AL RISALAH: Jurnal Ilmu Syariah dan Hukum

VOLUME 26 NO 1, MAY 2026
P-ISSN: 2252-8334 / E-ISSN: 2550-0309
This work is licensed under a Creative Commons Attribution 4.0 International License
https://doi.org/10.24252/al-risalah.vi.66450

Criminalization of Public Policy Without Mens Rea in Corruption Offenses: A Case Study of Sugar Import Policy

Nynda Fatmawati Octarina[1*], Leonardo Benito Maspaitella[2]
[1]*E-mail: ninda.fatmawati@narotama.ac.id*
[2]*E-mail: maspaitellaleonardo@gmail.com*
[1,2]*Universitas Narotama, Indonesia*
*corresponding author

Article history:
Received in revised form: 13 March 2026
Acceptance date: 16 April 2026
Available online: 18 May 2026

Keywords:
Mens Rea; Corruption Crimes; Criminal Liability.

How to Cite:
Octarina, N. F., & Maspaitella, L. B. (2026). Criminalization of Public Policy Without Mens Rea in Corruption Offenses: A Case Study of Sugar Import Policy. Al-Risalah Jurnal Ilmu Syariah Dan Hukum.
https://doi.org/10.24252/al-risalah.vi.66450

License:
Copyright (c) The authors (2026)

This work is licensed under a Creative Commons Attribution 4.0 International License.

Abstract

Criminal liability is grounded in the principle of geen straf zonder schuld, which requires the presence of both actus reus and mens rea to establish guilt. However, in the enforcement of corruption law in Indonesia, evidentiary practices tend to prioritize state financial losses and abuse of authority, often sidelining the assessment of the perpetrator's mental element. This reveals a critical gap between doctrinal principles and judicial practice, particularly in cases involving public policy decisions. This study aims to examine the position of mens rea in the evidentiary framework of corruption crimes and to analyze the criminal liability of public officials in the absence of proven intent, as reflected in the sugar import policy case. Using normative legal research with statutory, conceptual, and case approaches, this study analyzes Decision of the Central Jakarta District Court Number 34/Pid.Sus-TPK/2025/PN Jkt.Pst. The findings indicate that although mens rea in Indonesian criminal law is doctrinally reflected through intent and negligence, judicial reasoning in corruption cases tends to adopt a formalistic approach by emphasizing procedural violations and state losses. This study argues that such an approach leads to the criminalization of public policy in the absence of proven culpability. The novelty of this research lies in its critique of the shift from a culpability-based system toward a loss-based liability model in corruption cases. It concludes that state losses arising from policy decisions without intent to unlawfully benefit should be understood as occupational risks rather than grounds for criminal punishment, thereby reaffirming the centrality of mens rea in criminal liability.

INTRODUCTION

Indonesia regards law as the principal guideline in supporting the administration of government. Article 1 of Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the Government Administration Law/GA Law) provides an explanation regarding governmental administrative actions, stating that such actions are those carried out by governmental bodies and/or officials in the administration of governance. These actions are understood as acts performed by government officials or other state administrators to undertake or refrain from undertaking concrete actions within the framework of governmental administration. In this regard, every action taken by public officials must not only be based on lawful authority but must also be accountable when it gives rise to legal consequences, including losses to state finances. Therefore, the Indonesian legal system plays an important role in maintaining the accountability and integrity of public officials so that every decision made remains within the boundaries of law and public interest.[1]

An unlawful act arises when a governmental administrative action no longer falls within the scope of lawful authority, contradicts the law, or causes losses to the state, thereby potentially entering the sphere of criminal liability. In principle, criminal law requires the existence of fault as the basis for imposing criminal responsibility upon a person. The current positive criminal law system places fault as an essential element in addition to legality, such that punishment may only be imposed when an act prohibited by law is committed with culpability that can be legally attributed to the offender.[2] This is consistent with the principle of *nulla poena sine culpa*, or in Latin *actus reus mens rea*, which constitutes the basis of criminal liability and signifies that an act cannot render a person guilty unless accompanied by criminal intent or a guilty mind.[3]

In law enforcement practice, the application of *actus reus mens rea* often encounters various dynamics, including in cases involving public officials. The criminal liability of public officials is frequently associated with corruption offenses when a policy causes losses to state finances, making the proof of the *mens rea* element a matter that requires careful examination in determining criminal responsibility. Article 3 of Law Number 31

