

## ***Justice-Based Reconstruction of Prosecutorial Anti-Corruption Policy In National Strategic Projects***

**Idianto Idianto**

Faculty of Law, Diponegoro University, Semarang, Indonesia  
Idianto73@gmail.com

### ***Abstract***

*This study aims to reconstruct the criminal law policy of the Attorney General's Office (AGO) in accelerating Indonesia's National Strategic Projects (PSN), which currently has not been fully grounded in the value of justice. The research finds that the prevention of corruption in PSN remains dominated by a penal (repressive) approach and lacks a balanced non-penal (preventive) strategy, despite the AGO holding a central role as a law enforcement agency. This imbalance demonstrates the urgency of reconstructing criminal law policies to align with the principles of justice and effectiveness in corruption prevention. Employing a normative legal research method, this study concludes that a comprehensive policy reconstruction is required through structural strengthening, substantive regulatory reform, and legal culture revitalization. The novelty of this research lies in proposing the formal inclusion of the Strategic Project Protection Team (PPS) within corruption prevention regulations. This reconstruction institutionalizes the AGO's preventive role. It introduces a justice-based framework where asset recovery and administrative remedies take precedence, thereby ensuring that national development proceeds effectively without compromising legal integrity.*

**Keywords:** *Attorney General's Office; Criminal Law Reform; National Strategic Projects*

## **1. INTRODUCTION**

Infrastructure represents a form of public capital encompassing roads, bridges, sewer systems, and other essential facilities. It plays a crucial role as the driving force behind both national and regional economic growth. From a macroeconomic perspective, the availability of infrastructure services influences the marginal productivity of private capital, while from a microeconomic standpoint, it reduces production costs and enhances efficiency.<sup>1</sup> Infrastructure also contributes significantly to improving the quality of life, increasing labor productivity, expanding employment opportunities, and maintaining macroeconomic stability through fiscal sustainability, the development of credit markets, and a balanced labor market. Accordingly, the Indonesian government continues to accelerate infrastructure development to improve the quality of life and welfare of its citizens. The state plays a strategic role in promoting economic growth and infrastructure development by acting as a regulator and stabilizing force within the economic system. In this context, the state serves as a normative reference for business actors, particularly

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<sup>1</sup> Agung Wardana and Dzaki Aribawa Darmawardana, "Pembangunan Sebagai Proses Eksklusi: Kajian Hukum Dan Ekonomi-Politik Atas Proyek Strategis Nasional," *Jurnal Hukum & Pembangunan* 54, no. 2 (2024): 269–87, <https://doi.org/10.21143/jhp.vol54.no2.1580>.

in public procurement activities, to ensure that economic operations are conducted in an orderly manner and in compliance with applicable legal and regulatory frameworks.<sup>2</sup>

The central and regional governments, along with business entities, are required to implement strategic development programs that promote growth and equitable development to enhance public welfare. These programs are implemented through National Strategic Projects (PSN), as regulated under Presidential Regulation No. 109 of 2020, the third amendment to Presidential Regulation No. 3 of 2016 on the Acceleration of National Strategic Project Implementation, and Government Regulation No. 42 of 2021 on the Facilitation of National Strategic Projects.<sup>3</sup> Within this framework, the Attorney General's Office (AGO) plays a crucial role in upholding the rule of law, protecting public interests, safeguarding human rights, and combating corruption, collusion, and nepotism (KKN), as mandated by Law No. 11 of 2021, which amends Law No. 16 of 2004 on the Attorney General's Office of the Republic of Indonesia.

However, the AGO's implementation of criminal law policies in the acceleration of PSN remains dominated by the penal (repressive) approach rather than being balanced with non-penal (preventive) measures. In the context of justice-oriented criminal law policy, balancing these two approaches is vital. The imbalance raises a fundamental issue of how the AGO's criminal law policies can be reconstructed to focus not only on enforcement but also on effective prevention of corruption in PSN. The urgency of this research lies in the pressing need to integrate justice values into the AGO's criminal law policies to create a more effective and fair corruption prevention mechanism. A policy reorientation is necessary so that the AGO functions not merely as a law enforcer but also as a protector of national strategic projects through the pursuit of substantive justice.

The solution proposed in this research is a reconstruction of the AGO's criminal law policy based on justice values by balancing repressive and preventive measures. Repressive measures should be applied only when preventive efforts fail to avert criminal acts. The combination of both approaches constitutes an ideal criminal law policy framework to address corruption proportionally and justly.

Numerous previous studies have examined legal issues concerning the role of law enforcement institutions in preventing corruption within development projects. One such study is conducted by Giawa, which offers an important contribution to understanding the role of the Prosecutor's Office in safeguarding the implementation of National Strategic Projects through a normative approach that comprehensively outlines the legal basis, intelligence functions, and the structure of the Strategic Development Safeguards Team. The strength of this study lies in its detailed

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<sup>2</sup> Zaenal Arifin, Muhammad Amirullah, and Tri Nugroho, "Praktik Persaingan Usaha Tidak Sehat Dalam Pengadaan Barang/Jasa Pemerintah Di Sektor Jasa Konstruksi," *Jurnal USM Law Review* 7, no. 2 (2024): 757–67, <https://doi.org/10.26623/julr.v7i2.8368>.

