

Human Rights Protection in Structural Corruption Through State Capture Practices by State and Non-State Actors

Riyandi ^{1*}, Noer Wisnanto ², Heri Suseno Putra ³, Wijayono Hadi Sukrisno ⁴, Husni Thamrin ⁵

¹⁻⁵ Universitas Pertiba, Indonesia

Email : anda.riyandi@gmail.com

Korespondensi penulis: anda.riyandi@gmail.com

Abstract. *The practice of state capture has become one of the most dangerous forms of structural corruption because it involves the control of state institutions by state and non-state actors for personal and group interests. This phenomenon creates distortions of the principle of the rule of law, undermines the democratic system, and directly violates human rights (HAM). In Indonesia, the involvement of political elites, bureaucracy, and economic oligarchs in the legislative process, public policy, and distribution of state resources has led to the weakening of institutions, marginalization of vulnerable groups, and obstruction of the fulfillment of human rights as guaranteed by the 1945 Constitution, Law No. 39 of 1999 concerning Human Rights, and international instruments such as the International Covenant on Civil and Political Rights (ICCPR). This study uses a normative juridical approach and conceptual analysis of state capture-based corruption by examining the inadequacy of existing regulations, particularly in the Corruption Crime Law. The results indicate that there is no explicit regulation regarding state capture as a criminal offense, as well as weak prevention mechanisms and systemic oversight of the infiltration of non-state actors into government structures. Therefore, legal reform is needed through the establishment of new norms, strengthening law enforcement and human rights institutions, and increasing public participation in the legislative process to protect human rights from the threat of structural corruption. These efforts are crucial steps in maintaining the rule of law and social justice in Indonesia.*

Keywords: *Human Rights, Legal Reform, State Capture, State Non-State Actors, Structural Corruption.*

1. INTRODUCTION

The practice of state capture has increased significantly in the last decade and has become a new face of modern corruption (Emirzal, 2023). Unlike traditional forms of corruption, which are casuistic and individual, state capture occurs systematically and involves actors capable of controlling state institutions for narrow interests (Ambarwati, 2021). This phenomenon occurs when political and economic power infiltrates the heart of public policymaking, directing the direction of state laws, regulations, and decisions into the hands of a small group. The sustainability of substantive democracy is threatened because power is no longer managed based on the principle of checks and balances, but rather on transactional alliances between political elites and capitalists (Thamrin, 2020). In such conditions, the state loses its primary function as a protector of the public interest and becomes a tool for private interests.

The damage to state function due to state capture has a direct impact on human rights (Minal, 2025). Citizens' rights that should be guaranteed by the state, such as the right to health, education, employment, and justice, are neglected because decision-making is no longer directed at meeting the needs of the community. When public policy is influenced by vested

interests that conflict with the principles of social justice, human rights violations become inevitable (Efendi, 2024). Structural corruption, occurring at the level of regulation formation and policy implementation, has exacerbated inequality and social exclusion (Lubis, 2025). The state has failed to fulfill its role as a duty bearer, leaving citizens victims of a manipulatively controlled system.

Oversight of state and non-state actors involved in state capture remains very weak, both institutionally and legally (Kim, 2021). Oversight institutions such as the Corruption Eradication Commission (KPK), the Ombudsman, and the Supreme Audit Agency (BPK) are often subject to intervention by political forces seeking to maintain the status quo (Wulandari, 2024). Checks and balances are ineffective because most actors within the legal and political systems share the same vested interests (Habibah, 2025). A closed and non-participatory legislative process facilitates policy co-optation by elites (Abdullah, 2025). The absence of sanctions for abuse of power at the structural level allows the practice of state capture to continue unhindered.

Structural corruption refers to a form of corruption embedded in the power structures and state institutions (Aiman, 2024). Unlike bribery or gratuities, which are transactional and limited in nature, structural corruption permeates all aspects of the government system, including the policy formulation process, the creation of laws and regulations, and the implementation of public programs (Prasojo, 2023). State capture is the most extreme form of structural corruption because it involves complete control of state institutions by certain actors with economic and political influence (Jayusman, 2023). This scheme allows them to govern the country without holding formal office, simply by influencing decision-makers. This type of corruption is difficult to detect because it is often disguised as legal legitimacy.

The characteristics of state capture can be identified by several consistent patterns that emerge across various countries. First, the co-optation of state institutions, such as the legislative, judicial, and executive branches, through the selection of officials loyal to a particular group (Koho, 2021). Second, the formulation of public policies that deviate from the public interest and instead benefit a select group of elites (Budi, 2024). Third, the use of biased regulations as a legal instrument to perpetuate domination. In this situation, the law no longer functions as a tool of justice but rather as a means of legalizing political and economic domination (Al Banna, 2025). The consequence is structural disparities in the distribution of state rights and resources.