[1] Sandy Victor Hukunala & Della Paula Ajawaila, *Korupsi Sebagai Kesalahan Administratif Yang Menimbulkan Kerugian Keuangan Negara*, Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan, Vol. 8, Nomor 1, 2023, hlm. 83.
[2] Putu Cakra Ari Perwira, *Konsep Kerugian Keuangan Negara dalam Tindak Pidana Korupsi Setelah Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016,* Tesis, Universitas Islam Sultan Agung, Semarang, 2024, hlm. 10.
[3] Andi Bau Mallarangeng, dkk., *Pembuktian Unsur Niat Dikaitkan Dengan Unsur Mens rea Dalam Tindak Pidana Korupsi*, LEGAL: Journal of Law, Vol. 2, No. 2, 2023, hlm. 12.

of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Anti-Corruption Law/ACL) places state financial losses and abuse of authority as the principal elements, such that in several cases the proof of *mens rea* does not receive proportional attention.[4] This condition indicates a tendency to shift from fault-based liability toward result-based liability.

Within the sphere of governmental administrative law, public officials are granted discretion in policy-making. This is stipulated in Articles 23–24 of the Government Administration Law, which affirm that policies may be adopted in good faith and without conflicts of interest, particularly in situations not fully regulated by statutory provisions. Within this framework, not every error in policy-making may automatically be classified as a criminal offense, as there is a fundamental distinction between administrative fault and criminal fault. Issues concerning policy-making by public officials become increasingly apparent in strategic economic policies, one of which is import policy.

Pursuant to Article 50 paragraph (1) of Law Number 7 of 2014 concerning Trade (hereinafter referred to as the Trade Law), the Minister is authorized to regulate export and import activities in order to maintain market stability and fulfill domestic needs. This provision demonstrates that import policy constitutes a legitimate state instrument for market stabilization and the fulfillment of public needs. However, within the context of criminal law enforcement, particularly corruption offenses, such policies become relevant for legal scrutiny when there are indications of abuse of authority exceeding the intended purpose of the authority granted and resulting in losses to state finances. Abuse of authority is understood as the exercise of authority by public officials in a manner that deviates from its intended purpose, exceeds the limits of authority, or improperly combines authorities, as regulated under the theory of abuse of authority in state administrative law, which ultimately has the potential to cause losses to state finances and thereby becomes relevant within the framework of corruption offenses.[5]

The debate concerning the position of *mens rea* in criminal liability for corruption demonstrates the existence of two principal schools of thought. On the one hand, the positivist legal approach emphasizes that punishment may be justified as long as the normative elements of the offense are fulfilled, including the existence of state financial

[4] Grazia Vione Miru, Salmon Eliazer Marthen Nirahua & Hadiba Zachra Wadjo, *Pertanggungjawaban Pidana Terhadap Jabatan Dalam Tindak Pidana Korupsi Pengadaan Barang Dan Jasa*, Pattimura Legal Journal, Vol. 2, No. 2, 2023, hlm. 75-76.
[5] M. Kasman S., *Tuduhan Pelanggaran Wewenang dalam Kasus Korupsi Tom Lembong: Perspektif Hukum*, Locus Journal of Academic Literature Review, Vol. 4, No. 3, 2025, hlm. 169.

losses and abuse of authority, without the need to deeply prove the offender's subjective fault. On the other hand, the moral culpability approach places *mens rea* as a central element that cannot be disregarded, because criminal liability essentially requires the existence of subjective fault in the form of intent or negligence attributable to the offender. Several previous studies indicate that, in the practice of adjudicating corruption cases in Indonesia, there has been a tendency to shift from a culpability-based liability model toward a result-based liability model, characterized by the predominance of proving state financial losses as the basis for punishment. Nevertheless, such studies generally continue to position *mens rea* merely as a normative element of the offense, without critically examining the implications of disregarding this element in the context of public policies adopted through the discretion of state officials.

The sugar import policy case in the Central Jakarta District Court Decision Number 34/Pid.Sus-TPK/2025/PN Jkt.Pst involving Thomas Trikasih Lembong serves as a concrete illustration of the boundary between public policy discretion and the potential for criminal liability in corruption cases. The authorization of the sugar import policy undertaken by the Minister of Trade in his capacity as a state official vested with authority in the trade sector was essentially aimed at ensuring supply availability and maintaining the stability of national sugar prices through the importation of raw crystal sugar to be processed into white crystal sugar.[6] Based on the legal facts revealed during the trial, the Panel of Judges held that the execution of duties and responsibilities by the Minister of Trade as the Defendant had been carried out unlawfully because it contradicted and violated statutory regulations, referring to the granting of import approvals that were not based on a Coordinating Meeting of the Ministry of Economic Affairs, despite the absence of evidence that the sugar import policy had been undertaken with the intention of abusing authority for personal interests or for the benefit of certain parties in fulfilling the *mens rea* element.