<sup>3</sup> Zainal Arifin Mochtar and Idul Rishan, "Autocratic Legalism: The Making of Indonesian Omnibus Law," *Yustisia: Jurnal Hukum* 11, no. 1 (2022): 29–41, <https://doi.org/10.20961/yustisia.v11i1.59296>.

mapping of the Prosecutor's Office's statutory authority, as well as its systematic explanation of preventive functions such as legal assistance, administrative oversight, and the mitigation of threats and obstacles that may hinder project execution. However, its main weakness is the absence of empirical evidence demonstrating how these safeguarding mechanisms operate in practice, leaving unaddressed critical issues such as overlapping institutional authority, coordination challenges, and variations in implementation capacity. From an analytical perspective, the study is relevant because it clarifies the normative foundation of the Prosecutor's Office's role. Yet, it does not progress toward proposing a reconstruction of criminal law policy that incorporates justice values and a balanced penal–non-penal framework, elements that are central to this study.<sup>4</sup>

Two, Arfa's study (2021) represents an important scholarly work examining the relationship between the use of discretion by law-enforcement officials and the potential for corruption in the resolution of legal cases. The strength of this study lies in its robust normative-juridical analysis, particularly in identifying legal loopholes, regulatory weaknesses, and discretionary spaces that create opportunities for the misuse of authority. It also provides a clear theoretical foundation regarding the linkage between discretion, moral hazard, and the risk of abuse of power. However, its weakness is the absence of empirical data capable of demonstrating actual patterns of discretionary misuse in practice, leaving unaddressed crucial factors such as institutional dynamics, legal culture, and the effectiveness of internal oversight mechanisms. From an analytical perspective, this study is relevant because it emphasizes the urgency of strengthening regulations and control mechanisms governing the use of discretion. Yet, it does not advance toward formulating a comprehensive model of criminal-law policy reconstruction grounded in justice values and institutional integrity, which is the focus of this study.<sup>5</sup>

Three, Pranoto's study (2024) offers an important contribution to understanding the preventive role of prosecutorial intelligence in combating corruption through the Strategic Development Safeguards (PPS) function, using an empirical and socio-legal approach to capture its implementation at the regional level. The strength of this study lies in its empirical demonstration that the PPS mechanism positively correlates with improved regional development performance, particularly through enhanced coordination, monitoring, and early detection processes that reduce administrative and legal bottlenecks. However, its weakness is the limited examination of institutional risks, as the study does not sufficiently explore how the Attorney General's Office manages potential conflicts of interest arising from its dual intelligence and prosecutorial functions. From an analytical perspective, the study is relevant in

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<sup>4</sup> Astuti Angelina Giawa and Ojak Nainggolan, "Peran Kejaksaan Dalam Pengamanan Pembangunan Proyek Strategis Nasional," *BIMA: Journal of Business Inflation Management and Accounting* 2, no. 1 (2025): 316, <https://doi.org/10.57235/bima.v2i1.4944>.

<sup>5</sup> Reza Syawawi, "Diskresi Dan Potensi Korupsi Dalam Penyelesaian Masalah Hukum Terkait Percepatan Pelaksanaan Proyek Strategis Nasional (Analisis Terhadap Peraturan Presiden Nomor 3 Tahun 2016 Dan Instruksi Presiden Nomor 1 Tahun 2016)," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 419–35, <https://doi.org/10.54629/jli.v18i3.735>.

showing the practical effectiveness of PPS as a non-penal anticorruption tool. Yet, it does not advance toward proposing reforms or policy reconstruction needed to strengthen justice-oriented and balanced penal and non-penal approaches, which are central to this study.<sup>6</sup>

Gap Statement: Based on this mapping, there is currently no research that comprehensively designs a reconstruction of the AGO's criminal law policy in PSN by balancing penal and non-penal approaches through the lens of substantive justice. This research aims to fill this gap by proposing a model that integrates the PPS function into formal regulations to prevent corruption effectively.

## 2. METHOD

This research employs a normative legal research method to examine the coherence of legal norms. To achieve a comprehensive analysis, the study utilizes a statutory approach, a conceptual approach, and a philosophical approach. These approaches are applied to analyze criminal law policies regarding the role of the Attorney General's Office (AGO) in securing National Strategic Projects (PSN) and tackling corruption. Instead of empirical data, this research relies on legal materials. These consist of primary legal materials (laws and regulations specifically related to the AGO, PSN, and corruption eradication) and secondary legal materials (relevant legal literature, academic journals, and official reports). The collection technique employed is a documentary study, conducted by inventorying and reviewing relevant legal documents. The collected materials are then analyzed using a qualitative normative analysis method through legal interpretation (grammatical and systematic) and legal argumentation to construct a justice-based policy model.<sup>7</sup>

## 3. RESULTS AND DISCUSSION

### 3.1 Existing Criminal Law Policy of the Prosecutor's Office in National Strategic Projects

The term "policy" is taken from the term policy (English) or *politiek* (Dutch), which can be universally interpreted as a general principle that serves to direct the state/government to fulfill public interests in realizing the welfare or prosperity of society (citizens). Policy is a program chosen by a person or group of people and can be implemented and affect several people in order to achieve goals. Starting from this foreign term, the term criminal law policy can also be referred to as "criminal law politics". In foreign literature, "criminal law politics" is often known by various terms, including "*penal policy*", "*criminal law policy*" (*strafrecht*

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<sup>6</sup> Tri Atmojo Setyo Pranoto and Adhy Nugraha, "Peran Intelijen Kejaksaan Dalam Pencegahan Tindak Pidana Korupsi Melalui Fungsi Pengamanan Pembangunan Strategis," *Journal of Madani Hukum - Journal of Social and Legal Sciences* 2, no. 2 (2024): 68–78.

<sup>7</sup> Muhaimin Muhaimin, *Metode Penelitian Hukum (Legal Research Methods)* (Mataram: Mataram University Press, 2020).

