

The Essential of Criminal Sanction Against Perpetrators of Corruption Committed by State Administrators in Indonesia

Amiruddin*, La Ode Husen**, Muhammad Syarif Nuh***, Abdul Agis***

*Student of the Law Doctoral Program, Postgraduate of the Muslim University of Indonesia

**Professor of the Faculty of Law, Muslim University of Indonesia

***Associate Professor of the Faculty of Law, Muslim University of Indonesia

Corresponding Author: Amiruddin

Abstract: This research was conducted with the aim of analyzing and discovering concepts or theories in the punishment of state administrators who committed criminal acts of corruption, to analyze and find sanctions for criminal acts of corruption against state administrators and to analyze and find criminal sanctions for state administrators who commit criminal acts corruption. This type of research is normative juridical, the approach used is the statutory approach, conceptual approach and comparative approach.

Keywords: Criminal sanctions, Corruption, State Administrators

Date of Submission: 13-09-2019

Date of Acceptance: 30-09-2019

I. INTRODUCTION

Corruption is a crime that is the same as other types of crime such as theft that has existed since humanity lived on earth.¹ Corruption is a crime that has increased from time to time, both in quality and quantity, so it needs to get very serious attention to efforts to tackle it.

As a result, many state administrators holding executive, legislative and judicial powers, both at the central and regional levels, are so easy to commit criminal acts of corruption because the perpetrators have expectations, first, the perpetrators hope that the legal process for these criminal acts of corruption does not end until being tried and sentenced criminal sanctions. Secondly, the perpetrators hope that if the legal process continues in court, the perpetrators will take "resistance", so that they can be acquitted by the judge. Third, the perpetrators hope that, if a criminal sanction is imposed, the criminal sanction imposed by the judge is only a minimum criminal sanction (mild verdict), so that after completing his sentence the perpetrator can enjoy the remaining money from the corruption. This is due to the fact that up to now there has never been corrupt money returned entirely to the state along with bank interest, subject to tax.

Based on the description above, it can be concluded that the cause of corruption today is not low income, but greedy human behavior. According to Antonius Sujata, corruption is greed and the perpetrators are those who have sufficiency, so that the act of corruption is not just to meet needs, but to fulfill the desire for luxury.² Related to this Mahatma Gandhi once said: there is enough for everybody's need, but not enough for everybody's greed.³

II. II.STATEMENT OF THE PROBLEM

1. What is the nature of criminal sanctions against state administrators who commit criminal acts of corruption?
2. How is the development of criminal sanctions in acts of corruption committed by state administrators?
3. How do criminal sanctions compare to state administrators who commit corruption in Indonesia with other countries such as Hong Kong, China, India, South Korea and New Zealand?

¹Hamzah, Andi. *Perbandingan Pemberantasan Korupsi di Berbagai Negara*. Jakarta: Sinar Grafika, 2008, p.1.

²Sujata, Antonius. *Reformasi dalam Penegakan Hukum*. Jakarta: Djambatan, 2000, p.148.

³*Ibid.*

III. THEORETICAL FRAMEWORK

A. Theoretical Basis

1. Criminal and Criminalization

Criminal law is a negative sanction law, because the nature of criminal law is as a means of other efforts so that it has a subsidair function. Criminal sanctions include actions, a suffering that is based nonstop to find the basis for the nature and purpose of criminal and criminal acts in order to provide justification for the crime.⁴ Criminal is one of the sanctions aimed at enforcing the application of norms. Violation of the prevailing norms in society raises feelings of displeasure expressed in the provision of criminal sanctions.⁵

Criminal law is different from other laws, namely the intentional increase in suffering in the form of a criminal, with another purpose, namely to determine sanctions against violations of prohibition rules, in order to maintain order, calm and peace in society,⁶ namely through the imposition of criminal sanctions.

In criminal law, determining the actions that need to be threatened with criminal law or sanctions is very important.⁷ This is due, because the imposition of criminal sanctions is often used as a benchmark to what extent is the level of “civilization” of the nation concerned.⁸

According to Teguh Prasetyo and Abdul Halim, punishment can be interpreted as a stage of determining a criminal or providing sanctions in criminal law,⁹ which includes granting crimes in abstracto and granting crimes In concreto¹⁰. the granting of criminal offense in abstracto is to stipulate the system of criminal law sanctions concerning the legislators. Meanwhile, the provision of criminal In Concreto concerns various bodies which all support and implement the system of criminal law sanctions. Related to the sanction, G.P. Hofnagels stated, sanctions in criminal law are all reactions to violations of the law determined by the law, ranging from detention of suspects and prosecution of defendants to sentencing by judges which constitutes an entire process as a criminal.¹¹

2. Corruption Crime

According to David M Chalmers, corruption is “financial manipulation and injurious decisions to the economy are labeled corrupt” (manipulations and decisions about finance that endanger the economy).¹² According to the World Bank and UNDP corruption is “the abuse of public office for private gain”.¹³ (abuse of power by public officials for personal gain). The above opinion is in line with Paul Huntington who states, corruption is a deviant behavior of the public official or employees with the aim of obtaining personal benefits.¹⁴ while Vito Tanzi states, corruption is behavior that does not comply with the principle, carried out by individuals around the private or public officials, decisions made based on personal or family relations, including conflicts of interest and nepotism.¹⁵ The definition above shows, corruption is a crime related to position. Occupational crime is a logical consequence of the state administration activities of each country which naturally requires person, organization and authority.¹⁶

3. State Official

The state organizer has a very decisive role in administering the state to achieve the ideals of the nation’s struggle to realize a just and prosperous society as stated in the 1945 Constitution.¹⁷ Therefore, the most important thing in the governance and life of the country is the enthusiasm of the state officials as State

⁴Sudarto. *Hukum dan Hukum Pidana*. Bandung: PT. Alumni, 2007, p. 23.

⁵Sudarto. *Kapita Selekta: Hukum Pidana*. Bandung: PT. Alumni, 1981.

⁶Bemmelen, J. M. van. *Hukum Pidana 1: Hukum Pidana Material Bagian Umum*. Translated by Hasnan. Bandung: Bina Cipta, 1984, p. 13.

⁷Farid, Zainal Abidin, and Andi Hamzah. *Bentuk-Bentuk Khusus Perwujudan Delik (Percobaan, Penyertaan dan Gabungan Delik) dan Hukum Penitensier*. Jakarta: Sumber Ilmu Jaya, 2002, p. 259.

⁸Mudzakkir. “Sistem Pengancaman Pidana Dalam Hukum Pidana.” In *Seminar Nasional: Kriminalisasi dan Dekriminalisasi dalam Pembaharuan Hukum Pidana Indonesia*. Yogyakarta: Fakultas Hukum UII, 1993.

⁹Prasetyo, Teguh, and Abdul Halim Barkatullah. *Politik Hukum Pidana: Kajian Kebijakan Kriminalisasi dan Dekriminalisasi*. Yogyakarta: Pustaka Pelajar, 2005, p. 82.

¹⁰Sudarto. 2007. *Op. Cit.*, p. 42.

¹¹Prasetyo, Teguh, and Abdul Halim Barkatullah. 2005. *Op. Cit.*, p. 83

¹²Rines, George Edwin, ed. *The Encyclopedia Americana*. New York: Americana Corp., 1977, p. 22.