In the judgment, the Panel of Judges stated that the defendant, in his capacity as Minister of Trade, was proven not to have obtained personal gain from the sugar import policy. This factual finding gives rise to a more fundamental legal issue concerning the position of *mens rea* within Indonesia's criminal evidentiary system, because the *mens rea* element in the form of intent to enrich oneself was not fulfilled. Nevertheless, the absence of proof regarding the *mens rea* element did not eliminate legal responsibility for acts deemed to have caused losses to state finances, which had been lawfully established

[6] Andika Rayhan Putra Herang, *Analisis Unsur Perbuatan Pidana Dalam Kasus Korupsi Impor Gula Mantan Menteri Perdagangan Thomas Trikasih Lembong*, Jurnal Analisis Hukum, Vol. 8, No. 2, 2025, hlm. 184.

under the applicable legal provisions. The emergence of such circumstances raises a fundamental legal question regarding the basis of criminal liability for public officials when state losses occur without proof of the perpetrator's guilty mind. Where the *mens rea* element is disregarded, there arises a risk of criminalizing public policy, which may ultimately hinder the willingness of public officials to make strategic decisions.

These conditions indicate the existence of a gap between the fundamental principles of criminal law, which require culpability, and law enforcement practices that emphasize consequences. In particular, there remains a lack of studies analyzing the juridical implications of the absence of proven *mens rea* in corruption cases arising from public policy, as well as the potential occurrence of the criminalization of public policy. This study aims to fill that gap by analyzing the position of *mens rea* within the evidentiary system of corruption offenses and examining the boundary between administrative fault and criminal liability in the context of sugar import policies. The principal contribution of this study lies in its effort to reconstruct criminal liability by repositioning *mens rea* as a central element, while simultaneously criticizing the tendency toward the criminalization of policy without proof of subjective fault. Accordingly, this study offers a new perspective in distinguishing between occupational risk and criminal conduct. Based on the foregoing background, the research questions of this study are as follows: How is *mens rea* positioned within the evidentiary system of corruption offenses in Indonesia?. How should the criminal liability of public officials be determined in relation to sugar import policies?

METHODS

This study employs normative legal research focusing on the analysis of positive legal norms through statutory regulations, court decisions, and legal doctrines to examine the position of *mens rea* in proving corruption offenses and the criminal liability of public officials in policy-making. The approaches applied include a statutory approach to examine the provisions of the Anti-Corruption Law, the Government Administration Law, and the Trade Law; a conceptual approach to analyze the concepts of *mens rea*, *actus reus*, culpability (*schuld*), discretion, and abuse of authority; as well as a case approach through the analysis of the Central Jakarta District Court Decision Number 34/Pid.Sus-TPK/2025/PN Jkt.Pst, which was selected because it demonstrates an imbalance between state financial losses and the absence of proven *mens rea*.

Legal materials were collected through library research and analyzed descriptively and analytically by employing grammatical and systematic interpretation of the norms contained in the Anti-Corruption Law, which were then correlated with the doctrines of

actus reus and *mens rea* as well as the theory of culpability in criminal law. The analysis was further supported by deductive reasoning to assess the consistency of law enforcement with the principle of *geen straf zonder schuld* (no punishment without fault), thereby revealing a shift from culpability-based liability toward result-based liability in corruption offenses.

RESULT AND DISCUSSION

1. The Position of *Mens Rea* in the Evidentiary System of Corruption Offenses in Indonesia

Indonesian criminal law places the position of *mens rea* within the evidentiary system of corruption offenses as an inseparable component of the fundamental principle of criminal liability, namely *geen straf zonder schuld* or the principle of no punishment without fault. This principle affirms that the imposition of punishment upon a person cannot merely be based on the occurrence of an unlawful act or a loss caused thereby, but must also be accompanied by culpability that can be legally attributed to the offender.[7] Even when an act has fulfilled the formulation of an offense under statutory regulations and objectively constitutes a violation of a penal provision, this alone is insufficient to justify punishment. The imposition of criminal sanctions must also consider the mental attitude of the offender, including the intention, will, or purpose accompanying the commission of the act, as the basis for determining whether criminal culpability exists.[8]

Simons states that a criminal event fundamentally constitutes an unlawful act punishable by criminal sanctions and committed by a person capable of being held legally responsible.[9] This formulation demonstrates that a criminal offense contains several essential elements, namely the existence of a human act (*handeling*), which may take the form not only of an active conduct (*een doen*), but also of an omission or failure to perform a legal obligation (*een nalaten* or *niet doen*). Furthermore, the act must be unlawful (*wederrechtelijk*), punishable by statute (*strafbaar gesteld*), committed by an offender capable of responsibility (*toerekeningsvatbaar*), and accompanied by fault (*schuld*) on the part of the offender.[10] This construction is closely related to the doctrine in criminal