*politiek*)".<sup>8</sup> Criminal law policy in tackling corruption is increasingly becoming a must-do because of the diverse and widespread responses to corruption, which is increasingly seen from the growing corrupt behavior that has become part of the system in many developing countries, which tends to be carried out through institutions, workplaces, processes, and culture.<sup>9</sup> So that the eradication of corruption requires joint synergy, considering that the occurrence of corruption cannot be separated from the involvement of the implementation of various actions categorized as criminal acts, such as bribery, extortion, gratuities, embezzlement, various forms of fraud, and influence peddling, which are widely practiced by many people who hold various layers of certain positions.<sup>10</sup>

Abuse of authority, opportunity, and special means owned by state officials has a significant contribution to the background of corruption. Abuse of authority means abusing the obligations imposed or attached to one's position and position as a legal subject where he is and works.<sup>11</sup> Abuse of authority is related to efforts to eliminate the causes and conditions under which corruption crimes occur, including the problem of weak supervision and transparency. One of the efforts to increase transparency in the scope of public organizations in Indonesia is through information on the State Administrators' Wealth Report (LHKPN). The LHKPN helps the public to be able to actively participate in eradicating corruption, namely by utilizing the KPK facilities.<sup>12</sup> Whistleblower's System so that when finding officials who have a style of corruption, the public will be able to participate actively. The public who know about it can file a complaint in accordance with the applicable procedures, while the KPK will keep the identity of the complainant confidential. In addition to transparency, supervision by law enforcement agencies on national strategic projects currently run by the government also needs to be improved.<sup>13</sup>

One approach that is now getting more attention in the corporate world and the public sector is the implementation of *Corporate Governance Compliance* (CGC), namely compliance with the principles of *good* corporate governance (GCG).<sup>14</sup> GCG is an internal mechanism that emphasizes the importance of transparency, accountability, responsibility, independence, and fairness in every decision-making, operation, and interaction between business entities and stakeholders. In this context, CGC is not only an ethical standard, but also functions as a control

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<sup>8</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Bandung: Citra Aditya Bakti, 2010).

<sup>9</sup> Wawan Heru Suyatmiko, "Memaknai Turunnya Skor Indeks Persepsi Korupsi Indonesia Tahun 2020," *Integritas: Jurnal Antikorupsi* 7, no. 1 (2023): 161–178, <https://doi.org/10.32697/integritas.v7i1.717>.

<sup>10</sup> Suyatmiko.

<sup>11</sup> Arma Dewi, "Penyalahgunaan Wewenang Dalam Perspektif Tindak Pidana Korupsi," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 1 (2019): 24–40, <https://doi.org/10.52005/rechten.v1i1.4>.

<sup>12</sup> Dwi Harmono et al., "Kewajiban Pelaporan Harta Kekayaan Bagi Penyelenggara Negara," *Jurnal USM Law Review, Vol. 3, No. 2* 3, no. 2 (2020): 296–309.

<sup>13</sup> Muchamad Catur Rizky et al., "Upaya Pemberantasan Korupsi: Tantangan Dan Langkah-Langkah Konkret," *Jurnal Manuhara: Pusat Penelitian Ilmu Manajemen Dan Bisnis* 1, no. 4 (2023): 407–19, <https://doi.org/10.61132/manuhara.v1i4.726>.

<sup>14</sup> Mangisi Simanjuntak, "Mengungkap Tindak Pidana Korupsi Dari Pembuktian Terbalik Dan Laporan Harta Kekayaan Penyelenggara Negara (LHKPN)," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2016): 36–56, <https://doi.org/10.35968/jh.v7i1.125>.

system to minimize opportunities for corruption, collusion, and nepotism within the organization.<sup>15</sup> Effective implementation of CGC encourages the formation of an institutionalized anti-corruption culture through strengthening the internal control system, the existence of a whistleblowing system, an independent internal audit, and internal regulations such as codes of ethics, anti-bribery policies, and conflict of interest policies. In addition, CGC also creates compliance with external regulations, including the application of international standards such as ISO 37001 on Anti-Bribery Management Systems.<sup>16</sup> In practice, many state-owned enterprises (SOEs) and national private companies have begun to establish compliance units that have the task of monitoring internal compliance with the principles of CGC. This unit also plays a role in providing recommendations on potential corruption risks in projects or strategic decisions of the company.<sup>17</sup>

By integrating CGC into the corporate governance system, corruption is not only prevented through criminal threats, but also prevented from upstream by creating an ecosystem that upholds the value of integrity. In the context of national strategic projects (PSN), this is very important considering the size of the budget and the complexity of its implementation, which is very vulnerable to abuse of authority and corruption, procedural irregularities. Therefore, preventing corruption through CGC is part of a non-penal approach that supports the concept of *ultimum remedium*, which makes criminal law the last resort after administrative, ethical, and managerial approaches have been optimized.

In the context of regulation, Presidential Instruction No. 10/2016, which regulates the acceleration of PSN implementation, has not fully addressed the integrity risk management aspect. Therefore, CGC can fill this void by providing a governance framework that ensures project implementation is free from corrupt practices through corporate ethics instruments and internal legal compliance. The implementation of CGC in PSN implementing entities, both BUMN, BUMD, and private, is important as a form of moral and legal responsibility in the use of public funds. This also supports the application of the *ultimum remedium* concept in the criminal law of corruption, which makes crime the last step after managerial and administrative efforts have been taken.<sup>18</sup> In other words, CGC is a system-based corruption prevention tool that strengthens the integrity ecosystem in the implementation of National Strategic Projects while increasing public

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<sup>15</sup> Salma Zahada Sabhira and Muhammad Umar Fadhilah, "Analysis of Good Corporate Governance Principles in Corporate Law Regulation," in *Proceedings Series on Social Sciences & Humanities*, vol. 17, 2024, <https://doi.org/10.30595/pssh.v17i.1109>.

<sup>16</sup> Puti Surahati Tarigan et al., "Korelasi Dan Implementasi Good Corporate Governance Tentang Kinerja Financial Dan Dampaknya Pada Pelayanan Publik Perusahaan Swasta, Rumah Sakit, Pemerintahan, BUMN Serta Perguruan Tinggi," *Jurnal Kajian Dan Penalaran Ilmu Manajemen* 2, no. 2 (2024): 10–24, <https://doi.org/10.59031/jkpim.v2i2.385>.

