



## Reconstruction of The Meaning of Evil Conspiracies In The Punishment of Corruption Crimes To Realize Legal Certainty

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### Keywords

reconstruction, evil conspiracy, criminal acts of corruption

### Abstract

This study aims to examine and analyze the synchronization of the meaning of evil conspiracies in corruption crimes, as well as find a reconstruction of the meaning of evil conspiracies in the punishment of corruption crimes to realize legal certainty. The research method used is normative juridical with an analytical approach research approach, with a specification of analytical descriptions that describe generally accepted laws and regulations associated with legal theories and principles and implementation practices. Using the Grand Theory, Middle Range Theory, and Applied Theory in exploring and analyzing to find answers to research problems. The results showed that the implementation of the meaning of evil conspiracies in corruption was formulated differently between the Criminal Code and the Tipikor Law. Criminal law policy in combating corruption is explicitly stated by the qualification of offenses, as well as providing juridical understanding or limitations regarding evil conspiracies and then equating the perception of criminal policy between the Criminal Code and the Tipikor Law. This is in accordance with the principle of legality which requires that criminal law be determined in advance through laws and regulations and is detailed and careful. As for the researcher's suggestion, namely to the Government and the DPR, it is necessary to issue a special regulation containing guidelines for the implementation of the provisions of malicious consensus offenses. The guideline contains an explanation of the meaning of evil conspiracy, its elements, categories of criminal acts that can be punished with evil conspiracy, to simulated cases related to evil conspiracy's offenses



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## 1. Introduction

One of the characteristics of corruption is that corruption is classified as a criminal act that is always correlated with money and power. Perpetrators of corruption usually have power, be it political, economic, bureaucratic, legal or other powers, because they have this power, the perpetrators of corruption include people known to the public or Politically Exposed Person (PEP). The issuance of Law Number 31 of 1999 concerning the Eradication of Corruption Crime brought progress to the government's role in eradicating corruption. The law contains special trials for corruption crimes and mandates the establishment of a corruption eradication agency (Priyanto, Santiago, & Fakrulloh, 2023).

Corruption in Indonesia is still one of the causes of the collapse of the economic system in Indonesia which occurs systemically and widely so that it not only harms the state financial condition or the country's economy, but also has violated the social and economic rights of the community at large.

The paradigm of corruption in Indonesia is an extra ordinary crime (Pardede, 2016), transnational organized crime, *primum remedium* and the most serious crimes, systemic and multidimensional in the sense that it correlates with system, juridical, sociological, cultural, economic aspects between countries and so on. Therefore, corruption can not only be seen from the perspective of criminal law, but can be studied from other dimensions, such as the perspective of legal policy (law making policy and law enforcement policy), Human Rights (HAM) (Tompodung, 2019), Civil Law and State Administration Law. At first glance, specifically from the perspective of State Administrative Law, there is a close correlation between corruption crimes and legislation products that are Administrative Penal Law.

Based on Article 110 paragraph (1) of the Criminal Code (KUHP), evil acts that can be associated with evil conspiracies are only related to crimes regulated in Articles 104, 106, 107 and 108 of the Criminal Code (KUHP). The articles relate to crimes that are very dangerous and can threaten the safety of the state (*staatsgevaarlijke misdrijven*), such as treason and rebellion. In its development, evil consensus does not only apply to parties who commit treason and rebels but applies to drug criminals, money laundering perpetrators and perpetrators of corruption respectively through laws that regulate it (Grynaviski & Munger, 2017).

Evil consensus in the criminal act of corruption is regulated in Article 15 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, people who are proven to have committed evil conspiracies to commit corruption can be sentenced to a maximum of life imprisonment, or as short as four years in prison. A fine of Rp. 200 million to Rp. 1 billion will also be given to the accused perpetrators of evil conspiracies (Sieghart, 1985).

The problem that then arises is that when there is an agreement and refers to the elements of Article 88 of the Criminal Code, which refers to the intention to commit a crime, the agreement or intention to commit a crime is not necessarily carried out in the form of concrete acts, then in an evil agreement there is only an intention by holding an evil consensus, there is absolutely no act of implementation, so that in the case of criminal acts of corruption, evil conspiracies cannot be imposed the same criminal sanctions as perpetrators of criminal acts of corruption who have finished committing their criminal acts as stipulated in Article 2, Article 3, Article 5 to Article 14 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption (Tsapos, 2023)

Judging from the above description of evil consensus when the thing to commit a crime has been agreed (*overengekomen*) by two or more persons, for the existence of an agreement to commit a crime there must be an agreement between them, or with the word.

Others have the same intention, whereas if only the intention cannot be punished because the intention is realized by a concrete act. Therefore, Article 88 of the Criminal Code cannot give meaning to the phrase consensus evil in Article 15 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. This shows that if Article 88 of the Criminal Code (KUHP) is used as a reference to interpret Article 15 of the Corruption Law, it makes the regulation does not provide legal certainty because there is no understanding of meaning (Trelease, 2023).