Human rights protection in Indonesia is legally regulated through various national and international legal instruments. Law No. 39 of 1999 concerning Human Rights serves as the primary umbrella that recognizes and guarantees various basic human rights, from the right to life, the right to family, the right to justice, to the right to welfare (Sholihah, 2024). Article 71 of this law states that the government is obliged to respect, protect, uphold, and promote human rights as the primary responsibility of the state. These principles are reinforced through various implementing regulations and institutions such as the National Commission on Human Rights. However, in practice, human rights protection is weakened when state policies are co-opted through state capture.

States have three primary obligations regarding human rights: respect, protect, and fulfill. The obligation to respect requires states to refrain from intervening in ways that violate citizens' human rights (Ayuninsi, 2025). The obligation to protect requires states to prevent third parties, such as corporations or political elites, from committing human rights violations. The obligation to fulfill requires states to take proactive steps to provide adequate public services and legal protection. When state capture occurs, all of these obligations become dysfunctional. The state is no longer a protector, but instead colludes with perpetrators of human rights violations through regulations designed to benefit certain parties.

The International Covenant on Civil and Political Rights (ICCPR), ratified through Law No. 12 of 2005, is also an important reference for human rights protection (Jailani, 2021). The ICCPR contains universal principles such as the right to legal recognition, freedom of expression, political participation, and protection from torture. States parties are obligated to ensure that these rights are not violated, including by non-state entities. However, when regulatory power is controlled by an oligarchy or a particular group, fulfillment of obligations under the ICCPR becomes fictitious. Many cases demonstrate that human rights violations occurring in countries practicing state capture are actually carried out legally and formally through public policy.

Montesquieu's theory of state power emphasizes the importance of the separation of powers as the foundation of a state based on the rule of law. Each branch of government, executive, legislative, and judicial, must function independently to prevent the concentration of power that endangers citizens' freedoms (Rachamadika, 2024). State capture undermines this principle because power is controlled by a single group through multiple channels of influence. Institutional integrity theory states that an institution will lose its public function if it is too strongly influenced by private interests (Akbar, 2025). This phenomenon explains why formally existing state institutions can become irrelevant or even endanger social justice.

The elite dominance and capture theories proposed by Stigler and further developed by Hellman and Kaufmann demonstrate that in weak democratic systems, public policy is vulnerable to manipulation by political and economic elites (Mitra, 2022). They not only exploit existing regulations but also create new ones that benefit their positions. Their power is not limited to formal power but also stems from informal networks that infiltrate the legislative and judicial processes. This theory helps explain how state capture can occur in a legalistic manner, through formal processes that appear democratic but are actually manipulated behind the scenes.

The theory of substantive justice in constitutionalism emphasizes that law should not be limited to procedure but must be oriented towards real justice for citizens (Gusman, 2023). A state that adheres to the principle of substantive justice not only formally complies with the law but also ensures that the substance of the law reflects the values of justice, equality, and protection of the vulnerable. When regulations are used to perpetuate the interests of certain groups, the substance of the law loses its spirit of justice. State capture undermines the principle of substantive justice because laws are created not based on principles of social justice, but rather on elite compromises that sacrifice the interests of the masses.

2. METHODS

This research uses a normative juridical method with a statutory and conceptual approach. The statutory approach is conducted by examining various relevant legal instruments to examine the relationship between the practice of state capture and human rights protection in Indonesia, including the 1945 Constitution of the Republic of Indonesia, Law Number 31 of 1999 *juncto* Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, Law Number 39 of 1999 concerning Human Rights, and Law Number 19 of 2019 concerning the Corruption Eradication Commission. This approach is used to identify the limitations of positive legal substance in dealing with the practice of usurpation of state institutions by state and non-state actors. Meanwhile, the conceptual approach is used to build a theoretical understanding of the concepts of state capture, structural corruption, and their impact on the principles of the rule of law and human rights protection. It is based on doctrinal analysis and the thoughts of legal experts, academic literature reviews, and international standards such as the United Nations Convention against Corruption (UNCAC). By combining these two approaches, this study aims to develop a comprehensive legal argument regarding the need for a reformulation of anti-corruption norms that explicitly recognize state capture as a form of serious legal violation that has an impact on limiting the basic rights of citizens.