[7] Arif Awaludin, *Menguji Pertimbangan Mens rea dalam Pemidanaan Kasus Korupsi*, Cakrawala Hukum Majalah Ilmiah Fakultas Hukum Universitas Wijaya Kusuma, Vol. 21, No. 1, 2019, hlm. 8.
[8] Nur Laila, Marhatun Fatonah & Nur Rahmah, *Seberapa Penting Terpenuhinya Unsur Mens rea Dalam Penetapan Perkara Pidana Pada Kasus Korupsi Di Indonesia*, Triwikrama: Jurnal Multidisiplin Ilmu Sosial, Vol. 10, No 12, 2025, hlm. 3.
[9] Mustakim La Dee, Hukum Pembuktian Dalam Perkara Pidana, Cetakan I, Medan: PT Media Penerbit Indonesia, 2024, hlm. 45.
[10] Mustakim La Dee, Hukum Pembuktian Dalam Perkara Pidana.

law that views culpability through the relationship between *actus reus* and *mens rea* as the two principal elements constituting a criminal offense. *Actus reus* refers to the external act prohibited by law, whereas *mens rea* refers to the mental state of the offender in the form of intent or negligence at the time the act was committed.

Fundamentally, all corruptive acts formulated under the Anti-Corruption Law require a form of culpability in the form of intent (*dolus* or *opzet*).[11] This indicates that proving the element of fault constitutes an inseparable part of the law enforcement process. Within the context of criminal liability, the existence of fault serves as the basis for determining whether an act may be attributed criminally to the offender. The assessment of fault is not limited to the fulfillment of the prohibited act prescribed by statute, but must also consider the existence of the offender's will or awareness in committing the act. Within this evidentiary framework, the position of *mens rea* in proving corruption offenses is highly crucial, considering that the characteristics of such offenses are often related to the exercise of authority by public officials in carrying out governmental functions.

The regulation of corruption offenses under the Anti-Corruption Law demonstrates the existence of an intentional element within the formulation of the offenses. Article 2 paragraph (1), which contains the phrase "enriching oneself, another person, or a corporation," as well as Article 3, which uses the phrase "with the aim of benefiting oneself or another person," indirectly reflect the existence of a specific intention or purpose on the part of the offender, which essentially constitutes a manifestation of the concept of *mens rea* within the formulation of corruption offenses. Nevertheless, in law enforcement practice, the proof of corruption offenses often places greater emphasis on the existence of state financial losses and acts of abuse of authority, while the analysis of the offender's subjective fault is not always conducted comprehensively. This condition potentially gives rise to a paradigm shift in criminal liability from one originally based on fault toward one more oriented toward the consequences produced. Fault (*schuld*) constitutes an essential element requiring the existence of a psychological relationship between the offender and the act committed, such that punishment cannot be justified in the absence of intent or negligence attributable to the offender.[12] This principle is consistent with the characteristics of continental criminal law systems, such as that of the

[11] RB Budi Prastowo, *Delik Formil / Materiil, Sifat Melawan Hukum Formil / Materiil Dan Pertanggungjawaban Pidana Dalam Tindak Pidana Korupsi Kajian Teori Hukum Pidana Terhadap Putusan Mahkamah Konstitusi RI Perkara Nomor 003/PUU-IV/2006*, Jurnal Hukum Pro Justitia, Vol. 24, No.3, 2006, hlm. 223.
[12] Aditya Wiguna Sanjaya, *Ajaran Kesalahan dalam Hukum Pidana*, Cetakan I, Depok : Raja Grafindo Persada, 2023, hlm. 214.

Netherlands, which place the principle of *geen straf zonder schuld* as the primary basis for punishment. Therefore, the tendency of law enforcement practice in Indonesia to focus more heavily on the consequence in the form of state financial losses without adequately proving *mens rea* demonstrates a deviation from this fundamental principle.

In the context of Decision Number 34/Pid.Sus-TPK/2025/PN Jkt.Pst, the state financial losses and the granting of import permits used as indicators in determining the existence of corruption offenses potentially give rise to the risk of criminalizing public policies that were essentially adopted within the framework of carrying out governmental functions, such as maintaining the stability of national sugar prices and supply. This is related to the understanding that the element of state financial loss in corruption offenses must constitute an actual loss and must be connected with the existence of an unlawful act and the offender's culpability, rather than merely a potential loss or an administrative consequence of a policy.[13] Losses arising from a policy are more appropriately understood as consequences inherent in the administration of government rather than as a basis for imposing criminal liability for corruption offenses.