The imposition of criminal sanctions for evil conspiracies is contained in Article 2, Article 3, Articles 5 to Article 14 of Law Number 20 of 2001 concerning the Eradication of Corruption Criminal Acts which means evil conspiracies to commit acts prohibited in these articles the criminal conviction is equated with completed criminal acts, while evil consensus within the meaning of Article 15 of the new Criminal Law is at the level of intention, or in the level of preparation has not been manifested in the act of execution, or in other words evil consensus is an imperfect criminal act (Singh, 2016).

Another legal problem arises because of the lack of clarity and firmness of the understanding of the evil agreement itself, causing multiple interpretations. The implementation of the meaning and substance of evil conspiracies in corruption crimes has not been fully reflected in laws and regulations so that both state administrators and law enforcers have difficulty carrying out these authority functions (Atmasasmita, 2004).

For example, in the case of Anggodo Widjojo. In the case on August 31, 2010, the Tipikor Court Judges stated that Anggodo was legally and convincingly proven to have committed a criminal act of corruption by imposing a sentence of 4 (four) years in prison and a fine of Rp 150 million subsidiary to 3 (three) months imprisonment. Chief Judge Tjokorda Rai Suwamba said only the first charge, namely Article 15 jo Article 5 paragraph (1) letter a of Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts jo Article 55 paragraph (1) 1 of the Criminal Code was proven, namely everyone committing an evil conspiracy to give or promise something to a civil servant or state administrator with the intention that a civil servant or state administrator did or did not do something in a contrary position with obligations fulfilled (Zwierlein & De Graaf, 2013).

In addition, another case of malicious conspiracies for corruption crimes was committed by members of the House of Representatives on behalf of Setya Novanto. In connection with the evil agreement in Article 15 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, there has been a Constitutional Court Decision Number 21 / PUU-XIV / 2016 dated September 7, 2016. The case concerned petitioner Setya Novanto, who at the time was a member of the House of Representatives, who according to the applicant himself had been examined in an investigation on suspicion of corruption in malicious conspiracies or attempted corruption in the renewal of PT. Freeport Indonesia. Because the applicant is alleged to have committed a special crime in the form of an evil conspiracy that led to corruption in his meeting with the President Director of PT. Freeport Indonesia at that time, Maroef Sjamsuddin and businessman Muhammad Riza Chalid in June 2015. So that the applicant is positioned as the perpetrator of an evil conspiracy together with Muhammad Riza Chalid to commit a criminal act of corruption related to the extension of the license or contract of PT. Freeport Indonesia (Konda, 2019).

In sentencing by judges need to be a concern, because criminal sentencing must meet three important elements, namely legal certainty, expediency and justice. These three elements must be applied proportionally by the judge, so that sentencing is an important point that must be examined in criminal law. There is a disparity in the conviction of corruption cases that can occur not only in prison or principal crimes, but also includes disparities in the conviction of substitute money crimes. Article 2 and Article 3 of the Criminal Law can cause disparity in convictions. Article 2 regulates a minimum sentence of 4 years, while article 3 regulates a minimum sentence of 1 year. Article 2 can be applied to anyone, including other parties outside the state administrator, while Article 3 is specifically addressed to the state administrator.

Then the sentencing can come from the judge, among others, it occurs because of a diverse ideological understanding of the basic values or philosophy of punishment in following the flow of criminal law both classical and modern. Furthermore, in Indonesia's positive criminal law, judges have a very wide freedom to choose the type of crime they want, in connection with the use of alternative systems of criminal threats in the law.

Evil consensus seen from three dimensions includes: (1) the punishment of an act as a criminal act (formal and material), (2) testing the unlawful nature (material) based on the provisions of the norm

(element or element of delict), and (3) the substance or meaning contained in the term. From this description, it will be seen how the relationship between formal and material unlawful teachings in the context of punishment (punishable) of an act. Given that corruption crimes are extra ordinary crimes, the handling of corruption cases should be carried out as much as possible, because one of the spirits of the PTPK Law when its formation focused on deterrence, and rescue of state financial losses which is the purpose of punishment which has been formulated in articles 4 and 18 of the PTPK Law, and this is in line with the purpose of punishment.

Evil conspiracies are formulated differently between those formulated in the Criminal Code and those formulated in the Tipikor Law. This has an impact on uncertainty in the legal basis for handling criminal acts of corruption. Thus this research is entitled: "Reconstruction of the Meaning of Evil Conspiracies in the Punishment of Corruption Crimes to Realize Legal Certainty". Based on the description in the background of the problem mentioned above, the problems in this study can be formulated as follows: first, how is the implementation of the implementation of the meaning of evil conspiracies in the criminal act of corruption? Second, how to reconstruct the meaning of evil conspiracies in the punishment of corruption crimes to realize legal certainty?

## 2. Materials and Methods

This research method is a normative method Legal research is a research that studies legal disciplines, both in theory and practice. Peter Mahmud Marzuki explained that research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced (Amiruddin, 2012).

## 3. Results and Discussions

The policy formulation of criminal law in an effort to overcome corruption crimes has actually undergone various changes, which changes are made considering the rapid development of corruption. In fact, according to some experts or experts in criminal law and criminology as described in chapter I and chapter II, corruption is described as a disease that in its development not only damages or harms the country's finances and economy, but has exceeded these limits, namely damaging or harming the people's economy.

