

## Dualism of Criminal Procedural Law in the Handling of Corruption Crimes: A Study on the Relationship between the Corruption Eradication Commission and Conventional Law Enforcement Agencies

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### Abstract

The dualism of criminal procedural law in the handling of corruption crimes in Indonesia is a consequence of legal policy that categorizes corruption as an extraordinary crime. The establishment of the Corruption Eradication Commission, endowed with special powers of investigation, inquiry, and prosecution, was intended to address the limitations of conventional law enforcement mechanisms under the Indonesian Criminal Procedure Code. However, in practice, the coexistence of these two criminal procedural regimes has generated normative and institutional issues that affect the coherence of the criminal justice system, the distribution of authority among law enforcement agencies, as well as legal certainty and the protection of suspects' rights. This study aims to analyze the construction of criminal procedural law in corruption cases, the relationship of authority between the Corruption Eradication Commission and conventional law enforcement agencies, and the implications of procedural dualism for the principles of the rule of law. The research employs a normative legal research method, using statutory,

review of relevant legal materials. The analysis is grounded in the theories of *lex specialis*, authority, integrated criminal justice systems, legal certainty, due process of law, and procedural justice. The findings indicate that the dualism of criminal procedural law in corruption cases is not merely normative but also structural and institutional in nature. The absence of clear boundaries of authority and integrated coordination mechanisms between the Corruption Eradication Commission and conventional law enforcement agencies has the potential to fragment the criminal justice system. Furthermore, procedural differences in the handling of corruption cases undermine legal certainty and may weaken the protection of suspects' rights. Therefore, this study emphasizes the urgency of harmonizing criminal procedural law in corruption cases to ensure that anti-corruption efforts remain effective while remaining consistent with the principles of legal certainty, procedural justice, and the protection of human rights.

## Keywords

*Legal dualism, Corruption crime, Corruption Eradication Commission, Criminal justice system*

## Introduction

Corruption is a systemic crime that has far-reaching impacts on governance, economic stability, and public trust in the rule of law. In many jurisdictions, corruption is understood as an extraordinary crime that requires extraordinary law enforcement approaches.<sup>1</sup> This perspective has encouraged the development of special criminal procedural mechanisms that often deviate from ordinary criminal procedure.<sup>2</sup> Such conditions raise fundamental questions regarding the extent to which special criminal procedures can be justified without

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<sup>1</sup> Zahida Ashraf, "Transnational Corruption and the Role of International Criminal Law," *International Journal of Sustainable Applied Sciences* 3, no. 5 (2025): 295–312.

<sup>2</sup> Jonathan Jackson dkk., "Why Do People Cooperate with the Police and Criminal Courts? A Test of Procedural Justice Theory in 30 Countries," *Criminology*, 30 November 2025, 1745-9125.70022, <https://doi.org/10.1111/1745-9125.70022>.

undermining the core principles of the rule of law, particularly legal certainty, equality before the law, and the protection of human rights.<sup>3</sup>

In Indonesia, the establishment of the Corruption Eradication Commission represents a manifestation of this extraordinary approach to combating corruption.<sup>4</sup> The Commission is vested with broad and special powers of investigation, inquiry, and prosecution in corruption cases.<sup>5</sup> These special characteristics are not limited to institutional design but also give rise to a distinct criminal procedural framework that differs from the Indonesian Criminal Procedure Code as the general procedural law.<sup>6</sup> This divergence raises questions concerning the juridical legitimacy of applying different criminal procedural regimes to the same category of criminal offences.<sup>7</sup>

In law enforcement practice, corruption cases may be handled either by the Corruption Eradication Commission or by conventional law enforcement agencies, namely the police and the public prosecutor's office.<sup>8</sup> The involvement of different institutions has direct implications

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<sup>3</sup> Sergii M. Smokov dkk., "Rule of Law as a Principle of Criminal Procedure (on materials of the European Court of Human Rights).," *Pakistan Journal of Criminology* 14, no. 3 (2022), <http://www.pjcriminology.com/wp-content/uploads/2023/03/3.pdf>.