2. Criminal Liability of Public Officials for Sugar Import Policies Resulting in State Losses Despite the Absence of Proven *Mens Rea*

The criminal liability of public officials in policy-making fundamentally cannot be separated from the concept of authority within administrative law. In the administration of government, authority constitutes the legal basis that grants legitimacy to public officials to undertake actions or make administrative decisions in carrying out state functions.[14] Such authority may be obtained through attribution, delegation, or mandate, each of which provides officials with the capacity to act within the scope of authority prescribed by statutory regulations. In exercising such authority, public officials are frequently confronted with situations requiring decisions based on policy considerations and judgment. Under such circumstances, administrative law recognizes the concept of discretion as an instrument enabling public officials to make decisions or take actions when statutory regulations have not comprehensively regulated a matter or when immediate action is required in the interest of governmental administration. The exercise of such discretion is regulated under the Government Administration Law, which

[13] Christian Samuel Lodoe Haga & Ade Adhari, *Penghapusan Unsur Merugikan Keuangan Negara: Sinkronisasi Undang-Undang Tipikor dengan UNCAC*, Asas Wa Tandhim: Jurnal Hukum, Pendidikan & Sosial Keagamaan, Vol. 5, No. 1, 2026, hlm. 319.

[14] Jefferson Gerald Langkay, Ronald J. Mawuntu & Dani R. Pinasang, *Kajian Hukum Pelampauan Batas Kewenangan Pejabat Administrasi Yang Bertentangan Dengan Asas-Asas Umum Pemerintahan Yang Baik Berdasarkan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan*, Lex Administratum, Vol. 11, No. 04, 2023, hlm. 4.

provides governmental officials with the authority to make decisions aimed at overcoming governmental stagnation, ensuring legal certainty, and guaranteeing the effective administration of government. Nevertheless, discretion is not unlimited, as its exercise must continue to comply with the principle of legality, avoid conflicts of interest, and be carried out in good faith and in accordance with the purpose for which the authority was granted.

Although public officials are afforded discretion in policy-making, the exercise of such authority must remain within legal boundaries so as not to result in abuse of power. From the perspective of the Government Administration Law, abuse of authority may occur when officials exercise their authority contrary to the purpose for which it was granted, exceed the limits of their authority, or improperly combine authorities for particular interests. In this regard, it is important to distinguish between administrative fault and criminal fault in the exercise of such authority. Administrative fault focuses on errors or violations in the administration of government that may cause state losses, such that the primary issue to be proven is the existence of procedural or administrative errors rather than merely the occurrence of state losses as a consequence thereof. This differs from corruption offenses, which emphasize state financial losses arising from acts intended to enrich oneself or another party.[15]

In line with the principle of *ultimum remedium*, which places criminal law as a last resort after other legal mechanisms are no longer adequate, where state financial losses arise from administrative fault, the resolution should in principle first be pursued through governmental administrative mechanisms, including the obligation to reimburse state losses as regulated under Article 20 of the Government Administration Law. However, where the act is proven to contain elements of a criminal offense, criminal liability may still be imposed. Conversely, where no criminal elements are found but actual state losses have occurred, the matter may be resolved through civil mechanisms as regulated under Article 32 of the Anti-Corruption Law.[16]

Within the framework of national trade policy, the government possesses the authority to regulate export and import activities as instruments for maintaining economic stability and ensuring the availability of goods required by society. The Trade

[15] Ulfia Pamujiningsih, *Melihat Batas Kesalahan Administrasi, Maladministrasi Dan Tindak Pidana Korupsi Dalam Penyelenggaraan Pemerintaha*n, Rechtsvinding: Publikasi Ilmiah Hukum Dari Badan Pembinaan Hukum Nasional Kementerian Hukum Republik Indonesia, diakses pada 10 Maret 2026, https://rechtsvinding.bphn.go.id/articles/725

[16] Sandy Victor Hukunala & Della Paula Ajawaila, *Korupsi Sebagai Kesalahan Administratif Yang Menimbulkan Kerugian Keuangan Negara*, Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan, Vol. 8, No. 1, 2023, hlm. 86.