¹³Langseth, Petter, Rick Stapenhurst, and Jeremy Pope, eds. *The Rule of a National Integrity System in Fighting Corruption*. Warrington: The Economic Development Institute of the World Bank, 1997.

¹⁴Paul HuntingtoninChaerudin, Syaiful Ahmad Dinar, and Syarif Fadillah. *Strategi Pencegahan & Penegakan Hukum Tindak Pidana Korupsi*. Bandung: Refika Aditama, 2008, p. 2.

¹⁵*Ibid.*

¹⁶Wijaya, Firman. *Delik Penyalahgunaan Jabatan dan Suap dalam Praktek*. Jakarta: Penaku, 2011, p. 4.

¹⁷Letter considerations (a) of Law Number 28 Year 1999 concerning State Administrators who are Clean of Free from Corruption, Collusion and Nepotism.

Administrators and Government Leaders. State Officials according to Law Number 28 of 1999 concerning State Administrators who are Clean, Free of Corruption, Collusion and Nepotism are as follows.

Article 1 number 1:

State Administrators are State Officials who carry out executive functions. Legislative or judiciary, and other officials whose main functions and duties relate to state administrators in accordance with the provisions of the legislation in force.

Article 2:

State officials include:

1. State Official at the State's Highest Institution;
2. State Officials at State Higher Institutions;
3. Minister;
4. Governor;
5. Judge;
6. Other state officials in accordance with the provisions of the legislation in force; and
7. Other officials who have strategic functions in relation to state administrators in accordance with the provisions of the legislation in force.

4. State Function Theory

The rule of law cannot be realized if state power is still absolute or unlimited. Because in understanding the rule of law there is a belief that state power must be exercised on the basis of good and fair law¹⁸. So, the rule of law can be understood, that the relationship between the ruling and governed is not based on mere power, but based on an objective norm that binds the ruling party. What is meant by objective norms is law which not only applies formally, but is also maintained when dealing with legal ideas.¹⁹

To be considered as a rule of law, a State must have the characteristics of a rule of law. One characteristic of the rule of law is the separation of powers.²⁰ As is known, power tends to be abused, therefore there needs to be a legal institution that limits and controls it. The legal institution is a constitution. The constitution essentially implies the limitation of government power and the protection of people's rights from arbitrary actions of the government.²¹

Related to the function of the State, Locke distinguishes it into four functions, namely the function of establishing laws (legislating), making decisions (judging), using internal forces in carrying out these forces abroad in defending the community. With regard to these functions, Locke names the first function as legislative power, the third function is executive power and the function is federative power, while the second function is considered not as power.²²

5. Justice Theory

Justice must be reflected and become part of the legal substance. Legal performance that is consistent in application and procedures that are relatively similar to the storing behavior of legal norms can guarantee substantial justice. Consequences of substantive values of justice that must be realized in shared life include: (1) distributive justice, which is a relationship of justice between the state and its citizens, in the sense that the state must fulfill justice in the form of welfare, subsidies and opportunities in living together which is based on rights and due diligence, (2) legal justice, i.e. a justice relationship between citizens to the state and in this case it is the citizens who are obliged to fulfill justice in the form of obeying the applicable laws and regulations in the state, and (3) justice cumulative, which is a mutual relationship between citizens.²³

6. Human Rights Theory

Even though corruption has been categorized as a crime against humanity or a violation of human rights, but the question is who is the victim of the crime of corruption, according to Mudzakkir, crime victims are grouped into several groups, first, victims of abstract crime (abstract victims) , like the state or society; the

¹⁸Magnis-Suseno, Franz. *Etika Politik: Prinsip-Prinsip Moral Dasar Kenegaraan Modern*. Jakarta: PT. Gramedia Pustaka Utama, 1999, p. 295.

¹⁹*Ibid.*

²⁰The concept of the rule of law according to Immanuel Kant contains 2 important elements, namely: (a). Protection of human rights; (b). Separation of powers. With the separation of powers, human rights will get protection. Busroh, Abu Daud, and Abubakar Busro. *Asas-Asas Hukum Tata Negara*. Jakarta: Ghalia Indonesia, 1991, p. 111.

²¹Manan, Bagir. *Lembaga Kepresidenan*. Yogyakarta: Gama Media, 1999, p. 13.

²²Yusdiansyah, Efik. "Implikasi Keberadaan Mahkamah Konstitusi Terhadap Pembentukan Hukum Nasional Dalam Kerangka Negara Hukum." Disertasi, Universitas Padjadjaran, 2007, p.69.

²³Kaelan. *Pendidikan Kewarganegaraan Untuk Perguruan Tinggi*. Yogyakarta: Paradigma, 2007, p.36.

two group victims (collective victims),²⁴ such as organizations or groups based on race, religion, ethnicity, ethnicity, skin color or because there are similar interests; and third, are real victims, such as individuals or several individuals. Whereas according to article 1 number 13 of the Draft Law on the Criminal Procedure Code (RUU-KUHAP), the victim is someone who suffers physical suffering, mental loss of good name, and/or economic loss resulting from a criminal offense. Therefore, the intended victim is a real victim, whether an individual, racial, religious, ethnic, ethnic group or skin color or because of similar interests.

7. Criminal Law Policy Theory (Penal Policy)

Crime prevention can be done by using Penal and Non-Penal facilities. Crime prevention efforts are essentially part of criminal law policy (Penal Policy). Crime mitigation policies can be grouped into 2 (two) types, namely, first, crime prevention policies using criminal law (penal policy) and secondly, crime prevention policies using non-criminal means. Crime management policies that are carried out using criminal law (penal policy) are more focused on acts of retaliation (repressive), that is, after the occurrence of criminal acts. Whereas the crime prevention policy by using means outside the criminal law non-penal policy is more pressing preventive actions, that is, before the occurrence of criminal acts.

8. Criminal Theory

Judge's integrity is very dependent on the leader's example. Leadership exemplary will create the independence of the court, because good or bad or weak law enforcement is very dependent on the independence of the court.²⁵ Next, criminal theory will be presented, which include restriction theory (retributive theory), goal theory (utilitarian) and combined theory (verenging theory).

1. Absolute Theory (Theory of Revenge)

According to absolute theory, speech is imposed solely because people have committed a crime or a crime (quieapeccantumest). Crime is an absolute consequence that must exist in retaliation to the person who committed the crime.²⁶ Crimes are closely related to criminalization, because those who commit crimes should be brought to justice and sentenced accordingly.²⁷ The question that arises is. Who is the "bad guy"? Are those found to have committed prohibited acts and given legal sanctions listed in the Act referred to as criminals?²⁸ A person gets a criminal for having committed a crime, not seen any consequences arising from the crime. Only seen in the past, not seen in the future.²⁹

A criminal if proven guilty and capable of responsibility, criminal sanctions should be commensurate and commensurate with the severity and dangerous nature of the crime. Corruption is a crime related to state losses and has an extraordinary impact.