3. RESULT AND DISCUSSION

The Role of State and Non-State Actors in the Practice of State Capture

State actors hold strategic positions within power structures that can be exploited to manipulate policies and regulations. The executive, legislative, and judicial branches not only play a role in creating and implementing laws but can also serve as instruments for certain groups with political and economic power. Manipulation by state actors is often disguised as formal legal mechanisms, yet its substance deviates from the principles of justice and the public interest. When state institutions lose their independence and submit to the direction of certain elites, the state no longer serves as a protector of the people's interests but instead becomes a tool of oligarchic power. As a result, state structures become vulnerable to state capture, which undermines the integrity of the legal system and democracy.

The revision of the Corruption Eradication Commission Law through Law No. 19 of 2019 is a significant case study demonstrating legislative intervention aimed at weakening anti-corruption institutions. This law revises Law No. Law No. 30 of 2002 concerning the Corruption Eradication Commission (KPK) was amended by adding articles that limit its independence, such as Article 12B, which requires permission from the Supervisory Board to conduct wiretapping, and Article 3, which declares the KPK an executive body. These revisions fundamentally altered the KPK's structure and reduced its effectiveness in eradicating corruption. The lawmaking process took place without meaningful public participation and sparked widespread protests from civil society, academics, and anti-corruption activists. The legislature has used its constitutional authority to enact policies that serve specific political interests, rather than strengthen the integrity of the rule of law.

The influence of political oligarchy on the direction of law enforcement becomes increasingly apparent when the legislative and oversight processes are no longer based on the principle of public interest. A political oligarchy is an informal coalition of political elites and capitalists capable of directing strategic state decisions, including the appointment of public officials, the direction of national policy, and even budget allocation. In such a system, the political process is not based on meritocracy or transparency, but rather on loyalty and the return on power. This contradicts the principle of clean state governance free from corruption, collusion, and nepotism (KKN), as stipulated in Articles 3 and 5 of Law No. 28 of 1999 concerning Clean State Administration Free from Corruption, Collusion, and Nepotism. The dominance of oligarchies has deprived the law of its corrective role, and state institutions have become part of a closed network of interests.

Non-state actors also play a significant role in the practice of state capture, particularly large corporations, businesspeople, and special interest groups. They possess substantial financial capacity and extensive networks of power, which they use to influence the direction of public policy and decision-making within state institutions. Through political campaign funding, business partnerships, and economic concessions, they can exert influence over public officials. In some cases, large corporations are involved in drafting laws directly related to their business sectors, such as regulations on mining, forestry, and energy. The role of these non-state actors demonstrates how private entities can legally control public resources, which is destructive to the public interest.

The pattern of power relations between state and non-state actors is reflected in the practices of political donations, lobbying for regulatory drafting, and the holding of oversight institutions hostage. Political donations are often not transparently recorded and are used as negotiating tools to obtain post-election benefits, such as government projects, strategic positions, or the creation of favorable regulations. Lobbying for regulations is carried out through personal approaches to lawmakers, through economic pressure, and even bribes disguised as institutional contributions. Oversight institutions such as the Corruption Eradication Commission (KPK), the Supreme Audit Agency (BPK), and the National Commission on Human Rights (Komnas HAM) are held hostage by placing loyal individuals in key positions, who then serve as protectors of oligarchic interests. These practices are not explicitly regulated in Indonesian law but severely undermine the principles of clean and accountable governance.

The co-optation of state policy is often accompanied by a systematic weakening of oversight institutions. Following the revision of the KPK Law, this institution no longer holds the strong authority it once did. Law No. 19 of 2019 introduced the Supervisory Board as a new structure with the authority to approve strategic actions such as wiretapping, seizures, and searches. Articles 37B through 37G establish the Supervisory Board as an entity with significant authority over the operational work of the Corruption Eradication Commission (KPK), which was previously independent. The construction hampers a rapid response to corruption cases and opens up opportunities for intervention in the legal process. An institution that was once a symbol of corruption eradication has instead become part of a co-opted system of power.

The selection of commissioners in oversight institutions is often based on political considerations, rather than competence or integrity. The recruitment process for public officials in oversight institutions such as the National Commission on Human Rights (Komnas HAM),

the Ombudsman, and the Witness and Victim Protection Agency (LPSK) is highly vulnerable to interference from party elites and ruling coalitions. As a result, individuals with a track record of loyalty to particular interests are more easily granted strategic positions. This weakens the independence of these institutions, making them political tools rather than guardians of justice and human rights protection. Their decisions and recommendations tend to be lenient toward violations committed by those in power.