Consideration of the need for the formulation of criminal acts of corruption, as expressed in consideration of the above legislation shows concern over criminal acts of corruption that have harmed state finances and hindered national development. then the changes regarding the criminal act of corruption formulated can be seen from the formulation of the criminal act of corruption in Article 1 paragraph (1) of Law Number 3 of 1971 as follows: a. Whoever unlawfully commits an act of enriching himself or another person, or an Entity, which directly or indirectly harms the state finances and/or the country's economy, or is known or reasonably suspected by him that such act is detrimental to the state finances or the country's economy; b. Whoever with the aim of benefiting himself or another person or an Entity, abuses the authority, opportunity or means available to him because of his position or position, which can directly or indirectly harm state finances or the country's economy.

The formulation of corruption in Law Number 3 of 1971 puts corruption as a material offense. The consequence of this formulation is that corruption must first be proven whether it has harmed state finances or not. The formulation with this model results in ineffective countermeasures against corruption, especially those carried out by state officials.

The ineffectiveness of eradicating corruption by basing on the formulation of material offenses, then gave birth to a new corruption eradication policy, namely by formulating corruption as formal offenses. The establishment of the law on the eradication of corruption also seems to be encouraged by the movement of corruption which in its development not only harms the country's finances or economy but has damaged the social rights and economic rights of the people. This condition then changed the direction of criminal law policy, where the criminal act of corruption which was originally formulated

based on material offenses was changed to formal offenses. This can be seen in Article 2 and Article 3 of Law Number 31 of 1999 jo. Law Number 20 of 2001 concerning the Eradication of Corruption as follows:

Article 2 paragraph (1): Any person who unlawfully enriches himself or another person or a corporation that can harm state finances or the country's economy.

Article 3: Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of a position or position that may harm state finances or the country's economy.

Both formulations place corruption as a formal offense, where corruption is still criminalized, even if there is no loss to the country's finances or economy. This is in accordance with the explanation of Article 2 paragraph (1) of Law Number 31 of 1999 that the word "may" before the phrase "harm the finances and or economy of the State indicates that the criminal act of corruption is a formal offense, that is, the existence of a criminal act of corruption is sufficient with the fulfillment of the elements of the act that have been formulated not with the emergence of consequences.

Referring to the provisions of Article 103 of the Criminal Code, the provisions of evil conspiracies in the Criminal Code cannot be applied to criminal provisions regulated in criminal legislation outside the Criminal Code so that laws and regulations that criminalize evil conspiracies must determine for themselves the concept of evil conspiracies referred to in the relevant laws. The term evil conspiracy in Article 15 of the PTPK Law cannot refer to the formulation of Article 88 of the Criminal Code. The criminal act of evil consensus in the PTPK Law is actually regulated and law enforcement officials know the concept of evil consensus in question, but the absence of an explanation or concept of evil consensus in the PTPK Law prevents law enforcement officials from using the provisions of Article 15 of the PTPK Law to prevent and eradicate criminal acts of corruption. The Constitutional Court attempted to resolve the problem in the vacuum of the concept of evil consensus in Article 15 of the PTPK Law, but instead made it difficult for law enforcement officials to apply the criminal provisions of evil consensus as referred to in Article 15 of the PTPK Law.

The constitutional court through Constitutional Court Decision Number 21 / PUU-XIV / 2016, has handed down a ruling which basically states that the phrase evil consensus in Article 15 of the PTPK Law is contrary to the Constitution of the Republic of Indonesia Year 1945 as long as it is not interpreted, evil consensus is when two or more people who have the same qualities agree to commit a crime. In principle, the formulation of evil conspiracies in the Criminal Code is almost the same as the Constitutional Court ruling, but the Constitutional Court added a new element, namely two or more people who have the same qualities. With the new formulation of evil consensus in Article 15 of the PTPK Law above, what must be proven is that there is an agreement and the agreement is made by people who have the same quality. The Constitutional Court's ruling that made a new formulation in the criminal act of malicious conspiracies in corruption has raised new legal problems related to the phrase "equal quality". The Constitutional Court does not provide the same understanding and concept of quality in committing corruption crimes, namely whether the people who agree must be both from parties who have authority or both have economic power. The vagueness of the understanding of the same quality in the criminal act of evil consensus actually causes a blurring of new norms in the criminal act of evil consensus for corruption.

The criminal justice system in Indonesia as stipulated in the KUHAP (Code of Criminal Procedure) or Law No.8 of 1981, is actually identical to criminal law enforcement which is a system of power/authority in enforcing criminal law. This criminal law enforcement system in accordance with the provisions in the Criminal Code is implemented by 4 sub-systems, namely: 1. Investigative Power by the Police Agency. 2. Prosecution Power by the Public Prosecution Agency or the Prosecutor's Office. 3. The power to adjudicate by the Judiciary or Judges. 4. Power to execute sentences by execution officials (prosecutors and prisons).