<sup>17</sup> Angga Wijaya Holman Fasa and Sofia Yuniar Sani, "Sistem Manajemen Anti-Penyuapan ISO 37001:2016 Dan Pencegahan Praktik Korupsi Di Sektor Pelayanan Publik," *INTEGRITAS: Jurnal Antikorupsi* 6, no. 2 (2021): 187–208, <https://doi.org/10.32697/integritas.v6i2.684>.

<sup>18</sup> Dwi Siska Susanti, Nadia Sarah, and Nurindah Hilimi, "Indonesian Corporations Against Corruption: Prevention Strategies," *Integritas: An Anti-Corruption Journal* 4, no. 2 (2018): 207–32, <https://doi.org/10.32697/integritas.v4i2.222>.

confidence in the effectiveness of national development. National Strategic Projects (PSN) are a series of priority development programs set by the government to accelerate national economic growth. These projects are financed from the state budget, blended finance, and private investment, and often involve State-Owned Enterprises (SOEs) as the main implementers. However, due to their high economic value and complex processes, PSNs are highly vulnerable to corruption, collusion, and nepotism (KKN).

In this context, the application of the principles of Corporate Governance Compliance (CGC) is a necessity, especially when SOEs are involved as central actors in project execution. CGC refers to the practice of compliance with the principles of good corporate governance, which consists of transparency, accountability, responsibility, independence, and fairness.<sup>19</sup> Efforts to eradicate corruption do not solely rely on a penal approach (criminal law), but also require a non-penal strategy that is preventive, educative, and systemic. The non-penal approach emphasizes system improvement, institutional governance, and internalization of integrity values so that corruption can be prevented before it occurs. In this context, PT PLN (Persero), as a State-Owned Enterprise (SOE) that is directly involved in the implementation of the National Strategic Project (PSN), plays an important role in implementing the non-penal approach. Through a series of internal policies and mechanisms, PLN implements the principles of Corporate Governance Compliance (CGC) as part of the corruption prevention strategy of implementing Good Corporate Governance (GCG), which is supported by internal regulations and an anti-bribery management system (ISO. 37001:2016), as well as internal and external monitoring, are tangible manifestations of the non-penal approach taken by the company in creating an anti-corruption culture.

This non-penal approach is in line with the concept of *ultimum remedium* in criminal law, where punishment is used as a last resort when administrative mechanisms, ethics, and governance systems are unable to prevent crime. In the implementation of large-value and high-risk PSN, efforts such as those made by PLN directly contribute to reducing the potential for state losses and budget waste through systemic improvements. Thus, the implementation of anti-corruption policies by PLN is not only part of corporate compliance but also a concrete form of applying a non-penal approach in the eradication of corruption, which supports the realization of clean, effective, and sustainable national development. The legal instruments that form the basis for the implementation of non-penal policies in efforts to tackle corruption in Indonesia are currently scattered in various laws and regulations and national policies. Technically, this non-punitive effort is regulated in Presidential Instruction Number 10 of 2016 on Action to Prevent and Eradicate Corruption. This Presidential Instruction assigns government officials, including law enforcers, to take preventive and systemic steps in preventing corruption, as well as encouraging

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<sup>19</sup> Rizqi Yurice Prastika, "Efektivitas Penerapan Good Corporate Governance (GCG) Dalam Upaya Pencegahan Tindak Pidana Korupsi Di PT Kereta Api Indonesia (Persero)," *Journal of Legal Idea* 6, no. 1 (2020): 96–112, <https://doi.org/10.20884/1.jih.2020.6.1.134>.

accountability through reporting and monitoring systems. Non-punitive legal construction places corruption prevention not only as a moral or ethical matter, but as an integral part of a legal and binding system.

Presidential Instruction No. 10/2016 strengthens the legal construction of non-punitive policies by providing a legal basis for corruption prevention approaches that do not solely rely on legal action. Through this instruction, the government encourages bureaucratic reform, increased transparency, and accountability in governance. This is in line with the *ultimum remedium* principle, where criminal law is used as a last resort after administrative and civil mechanisms are ineffective. Thus, Presidential Instruction No. 10/2016 is an integral part of the national legal framework that supports the implementation of non-punitive policies in efforts to prevent and eradicate corruption in Indonesia. The development of PSN, which is spread across various regions, is intended so that its presence can be part of efforts to improve the quality and quantity of infrastructure in Indonesia, and directly or indirectly reduce the gap in per capita income growth and welfare between regions in the long term.<sup>20</sup> To accelerate the implementation of national strategic projects and based on studies from the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP), the government made changes to the PSN list through Presidential Regulation No. 58 of 2017 on Amendments to Presidential Regulation No. 3 of 2016 on Acceleration of the Implementation of National Strategic Projects. This change includes, among others, national strategic projects originating from non-government budgets coordinated and proposed by the Minister of Planning National Development/Head of the National Development Planning Agency to KPPIP, and if the national strategic project (PSN) is not in accordance with the spatial plan (RTRW), detailed regional spatial plan (RDTRD) or zoning plan for coastal areas and small islands.