Criminalization is the most important part in criminal law, because it is the culmination of the entire process of holding someone responsible for a crime.³⁰ John Koplan divides the retribution theory into two, namely the revenge theory (the revenge theory) and the theory of penance (the expiation theory).³¹ The criminal was dropped because we "owed him something" or Karen "he owed us something". Retaliation means that the criminal's debt has been "paid back" (the criminal is paid back) while redemption means that the criminal "paid back the debt" (the criminal pays back).³²

2. Relative Theory (Objective Theory)

According to this theory, the crime is not to satisfy the demands of justice or to make reparations or take to people who have committed a crime. The basis of criminal justification lies in useful goals, so this theory

²⁴Mudzakkir. "Penelusuran, Penyitaan, Perampasan dan Pengelolaan Aset Tindak Pidana." In *Focus Group Discussion (FGD) tentang Penyitaan dan Perampasan Aset untuk Mendukung Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*. Yogyakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan Departemen bekerjasama dengan Departemen Hukum dan Hak Asasi manusia Republik Indonesia, 2009.

²⁵Muhammad, Rusli. *Kemandirian Pengadilan Indonesia*. Yogyakarta: UII Press, 2010, p. 146.

²⁶Muladi, and Barda Nawawi Arief. *Teori-Teori dan Kebijakan Pidana*. Bandung: PT. Alumni, 1992, p. 10.

²⁷Hamzah, Andi, and Siti Rahayu. *Suatu Tinjauan Ringkas Sistem Pidanaan di Indonesia*. Jakarta: Akademika Pressindo, 1983, p. 10.

²⁸Anwar, Yesmil, and Adang. *Sistem Peradilan Pidana: Konsep Komponen dan Pelaksanaannya dalam Penegakan Hukum di Indonesia*. Bandung: Widya Padjadjaran, 2009, p. 113.

²⁹Hamzah, Andi, and Siti Rahayu. 1983. *Op. Cit.*, p. 25.

³⁰Huda, Chairul. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. Jakarta: Kencana Prenada Media Group, 2006, p. 125.

³¹Muladi, and Barda Nawawi Arief. *Teori-Teori Dan Kebijakan Pidana*. Bandung: PT. Alumni, 1992, p. 13.

³²*Ibid.*

is often referred to as the goal theory (utilitarian theory). Criminal imposed is not “quia peccatum est” (because people who have committed crimes), but “ne peccetur” (so people do not commit crimes).³³ The above opinion is in line with the Roman philosophical Seneca’s statement which states: “nemoprudennspunitquieapeccatum est, sed ne peccetur” (no normal person is convicted of doing an evil deed, but he is convicted so that there is no evil deed). Meanwhile, Plato and Aristotle stated: “The crime was handed down not because they had done evil, but so that crime should not be done.”³⁴

According to the theory of purpose, every crime does not have to be followed by a criminal. It is not enough to have a crime, but it must be questioned the benefits of a crime for the community or for the perpetrators. Crimes are not only seen in the past, but also in the future, so there must be a clear objective in the criminal prosecution sector.³⁵ These objectives are left to the effort so that the crimes committed are not repeated, namely general prevention (general prevention). Both are based on the idea, that starting from the threat of being convicted until the crime is committed, people will be afraid of committing crimes.

a. General Prevention

The main objective to be achieved from general prevention is public prevention for the community or all people so as not to violate public order or commit a crime. According to Vos, the longest form of general prejudice theory which is criminal or frightening in nature is that it is publicly expected to suggest that other community members do not dare to commit crimes. So, so that members of the public are afraid, the criminal who deter the implementation is carried out in public. This theory views the criminal as a forced “noodzakelijki” in order to maintain public order. If everyone understands, material violates the law and threatens the criminal, then that person also understands that a criminal will be sentenced for a crime that is committed and the crime can be prevented because everyone who intends evil, his soul has been under pressure from criminal threats. This is what is called the “Psychologyschedwang” theory from Anselm Von Fourbach. However, there is a possibility that the crime will still be committed, because the person does have an evil talent, so he does not ignore the existence of criminal threats, but must be accompanied by a concrete conviction by carrying out his real criminal. The objection to this theory is, first, the criminal threat is something abstract in the laws and regulations for the crime in question and may not necessarily occur, or sometimes a concrete act occurs only a minor crime, whereas the second, in determining the crime may be carried out arbitrarily, that is, there is no balance between the severity of the sentence threatened and the actual state of the crime.

b. Special Prevention

The main objective to be achieved by special prevention is that the criminal can prevent the offender from repeating the crime. According to Van Hamel, the purpose of criminal law besides maintaining public order (objective theory) also has a combination of frightening purposes (afschrikking) to improve (verbetering) and for certain crimes must destroy (onschdeljkmaking). First, correcting the maker (verbeterng van de deader), which is a criminal goal to improve the maker to become a good human being by reclassering. Dropping the criminal must be accompanied by education while undergoing the crime. The education provided is mainly for discipline, in addition it is given a number of skills such as sewing, carpentry and so on as a provision after they have finished serving their crimes. Meanwhile, according to Zeven Bergen, to improve criminals there are three kinds of ways, namely repair “juridical”, “intellectual” repair and “morel repair”. Second, get rid of criminals (onschadeijkmaken van de misdadiger), namely certain criminals because there are no irreparable conditions and they cannot accept crimes for the first, second and third purposes because there is no benefit, then the imposed criminal must get rid of in the community by imposing a life sentence or capital punishment.³⁶

3. Combined Theory

If there are two opinions that contradict each other there is usually an opinion ketinga that is in the middle. In addition to the absolute theory and the relative theory of criminal law, a third theory (vergelding) emerged that acknowledged the elements of preventing and repairing criminals.³⁷ In this theory, the prohibition of criminal law is shown to people and their actions, the concept of the act of doing the modification of the doctrine of free will, deduction and using the empirical-normative concept.

According to this theory, crime is needed not as revenge, but aims as accountability for free choice and in consideration of other mitigating factors (external-internal).³⁸ The development of criminal thought is further related to a person’s responsibility based on mistakes replaced by the dangerous nature of the maker (etat

³³*Ibid.*, p. 16.

³⁴Hamzah, Andi, and Siti Rahayu. 1983. *Op. Cit.*, p., p. 24.

³⁵*Ibid.*, p. 26.

³⁶Anwar, Yesmil, and Adang. 2009. *Loc. Cit.*

³⁷Hamzah, Andi, and Siti Rahayu. 1983. *Op. Cit.*, p. 28.

³⁸Prasetyo, Teguh. *Hukum Pidana*. Jakarta: Rajawali Pers, 2010, p.74.

dangareux). The form of accountability to the developer is more of an action to protect the community. According to this school, the criminal must remain oriented to the nature of the maker. This flow requires the flow of individualization on the properties of the maker. Criminal application is carried out in combination by emphasizing one element without eliminating the other elements or all the elements that exist .. The first author who proposed this theory was Pellegrino Rossi (1887-1848). He considers retaliation to be the principle of crime and the severity of the crime must not go beyond a fair retaliation, but he is opinionated, the criminal has various influences, among others, repairing something that is damaged in society and general prevention.³⁹

Corruption eradication, especially against corruption committed by state officials, requires severe criminal sanctions to be followed by criminal charges. Therefore, there needs to be a reference that can be used as a guideline for judges in imposing criminal sanctions, namely guidelines for punishment (sentencing guideline). The use of modern absolute theory aims, so that criminal sanctions imposed by judges can cause a deterrent effect on the perpetrators in order to realize justice in society.