<sup>4</sup> Leo Agustino dkk., "Corruption Eradication in Indonesia: The Experience of The Corruption Eradication Commission (KPK)," *Journal of Governance* 6, no. 2 (2021): 231–43.

<sup>5</sup> Iwan Rasiwan, "Pemberantasan Tindak Pidana Korupsi: Dari Konsep, Penindakan, hingga Visi Masa Depan," *AMU Press*, 2025, 1–301.

<sup>6</sup> Faisal dkk., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (2024): 2301634, <https://doi.org/10.1080/23311886.2023.2301634>.

<sup>7</sup> Viacheslav Tuliakov, "Transnational criminal law, sovereignty and international justice: Harmonization challenges and policy evolution," *International Annals of Criminology*, 2025, 1–23.

<sup>8</sup> Romli Arsad, "Obstacles And Challenges In Law Enforcement Against Corruption In Public Services," *Russian Law Journal* 11, no. 3 (2023): 3331–39.

for the application of two distinct criminal procedural regimes.<sup>9</sup> This situation creates a dualism of criminal procedural law in the handling of corruption crimes, which may result in procedural inconsistencies and differential legal treatment of suspects.<sup>10</sup> Such dualism raises concerns as to whether the criminal justice system can ensure legal certainty and equality before the law when a single criminal offence is subject to divergent procedural frameworks.<sup>11</sup>

The relationship between the Corruption Eradication Commission and conventional law enforcement agencies in the handling of corruption cases also reflects complex institutional dynamics.<sup>12</sup> Issues related to case takeover, coordination and supervision, as well as the delimitation of institutional authority, frequently give rise to institutional conflicts that directly affect criminal procedural processes.<sup>13</sup> Changes in the institutional design of the Commission through legislative amendments have further reshaped this relationship, while simultaneously raising questions about how these shifts influence the consistency and integrity of the criminal procedural system in corruption cases.<sup>14</sup>

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<sup>9</sup> Anis Widyawati dkk., “The Urgency of Supervision Institutions in Implementing Prisoners’ Rights as an Effort to Restructure Criminal Execution Laws,” *Jambura Law Review* 7, no. 1 (2025): 127–51.

<sup>10</sup> Muhamad Yofhan Wibianto dkk., “Real Justice, Real Impact with the Prosecutors in Action,” *Journal of Human Rights, Culture and Legal System* 5, no. 3 (2025): 1015–41.

<sup>11</sup> Michael King, *The framework of criminal justice* (Routledge, 2023).

<sup>12</sup> Karl Z. Meyer dkk., “Corruption Dynamics: Integrating Structure, Agency and Institutional Logics across Contexts,” *International Journal of Management Reviews* 28, no. 1 (2026): e12403, <https://doi.org/10.1111/ijmr.12403>.

<sup>13</sup> Mika Junninen, *Government Resolution on a strategy and action plan to combat organised crime (2025–2030)*, 2025.

<sup>14</sup> Andriy Yuzzyuk dkk., “Addressing corruption through legal reform: Exploring connections and pathways for change,” *Multidisciplinary Reviews* 8 (2024).

From the perspective of the rule of law, the existence of dualism in criminal procedural law for corruption cases presents significant conceptual challenges.<sup>15</sup> The rule of law requires a legal system that is coherent, predictable, and capable of providing equal protection for all citizens within the criminal justice process. Accordingly, questions arise as to how such procedural dualism affects the principles of procedural justice and whether the special criminal procedures for corruption cases remain within constitutionally and theoretically justifiable limits.<sup>16</sup>

To date, research on corruption eradication in Indonesia has largely focused on the effectiveness of the Corruption Eradication Commission, the political-legal aspects of its establishment, or normative analyses of law enforcement authority.<sup>17</sup> There remains a relative lack of studies that specifically examine the dualism of criminal procedural law in the handling of corruption crimes by placing the relationship between the Corruption Eradication Commission and conventional law enforcement agencies at the center of analysis, particularly in relation to legal certainty and procedural justice.<sup>18</sup> This gap in the literature highlights the academic need for a critical examination of how procedural dualism is constructed, how

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<sup>15</sup> Mardiyanti Mardiyanti dan Abdullah Sulaiman, "The Dualism of Judicial Authority in Handling Abuse of Power by Government Officials Between the Administrative Court and the Corruption Criminal Court," *Greenation International Journal of Law and Social Sciences* 3, no. 2 (2025): 282–89.