Corruption in National Strategic Projects (PSN) is a very serious and frequent issue of concern in Indonesia. National Strategic Projects (PSN) are large projects prioritized by the government to accelerate infrastructure and economic development. However, due to their large scale and funding, these projects are often targeted by corrupt practices.<sup>21</sup> Corruption in PSN can take many forms, such as Budget Inflation (Mark-Up), Tender Fixing through auction processes that are supposed to be transparent and competitive, are often manipulated to favor certain parties, Bribery and Gratuities to Quality Reduction: Reducing the quality of materials and work from predetermined standards to save costs. At the same time, the funds received remain within the budget. The impact of corruption in PSN is very detrimental to the state and society. In addition to causing financial losses, this corruption can also hinder the development of infrastructure that

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<sup>20</sup> Agung Wardana and Dzaki Aribawa Darmawardana, "Pembangunan Sebagai Proses Eksklusi: Kajian Hukum Dan Ekonomi-Politik Atas Proyek Strategis Nasional," *Jurnal Hukum & Pembangunan* 54, no. 2 (2024): 259–88, <https://doi.org/10.21143/jhp.vol54.no2.1580>.

<sup>21</sup> Suparjo Sujadi, "Kajian Tentang Pembangunan Proyek Strategis Nasional (PSN) Dan Keadilan Sosial (Perspektif Hukum Pancasila)," *Jurnal Hukum Lingkungan Indonesia* 4, no. 2 (2018): 1–24, <https://doi.org/10.38011/jhli.v4i2.68>.

should provide great benefits to society. For example, infrastructure built with low quality has the potential to break down quickly and be dangerous for users. In tackling criminal acts (TP) of corruption through the penal route, Indonesia actually has an integrated criminal justice system (SPPT) with a positive legal framework regulated in various criminal law regulations, among others, the most important of which is Law No. 20 of 2001 in conjunction with Law No. 31 of 1999 on Eradication of Corruption. *In the case a quo*, the role of prosecutors based on the provisions of article 18 of Law No. 11 of 2021 on Amendments to Law No. 16 of 2004 on the Indonesian Attorney General's Office states that the Attorney General by Special Power of Attorney or by virtue of his position can act as a State Attorney in the fields of civil and state administration and administration in all judicial environments, both inside (litigation) and outside the court (non-litigation) for and on behalf of the state or government and for the public interest. Furthermore, the provisions of Article 30B in the field of intelligence, the AGO is also authorized, among others, to create conditions that support and secure the implementation of development, and to prevent corruption, collusion, and nepotism. Article 34 also authorizes the AGO to provide legal considerations to the President and other government agencies.

Based on the above provisions, the authority of the Prosecutor's Office to act on behalf of the state or government and BUMN does not solely arise because there is a request from the parties or the will of the prosecutor's office itself, but comes from the attributive authority given to the Law by the legislature and the granting of this authority is also based on the 1945 Constitution of the Republic of Indonesia because it is attached function as part of judicial power (judiciary). Legal assistance for the development of national strategic projects by the Attorney General's Office is carried out in two fields: the intelligence field by the Directorate of Strategic Development Security to oversee and secure the implementation of national strategic project development, and by the civil and state administrative fields, through the Directorate of Civil Affairs. If the state or government is sued or sued civilly, the Directorate of Legal Consideration provides legal opinions (Legal Opinion), assistance (Legal Assistance), and legal audits (Legal Audit). This legal assistance is carried out based on a cooperation agreement and submission of a request for assistance, and or followed by granting special powers from government agencies, state or government institutions, BUMN, BUMD and other legal entities if the government has a civil interest. With the authority possessed by the Prosecutor's Office related to development, potential legal problems in the future can be prevented, as well as potential obstacles that can hinder or slow down development can be eliminated or at least minimized, so that development can run on time as planned.

Combating criminal acts of corruption is certainly not enough with improvements to laws in the field of criminal law alone. Still, it must also be supported by reforms in other fields of law, especially in the field of state administrative law, so as to create good, efficient and effective government, namely good governance. This is because the crime of corruption is essentially the criminalization of several activities related to the implementation of state administrative law. The

provisions used as the basis for the implementation of bureaucracy in Indonesia today still do not support the realization of good governance that can support the eradication of corruption.

### **3.2 Obstacles in Prosecutorial Anti-Corruption Policy in National Strategic Projects**

The implementation of PSN assistance by the AGO in the field faces various Threats, Disruptions, Obstacles, and Challenges (AGHT). Material Barriers (Land and Budget Issues): Another significant obstacle is material issues related to land acquisition for projects (AGO), which identified land acquisition as an issue that "greatly affects the success or failure of the PSN that we are escorting". The complexities include: "There is no budget availability that should be prepared by the Government / Local Government" for land acquisition, the status of project land in forest or conservation areas that require special permits, and "long" and tough land price negotiations with owners. These constraints are administrative and technical in nature, but have the potential to impede projects or trigger corrupt practices (e.g., bribery to expedite land permits). For the AGO, these material obstacles are outside the direct authority of criminal enforcement, but must be anticipated through cross-agency coordination. In accordance with the *ultimum remedium* theory, the AGO tends to encourage the resolution of these administrative problems in a non-criminal manner first - for example, encouraging the local government to fulfill the land budget, accelerate permits through legal assistance, or mediate land negotiations.

2016 underlines the need to accelerate PSN for the public interest, so that the AGO, together with the relevant ministries/institutions, are obliged to find solutions so that bottlenecks such as land do not lead to project stagnation. However, if in the land acquisition process there are indications of abuse of authority (e.g., illegal levies or markup of compensation), criminal law enforcement must be applied. This is in line with the value of justice: non-penal policies do not mean ignoring violations of the law, especially those that harm state finances.<sup>22</sup> Bureaucratic and Regulatory Barriers: Bureaucratic obstacles are also an internal challenge for non-penal policies. An interview with the Attorney General's Office mentioned "overlapping laws and regulations" as an obstacle that is "quite draining" in accelerating PSN. The number of regulations that collide with each other or are not synchronized (for example, central vs. regional regulations, or sectoral regulations with different interpretations) makes project organizers confused and vulnerable to taking the wrong procedural steps. In addition, licensing problems often arise due to a legal vacuum (absence of technical rules), unclear norms, or duplication of rules. This condition can be exacerbated by the practice of illegal levies in the licensing bureaucracy, which adds costs and time. For the AGO, this kind of regulatory obstacle complicates the task of assistance because problem-solving is not merely legal, but requires policy reform at a higher level. In terms of the value of legal certainty (*Radbruch*), overlapping and unclear rules clearly undermine certainty, thereby increasing opportunities for corruption and abuse of legal loopholes. The theory of

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<sup>22</sup> Eko Pranoto, *Intelijen Kejaksaan Dalam Pencegahan Tindak Pidana Korupsi Pada Proyek Strategis Nasional* (Jakarta: Rajawali Pers, 2024).