IV. DISCUSSION

A. The Nature of Crimes Against State Organizers Committing Criminal Acts of Corruption.

The purpose of criminal law is based on the flow that influences it, namely the classical and modern styles. According to the classical flow the purpose of criminal law is to protect individuals from the power of the ruler or the state. Beccaria who wrote about “*Dei delittedellepene*” stated that criminal law must be regulated by written law.⁴⁰ Criminal law is written in a certain system which is binding, so that every act of someone who is threatened with a criminal must be subject to the crime without regard to the personal circumstances of the maker, the reasons that encourage the crime as well as the criminal which is beneficial to the person who committed the crime or the community. Meanwhile, according to the modern school, the purpose of criminal law is to protect the public against crime. In its development, criminal law must pay attention to the nature and form of crime and the perpetrators. According to Van Bemmelen, the ultimate goal of criminal law is to state and describe the matters in which the government in the name of the authority granted by the public relating to order, calmness, security, protection of certain interests, avoiding vigilantism on the part of the population individually or by administrative bodies in the form of “*onrechtmatigedaden*” and at all times must uphold the truth. All of that is mentioned in the strafwet by determining how an act which is worthy of criminal punishment as an act that can be convicted for the person responsible for who violates the criminal law rules that have been created.⁴¹

Corruption in Indonesia is no longer an ordinary crime because it has been categorized as an extraordinary crime.⁴² In fact, corruption has become a “crime against humanity” (crimes against humanity) and a common enemy (common enemy),⁴³ bearing in mind trillions of rupiahs that should have been used to realize social welfare were stolen by irresponsible parties.⁴⁴ Corruption by state administrators has been widespread and is one form of crime that is difficult to prove and thrives in line with economic, legal and political power.⁴⁵

The question that arises is, why does the judge tend to always impose minimal criminal sanctions? This is because the current law on corruption eradication is tolerant of corruptors. Therefore, the Corruption Eradication Act needs to provide severe criminal threats followed by criminal prosecution for corruptors. Why does the Corruption Eradication Law need to pose a grave threat to corruptors? This is intended so that law enforcement against criminal acts of corruption, particularly corruption committed by state administrators can have a deterrent effect, both for perpetrators and the public and can provide benefits for efforts to eradicate corruption in Indonesia from upstream to downstream.

Law enforcement against corruption, especially corruption committed by state administrators, requires the establishment of severe criminal threats and the imposition of serious crimes, followed by criminal prosecution according to the nature and category of corruption crimes. The imprisonment of serious crimes followed by criminal prosecution is based on historical, philosophical, theoretical, juridical, and sociological reviews.

³⁹*Ibid.*, p. 73

⁴⁰Poernomo, Bambang. *Asas-Asas Hukum Pidana*. Jakarta: Ghalia Indonesia, 1992, p. 24.

⁴¹Van Bemmelen in Sumaryanto, A. Djoko. *Pembalikan Beban Pembuktian Tindak Pidana Korupsi dalam Rangka Pengembalian Kerugian Keuangan Negara*. Jakarta: Prestasi Pustaka, 2009, p.108.

⁴²Jaya, Nyoman Serikat Putra. *Beberapa Pemikiran Ke Arah Perkembangan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti, 2008, p. 69.

⁴³Hatta, Mohammad. *Kebijakan Politik Kriminal: Penegakan Hukum Dalam Rangka Penanggulangan Kejahatan*. Yogyakarta: Pustaka Pelajar, 2010, p. 61.

⁴⁴*Ibid.*

⁴⁵Adji, Indriyanto Seno. *Humanisme dan Pembaruan Penegakan Hukum*. Jakarta: Kompas, 2009, p. 138.

First, historically, according to its history, the crime of corruption has been going on since the days of Ancient Egypt, Babylon, Rome until the Middle Ages, and until now.⁴⁶ Whereas in Indonesia, corruption began from the time of the kingdom until the colonial era by the VOC. In fact, the VOC went bankrupt at the beginning of the 20th century due to the rampant corruption in his body. The culture of corruption grew into the reign of the old order.⁴⁷ . Efforts to eradicate corruption during the Old Order Government were carried out with the issuance of laws and regulations which are essentially to prevent and overcome the occurrence of corruption,⁴⁸ include: 1) Regulation of Army Chief of Staff Number Prt/PM-06/1957 regarding eradicating corruption by applying articles in the Criminal Code concerning violent crime, such as article 415, article 416, article 418, article 419, article 420, article 423 , article 425, and article 435⁴⁹ the sanction of a sentence of life imprisonment or 20 years imprisonment; 2) Regulation Number PRT/PM-08/1957 concerning property ownership on May 27, 1957; 3) Rule Number PRT/PM-011/1957 concerning the Authority of Military Authorities in Confiscating Goods dated July 1, 1957 as well as the Ruling Rule of War Number PRT/Peperpu/013/1958 concerning Investigation, Prosecution, Corruption Inspection and Property Inspection dated April 15 1958; and Government Regulation in Lieu of Law (Perpu) Number 1 of 1960 concerning the Investigation, Prosecution and Examination of Corruption Crimes.

Second, philosophically, the imposition of serious crimes is followed by crimes against corruptors related to law enforcement efforts in a firm and consistent manner, so as to have a deterrent effect on the perpetrators and the public. Corruption is a crime related to state revenue. The state's money is money that comes from the people or public money, so it needs to be given maximum criminal sanctions that are direct and instantaneous. If a state official commits a criminal act of corruption with a state loss of billions or trillions in value for the first time, then it is appropriate for them to be subjected to severe criminal sanctions accompanied by criminal charges without waiting for the second repetition of criminal acts. The dangers of corruption committed by these state officials, besides harming the country's finances and economy, also seize the social and economic rights of the wider community. If corruptors were only given minimal criminal sanctions, we certainly could not imagine how much state money would be corrupted so that efforts to create a just and prosperous society would be disrupted and hampered.

Third theoretically, the eradication of corruption has been carried out since the Old Order government. Corruption eradication can be done through two channels, namely improving legislation and improving human resources who will become capable, honest and honest law enforcers.⁵⁰ Changes to the Law on the Eradication of Corruption have been carried out, both during the Old Order Government, the New Order Government and the Reformation era and finally with Law Number 13 of 1999 which was later amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes , where the provisions regarding norms and criminal sanctions in the law always experience changes. The provision of criminal sanctions every time there is a change in the law on criminal acts of corruption, it always experiences an increase or a weight. However, the public and even some legal experts always see the lack of laws that cause corruption eradication.⁵¹ In fact, in the reformation era the change was marked by the issuance of various legislative products whose aim was to renew, both the substance and institutional aspects, among others,⁵² including its human resources with the formation of the Corruption Eradication Commission (Law Number 30 of 2002) and the Corruption Court and the Regional Corruption Court (Law Number 46 of 2009), where law enforcement at the agency investigates, prosecutors, prosecutors general and judges are conducted through fit and proper tests.

Fourth, legally, the imposition of severe criminal sanctions on corruptors (corruptors) aims to realize strict law enforcement and does not tolerate perpetrators. However, criminal sanctions in the UUPTPK are of alternative cumulative nature, giving rise to the tendency of judges to impose minimal penalties (light sentences). To realize law enforcement that does not provide tolerance, the imposition of criminal sanctions against corruptors needs to be evaluated periodically. Corruption is a trans-national crime, so the law enforcement in addition to considering national law is also an International Convention and cooperating with other countries. The renewal of criminal sanctions aims to harmonize the law⁵³ in law enforcement, which is a joint effort towards harmony, harmony and balance to maximize criminal sanctions.