<sup>16</sup> Sergio Carrera dkk., "Criminal justice, fundamental rights and the rule of law in the digital age," *Report of a CEPS and QMUL Task Force*, 2021, <https://cdn.ceps.eu/wp-content/uploads/2021/05/Criminal-Justice-Fundamental-Rights-and-the-Rule-of-law-in-the-Digital-Age.pdf>.

<sup>17</sup> Taufiqurrohman Syahuri dkk., "The Role of the Corruption Eradication Commission Supervisory Board within the Indonesian Constitutional Structure," *Cogent Social Sciences* 8, no. 1 (2022): 2035913, <https://doi.org/10.1080/23311886.2022.2035913>.

<sup>18</sup> Mathieu Deflem, "Corruption, law, and justice: A conceptual clarification," *Journal of Criminal Justice* 23, no. 3 (1995): 243–58.

institutional relationships shape its application, and what implications it holds for the criminal justice system and the rule of law in Indonesia.

Based on the foregoing discussion, this study is directed toward an in-depth examination of the construction of dualism in criminal procedural law in the handling of corruption crimes, with a particular focus on the relationship between the Corruption Eradication Commission and conventional law enforcement agencies, as well as its implications for legal certainty and procedural justice within the Indonesian criminal justice system.

## Method

This study adopts a qualitative approach using a systematic literature review method to examine the dualism of criminal procedural law in the handling of corruption crimes, particularly in relation to the interaction between the Corruption Eradication Commission and conventional law enforcement agencies. The review is based on a comprehensive search and analysis of relevant scholarly literature, including reputable international journal articles, accredited national journals, academic books, and statutory regulations related to criminal procedure and the eradication of corruption. The literature was selected based on substantive relevance, theoretical contribution, and its connection to issues of procedural specialization and the institutional design of law enforcement.<sup>19</sup>

The analysis was conducted qualitatively through thematic synthesis of the selected literature in order to identify prevailing patterns of thought, divergent approaches, and research gaps within the

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<sup>19</sup> Denny Gioia, "A Systematic Methodology for Doing Qualitative Research," *The Journal of Applied Behavioral Science* 57, no. 1 (2021): 20–29, <https://doi.org/10.1177/0021886320982715>.

discourse on criminal procedure in corruption cases. The analytical focus was directed toward examining how procedural dualism is conceptualized in the literature, how the relationship between law enforcement institutions is understood, and how such dualism affects the principles of legal certainty and procedural justice. The findings of the review are then systematically organized to provide a critical analytical foundation for assessing the structuring of criminal procedural law in corruption cases within the framework of the rule of law.<sup>20</sup>

## **Result And Discussion**

### **1. The Dualism of Criminal Procedure Law in Corruption Cases as a Consequence of the Extraordinary Crime Approach**

In modern criminal law literature, corruption is widely positioned as a crime with structural and systemic characteristics, and therefore cannot be treated merely as a conventional criminal offense. This conception has given rise to the doctrine of extraordinary crime, which classifies corruption as an offense with extraordinary impacts on state governance, the economy, and the legitimacy of public authority. Based on this doctrine, the state is granted broader discretionary space to design special law enforcement mechanisms, including in the realm of criminal procedural law. Comparative legal literature demonstrates that many countries have established specialized anti-corruption

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<sup>20</sup> Karin Zotzmann, *Codes of Corruption: A Critical Realist Discourse Analysis of Illicit Transactions* (Taylor & Francis, 2025).

agencies with expanded procedural powers as a response to the limitations of the general criminal justice system.<sup>21</sup>