Until the end of 1986, the prosecution process for minor cases in the UK was carried out by the Police themselves (Police Prosecutor). While a rather heavy case is carried out by a lawyer called a Solicitor. And tough cases are heard in the high court (appellate level) with a public prosecutor lawyer called Barrister. However, since 1986, the one who determines whether the case investigated by the Police can be brought to court or not is the Prosecutor who is a member of the Crown Prosecution Service (CPS). And in the UK there are 31 prosecutors or CPS consisting of Crown Prosecutor, senior Crown Prosecutor, Assistant branch CPS, Branch prosecutor (in Indonesia at the level of Chief District Attorney), and Chief Prosecutor (at the level of Chief Prosecutor high). The sources of law in the criminal justice system in the UK consist of: a) Custom, is the oldest source of law. It grew and developed from the customs of the Anglo Saxon tribe in the Middle Ages that gave birth to Common Law. So the English legal system is also called the Anglo Saxon system. b) Legislation/statute, in the form of laws made through parliament. c) Case law/judge made law, customary law that develops in society through a judge's decision which is then followed by the next judge giving birth to the principle of precedent. In the Common Law system such as in England, customs or customs developed based on Court decisions have a very strong position because the principle of Stare Decisis or the Principle of Binding Force Of Precedents applies. This principle requires judges to follow previous judges' rulings. The part of the judge's decision that must be followed and binding is the part of legal considerations referred to as ratio decidendi while the rest of the so-called obiter dicta is not binding. In the English judicial system, the right and wrongness of the accused is determined by juries recruited from ordinary society. The judge's job is only to ensure that the trial proceeds according to procedure and sentence him according to the law. Therefore, the job of prosecutors and lawyers in the trial is to convince the jury that the defendant is guilty or not. Unlike the civil law system adopted in Indonesia as a continuation of the legal system adopted by the Netherlands, the task of judges in court is more difficult because in addition to having to determine the right and wrong of the defendant also determine the sentence (sentence). In 1994 there has been a shift of the accusator system to an inquisitor system in the English Criminal procedure law. This is because the Police in the UK find it difficult to uncover or solve various cases that pose a serious threat to society, especially terrorism. Because suspects take refuge behind the impunity provided by law, among others, the right to remain silent. This change seen from the context of the existence of existing legal systems in the world (civil law and common law) turns out that now is no longer the time to sharply debate the differences between the two legal systems.

Although this principle has never been formally formulated in legislation, it animates court decisions. Because it was based on case law, at first the courts in England felt that he had the right to create a delict. However, in its 1972 development, the House of Lords unanimously rejected the power of the courts to create new offenses or expand existing offenses. So there seems to be a shift from the principle of legality in the material sense to the principle of legality in the formal sense. This means that an act can initially be determined as an offense by a judge based on common law (customary law developed through court decisions), but in its development can only be determined based on law (statute law).

Based on this principle, there are two conditions that must be met for a person to be punished, namely that there is an outward act that is forbidden (*actus reus*) and there is an evil / despicable mental attitude (*mens rea*). *Actus reus* does not only refer to an act in the usual sense, but contains a broader meaning, which includes: a. The conduct of the defendant b. The result or result of his actions. c. The circumstances listed / contained in the formulation of criminal acts, for example in the formulation of theft offenses are called other people's property. 3. Strict Liability Although in principle the principle of *Mens Rea* applies, in England there are offenses that do not require the existence of *mens rea*. The maker can already be punished if he has committed the act as formulated in the law regardless of his mental attitude. Here applies what is called Strict Liability which is often briefly defined as liability without fault. According to common law, Strict Liability applies to three types of delicacies, namely: a. Public

nuisance (disturbance to public order, blocking highways, emitting unpleasant odors that disturb the environment). b. Criminal libel (slander, defamation). c. Contempt of court (violation of court order).

There are four categories of participation, namely: a. A principal in the first degree (first degree actor; main actor or material maker / actual offender). b. A principal in the second degree. c. An accessory before the fact. d. An accessory after the fact. 7. Inchoate offences (incomplete or preliminary crimes) A criminal act often involves or is preceded by various acts that are closely related to the principal crime. Various acts that precede the occurrence of the main crime which are actually at the initial level, can be seen as independent offences and therefore can be referred to as preliminary crimes. These preliminary crimes are known in British literature as inchoate offences, which include: a. Incitement. b. Conspiracy. c. Attempt.

The importance of paying attention to the substance of the law in legal reform (criminal) is based on the fact that the law must be rational, not just a tool to achieve rationality. Rational law will be efficient if it is supported by legal instruments, law enforcers, besides that the law must be in contact with the social structure of society. Without being able to integrate all the interests of society, the function of law as a means of social control cannot run effectively, the function of law as social engineering of the community that is the target of legal regulation will also fail, therefore improving the judicial environment starts from improving the substance of law that is matched with the value system that shapes the behavior of the legal culture of the community.

Basically, the ultimate goal of criminal policy, namely the protection of society to achieve the main goal which is often referred to by various terms such as "happiness of the citizens" (happiness of the citizens); "a wholesome and cultural living", "social welfare" or equality. The protection of the community in question certainly includes the interests of perpetrators, victims, and the community. If there are still many crimes that need to be punished if the act is violated, it can be done through criminal policy through the formation of laws with the aim of enforcing the basic norms of the community (including customary norms, customary crimes).