⁴⁶Kartono, Kartini. *Patologi Sosial*. Jakarta: PT. Raja Grafindo Persada, 2000, p. 93.

⁴⁷Wijayanto, and Ridwan Zachrie, eds. *Korupsi Mengorupsi Indonesia: Sebab, Akibat, dan Prospek Pemberantasan*. Jakarta: PT. Gramedia Pustaka Utama, p. 5.

⁴⁸Kristiana, Yudi. *Independensi Kejaksaan dalam Penyidikan Korupsi*. Bandung: PT. Citra Aditya Bakti, 2006, p.1.

⁴⁹Dirdjosisworo, Soedjono. *Fungsi Perundang-Undangan Pidana dalam Penanggulangan Korupsi di Indonesia*. Bandung: Sinar Baru, 1984, p. 3.

⁵⁰Hamzah, Andi. *Perbandingan Pemberantasan Korupsi di Berbagai Negara*. Jakarta: Sinar Grafika, 2008, p. 4.

⁵¹*Ibid.*, p. 81.

⁵²Jaya, Nyoman Serikat Putra 2008. *Op. Cit.*, p. 71.

⁵³Slamet, KusnuGoesniadhie. *Harmonisasi Hukum dalam Perspektif Perundang-Undangan: Lex Specialis Suatu Masalah*. Surabaya: JP Books, 2006, p. 2.

In general, every community has ideals of order and justice that will be achieved through legal instruments that have a very central position.⁵⁴ Related to that, Robert McIver said: without law there is no order, and without order man is lost, no knowing where they go, not knowing that they do (free translation: without law there is no order, and without order anyone can do wrong, and don't know what to do).⁵⁵ The social reality is the opposite, especially law enforcement against corruption crimes committed by state administrators, as if what is happening now in Indonesia is with law there is no order.⁵⁶ The opinion above shows, in Indonesia, state and individual organizers who commit billions of corruption crimes are only given minimal criminal sanctions. Therefore, if a state organizer commits a criminal act of corruption, the judge should have the courage to impose severe criminal sanctions and be followed by criminal charges to create a deterrent effect for the perpetrators.

B. Development of Criminal Sanctions Against State Organizers Committing Criminal Acts of Corruption.

In Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter referred to as UUPTPK), the criminal acts of corruption committed by state administrators are as follows:

Article 3: Any person who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him because of a position or position that could harm the country's finances or the economy of the country, is convicted with life imprisonment or prison sentence at least 1 (one) year and a maximum of 20 (twenty) years and/or a fine of no less than Rp 50,000,000.00 (fifty million rupiahs) and a maximum of Rp 1,000,000,000.00 (one billion rupiahs)

Article 8: Every person who commits an offense as referred to in article 415 of the Criminal Code, shall be liable to life imprisonment or imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp 150,000,000.00 (one hundred fifty million rupiah) and a maximum of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).

Article 11: Every person who commits a criminal offense as referred to in article 418 of the Indonesian Criminal Code, shall be liable to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a minimum fine of Rp 50,000. 000.00 (fifty million rupiah) and a maximum of Rp 250,000,000.00 (two hundred fifty million rupiah).

Article 12: Every person who commits an offense as referred to in article 419, article 420, article 423, article 425, or article 435 of the Indonesian Criminal Code with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (two) twenty years and a minimum fine of Rp. 200,000,000.00 (two million rupiahs) and a maximum of 1,000,000,000.00 (one billion rupiah).

Based on the Constitutional Court Decision no.003/PUU-IV/2006 taggal July 25, 2006 Explanation of article 2 paragraph (1) of Law Number 31 Year 1999 has been revoked and against the law (wederrechtelijkheid) in criminal acts of corruption is limited only to the law in the formal sense (formielewederrechtelijkheid) because it is against the law in the material sense (materiele wederrechtelijkheid) is seen as contrary to the 1945 Constitution and article 1 paragraph (1) of the Criminal Code.

Therefore, the provisions in Law Number 31 of 1999 concerning Eradication of Corruption, regulating acts of corruption committed by state officials, ranging from the top (central) to the lower (regional), both executive, legislative, and judiciary. Corruption deeds regulated in these articles are related to the nature of the law in a formal sense.

Based on the provisions of the articles above, the minimum criminal sanctions set out in Act Number 31 of 1999 concerning Eradication of Corruption Crimes are minimal criminal sanctions, namely a prison sentence of between 1-4 years and a fine of between Rp 50 million - Rp. 200 million. For example, a minimum imprisonment of 1 year and a fine of Rp. 50 million (article 3), imprisonment of at least 3 years and a fine of Rp. 150 million (article 8), imprisonment of at least 1 year and a fine of Rp. 50 million (article 11) and a minimum imprisonment of 4 year and a fine of Rp. 200 million (Article 12).

1. History of Laws and Regulations on Corruption in Indonesia.

Regulations on corruption in Indonesia began in 1957 with the issuance of Military Regulations Rule Number PP/PM/-06/1957 dated 9 April 1957 about Corruption Eradication which returned the provisions of the Criminal Code related to the corruption in wetboek van Strafrecht (KUHP) Chapter 9 XXVIII concerning Crimes committed in the Office, including: Article 415 (embezzlement), Article 416 (forgery), Article 418 - Article 420 (accepting bribes), Article 423, Article 425 and Article 435 (illegally benefiting oneself). Considerations for Regulation of Military Authorities number Prt/PM-06/1957 dated April 9, 1957 concerning Corruption Eradication are: due to the lack of fluency in efforts to eradicate acts that are detrimental to the

⁵⁴Nitibaskara, Tubagus Ronny Rahman. *Ketika Kejahatan Berdaulat: Sebuah Pendekatan Kriminologi, Hukum dan Sosiologi*. Jakarta: Peradaban, 2006, p. 5.

⁵⁵MacIver, Robert Morrison. *The Web of Government*. London: Macmillan Education, 1947.

⁵⁶Nitibaskara, Tubagus Ronny Rahman. 2006.*Loc. Cit.*

country's finances and economy, which by the public called corruption need to immediately establish a working procedure to be able to break through traffic in an effort to eradicate corruption.

2. Provisions in Law Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption Crimes by State Administrators.

In the development of Law Number 31 of 1999 concerning Eradication of Corruption, the amendment and adjustment have been enacted, namely the enactment of Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning Eradication of Corruption.

Based on the provisions of Law Number 20 of 2001 Amendments to Law Number 31 of 1999 Concerning Eradication of Corruption, there are changes in the provisions of several articles in Law Number 31 of 1999 concerning Eradication of Corruption in relation to state offenders who commit corruption . Changes in the Corruption Eradication Act are also followed by changes in the explanation of the articles as follows:

First, the explanation of article 1 number 1 of Law Number 20 Year 2001: article 2 paragraph (2) reads: what is meant by "certain conditions" in this provision is a condition that can be used as a reason for criminal burdening for the perpetrators of a criminal act of corruption that is if the criminal act carried out on funds intended for overcoming danger situations, national natural disasters, countermeasures due to widespread social unrest, overcoming economic and monetary crises and overcoming corruption.

Second, the explanation of article 5 paragraph (2) reads: what is meant by "state administrators" in this article is the state administrators as referred to in Law Number 28 of 1999 concerning State Administrators that are Clean and Free of Corruption, Collusion, and Nepotism. The definition of "State Organizer" also applies to the following articles in this Law.