The extraordinary crime approach can be explained through the crime control model proposed by Herbert L. Packer. Within this model, the effectiveness and efficiency of law enforcement are prioritized as the primary means of protecting public interests from crimes with wide-ranging impacts. In the context of corruption eradication, the crime control orientation is reflected in the granting of special powers to anti-corruption agencies to accelerate investigative processes, expand evidentiary techniques, and minimize procedural obstacles. From this perspective, the specialization of criminal procedural law is viewed as a legitimate and rational instrument for addressing the complexity of corruption crimes.<sup>22</sup>

Nevertheless, criminal procedure law literature also emphasizes that the dominance of the crime control approach has the potential to disrupt the balance of the criminal justice system if it is not counterbalanced by the principle of due process of law. The due process model underscores the importance of protecting individual rights, limiting state power, and ensuring fair procedural guarantees at every stage of the criminal process. In the context of criminal procedure for corruption cases, the tension between crime control and due process becomes

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<sup>21</sup> Matthew C. Stephenson dan Sofie Arjon Schütte, "Specialised anti-corruption courts—A comparative mapping. 2022 update," *U4 Issue*, 2022, <https://www.cmi.no/publications/file/8555-specialised-anti-corruption-courts.pdf>.

<sup>22</sup> Oksana Lukashuk, "The evolution of corruption theories as a prerequisite for the formation and implementation of state criminal law policy," *Public Policy and Accounting*, no. 2 (10) (2024): 43–52.

increasingly apparent when procedural specializations are applied selectively through certain institutions, while other law enforcement agencies remain subject to the general criminal procedure law.<sup>23</sup>

This phenomenon gives rise to what legal theory describes as legal exceptionalism, namely a condition in which a special legal regime is applied to certain types of crimes in deviation from the general principles of the legal system. In the context of handling corruption cases in Indonesia, legal exceptionalism is reflected in the application of two criminal procedural regimes to the same category of offense. On the one hand, the general criminal procedure law as regulated in the Criminal Procedure Code (KUHAP) continues to apply to conventional law enforcement authorities; on the other hand, a criminal procedural regime with distinctive characteristics is applied by the Corruption Eradication Commission (CEC). This dualism is not merely normative in nature, but also structural, as it is embedded within the institutional design of law enforcement.

Critical legal literature highlights that uncontrolled legal exceptionalism has the potential to erode the principles of legal coherence and equality before the law. When legal procedures are determined by the institution handling the case rather than by the nature of the offense itself, the criminal justice system risks losing its internal consistency. From the perspective of the rule of law (*rechtsstaat*), such a condition is problematic, as a rule-of-law

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<sup>23</sup> Delia Magherescu, “Criminal investigation of the corruption crimes: Evidence and procedure in an interdisciplinary approach,” *Rev. Brasileira de Direito Processual Penal* 6 (2020): 1239.

state requires a legal system that is predictable, consistent, and equally applicable to all citizens.

Furthermore, the dualism of criminal procedural law can also be analyzed through the theory of procedural justice, which emphasizes that the legitimacy of the criminal justice system is determined not only by its outcomes, but also by the fairness of the processes as perceived by the parties involved. The literature indicates that differences in procedures for handling similar cases can influence perceptions of justice and public trust in the legal system. In this context, the dualism of criminal procedure in corruption cases has the potential to generate the perception that procedural justice is relative and dependent on the state's institutional choices rather than on uniform legal standards.

Thus, the dualism of criminal procedural law in the handling of corruption offenses constitutes a direct consequence of the extraordinary crime approach operating within the framework of the crime control model and legal exceptionalism. Although this approach may be functionally justified to enhance the effectiveness of corruption eradication, legal scholarship emphasizes that the specialization of criminal procedural law must remain within the normative boundaries of the rule of law. Without a clear limiting framework, the dualism of criminal procedure law risks undermining the coherence of the criminal justice system and generating sustained tension between law enforcement effectiveness and procedural justice.