Regarding the subject of evil conspiracy, Article 88 of the Criminal Code "occurs when two persons or agree to commit a crime". An evil consensus is deemed to have taken place after two or more persons have reached an agreement to commit the crime, even though the crime has not occurred as long as there has been an intention to commit the evil act alone can be subject to delicacy.<sup>9</sup> In certain cases, it is considered sufficient grounds to threaten a crime if there has been an agreement to commit a crime. Thus, the framers of the law are of the view that sometimes the agreement itself is already a dangerous thing, so it is appropriate to be made a complete offense. Another difference is that probation applies to all crimes formulated in Book II, unless the article of the Penal Code is otherwise specified. For example, for persecution, in Article 351 paragraph (5) of the Penal Code it is specified that, attempts to commit this crime are not criminalized. On the other hand, evil consensus only applies to certain criminal acts expressly designated by the Penal Code, so it does not apply to all crimes.

There are three points in criminal law, namely criminal acts, criminal liability and criminal and penalties. All of these show the penal system that must be built as a renewal in the Criminal Code. So that what the law aspires to uphold justice as high as possible can really be achieved. To better understand it, it will be explained one by one the section.

This part became a new section, which usually *strafbaar feit* was at the level of theory, has now become normative. To be convicted of an act, this is closely related to the source of law or the basis of legality which states that whether the act committed is a criminal offense or not a criminal offense, as stated in the current Criminal Code. The concept of the Criminal Code also departs from the principle of formal legality (sourced from the law), but the concept of the Criminal Code also gives place to the law that lives in the community, namely customary law which is unwritten as a source of law outside the principle of formal legality.

In the formulation of Article 11 of the Criminal Code Bill for its elements, it is stated that a criminal act is an act of doing or not doing something that is declared by laws and regulations as a

prohibited act and threatened with a crime, has an unlawful nature or is contrary to the legal consciousness of the community and is excluded from justifying reasons for committing the crime.

As one of the legal experts, Moeljatno uses the term criminal act because he believes that the term criminal act is an inappropriate term because the word "act" does not refer to abstract things such as actions, but is the same as the word event which also expresses concrete conditions, such as behavior, gestures or physical attitudes, better known in actions, actions and actions.

In addition to the dualism view, there is another view, namely the view of monism, which is a view that does not separate between elements about actions and elements about the person. As stated by Wirjono Prodjodikoro, he stated that the crime is an act whose perpetrators can be subject to criminal law. Adherents of monism do not expressly separate between the elements of criminal acts and the condition that perpetrators can be convicted. The elements that concern the person for adherents of dualism, namely guilt and the existence of criminal responsibility as not elements of criminal acts but conditions for being able to be discharged, while according to adherents of monism are also criminal elements. Monism does not distinguish between the elements of criminal acts and the conditions for convict, the conditions for conviction are also included in and become elements of criminal acts.

It is necessary to see the provisions in Article 103 of the Criminal Code which only mentions Chapter 1 to Chapter 8. In the provisions on the issue of experimentation, it has been regulated in Book 1 of the Criminal Code in Chapter 4 Article 53 of the Criminal Code on Experimentation. Based on this, according to the author, the experimental element contained in Article 53 Chapter 4 of the Criminal Code can be used to give meaning to the experimental element in Article 15 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. After the provisions on the problem of trial have been answered, then go to the provisions on assistance. In Chapter 5, Article 56 of the Criminal Code stipulates Participation in Delik. Based on this, it can be concluded that elements related to assistance can be used to provide content from the elements of assistance contained in Article 15 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. However, it is different from the provision of evil conspiracy. It is known that the provisions regarding evil conspiracies have been regulated in Article 88 of the Criminal Code contained in Chapter 9.

Based on this, the understanding of the meaning of some terms in the Criminal Code should not be used for criminal provisions that are outside the Criminal Code. This is because strictly Article 103 of the Criminal Code does not state that evil conspiracies can be punished. Article 103 of the Criminal Code only expressly regulates Chapter 1 to Chapter 8, which is about probation and assistance, including being punishable, so Article 15 of Law Number 20 of 2001 concerning the Eradication of Corruption can be used, except for evil conspiracies, which according to the author cannot be criminalized, because these provisions are regulated in Article 88 of the Criminal Code in Chapter 9. Based on this, normatively, Article 88 of the Criminal Code can be used to give meaning to the phrase evil consensus in Article 15 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption.

In the facts of the trial in that case it is more appropriate to be a trial offense rather than a malicious consensus offense. This is because in that case, in addition to the intention to consensus maliciously, there has also been the beginning of implementation, namely the preparation of bribes.

The application of Article 15 related to evil conspiracy, there is confusion and incomprehension of law enforcement officials in interpreting between experimental offenses and evil consensus offenses. This is because between the offense of experimentation and the offense of evil consensus there is a very clear difference. In experimental delicacies, there are elements, namely having made the beginning of preparation and the beginning of execution, but not completed not because of the will of the perpetrator, while in evil conspiracies, only the intention to corruption can be punished.