The weakening of oversight institutions has a direct impact on the protection of human rights, particularly the right to justice and clean governance. Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, and certainty of fair law, as well as equal treatment before the law. If law enforcement and oversight institutions are held hostage by elite interests, the right to justice becomes a mere illusion. The people no longer have equal access to legal processes and public services. In such a situation, corruption is not only a violation of state finances but also a violation of citizens' basic rights.

Clean and accountable governance is a crucial prerequisite for protecting human rights, as stipulated in Article 9 paragraph (3) of Law No. 39 of 1999 concerning Human Rights, which states that everyone has the right to a clean and authoritative government. When public policy is influenced by oligarchic networks and oversight institutions no longer function independently, the state fails to provide a safe and just space for all its citizens. Public decisions benefit only a small elite, while the majority of the people experience marginalization. The right to fair services, meaningful participation, and social justice is neglected due to the practice of state capture that is allowed to go uncorrected.

This situation demonstrates that state capture poses a serious threat to the legal system and human rights in Indonesia. The law, which should be a tool of justice, has become a tool for legitimizing the dominance of false power. Unless structural reforms are implemented in state institutions, including recruitment mechanisms and internal oversight, state capture will continue to spread and undermine public trust in the legal system. Strengthening the role of civil society, ensuring transparency of public information as stipulated in Law No. 14 of 2008, and establishing regulations that limit the influence of oligarchs are urgently needed. Without these concrete steps, human rights protection will remain an empty slogan in a co-opted system.

The Impact of State Capture Practices on Human Rights Protection and Positive Legal Evaluation

Violations of economic, social, and political rights are the most glaring impact of the systematic practice of state capture. When public policy is controlled by a small elite who prioritize only their own political and business interests, the public's access to public services

is neglected. The rights to education, health, and social protection, as guaranteed in Article 28C paragraph (1) and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, are not realized fairly and equitably. The state no longer functions as a protector of the public interest, but rather as a provider of facilities for the oligarchy. In this situation, the implementation of public budgets and social development is no longer directed at ensuring the welfare of the people, but rather at serving the accumulation of power.

Inequality in access to economic rights is further exacerbated when strategic sectors such as energy, mining, and infrastructure are controlled by politically influential interest groups. Article 9, paragraph (1) of Law No. 39 of 1999 concerning Human Rights affirms that everyone has the right to live in physical and spiritual prosperity, to enjoy a good and healthy environment, and to receive health services. However, in practice, the control of resources by elites involved in state capture leads to highly unequal economic distribution. Investments primarily benefit large corporations, while indigenous communities, laborers, and farmers often lose their land rights and livelihoods. When economic policies are designed without public participation, social justice becomes difficult to achieve.

The weakening of public participation and civil liberties is another form of erosion of basic rights resulting from state capture. Article 28E paragraph (3) of the 1945 Constitution guarantees the right of every person to express opinions, assemble, and associate peacefully, and Article 28F guarantees the right to information. However, when power is held exclusively, public space is narrowed, and critical voices of the government are persecuted through legal threats, violence by officials, or the misuse of digital instruments. Civil liberties, a prerequisite for democracy, are no longer respected but are instead perceived as a threat to the stability of power. It has led to the emergence of a new, legalistic authoritarianism, which undermines public trust in democratic institutions.

A weak oversight system exacerbates the continued practice of state capture, as there is no mechanism capable of effectively correcting abuses of power. The principle of checks and balances, the foundation of a rule of law, becomes dysfunctional when supervisory institutions lack independence and decision-making processes are closed. The Judicial Commission, the Corruption Eradication Commission (KPK), and the Ombudsman, which should safeguard the integrity of public institutions, are instead subject to structural interference that diminishes their effectiveness. When these institutions lose their capacity to act independently, there is no control over the collusion and nepotism that thrive within the government system. It leads to the effacement of public officials and legal violations going untouched.

An analysis of Law No. 30 of 2002, as amended by Law No. 19 of 2019, reveals serious limitations on the KPK's independence. The addition of a Supervisory Board with the authority to approve wiretapping and searches, as stipulated in Articles 12B to 12F, significantly limits the scope of KPK investigators. The requirement to seek permission slows down the case handling process and provides loopholes for corruptors to evade prosecution. Furthermore, the change in the status of KPK employees to civil servants, based on Article 1, point 6A of Law No. 19 of 2019 opens up opportunities for political influence in recruitment and internal oversight processes. This situation demonstrates that the law enforcement system is in decline and is no longer capable of acting as a bulwark against human rights violations related to structural corruption.