## **2. The Relationship of Authority between the Corruption Eradication Commission and Conventional Law**

## Enforcement Agencies in the Corruption Criminal Justice System

The relationship of authority between the Corruption Eradication Commission (CEC) and conventional law enforcement agencies, namely the Police and the Public Prosecutor's Office, is not merely a matter of institutional technicality, but also a theoretical issue within criminal law and constitutional law. The establishment of the CEC with powers of inquiry, investigation, and prosecution signifies a shift in the design of the criminal justice system from a conventional model toward a specialized model. This shift was intended to respond to the failure of ordinary law enforcement mechanisms in addressing corruption; however, at the same time, it has generated a complex and not always harmonious relationship of authority in practice.

From the perspective of the theory of attribution and delegation of authority, the powers of the CEC constitute attributed authority directly conferred by statute, rather than authority delegated from the Police or the Prosecutor's Office. Consequently, the CEC stands as a law enforcement субъект that is normatively equal to conventional law enforcement agencies in the realm of corruption offenses. Nevertheless, this normative equality is not automatically accompanied by clarity regarding operational boundaries. When statutory provisions fail to establish clear parameters for the division of roles, the relationship of authority becomes susceptible to unilateral interpretation by each institution.

This relationship of authority can also be examined through the principle of *lex specialis derogat legi generali*. The criminal procedural law applied by the CEC is positioned as a special legal

regime that deviates from the general provisions of the Criminal Procedure Code. Theoretically, such deviation is legitimate insofar as it is limited, proportional, and consistent with the objectives of its establishment. However, when the application of special procedural law is not accompanied by clear limitations, the *lex specialis* principle itself may become a source of legal uncertainty. In this context, the relationship between the CEC and conventional law enforcement agencies becomes blurred, as the special legal regime is not fully integrated into the general criminal procedural system.

From the standpoint of the integrated criminal justice system theory, the existence of more than one institution with relatively similar powers should not result in competition for authority, but rather in functional cooperation. A criminal justice system requires coordination and a clear division of roles so that each institution operates as part of a unified whole. When the relationship between the CEC, the Police, and the Prosecutor's Office is not systemically integrated, the corruption criminal justice system tends to operate in a sectoral manner. This condition affects not only the effectiveness of law enforcement, but also the consistency of the application of criminal procedural law.

The relationship of authority is also closely linked to the theory of the independence of law enforcement institutions. The independence of the CEC is theoretically intended to safeguard law enforcement processes from political and economic intervention. However, independence cannot be understood as unlimited freedom. In legal theory, independence must always be

balanced with accountability and legal certainty. When coordination and supervision mechanisms are applied without a clear framework, the relationship of authority between the CEC and conventional law enforcement agencies risks shifting from equilibrium toward either dominance or, conversely, subordination.

Thus, from a theoretical standpoint, the relationship of authority between the CEC and conventional law enforcement agencies reflects a tension between the need for specialized criminal procedural law and the principle of an integrated criminal justice system. Without a formulation grounded in robust legal theory, this relationship of authority risks reinforcing the dualism of criminal procedural law in corruption cases and undermining the primary objective of corruption eradication itself. Therefore, the reconfiguration of this relationship of authority must be situated within the framework of authority theory, the *lex specialis* principle, the integrated criminal justice system, and the independence of law enforcement institutions.

### **3. Implications of the Dualism of Criminal Procedure in Corruption Cases for Legal Certainty and the Protection of Suspects' Rights**

The dualism of criminal procedural law in the handling of corruption offenses cannot be separated from theoretical concerns regarding legal certainty and the protection of suspects' rights. In modern legal systems, criminal procedure functions not merely as an instrument to punish offenders, but also as a mechanism to restrain state power. The coexistence of different procedural regimes between the Criminal Procedure Code and the special procedural rules applied by the Corruption

Eradication Commission (CEC) creates a situation in which a single type of offense may be processed through different procedural mechanisms, depending on the institution handling the case. This condition constitutes the starting point of justice and legal certainty issues in the enforcement of anti-corruption law.

From the perspective of Gustav Radbruch's theory of legal certainty, law must fulfill the elements of clarity, consistency, and predictability. When corruption-related criminal procedures operate under two different regimes without clear and objective boundaries, legal certainty is undermined. Legal subjects are no longer able to rationally anticipate the procedural framework they will face when involved in corruption cases. In this context, the dualism of criminal procedure in corruption cases potentially generates legal uncertainty that contradicts the principle of the rule of law, even though it is justified on the grounds of enhancing the effectiveness of corruption eradication.