Law provides the legal basis for the government to control the distribution and availability of goods through various policies, including the regulation of import licensing for certain commodities. Such regulation aims to ensure the availability of essential goods, maintain price stability, and protect the interests of consumers and domestic business actors. Accordingly, import policy fundamentally constitutes part of the government's authority in managing the national trade system, such that decisions concerning the granting of import permits cannot be separated from the broader context of economic policy within governmental administration.[17]

In the context of the sugar import policy examined in Case Decision Number 34/Pid.Sus-TPK/2025/PN Jkt.Pst, the policy of granting import permits fundamentally cannot be separated from the government's authority to manage the stability of supply and prices of strategic commodities. Sugar constitutes one of the commodities categorized as an essential good with a direct influence on economic stability and the purchasing power of society. Accordingly, import policy is frequently employed as an instrument to balance domestic demand with limitations in domestic production. Under certain circumstances, the government may adopt policies accelerating or adjusting import quotas in anticipation of potential shortages or price increases in the market. Therefore, the policy of granting import permits fundamentally forms part of trade and market stabilization policy within the realm of public policy.[18]

The absence of proven *mens rea* in the sugar import case demonstrates that the determination of corruption offenses cannot merely be based on the existence of a policy granting import permits or the occurrence of state losses as a consequence of such policy. Consequently, the determination of criminal liability must first assess whether the act contains elements of abuse of authority accompanied by intent to benefit oneself or another party. Where such intentional elements cannot be proven, the existence of state losses must be analyzed more comprehensively by assessing the relationship between the policy adopted, the objectives of governmental administration, and whether there was any deviation from the purpose for which the authority was granted in adopting the policy.

[17] Suparji, *Pengaturan Perdagangan Indonesia Undang-Undang No. 7 Tahun 2014 Tentang Perdagangan*, Edisi I, Jakarta: UAI Press, 2014, hlm. 6-7.
[18] Hilmi Rahman Ibrahim & Hamka Halkam, *Perdagangan Internasional & Strategi Pengendalian Impor,* Cetakan I, Jakarta: Lembaga Penerbitan Universitas Nasional (LPU-UNAS), hlm. 39.

CONCLUSION

This study demonstrates that, in the practice of enforcing corruption law in Indonesia, there has been a shift from a culpability-based liability model toward a result-based liability model, characterized by the predominance of proving state financial losses over proving *mens rea*. These findings confirm that the position of *mens rea* as an essential element within the principle of *geen straf zonder schuld* has not yet been consistently implemented in judicial practice, particularly in cases related to public policy. Theoretically, this study contributes by reaffirming the importance of repositioning *mens rea* as the primary parameter of criminal liability, while more clearly distinguishing between occupational risk and criminal conduct within the context of governmental administration.

In the context of the criminal liability of public officials, this study finds that the absence of proven *mens rea* should constitute the determining boundary between administrative fault and corruption offenses, such that criminal punishment cannot be justified solely on the basis of state financial losses. The practical implication of this finding is the need for a reorientation of law enforcement policy that prioritizes the proof of culpability, both through prosecutorial guidelines and judicial interpretation that places greater emphasis on the subjective element of the offender. Furthermore, there is a need to strengthen the normative framework by explicitly distinguishing between abuse of authority of an administrative nature and abuse of authority that fulfills criminal elements, in order to prevent the criminalization of public policy. Accordingly, future criminal law reform should be directed toward strengthening the principle of *geen straf zonder schuld* as the principal foundation for ensuring legal certainty while simultaneously protecting the discretionary space of public officials in policy-making.

REFERENCES

Books:

Ibrahim, H. R., & Halkam, H. (2021). Perdagangan Internasional & Strategi Pengendalian Impor. Jakarta: Lembaga Penerbitan Universitas Nasional (LPU-UNAS).

Idris, M. F. (2023). Konsep Dasar Hukum Pidana: Jilid I. Semarang: Yayasan Prima Agus Teknik.

La Dee, M. (2024). Hukum Pembuktian Dalam Perkara Pidana. Medan: PT Media Penerbit Indonesia.

Moro Asih, M., dkk. (2025). Dasar-Dasar Hukum Pidana. Padang: CV. Lauk Puyu Press.

Purnama, I. K. A. (2023). Pembaruan Sistem Peradilan Pidana Indonesia. Bandung: PT

Refika Aditama.

Sanjaya, A. W. (2023). Ajaran Kesalahan Dalam Hukum Pidana. Depok: Raja Grafindo Persada.

Suparji. (2014). Pengaturan Perdagangan Indonesia: Undang-Undang No. 7 Tahun 2014 Tentang Perdagangan. Jakarta: UAI Press.

Waluyo, B. (2023). Hukum Pidana Dan Peradilan Pidana. Jakarta: LPPM Press.