In evil conspiracies to commit a criminal offence is also punishable by a more severe crime in the Special Penal Code, which is punishable with the same crime when the act is actually realized. Unlike the general case of evil conspiracies in the Criminal Code, for example, providing assistance to the enemy in wartime is threatened with a prison sentence of 15 (fifteen) years, while evil consensus against it is



only threatened with a prison sentence of six years. The Special Criminal Law also criminalizes preparatory acts (other than malicious conspiracy) which generally in the Criminal Code cannot be criminalized. In the doctrine of attempted delicts, for example, the "preparatory act" of committing a criminal offense that cannot yet be qualified as the "beginning of execution" that can be convicted, is not made a criminal offense. Unlike the case in the crime of spreading terror, the same crime is threatened with a completed crime even though it is still in the preparatory stage, such as "planning" or "collecting funds" for the implementation of a crime of spreading terror. In this case, considering that there is no equivalent at all, there is a "leap" in criminal aggravation, namely from a non-criminal act to a criminal act. There is no sufficient ethical basis to convict it of the same crime when it was perfectly committed as a crime of spreading terror. In this case, criminal threats are not just "sanctions" that can be imposed by judges that have been stipulated in law, but also a moral justification for criminalization, especially about what and what crimes are appropriate and fair. For example, combating terrorism with a law enforcement approach based on a desire to respect human rights, after military and intelligence approaches are considered to lack respect for human rights.

When in the Criminal Code the criminal determination for probationary offenses, for example, is based on the "evil will" that has been turned out, which is considered less dangerous when compared to the offenses that are completed so that they are threatened with lighter crimes, then this is not the case with attempted terrorism. The same is the case with corruption and other special crimes. This can be interpreted that in the view of the framers of the law, even though it is still at the level of attempted corruption and terrorism, it is seen as dangerous as the offense is completed and the punishment must be toughened so that the perpetrators are deterred and do not repeat the act and besides that the aim is to inflict state losses. Then the more important thing is to be a lesson for society in general to avoid these actions.

The Horizontal Law Synchronization Theory proposed by Soerjono Soekanto and Sri Mamuji that legal synchronization is to examine the extent to which a written positive legal regulation has been synchronized or compatible with other regulations. There are two types of ways of reviewing synchronization of rules, namely: first, vertical synchronization, identifying whether a law is in line when viewed from the point of strata or hierarchy of existing laws and regulations. Second, horizontal synchronization, identifying laws and regulations that are equal in position and that regulate the same field (Marzuki, 2017).

The implementation of synchronization of a legal product is not limited only to the formation of a legal product, but the implementation of harmonization and synchronization is also carried out on legal products that have been formed. Synchronization and harmonization are carried out due to the legal dynamics of the formation or promulgation of a new law that causes some of these legal products to be disharmonious or out of sync with the newly promulgated laws and regulations (Sayuna, 2016).

Legal synchronization is the alignment and harmony of various laws and regulations related to existing laws and regulations that are being prepared to regulate a particular field. The purpose of synchronization activities is so that the substances regulated in the statutory product do not overlap, complement each other (supplementary), interrelated, and the lower the type of regulation, the more detailed and operational the content material. The purpose of synchronization activities is to realize the regulatory basis of a particular field that can provide adequate legal certainty for the implementation of certain fields efficiently and effectively.

Evil consensus requires at least 2 (two) participants. If there is only one person there is no consensus, instead one must make a promise to oneself. There is no necessity for 3 (three), 4 (four), or more people to complete an evil consensus; Enough 2 (two) people are required. If two or more people overrecommend to commit a crime, then there has been an evil agreement. A crime cannot be committed unless there is an agreement between them. Therefore, although there has been no poeging, not even a preliminary act, there has been a punishable evil consensus (voorbereiding) (Soekanto, 2007).

The experiment is listed in Chapter 4 Book I of the Criminal Code, namely Article 53 of the Criminal Code. This shows that Article 15 of the experimental element of the Corruption Law stipulated in Article 53 of the Criminal Code can be used to create meaning. Similar to assistance, participation in criminal acts is listed in Article 56 of the Criminal Code. This shows that by referring to the terms of Article 103, it can practically provide the contents of the elements of assistance or phrases of assistance included in article 15 by using rules or elements relating to support. Then, article 88 of the Criminal Code contains information about evil conspiracies. As a result, article 88 of the Criminal Code concerning the meaning of various terms used in the Criminal Code cannot be applied to criminal law that is not contained in the Criminal Code. Article 103 of the Criminal Code and other laws that stipulate that conspiracies to commit crimes can be criminalized, such as the Corruption Eradication Law, are not clearly outlined so that they cannot be used as references.

The evil conspiracy used in Article 15 of the Corruption Eradication Law cannot be interpreted by referring to Article 88 of the Criminal Code. Because neither the Criminal Law nor Article 103 of the Criminal Code clearly describe the definition of the phrase. And therefore, practitioners can now provide interpretation without restriction. Then, the question becomes whether strafbaar can be accepted based solely on interpretation. In the opinion of experts does not correspond to the statutory definition of the decomposition of elements. So, according to science, he is clear, but not according to the law. As a result, this is an ambiguous norm that does not guarantee legal certainty. The expert asserted that because it was considered a violation of the constitution, the phrase "evil consensus" must be set aside so that it has no legal force. Because there is no concrete understanding in the phrase, and also does not guarantee legal certainty. Articles 104, 106, 107, and 108 of the Criminal Code only apply to acts that are expressly declared criminalized or acts that can be punished with crime even if only at the stage of evil conspiracy.