Beyond legal certainty, the dualism of criminal procedure also affects the protection of suspects' rights when viewed through the theory of *due process of law*. This theory emphasizes that every law enforcement action must be conducted through fair and proportional procedures that respect human rights. The extraordinary powers vested in the CEC, such as wiretapping and special detention arrangements, can only be theoretically justified if accompanied by adequate control and oversight mechanisms. In the absence of clear regulation, procedural differences between the CEC and conventional law enforcement agencies risk creating

unequal legal treatment for suspects involved in similar corruption cases.

Within the framework of procedural justice theory as developed by John Rawls, justice lies not only in the final outcome of law enforcement, but also in the process through which it is achieved. Inconsistent and institutionally fragmented procedures may weaken the sense of justice felt by both suspects and the public. When legal processes are perceived as unfair or excessively repressive, the legitimacy of the criminal justice system is threatened, even when its primary objective is to combat corruption as an extraordinary crime.

Furthermore, the dualism of criminal procedural law in corruption cases can also be analyzed through the theory of limitations on state power in criminal law. Criminal procedure fundamentally serves as a safeguard against the potential abuse of authority by law enforcement officials. When special powers are not balanced by clear and uniform procedural standards, the scope of discretion afforded to law enforcement agencies becomes excessively broad. In this context, the dualism of criminal procedure in corruption cases risks shifting the balance between the public interest in combating corruption and the protection of individual rights.

Thus, from a theoretical standpoint, the dualism of criminal procedure in corruption cases generates a persistent tension between the effectiveness of law enforcement and the fundamental principles of the rule of law. Without systematic regulation grounded in legal theory, such dualism not only creates legal uncertainty but also risks eroding the protection of suspects' rights. Therefore, the harmonization of criminal procedural law

in corruption cases constitutes an urgent necessity to ensure that corruption eradication remains effective while remaining aligned with the principles of legal certainty, *due process of law*, and procedural justice.

## Conclusion

Based on the three analyses and discussions presented, it can be concluded that the dualism of criminal procedural law in the handling of corruption offenses is a direct consequence of a legal design that classifies corruption as an extraordinary crime requiring special law enforcement mechanisms. The analysis of the normative construction of corruption-related criminal procedure demonstrates that the existence of special procedural rules applied by the Corruption Eradication Commission (CEC) constitutes a legitimate deviation from the general regime of the Criminal Procedure Code, insofar as it is grounded in the principle of *lex specialis derogat legi generali*. However, such deviations have not yet been formulated in a fully systematic manner, thereby leaving unresolved normative tensions within the overall structure of criminal procedural law.

Furthermore, the analysis of the authority relationship between the CEC and conventional law enforcement agencies confirms that the dualism of criminal procedure in corruption cases is not merely normative, but also institutional in nature. The CEC's authority, which is attributed directly by statute, theoretically places it on an equal footing with the Police and the Prosecution Service in the enforcement of anti-corruption law. Nevertheless, the absence of clear boundaries of authority and integrated coordination mechanisms has resulted in fragmentation within the criminal justice system. This condition indicates that, without an authority framework grounded in the theory

of an integrated criminal justice system, the establishment of a special institution may instead generate jurisdictional conflicts and weaken the consistency of law enforcement.

Finally, the analysis of the implications of the dualism of criminal procedural law for legal certainty and the protection of suspects' rights reveals an inherent tension between the effectiveness of corruption eradication and the principles of the rule of law. Procedural differences in the handling of corruption cases carry the risk of unequal legal treatment, thereby conflicting with the theories of legal certainty, due process of law, and procedural justice. Accordingly, the dualism of criminal procedural law in corruption cases can only be theoretically justified if it is accompanied by clear, proportional, and integrated regulation, so that the objective of effective corruption eradication can be achieved without undermining legal certainty and the protection of human rights.

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