Journals

Aji, A. D. (2024). Analisis Yuridis Hukum Pidana Dan Hukum Administrasi Dalam Perkara Tindak Pidana Korupsi Perspektif Critical Legal Studies. Lex Renaissance, 9(2), 309-332. https://doi.org/10.20885/JLR.vol9.iss2.art4

Alviolita, F. P., & Arief, B. N. (2019). Kebijakan Formulasi Tentang Perumusan Tindak Pidana Pencemaran Nama Baik Dalam Pembaharuan Hukum Pidana Di Indonesia. Law Reform, 15(1), 130-148.

Ar, A. M., Wirda, W., Rusbandi, A. S., Zulhendra, M., Bahri, S., & Fajri, D. (2024). Peran Niat (Mens rea) Dalam Pertanggungjawaban Pidana Di Indonesia. Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin, 1(3), 240-252. https://doi.org/10.71153/jimmi.v1i3.140

Awaludin, A. (2019). Menguji Pertimbangan Mens rea Dalam Pemidanaan Kasus Korupsi. Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijaya Kusuma, 21(1).

Balya, H., Syukran, M. Z., & Abrar, A. (2025). Peran Mens rea Dalam Sistem Hukum: Analisis Hubungan Dengan Prinsip Etika Dan Keadilan. As-Salam: Jurnal Studi Hukum Islam & Pendidikan, 14(1), 99-107.

Busroh, H. F. F. (2016). Pembuktian Terbalik Dalam Tindak Pidana Korupsi. To-Ra, 2(2), 335-352. https://doi.org/10.33541/JtVol5Iss2pp102

Fadlian, A. (2020). Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis. Jurnal Hukum Positum, 5(2), 10-19.

Fathuddin, F. (2015). Tindak Pidana Korupsi (Dugaan Penyalahgunaan Wewenang) Pejabat Publik (Perspektif Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan). Jurnal Cita Hukum, 3(1), 95-370.

Fridawati, T., etc., (2024). Perkembangan Teori Pertanggungjawaban Pidana Di Indonesia: Kajian Pustaka Terhadap Literatur Hukum Pidana. Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin, 1(3), 317-328.

Haga, C. S. L., & Adhari, A. (2026). Penghapusan Unsur Merugikan Keuangan Negara: Sinkronisasi Undang-Undang Tipikor Dengan UNCAC. Asas Wa Tandhim: Jurnal Hukum, Pendidikan & Sosial Keagamaan, 5(1).

Herang, A. R. P. (2025). Analisis Unsur Perbuatan Pidana Dalam Kasus Korupsi Impor

Gula Mantan Menteri Perdagangan Thomas Trikasih Lembong. Jurnal Analisis Hukum, 8(2), 177-192. https://doi.org/10.38043/jah.v8i2.7028

Hukunala, S. V., & Ajawaila, D. P. (2023). Korupsi Sebagai Kesalahan Administratif Yang Menimbulkan Kerugian Keuangan Negara. Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan, 8(1), 82-89.

Jalil, R. (2024). Dinamika Kebijakan Impor Gula: Perspektif Good Governance Dalam Pengambilan Keputusan Oleh Menteri Perdagangan. Innovative: Journal Of Social Science Research, 4(6), 7057-7066.

Kasman, M. (2025). Tuduhan Pelanggaran Wewenang Dalam Kasus Korupsi Tom Lembong: Perspektif Hukum. Locus Journal Of Academic Literature Review, 4(3), 168-176.

Kurdi, K., Ardhan, A., & Dadek, T. A. (2025). The Relevance of The Principle of No Criminal Punishment Without Fault (Geen Straf Zonder Schuld) in Corporate Criminal Liability in Indonesia. Jurnal Mercatoria, 18(2), 209-218.

Laila, N., Fatonah, M., & Rahmah, N. (2025). Seberapa Penting Terpenuhinya Unsur Mens rea Dalam Penetapan Perkara Pidana Pada Kasus Korupsi Di Indonesia. Triwikrama: Jurnal Multidisiplin Ilmu Sosial, 10(12).

Langkay, J. G., Mawuntu, R. J., & Pinasang, D. R. (2023). Kajian Hukum Pelampauan Batas Kewenangan Pejabat Administrasi Yang Bertentangan Dengan Asas-Asas Umum Pemerintahan Yang Baik Berdasarkan Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan. Lex Administratum, 11(4).

Mahaputra, I. N. T. W., & Laela, S. (2025). Pertanggungjawaban Hukum Pejabat Negara Dalam Tindak Pidana Korupsi Berdasarkan Sistem Peradilan Pidana Di Indonesia. Decisio: Law Journal, 2(1), 7-12.

Mallarangeng, A. B., & Ali, I. (2023). Pembuktian Unsur Niat Dikaitkan Dengan Unsur Mens rea Dalam Tindak Pidana Korupsi. Legal Journal Of Law, 2(2), 11-24.