Criminal Law Reform demands a solution through regulatory reform: the government needs to harmonize regulations related to PSN. This step has begun to appear, for example with the issuance of PP No. 42 of 2021 on the Ease of National Strategic Projects to simplify PSN licensing. However, if technical regulations still overlap, the AGO's assistance role will be less than optimal. The AGO itself, through the judicial intelligence function, seeks to ensure that there are no regulatory obstacles that hinder the project. One way is to conduct an initial mapping of potential overlapping regulations before the project runs, then provide input for improvement. In practice (AGO), the PPS Team conducts puldata and pulbaket (data and information collection) related to regulations at the beginning, so that the potential for regulatory AGHT can be anticipated and solutions can be found through renpam (security plan) and renggal (step plan). This effort is a form of elaboration of the value of expediency - the law must be useful by removing bureaucratic obstacles for smooth development.

The absence of assistance rules in each project phase and overlapping regulations erode legal certainty. In contrast, project security threats and land issues reduce the usefulness of development results for the community. The AGO's non-penal policy must be supported by legal reforms that ensure clarity of roles (Legal Reform), inter-agency synergy, and adequate resources. The *ultimum remedium* principle remains a guide, where administrative and preventive measures take precedence to avoid unnecessary criminalization. Still, criminal law enforcement remains on standby as a last resort to enforce the law.<sup>23</sup> In the framework of national strategic projects, a balanced combination of non-penal and penal efforts is expected to be able to tackle corruption more effectively in the future. Reconstruction or policy reconstruction is needed so that the current weaknesses are overcome, for example, a special implementing regulation is needed to regulate the pattern of AGO assistance in PSN, following up on the mandate of Presidential Instruction 1/2016 and filling the void in the Presidential Regulation on PSN. In addition, coordination with other supervisory institutions, such as the KPK and BPKP, needs to be improved in the form of data exchange and joint supervision. Thus, non-penal policies by the AGO can function optimally as the guardian of corruption prevention (preventive) while ensuring the outcome of integrated law enforcement: the achievement of corruption-free strategic development, beneficial to the welfare of the people, and fair and authoritative law enforcement. In the framework of the national strategic project, this balanced combination of non-penal and penal efforts is expected to be able to tackle corruption more effectively. In the future, policy reconstruction is needed so that current weaknesses are overcome. For example, special implementing regulations are needed that regulate the pattern of A G O assistance in PSN, following up on the mandate of Presidential Instruction 1/2016 and filling the void in the Presidential Regulation on PSN. In addition, coordination with other supervisory institutions, such as the KPK and BPKP, needs to be improved in the form of data

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<sup>23</sup> Yuspar Yuspar and Fahmiron Fahmiron, "Kewenangan Kejaksaan Penghentian Penuntutan Dalam Perkara Pidana Berdasarkan Restorative Justice," *UNES Law Review* 6, no. 2 (2023): 7071–7081, <https://doi.org/10.31933/unesrev.v6i2.1595>.

exchange and joint supervision. Thus, non-penal policies by the AGO can function optimally as the guardian of corruption prevention (preventive) while ensuring the outcome of integrated law enforcement: the achievement of corruption-free strategic development, beneficial to the welfare of the people, and fair and authoritative law enforcement.

The substance of the regulations contained in Presidential Instruction No. 10/2016- in the context of the procurement of goods and services-is basically aimed at eradicating corruption and abuse of power by public officials. This is systemic corruption in the bureaucratic chain that is always related to policymaking. On the one hand, existing policies are used to commit corruption. On the other hand, there is a limited understanding of some law enforcement officials of the meaning of "abuse of authority" in the realm of State Administrative Law, which is equated with the meaning of "against the law" in the realm of criminal law.<sup>24</sup> The overall correlation of the actions described with the regulations stipulated in Presidential Instruction No. 10/2016 is the opening of the value chain of the possibility of criminal acts of corruption in the procurement of goods and services in the implementation of national strategic projects. The existence of maladministration that has caused repeated administrative chaos is an indication that, in the implementation of national strategic projects, there may have been abuse of authority and corrupt acts by the organizers. This will result in the difficulty of achieving the targets of the program to accelerate the implementation of national strategic projects. In this context, actions that begin with maladministration can be categorized as criminal acts of corruption when they meet the element "can harm state finances or the state economy" The emergence of elements of state losses - in accordance with the substance of Presidential Instruction No. 10/2016 - must be resolved in criminal law in accordance with Law No. 31/1999 jo Law No. 20/2001 However, if there is no evidence of elements of state losses, in accordance with Law No. 30/2014, the settlement must refer to State Administrative Law.