Third, the explanation of article 12 letter d reads: what is meant by "advocate" is a person who is engaged in providing legal services both inside and outside the court meeting the requirements in accordance with the provisions of the applicable laws and regulations.

Fourth, the explanation of article 12 B paragraph (1) reads: what is meant by "gratification" in this paragraph is a gift in the broadest sense, which includes the recipient of money, goods, rebates (discounts), commis, loans without interest, travel tickets, lodging facilities , travel, free medical treatment and other facilities. The gratuities were received both domestically and abroad and carried out using electronic advice or without electronic means.

Based on the provisions of the aforementioned articles, the criminal sanctions regulated in Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crime are minimal criminal sanctions that vary, namely imprisonment between 1 - 4 year and criminal fines between Rp 50 million - Rp 200 million. The minimum criminal sanctions provisions, for example, a minimum imprisonment of 4 years and a fine of Rp. 200 million (Article 2, article 12, and article 12 B), a minimum prison sentence of 1 year and a fine of Rp. 50 million (article 5 paragraph 2, article 9 and article 11) imprisonment of at least 3 years and a fine of Rp. 150 million (article 6 paragraph 2 and article 8) and imprisonment of at least 2 years and a fine of Rp. 100 million (article 10).

3. Government Officials in Legislation Related to the Imposition of Criminal Sanctions Against State Administrators Committing Criminal Acts of Corruption

In general, a state organizer is a person appointed by an official who is authorized to carry out a state position related to the duties of a state body or its parts. A state organizer is a person who is given the trust to carry out a certain position to carry out the duties of the state and when committing a crime, the criminal sanction should be more severe than the criminal sanction imposed on a person who is not a State Operator.

The State Organizers in this dissertation research are everyone who carries out executive, legislative or judicial functions, and other officials whose main functions and duties are related to state administrators, including Ministers, Governors, Regents and Mayors (Executive), Members of DPR RI, Provincial DPRD , Regency and city (legislative) as well as Investigators, Prosecutors, Judges and Advocates (Yudikaif). State Administrators can be divided into two, namely the central level state officials and regional level state officials. Central Level State Officials, consisting of State High Officials and Other High State Officials. High Level Regional Officials, consisting of provincial, district and city government officials as well as other officials, including state officials in the regions at the lowest level that perform executive, legislative and judicial functions.

State Administrators who carry out executive, legislative and judicial functions at the central and regional levels can be clarified as four, namely: 1) State High Officials and Other High State Officials; 2) Provincial Regional Offices and other Provincial Level Officials; 3) Regency/City Regional Officials and other Regency/City Regional Officials; 4) Local officials at the lowest level.

Therefore, the imposition of criminal sanctions against state administrators who commit criminal acts of corruption is very dependent on the effective domestic anticorruption legal infrastructure (UUPTPK),

international cooperation to help each other in the field of law, actively supported by the people of the country concerned and political will to make strategic government anti-corruption can work.

The results showed, criminal sanctions in the articles of Law Number 31 of 1999 concerning Eradication of Corruption Crimes As amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes are criminal sanctions with minimal provisions maximum. While the minimum criminal sanctions in the provisions of the articles of the Law (UUPTPK) are minimum criminal sanctions that vary, ie between 1 - 4 years or under 5 years.

C. Imposition of Criminal Sanctions Against State Organizers Committing Criminal Acts of Corruption in Other Countries, including Hong Kong, India, China, South Korea and New Zealand

1. Hong Kong

a. Hong Kong Court of Appeals verdict between Ernest Percival Max Hunt v The queen.⁵⁷

Ernest Percival Max Hunt is a Royal Hong Kong Police Commissioner who is accused of having assets that do not match his honorarium so he is obliged to report his assets to the Hong Kong Anti-Corruption Director. His wealth was discovered after Goldber appealed and was convicted of criminal sanctions. Ernest Percival Max Hunt was reported by the applicant by asking the court judge's permission. First, on February 14, 1973 through the Attorney General to give a statement about the assets of expenditure and income to the Director of Anti-Corruption with a copy to his wife; Second, on May 31, 1973 the same letter was given to his wife; and Third, dated July 6, 1973 Ernest Percival Max Hunt was given the latest letter charged to the Hong Kong First Court Court (Court of First Instance of Hong Kong) the ownership of these assets was contradicted by article 10 paragraph 1 letter a of the bribery Prevention Ordinance Chapter 201 (Section Section 10 of the Prevention of Bribery Ordinary of Hong Kong).

The balance of the Hong Kong High Decision is that the applicant has provided a satisfactory explanation of living standards of \$ 207,404.52 but the applicant has not provided a satisfactory explanation of living standards of \$ 222.62.06. Based on the aforementioned considerations, the Hong Kong High Court on February 15, 1974 then upheld the previous court's decision to impose a 1-year prison sentence and dismissal as a member of the Hong Kong Police.

b. The Hong Kong Court Appeal between Peter Fitzroy Godber v. The Queen⁵⁸

Peter Fitzroy Godber, Hong Kong Police Chief Inspector (for 18 years as a member of the Hong Kong Police Department, was known as a corrupt police officer and had committed several crimes); Poisi Inspector CHEN Hon-Kuen is the Commander and Hunt Inspector as Wanchai Division Police Inspector. In 1973, based on the results of an investigation by the Independent Commission of Anti-Corruption of Hong Kong accused of corruption, the three of them had conspired to receive money from their clients for \$ 25,000. the act is regulated and threatened with criminal sanction in article 10 of the BAb Prevention Ordination BAb 201 (Section 10 of the Prevention of BryberyOrdonance of Hong Kong).

The verdict of the First Court and the Court of Appeal shows that ownership is essential and rational in relation to someone's increasing or decreasing judgment. The increase in assets owned by a person is used as the main basis for judges to impose criminal sanctions on corruption offenses committed by state officials, both judges in the first instance courts and high court judges.

2. India

a. Supreme Court of India between The State of Madras V VaidyanataIyer⁵⁹

VaidyanataIyer is a tax officer at the Indian Tax Obligation Service who is accused of receiving a gift of Rs. 800 of NarayanaIyer as loans and not gratuities. These acts are contrary to the provisions of section 161 of the Indian Penal Code. By the State At Madras Attorney he was charged with violating section 161 of the Indian Penal Code.

The decision of the Court of First Instance of Madras in its consideration stated that the award of a sum of Rs. 800 is not a loan but is a gratuity. The Special Judge of the Madras First Level Court has sentenced him to 6 months imprisonment and for the Verdict of the First Level Court, the defendant VaidyanathaIyer filed an appeal on the basis of the appeal, in principle that the gift was not a gratuity, but was a loan from NarayanaIyer's client. Against the defendant's appeal the Court of Appeal of Madras has acquitted Defendant A. Vaidnayanatha from the indictment under the provisions of Article 136 of The Contitution of India which basically states that the state has a special leave to appeal.

From the aspect of criminal sanctions, the decision of the Supreme Court also shows the commitment and independence of the Supreme Court Judges of India in the Eradication of Corruption, which strengthens the Madros First Level court decision plus the obligation to submit bond guarantees. The attitude of the Indian

⁵⁷<http://www.hklji.hk/eng/hk/cases/hkca/1974/111> accessed on April 17 2019 at 20:45.

⁵⁸<http://www.hklji.hk/eng/hk/cases/hkca/1974/111> accessed on April 17 2019 at 20:45.