Along with the many qualitative offenses regulated in various special criminal regulations, including Article 15 of Law Number 31 of 1999 as amended by Law Number 20 of 2001, the provisions of Article 88 of Law Number 1 of 1946 are no longer adequate because the definition in Article 88 of Law Number 1 of 1946 has the potential to violate human rights and give birth to repressive law enforcement when applied to qualitative offenses. By this definition, the malicious consensus on qualitative offenses only considers the presence or absence of agreement without further looking at whether the people who agree have the qualities stipulated by law. For example, two or more persons who are not officials or civil servants or state administrators who have conversations or agree to commit criminal acts of corruption under Article 15 juncto Article 3 of Law Number 31 of 1999 as amended in Law Number 20 of 2001, because these persons do not have the qualities required by Article 3 of Law Number 31 of 1999 as amended in Law Number 20 of 2001, namely employees or officials who have certain authorities. Because, in the absence of these qualities, it is impossible for these criminal acts to occur.

In the absence of an explanation of the quality of those who agree, the phrase "agreeing to commit a crime" also does not provide legal certainty because in what form is the agreement referred to by Article 88 of Law Number 1 of 1946? Does the agreement have to be affirmed verbally or is it just a gesture or should it be followed up even though the follow-up only comes to preparatory action? This needs to be emphasized because it refers to the nature of evil consensus as convergence delicacies, that is, offenses that can only be committed by two or more people and these people must jointly embody all the delicts, not just some of the elements of the delict. Therefore, each person must fulfill all the elements of offense together. This form is once an example of noodzakelijke deelneming (inclusion as a condition). What must be accepted is the condition that there are at least two perpetrators (pleger), and not, for example, a perpetrator and an assistant perpetrator (medeplichtige) cooperating.

The act of "agreeing" contained in the evil consensus under Article 15 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 must be interpreted by an agreement expressly stated by the people who agree. The agreement in the article cannot be fulfilled or concluded unilaterally. Therefore, the most likely way to know the agreement of both parties is the existence of a firm agreement

from these people or judging from the follow-up carried out by these people so that it can be concluded that the people have agreed. Note that convergence offenses are different from inclusions. In convergence offenses, the perpetrators are required to jointly perform the offense perfectly, while in inclusion there is a division of roles so that criminal offenders and participants can divide roles or only do part of the delicacy elements. It is this nature of convergence offenses to evil consensus that closes the possibility that evil consensus is committed by a third person or a person who has no qualities in the subject of his delict, in which case evil consensus is applied to qualitative offenses.

The conformity of understanding that is the core of the agreement must be realized in the form of preparatory actions. Because in principle, criminal law does not convict the mind. Therefore, evil consensus is not merely what is thought but must manifest itself in the act of a firm agreement. This can be inferred from Ashworth's statement that "if the parties are still at the stage of negotiation, without having decided what to do, no criminal conspiracy has yet come into being". Conversations and discussions that are not accompanied by agreement do not fall under the definition of conspiracy. This is in line with the opinion of R Soesilo who stated that negotiations and talks have not been included in the evil consensus.

The implementation of synchronization of a legal product is not limited only to the formation of a legal product, but the implementation of harmonization and synchronization is also carried out on legal products that have been formed. Synchronization and harmonization are carried out due to the legal dynamics of the formation or promulgation of a new law that causes some of these legal products to become disharmonious or out of sync with the newly promulgated laws and regulations.

As for according to English law at first the experiment was not legally prohibited, but then there was a very significant change in 1748 because the experiment was punishable, that is, there must be an intention to commit a certain crime and the act was done but not completed, The doctrine laid down by Lord Mansfield in *Rex V.Scofield* consists of all principles, namely that action lies in intention and intention alone cannot be punished, However, following an action taken, the judge not only punishes because there is an action committed, but because there is an intention that is done in violation of the law and the intention is dangerous. Although there are also quite controversial decisions as considered in the *Regina vs. Collins* case decision of 1864. It is said that pickpocketing from an empty pocket is not an attempt because it is called an attempt to commit a crime when no interference occurs, and in the absence of interference the crime succeeds.

If the principle of *lex certa* is not fulfilled by its elements, then the provision is clearly contrary to the 1945 Constitution. If this concept refers to Article 88 of the Criminal Code, it is a matter of legal rules that can have implications in the future. Deeds because of the chosen means and objectives cannot solve the crime but about deeds that cannot possibly realize the formulation of the offense because there is no essential element in this formulation. This situation is clearly detrimental to citizens because the formulation of such norms will expand the authority of interpretation of real evil intentions, not all legal subjects have the quality to do evil or the basis of the quality of authority they have. That as such, the qualities required in qualitative offenses are those qualities that are legally prescribed in the penal code that cause the offense to be committed only by a particular person. Certain qualities can be in the form of position, authority, profession, occupation, or certain circumstances determined on a particular subject.