Mandagi, S. (2021). Pemidanaan Percobaan Kejahatan Dalam Delik Aduan. Lex Crimen, 10(13).

Miru, G. V., Nirahua, S. E. M., & Wadjo, H. Z. (2023). Pertanggungjawaban Pidana Terhadap Jabatan Dalam Tindak Pidana Korupsi Pengadaan Barang Dan Jasa. Pattimura Legal Journal, 2(2), 74-1.

Mutaqqin, A. (2024). Telaah Asas Geen Straf Zonder Schuld Terhadap Pertanggungjawaban Pidana Atas Tindak Penipuan Melalui Modus Ritual Mistis. Jurnal Peradaban Hukum, 2(2), 58-61.

Nurhayati, R., & Gumbira, S. W. (2017). Pertanggungjawaban Publik Dan Tindak Pidana Korupsi. Jurnal Hukum Dan Peradilan, 6(1), 41-66. https://doi.org/10.25216/jhp.6.1.2017.41-66

Oktafianto, W. D., Kristiawanto, K., & Nainggolan, M. (2025). Pertanggungjawaban

Pidana Pelaku Turut Serta Dalam Tindak Pidana Korupsi Penerimaan Suap Oleh Hakim. Cendekia: Jurnal Penelitian Dan Pengkajian Ilmiah, 2(2), 274-286.

Prastowo, R. B. B. (2006). Delik Formil/Materiil, Sifat Melawan Hukum Formil/Materiil Dan Pertanggungjawaban Pidana Dalam Tindak Pidana Korupsi: Kajian Teori Hukum Pidana Terhadap Putusan Mahkamah Konstitusi RI Perkara Nomor 003/PUU-IV/2006. Jurnal Hukum Pro Justitia, 24(3).

Ramadani, R., Febriyanti, E. P., Putri, S. A. S., Ramadhan, M. F., Hasmidyani, D., & Budiman, M. A. (2024). Analisis Kebijakan Tarif Impor Gula Terhadap Permintaan Gula Di Indonesia. Journal Of Business Technology And Economics, 1(2), 79-85.

Saputra, M. R., & Hilyatunisa, N. (2025). An Analysis Of Judicial Considerations Of The Capitalist Economy In The Tom Lembong Case. 3(3), 303-315. https://doi.org/10.59653/jplls.v3i03.1852

Suhenriko, M. (2023). Implementasi Teori Hierarki Hans Kelsen Terhadap Perumusan Kebijakan Di Indonesia. Jurnal Ilmiah Multidisiplin, 1(2), 64-71.

Susanto, J., Solehah, S. M., Rahma, D. L., & Ilmanta, R. A. (2024). Implementation Of Criminal Responsibility For The Press From The Theory Perspective Of Paul Johann Anselm Von Feuerbach: Implementasi Pertanggungjawaban Pidana Bagi Pers Dari Perspektif Teori Paul Johann Anselm Von Feuerbach. Al-Musthalah: Jurnal Riset Dan Penelitian Multidisiplin, 1(2), 238-261.

Valentine, V. L., Eskanugraha, A. P., Purnawan, I. K. W. A., & Sasanti, R. S. B. (2023). Penafsiran Keadaan Tertentu Dalam Tindak Pidana Korupsi: Perspektif Teori Kepastian Hukum. Jurnal Anti Korupsi, 13(1), 14-27.

Legislation

Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

Undang-Undang Nomor 17 Tahun 2003 tentang Keuangan Negara.

Undang-Undang Nomor 1 Tahun 2004 Tentang Perbendaharaan Negara.

Undang-Undang Nomor 39 Tahun 2008 tentang Kementerian Negara.

Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan.

Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan.

Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

Putusan Pengadilan Negeri Jakarta Pusat Nomor 34/Pid.Sus-TPK/2025/PN Jkt.Pst.

Others

Kamus Besar Bahasa Indonesia (Online). (2025). Tanggung jawab. Diakses 20 Januari 2025, dari https://kbbi.web.id/tanggung%20jawab.

Pamujiningsih, U. Melihat Batas Kesalahan Administrasi, Maladministrasi Dan Tindak Pidana Korupsi Dalam Penyelenggaraan Pemerintahan. Rechtsvinding: Publikasi Ilmiah Hukum dari Badan Pembinaan Hukum Nasional Kementerian Hukum Republik Indonesia. https://rechtsvinding.bphn.go.id/articles

Perwira, P. C. A. (2024). Konsep Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi Setelah Putusan Mahkamah Konstitusi Nomor 25/PUU-XIV/2016 (Tesis, Universitas Islam Sultan Agung Semarang). Semarang: Universitas Islam Sultan Agung.