to ensure that only cases with strong indications of intentional corruption proceed to criminal trial, while those within the administrative realm are resolved through their proper mechanisms.

Fourth, for the academic community and legal study centers, it is recommended to continue and deepen research on this issue. Further research could be directed toward empirically testing the effectiveness of the proposed demarcation framework through a broader quantitative analysis of court decisions or developing risk assessment instruments for policy criminalization that can be used by the government. A sustained dialogue between academics and practitioners is key to ensuring that legal reforms are not only enshrined on paper but are also internalized in the daily practice of law enforcement.

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