Existing national legal instruments do not explicitly regulate the practice of state capture as a criminal offense. Law No. 31 of 1999, in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption, only covers conventional forms of corruption such as bribery, gratuities, and embezzlement in office. There are no legal norms specifically regulating the hostage-taking of state institutions or the manipulation of regulations by non-state actors. Law No. 39 of 1999 concerning Human Rights does provide a normative foundation regarding the right to justice and clean governance, but it does not provide a legal mechanism to prosecute oligarchic actors operating behind the scenes. Law No. 26 of 2000 concerning Human Rights Courts is also limited to gross human rights violations, such as genocide and crimes against humanity, making it irrelevant to addressing human rights violations resulting from state capture.

The absence of legal norms that define state capture as a violation of state governance makes it difficult to prove the case in the judicial process. The practice of taking institutions hostage and influencing regulations is generally carried out through formal legal channels, and therefore is not classified as a crime under Indonesia's positive legal system. It creates a serious legal vacuum, as no legal instrument can address the informal power structures that actually govern the state. Consequently, the public loses faith in structural justice, and the state fails to fulfill its corrective function in addressing abuses of power. When the law is unable to address hidden practices of power, the rule of law becomes meaningless.

The principle of good governance requires the state to guarantee public participation in decision-making and ensure accountability in governance. Public administration law plays a crucial role in regulating the procedures for policy formulation, regulation drafting, and public complaints mechanisms regarding decisions by state officials. When administrative procedures are conducted transparently and participatively, the opportunity for state capture is reduced.

However, if the administrative process is controlled by elites operating in secret and without oversight, the principles of good governance cannot be effectively implemented. The state's failure to build a responsive and inclusive administrative system has exacerbated the widespread abuse of power.

Law No. 14 of 2008 concerning Public Information Disclosure is a crucial instrument in promoting government transparency. Article 3, letter a, states that information disclosure aims to guarantee citizens' right to know public policy plans. However, implementation of this law remains weak because many institutions fail to comply with the obligation to disclose strategic information, particularly regarding budgetary policies and legislation. The reluctance of public institutions to disclose information hinders effective public oversight. This situation is exploited by interest groups to carry out state capture practices undetected. Without transparency, the opportunity for abuse of power and human rights violations will continue to increase.

Strengthening regulations to safeguard the integrity of public institutions is an urgent step to prevent the spread of state capture practices. Institutional integrity can only be maintained if the legislative process and the appointment of public officials are conducted openly, accountably, and based on competence. The state needs to formulate new legal norms that explicitly prohibit and punish the practice of hostage-taking of state institutions, including the manipulation of policies by non-state actors. Furthermore, legal reform must take into account the human rights dimension so that the resulting public policies truly protect citizens' rights. Without serious regulatory reform, the state will remain trapped in a cycle of closed, corrupt, and unjust power.

4. CONCLUSION AND RECOMMENDATION

The practice of state capture has revealed the most complex and systemic face of corruption, which not only undermines the integrity of state institutions but also directly threatens the fundamental principles of the rule of law and the protection of human rights. This mechanism of power usurpation involves collusion between state actors, such as executive, legislative, and judicial officials, with non-state actors such as businesspeople and political-economic oligarchs, who jointly manipulate regulations and public policies to perpetuate their narrow interests. This phenomenon not only undermines the state's institutional structure but also hijacks substantive democratic processes, which are supposed to guarantee social justice, transparency, and public accountability. As a result, many existing legal instruments, such as Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of

Corruption, have not been able to clearly identify the practice of state capture as a form of extraordinary crime that must be addressed with equivalent legislative strategies. This weakness is also evident in Law No. 39 of 1999 concerning Human Rights and Law No. Law No. 26 of 2000 concerning Human Rights Courts has not yet addressed forms of political corruption as structural violations of civil, political, and economic human rights.

The establishment of new legal norms that explicitly recognize and regulate state capture as a form of systematic and organized corruption is an urgent matter that cannot be postponed. This change must be integrated into the revision of the Corruption Crime Law or in a separate legal instrument that specifically defines, classifies, and regulates law enforcement mechanisms for state capture practices. Furthermore, the role of independent institutions such as the Corruption Eradication Commission (KPK), the National Commission on Human Rights (Komnas HAM), and the Ombudsman must be strengthened in terms of authority, structure, and legal protection against political interference. Transparency in the legislative process, including civil society involvement in the planning and policy-making stages, must be explicitly guaranteed, as stipulated in Articles 96 and 96A of Law No. 12 of 2011 concerning the Formation of Legislation. This participation is also encouraged through strengthening access to public information, as guaranteed in Law No. 14 of 2008 concerning Public Information Transparency. With these concrete steps, the state can reclaim its sovereignty from the grip of oligarchic powers and ensure the fulfillment of the constitutional rights of all citizens in a fair and sustainable manner.

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