Understanding the nature of this evil consensus is very important because it relates to the constitutional right of citizens to obtain legal certainty and comfort in life in the state. Thus, the state in law enforcement must be able to uphold the principle of due process of law and fair procedure, not solely a crime control model;

Based on the above legal considerations, it is legally reasonable for the Petitioner's application to be granted that Article 15 of the Criminal Law is limited to relating to the phrase "evil consensus" contrary to the 1945 Constitution as long as it is not interpreted "it is said that there is an evil consensus when two or more persons of the same quality agree to commit a criminal offence".

The subject of offense refers to people who commit criminal acts both in general and who have certain qualities. Prohibited acts (strafbaar) refers to the form of prohibited acts that are clearly formulated, while criminal threats contain the threatened acts and the type of punishment to be imposed so that Article 2, Article 3, Article 5 to Article 14 must be placed in the prohibited acts section not in the criminal threat section so that in practice it is required to include "juncto" because evil consensus is not a stand-alone offense.

#### 4. Conclusion

Implementation The implementation of the meaning of evil conspiracies in the criminal act of corruption is formulated differently between the Criminal Code and the Tipikor Law. In the case of corruption, evil conspiracies cannot be imposed the same criminal sanctions as perpetrators of corruption who have finished committing their crimes as stipulated in Article 2, Article 3, Article 5 to Article 14 of the Tipikor Law. Referring to the elements of Article 88 of the Criminal Code, in the event that the intention to commit a crime or agreement is not necessarily carried out in the form of concrete acts, then in an evil agreement there is only an intention by holding an evil consensus, there is absolutely no act of implementation. So that in its implementation, there is confusion among law enforcement officials in interpreting between experiments and evil conspiracies themselves. This has an impact on legal uncertainty in the basis for prosecuting perpetrators of corruption crimes. Juridically, there is no strict regulation about the limit or size of an act or action that can be categorized as an evil consensus.

Reconstruction of the meaning of evil consensus in the punishment of corruption crimes to realize legal certainty is that evil consensus is considered a stand-alone offense, meaning that people who have committed evil conspiracies are considered to have committed criminal acts. Criminal law policy in combating corruption is explicitly stated in the qualification of offenses, and provides juridical understanding or limitations regarding evil conspiracies. Doing the act of preparation and initiation of execution with intention is included in the act of evil consensus. The definition of limits on evil conspiracy, criminal behavior in assistance then equates the perception of criminal policy between the Criminal Code and the Tipikor Law. This is in accordance with the principle of legality which requires that criminal law be determined in advance through laws and regulations and is detailed and careful (*lex certa*).

#### 5. References

- Amiruddin, Amiruddin. (2012). Pemberantasan Korupsi dalam Pengadaan Barang dan Jasa melalui Instrumen Hukum Pidana dan Administrasi. *Jurnal Media Hukum*, 19(1).
- Atmasasmita, Romli. (2004). *Sekitar Masalah Korupsi: Aspek nasional dan aspek internasional*. Mandar Maju.
- Grynaviski, Jeffrey D., & Munger, Michael C. (2017). Reconstructing Racism: Transforming Racial Hierarchy from "Necessary Evil" into "Positive Good". *Social Philosophy and Policy*, 34(1), 144–163.
- Konda, Thomas Milan. (2019). *Conspiracies of conspiracies: How delusions have overrun America*. University of Chicago Press.
- Marzuki, Mahmud. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Pardede, Marulak. (2016). Grand Design Reformasi Penelitian Hukum Kementerian Hukum dan Hak Asasi Manusia Negara Republik Indonesia. *Jurnal Penelitian Hukum De Jure*, 16(2), 125–145.
- Priyanto, Bambang Budi, Santiago, Faisal, & Fakrulloh, Zudan Arief. (2023). The role of the Corruption Eradication Commission (CEC) in carrying out its functions and authorities to eradicate corruption. *Jurnal Indonesia Sosial Sains*, 4(07), 607–616.
- Sayuna, Inche. (2016). *Harmonisasi dan Sinkronisasi Hukum Surat Kuasa Membebaskan Hak*

- Tanggungjawab (SKMHT) Ditinjau Dari Otentisitas Akta Menurut Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.* UNS (Sebelas Maret University).
- Sieghart, Paul. (1985). *The lawful rights of mankind: An introduction to the international legal code of human rights.*
- Singh, Aman Deep. (2016). Literature, Films and Television: Reconstruction of Intertextuality in Select English Television Serials. *Asian Quarterly: An International Journal of Contemporary Issues*, 3(14), 46–56.
- Soekanto, Soerjono. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat.*
- Tompodung, Schwars Marhani. (2019). Aspek Hukum Pemberantasan Tindak Pidana Korupsi Menurut Instrumen Hukum Internasional. *Lex Crimen*, 8(3).
- Trelease, Allen W. (2023). *White terror: The Ku Klux Klan conspiracy and southern reconstruction.* LSU Press.
- Tsapos, Melina. (2023). Who is a Conspiracy Theorist? *Social Epistemology*, 1–10.
- Zwierlein, Cornel, & De Graaf, Beatrice. (2013). Security and conspiracy in modern history. *Historical Social Research/Historische Sozialforschung*, 7–45.