⁵⁹<http://www.liiofindia.org/in/cases/cen/INSC/1957/79.html> accessed on April 17 2019 at 20:45.

Supreme Court is at the same time an “instruction” to the lower courts to maintain commitment, especially in dealing with corruption.

3. China

The Chinese government is committed to efforts to eradicate corruption in its country by cracking down on corruptors with severe punishment, ranging from life imprisonment to the death sentence through a careful punishment process. Only those who committed extreme corruption were sentenced to death.

Imposition of criminal sanctions against perpetrators of acts of corruption, especially corruption committed by state administrators, namely through the imposition of severe criminal sanctions, both life imprisonment and capital punishment. This has been proven, if a state organizer commits a criminal act of corruption with a value of billions of rupiah (Rp. 3.9 billion), the criminal sanction is capital punishment.

The imposition of severe criminal sanctions against the perpetrators of corruption shows that the Chinese government is very serious in committing criminal acts of corruption committed by state officials, starting from the top state administrators to the lower levels.

This situation is certainly very different from Indonesia, because if a state organizer commits a criminal act of corruption that harms the country’s billions of rupiah, then the perpetrators will not necessarily be subject to criminal sanctions that are commensurate or especially commensurate with severe criminal sanctions, such as life imprisonment or capital punishment. In fact, in criminal justice practices, state administrators who commit criminal acts of corruption with billions of rupiah in state financial losses often have incomplete legal processes, or the perpetrators are acquitted or perpetrators are only given minimal criminal sanctions by judges.

4. South Korea

The eradication of criminal acts in South Korea proceeded consistently, in the sense that many high-ranking state officials were brought to justice. If there is a state official who is accused of committing a criminal act of corruption, the South Korean Prosecutor’s Office immediately conducts an investigation, an investigation until a court hearing and ends in criminal sanctions which are commensurate with the acts committed.

The principle of combating corruption in South Korea is. No state leader is immune to corruption. President Chun Doo-Hwan during his reign from 1980 - 1985 has accumulated wealth. The South Korean Soul Court decided to confiscate the property of former president Chun Doo_Hwaan, because he was late in paying fines for the assets he obtained illegally while in power. According to court officials the assets confiscated were luxury condos and Mercedes Benz cars. This step was carried out to pressure Chun to pay a fine of 220 billion won (US \$ 195 million) set three years ago after the court proved that he had accumulated wealth when he became President. Likewise, his successor Roh Tae-Woo was also involved in a bribery case while in power and the court ruled he must return a fund of 262 billion won. At this rate Chun Doo-Hwan only returned 31.29 billion won and Roh Tae-woo at 174 billion won. After being sworn in as President in 1993 Kim Young-sam said that Chun Doo-Hwan and Roh Tae-Woo stole 400,000,000,000 won or about \$ 350,000,000 from South Koreans and he said he would carry out an internal investigation. The investigation into Chun began on November 16, 1995. On December 3, 1995 Chun Doo-Hwan and 16 others were arrested on conspiracy and rebellion charges. At the same time, an investigation into the corruption of their presidency began and in March 1996 their public hearing began. Finally, on August 26, 1996 the Soul District Courts sentenced him to death. While his successor Chun Doo-Hwan, that is Rooh Tae-Woo was only sentenced to prison for 22.5 years.⁶⁰

5. New Zealand

In some countries, efforts are made to minimize differences between court decisions by making a guideline that can be used as a reference for judges in imposing proportional criminal sanctions, namely criminal sanctions in accordance with the severity and dangerousness of a crime. The idea of imposing proportional criminal sanctions developed into the idea of making a criminal guideline (Sentence Guidelines).

The Sentencing Guidelines (Sentencing Guidelines), which were first made in America, were later adopted by other countries in the world, such as Finland (1976), Sweden (1988) with adjustments related to the measures used by Canada (1988) to adopt the basic principles and then modifying the model as a criminal guideline for juvenile inmates and New Zeland (2002).⁶¹

In this Desertasi research, it was stated one of the countries that had made Sentencing Guidelines and applied them to the perpetrators of crime, namely New Zeland. The new Zeln Sentencing Guidelines are regulated in the Sentencing Guidelines and Parole Reform, 2006 which is an amalgamation of changes in both laws, namely the 2002 Parole Act and the Sentencing Statute, 2002. The Parole Act 2002 is a law governing parole, while the Sentencing Statute, 2002 is a special law concerning criminal prosecution. The making of

⁶⁰<http://en.wikipedia.org/wiki/Chun-Doo-hwan> accessed on April 23, 2019 at 21:30.

⁶¹Zulfa, Eva Achjani. *Pergeseran Paradigma Pemidanaan*. Depok: UI Press, 2011, p. 42.

criminal guidelines is due to problems in imposing sanctions imposed by judges on perpetrators of criminal acts, namely judges often impose minimal criminal sanctions, even minimal criminal sanctions on criminal offenders with the aim of obtaining parole as stipulated in the 2002 Parole Act. condition for a prisoner to apply for parole is that they have been serving a criminal sentence for 2/3 of the criminal sentenced by the judge. These requirements then lead to the tendency of judges to impose minimal criminal sanctions and even minimal criminal sanctions and even more minimal criminal sanctions on criminal offenders.

The criminal guidelines (sentencing guidelines) in New Zeland can be used as materials for making criminal guidelines, especially against corruption committed by state administrators in Indonesia, both those that run the executive, legislative and judicial functions, at the central and regional levels.

V.CONCLUSION

1. The nature of imposing criminal sanctions by state administrators is ideally heavier than non-state administrators, where the sanctions are heavy and weighty both in terms of criminal, penalties and administration so that the purpose of criminal punishment can be achieved if the deterrent effect on state administrators who commit criminal acts of corruption.
2. Imposition of criminal sanctions for corruption tends to make judges decide the minimum penalties, both imprisonment, and fines accompanied by replacement money which if not paid then replaced with confinement.
3. Criminal sanctions that apply in Indonesia to state administrators are minimal sanctions both imprisonment, fines accompanied by replacement money. In Hong Kong, the perpetrators were subjected to criminal sanctions and dishonorable discharge, while in India they were subjected to criminal sanctions and the obligation to provide bond guarantees.