Non-penal policy in countering corruption refers to an approach that does not involve direct criminal punishment but emphasizes preventive, educative, and structural efforts to prevent corruption. The urgency of this policy is very important in the context of countries with high levels of corruption because relying solely on criminal law enforcement is often not effective enough to eradicate corruption as a whole. In the context of discussions on crime prevention, including corruption prevention, the term Criminal Policy is known. *Criminal Policy*, as a rational effort of society in tackling crime, can be carried out operationally through both penal and non-penal means. Penal and non- penal means are a pair that cannot be separated from each other; it can even be said that they complement each other in the effort to tackle corruption.<sup>25</sup>

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<sup>24</sup> Margaret Pangaribuan et al., "Penyalahgunaan Wewenang Ditinjau Berdasarkan Hukum Administrasi Negara: Studi Kasus Nomor 188.45/512/KPTS-BPT-2018 Tentang Pemberhentian Karena Melakukan Tindak Pidana Kejahatan Jabatan Atau Tindak Pidana Kejahatan," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 1, no. 3 (2024): 145–52, <https://doi.org/10.62383/demokrasi.v1i3.260>.

<sup>25</sup> Imelda Hasibuan and Sunariyo Sunariyo, "Analisis Yuridis Perbuatan Penyuaipan Dalam Tindak Pidana Korupsi," *Jurnal Ilmu Hukum "THE JURIS"* 7, no. 2 (2023): 445–452, <https://doi.org/10.56301/juris.v7i2.1051>.

When viewed from a macro criminal political perspective, crime prevention policies using means outside of criminal law or non-penal policy are the most strategic policies. This is because a non-penal policy is more of a preventive measure against the occurrence of crime. In essence, it cannot be denied that repressive measures also contain prevention, but it needs to be realized that the real prevention is in the form of maximum efforts not to commit crimes.<sup>26</sup>

### **3.3 Justice-Based Reconstruction of Prosecutorial Criminal Law Policy**

The reconstruction of non-penal policies in efforts to tackle corruption by the Prosecutor's Office in the acceleration program for the implementation of national strategic projects based on justice values is an approach that aims to strengthen efforts to prevent and prosecute corruption by not only relying on criminal sanctions, but also by implementing strategies that support the development of fairer and more effective systems and policies.<sup>27</sup> Regarding corruption crimes that harm the state, Article 4 of the Anti-Corruption Law states that the return of financial losses or the restoration of the state economy does not eliminate the criminalization of the perpetrators of corruption crimes. This means that if the perpetrator of a corruption crime can return the state's financial losses, he will still receive a prison sentence because the return of state financial losses is an additional penalty, the return of state financial losses as an additional penalty is regulated in Article 18 paragraph (1) of the Anti-Corruption Law.<sup>28</sup> The regulations contained in the Anti-Corruption Law tend to cause other problems, including the fact that due to the focus on physical imprisonment, the state's financial losses will not be recovered and returned, when the perpetrators of corruption are given imprisonment sanctions, the state will lose more because it has to spend money to facilitate corruption convicts, and the threats in this Law are no longer relevant and do not pay attention to the principle of economic analysis of law, which principle will deter the perpetrators of corruption with fines and asset recovery that must be carried out. The principle of economic analysis of law is an interdisciplinary science that seeks to see the existence of law, especially its sanctions, in relation to economic principles.

The application of the principle of *economic analysis of law* in environmental disputes is that this theory is very helpful in relation to calculating the amount of compensation that can support the restoration of the environment in the future both for the victims and for the environment itself so that through the application of this theory it will help judges in deciding environmental cases that fulfill a sense of justice, certainty, and usefulness. In addition, in tax disputes, this theory can be used in tax amnesty policies that will benefit all parties, including the state, taxpayers, and the community. In accordance with the basic concepts of economic analysis of law theory, namely

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<sup>26</sup> Irvino Rangkuti et al., "Intelligence Function in Preventing Corruption: Indonesian Prosecutor's Office and Strategic Development Security," *KnE Social Sciences*, 2024, 716–37, <https://doi.org/10.18502/kss.v8i21.14788>.

<sup>27</sup> Dandi Jayusman, Annarentika Faajra Shakhila, and Benedikta Wewieta Li Pena, "Penyalahgunaan Kekuasaan Dan Viktimisasi Proyek Strategis Nasional Di Pulau Rempang," *Jurnal Hukum & Pembangunan* 55, no. 2 (2025), <https://doi.org/10.21143/jhp.vol55.no.2.1791>.

<sup>28</sup> Bambang Prakoso, "Optimalisasi Pemulihan Kerugian Keuangan Negara Melalui Jalur Non-Penal Dalam Proyek Pembangunan," *Jurnal Hukum Pembangunan* 52, no. 1 (2022): 18.

maximization, balance, and efficiency, as expected by the government through the tax amnesty policy. This is done by the way the state can optimize tax revenue so that taxpayers get relief in paying taxes, and the community can enjoy tax amnesty with development.

The recovery of state financial losses due to corruption is an important and prioritized matter in the eradication of corruption. The concept of recovering state financial losses can be applied with the theory of asset recovery or asset recovery from corruption crimes. Asset recovery can. It is used as a preventive measure for corruption crimes, first, it occurs in the presence of assets controlled by corruptors, so that they will lose resources to commit other crimes.<sup>29</sup> Second, by attacking the motive of the crimes of the corruptors directly, there is no more opportunity to enjoy the proceeds of the crime, which is eliminated, or at least minimized. The return of assets will eliminate the goal that is the motive for criminal acts and the absence of opportunities to achieve that goal can eliminate the motive that drives a person to commit a crime. Third, with the return of assets, there is a message conveyed to the public that there is no safe place in this world for corruptors to hide the proceeds of their criminal acts, as well as giving a message that no one can enjoy the assets of corruption, as the doctrine of "crime doesn't pay". The Anti-Corruption Law should also emphasize the application of the Economic Analysis of Law theory. An urgent and important thing for law enforcers, especially in Indonesia, is to return to the main objective of eradicating corruption. With the application of the elimination of imprisonment sanctions, the author argues that this will be more effective in eradicating criminal acts of corruption, with the condition that the perpetrators of corruption must first return the state's financial losses, so that the imprisonment sanction is no longer the main punishment, but can be waived when the perpetrators of corruption carry out the condition.

So far, Indonesia, in dealing with corruption cases, has tended to prioritize the punishment of the perpetrators of corruption rather than the return of state assets. Corruption eradication is focused on three main issues, namely prevention, eradication, and asset recovery. Therefore, law enforcement agencies are needed to handle corruption crimes, in the context of the legal structure, including law enforcement institutions, authority, and formal mechanisms that regulate how law enforcement works. In the context of PSN, the structure of countering corruption involves several key components: The Attorney General's Office (as a law enforcement officer), APIP (K/L or regional Inspectorate, BPKP), the Police, as well as special units such as the Committee for the Acceleration of Priority Infrastructure Delivery (KPPIP) that monitor PSN. Based on Presidential Regulation No. 3 of 2016 jo. Presidential Regulation No. 109 of 2020, if there are reports of irregularities in the implementation of PSN, the current mechanism requires settlement through administrative channels first, instead

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<sup>29</sup> Adithiya Diar, Tri Imam Munandar, and Saidatul Nadia Abd Aziz, "A Comparative Analysis of the Transformation of Corruption Practices in Indonesia and Malaysia," *Indonesian Journal of Criminal Law Studies* 10, no. 2 (2025): 851–900, <https://doi.org/10.15294/ijcls.v10i2.30206>.

of direct criminal proceedings. Reports from the public about alleged abuse of authority in PSN that go to the Attorney General's Office or the Police must also be forwarded to the head of the relevant ministry/institution or regional head to be examined and followed up internally within a 5-day time limit. Furthermore, the head of the agency must involve APIP to audit further within a maximum of 30 days. The results of the APIP audit will determine the follow-up. If it is only an administrative error (whether it causes state losses or not), then it is sufficient to resolve it with administrative corrections and refunds. Only if APIP finds indications of real corruption should the case be referred back to the Attorney General's Office or the Police for enforcement of criminal law. From a structural perspective, this approach aims to prevent projects from being held hostage by the fear of over-criminalization; officials are allowed to correct administrative errors first, so that PSN development can continue. However, implementation of this structure faces challenges: cross-agency coordination is often suboptimal, APIP capacity varies, and oversight by the AGO over administrative processes is weak. In addition, there is a risk that this mechanism could be abused to delay or avoid enforcement if the integrity of the supervisory apparatus is weak. APIP occupies a strategic position in managing public complaints, as public participation constitutes a fundamental instrument in supporting oversight functions over civil servants to ensure the realization of good and clean governance; however, the effectiveness of APIP's function remains limited.<sup>30</sup>

Based on the description above, the reconstruction of non-penal policies to overcome corruption in PSN by the AGO must be carried out in an integrated manner in all three components of the legal system. The structural aspect is strengthened through coordinated institutions (integrated task force, strengthening JAM Intelligence, APIP-APH synergy) so that the corruption prevention process runs smoothly institutionally. The substance aspect is clarified by updating laws and regulations - starting from the revision of the AGO Law that provides a clear mandate for prevention efforts, adjusting the Presidential Regulation on PSN that closes implementation loopholes, to operational technical rules - so that there is legal certainty and detailed guidance for implementers. The legal culture aspect is changed by instilling the values of integrity, collaboration, and prevention orientation among officials and increasing the role of the community, all of which create a conducive environment for non-penal policies. These three aspects are like supporting legs that must be balanced. Changes in structure and substance without accompanying cultural changes can lead to implementation gaps (good rules but not implemented). Conversely, a strong anti-corruption culture needs to be facilitated by supportive rules and institutions. Effective non-penal policies will eliminate factors conducive to corruption early on, so that the number of corruption cases that must be

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<sup>30</sup> Muhammad Nur Aflah et al., "Kedudukan Hukum Aparatur Pengawasan Intern Pemerintah Dalam Pengawasan Pengadaan Barang/Jasa Pemerintah," *Jurnal USM Law Review* 4, no. 2 (2021): 631–50, <https://doi.org/http://dx.doi.org/10.26623/julr.v4i2.4279>.

dealt with by penal action can naturally decrease (not because they are covered up, but because they are successfully prevented)

Ultimately, this reconstruction is in line with the purpose of the law to achieve justice and expediency. National development through PSN can take place quickly and efficiently, while still upholding good governance. The AGO, as part of the legal structure, with the support of adequate regulatory substance and a new legal culture, can transform into a "prosecutorial institution that is also reliable in prevention" - carrying out a balanced national legal policy between repression and prevention. Thus, countering corruption is no longer partial and reactive, but comprehensive and proactive for the prosperity of the people as mandated by the 1945 Constitution.

#### **4. CONCLUSION**

Conclusion First, the current construction of criminal law policies by the Attorney General's Office in National Strategic Projects (PSN) is still dominated by a penal (repressive) approach. While the AGO plays a role in ensuring compliance, the policy lacks a fully integrated, justice-oriented preventive strategy, leading to an imbalance in corruption eradication efforts. Second, this lack of optimality is caused by structural and substantive weaknesses, including overlapping regulations, insufficient coordination between oversight bodies, and a legal culture that continues to prioritize formalistic enforcement over substantive justice and asset recovery. Third, this study proposes a reconstruction model that harmonizes penal and non-penal measures. The reconstruction involves strengthening the legal structure through better institutional coordination, reforming regulatory substance by formalizing the role of the Strategic Project Protection Team (PPS) in corruption prevention laws, and revitalizing legal culture to prioritize prevention and asset recovery. Recommendation: It is recommended that the government and the AGO formulate specific implementing regulations that govern the PPS assistance pattern in PSN. This regulation should explicitly prioritize administrative and civil asset recovery mechanisms for state losses, utilizing criminal enforcement strictly as a last resort to ensure both legal certainty and the successful acceleration of national development.

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