REFERENCES

- [1]. Adji, Indriyanto Seno. (2009). *Humanisme dan Pembaruan Penegakan Hukum*. Jakarta: Kompas.
- [2]. Ahmad, Kamri. (2016). Pengaruh Sistem Politik Terhadap Praktek Korupsi. *Jurisprudentie, Universitas Islam Negeri Alauddin Makassar*, 3(2), 123 – 130.
- [3]. Ancel, Marc. (1965). *Social Defence: A Modern Approach to Criminal Problems*. London: Routledge & Kegan Paul.
- [4]. Anwar, Yesmil, & Adang. (2009). *Sistem Peradilan Pidana: Konsep Komponen dan Pelaksanaannya dalam Penegakan Hukum di Indonesia*. Bandung: Widya Padjadjaran.
- [5]. Arief, Barda Nawawi. (1996). *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. (Doctor Disertasi), Universitas Diponegoro, Semarang.
- [6]. Ashworth, Andrew. (1991). *Principles of Criminal Law*. Oxford: Clarendon Press.
- [7]. Atmasasmita, Romli. (2003). *Pengantar Hukum Kejahatan Bisnis*. Jakarta: Kencana Prenada Media Group.
- [8]. Bachmid, Fahri, Sampara, Said, & Husen, La Ode. (2018). The Rights Of The Constitutional Court's Decision On The House Of Representatives 'Representatives About The President's Prospective And / Or The President's Vice Representatives According To The State Basic Law Of The Republic Of Indonesia. *IOSR Journal of Humanities and Social Science*, 23(10), 43-61.
- [9]. Batubara, Marwan (Ed.) (2008). *Skandal BLBI: Ramai-Ramai Merampok Negara*. Jakarta: Haekal Media Center.
- [10]. Bemmelen, J. M. van. (1984). *Hukum Pidana I: Hukum Pidana Material Bagian Umum* (Hasnan, Trans.). Bandung: Bina Cipta.
- [11]. Bentham, Jeremy. (2014). *Teori Perundang-undangan: Prinsip-Prinsip Legislasi, Hukum Perdata dan Hukum Pidana*. Bandung: Nuansa Cendekia.
- [12]. Busroh, Abu Daud, & Busro, Abubakar. (1991). *Asas-Asas Hukum Tata Negara*. Jakarta: Ghalia Indonesia.
- [13]. Chaerudin, Dinar, Syaiful Ahmad, & Fadillah, Syarif. (2008). *Strategi Pencegahan & Penegakan Hukum Tindak Pidana Korupsi*. Bandung: Refika Aditama.
- [14]. D., Moh. Mahfud M. (1988). *Hukum Kepegawaian Indonesia*. Yogyakarta: Liberty.
- [15]. Dirdjosisworo, Soedjono. (1984). *Fungsi Perundang-Undangan Pidana dalam Penanggulangan Korupsi di Indonesia*. Bandung: Sinar Baru.
- [16]. Elliott, Kimberly Ann. (1999). *Korupsi dan Ekonomi Dunia* (A. Rahman Zainuddin, Trans.). Jakarta: Yayasan Obor Indonesia.
- [17]. Farid, Zainal Abidin, & Hamzah, Andi. (2002). *Bentuk-Bentuk Khusus Perwujudan Delik (Percobaan, Penyertaan dan Gabungan Delik) dan Hukum Penitensier*. Jakarta: Sumber Ilmu Jaya.
- [18]. Friedman, Lawrence M. (1975). *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

- [19]. Friedman, Lawrence M. (2009). *Sistem Hukum: Perspektif Ilmu Sosial* (M. Khozim, Trans.). Bandung: Nusamedia.
- [20]. Fuady, Munir. (2007). *Dinamika Teori Hukum*. Jakarta: Ghalia Indonesia.
- [21]. Goldstein, Joseph. (1979). Police Discretion not to Invoke the Criminal Process: Low Visibility Decisions in the Administration of Justice. In George F. Cole & Marc G. Gertz (Eds.), *The Criminal Justice System: Politics and Policies*. Belmont: Wadsworth Publishing Co. Inc.
- [22]. Hamzah, Andi. (2008). *Perbandingan Pemberantasan Korupsi di Berbagai Negara*. Jakarta: Sinar Grafika.
- [23]. Hamzah, Andi, & Rahayu, Siti. (1983). *Suatu Tinjauan Ringkas Sistem Pemidanaan di Indonesia*. Jakarta: Akademika Pressindo.
- [24]. Hart, H. L. A. (2009). *Law, Liberty, and Morality (Hukum Kebebasan dan Moralitas)* (Ani MualifatulMaisah, Trans.). Yogyakarta: Genta Publishing.
- [25]. Hatta, Mohammad. (2010). *Kebijakan Politik Kriminal: Penegakan Hukum dalam Rangka Penanggulangan Kejahatan*. Yogyakarta: Pustaka Pelajar.
- [26]. Himawan, Charles. (2003). *Hukum sebagai Panglima*. Jakarta: Kompas.
- [27]. Hoefnagels, GerardusPetrus. (1969). *The Other Side of Criminology*. Springer Netherlands.
- [28]. Huda, Chairul. (2006). *Dari Tiada Pidana tanpa Kesalahan Menuju kepada Tiada Pertanggungjawaban Pidana tanpa Kesalahan: Tinjauan Kritis terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. Jakarta: Kencana Prenada Media Group.
- [29]. Husen, La Ode. (2005). *Hubungan Fungsi Pengawasan Dewan Perwakilan Rakyat dengan Badan Pemeriksa Keuangan dalam Sistem Ketatanegaraan Indonesia*. Bandung: CV. Utomo.
- [30]. Husen, La Ode. (2009). *Negara Hukum, Demokrasi dan Pemisahan Kekuasaan*. Makassar: PT. Umitoha Ukhuwah Grafika.
- [31]. Husen, La Ode. (2017). Accountability and Oversight in the Structure State System in Indonesia. *International Journal of Science and Research (IJSR)*, 6(6).
- [32]. Husen, La Ode. (2019). *Negara Hukum, Demokrasi dan Pemisahan Kekuasaan*. Makassar: CV. Social Politic Genius (SIGn).
- [33]. Husen, La Ode, Baharuddin, Hamzah, Kamal, Muhammad, &Purnawati, Andi. (2017). Legal Protection of Protected Wildlife in the Criminal Law System in Indonesia. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(6), 301-306.
- [34]. Husen, La Ode, Rahman, Sufirman, Sampara, Said, &Arsyad, Nasrullah. (2917). The Enforcement Of Ethics Of State Officials In The Indonesian Legal System. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(5), 1684-1689.
- [35]. Husen, La Ode, Rahman, Sufirman, Sampara, Said, &Sindawa. (2017). The Natural Village Government It Self State Laws System In Indonesia. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(6), 726-731.
- [36]. Husen, La Ode, &Thamrin, Husni. (2017). *Hukum Konstitusi: Kesepakatan (Agreement) dan Kebiasaan (Custom) Sebagai Pilar Konvensi Ketatanegaraan* (Nurul Qamar Ed.). Makassar: CV. Social Politic Genius (SIGn).
- [37]. Indrayana, Denny. (2008). *Negeri Para Mafioso: Hukum di Sarang Koruptor*. Jakarta: Kompas.
- [38]. Jalil, Husni, Husen, La Ode, Abidin, Andi, &Rezah, Farah Syah. (2017). *Hukum Pemerintahan Daerah dalam Perspektif Otonomi Khusus*. Makassar: CV. Social Politic Genius (SIGn).
- [39]. Jaya, Nyoman Serikat Putra. (2008). *Beberapa Pemikiran ke Arah Perkembangan Hukum Pidana*. Bandung: PT. Citra Aditya Bakti.
- [40]. Kaelan. (2007). *Pendidikan Kewarganegaraan untuk Perguruan Tinggi*. Yogyakarta: Paradigma.
- [41]. Kaligis, Otto Cornelis. (2006). Korupsi sebagai Tindakan Kriminal yang Harus Diberantas: Karakter dan Praktek Hukum di Indonesia. *Journal Equality, Universitas Sumatera Utara*, 11(2), 151 – 160.
- [42]. Karnasudirdja, Eddy Djunaedi. (1984). Lokakarya Pemidanaan: Standar Pemidanaan. In *Musyawaharah Nasional ke-VII*. Jakarta: Ikatan Hakim Indonesia.
- [43]. Kartono, Kartini. (2000). *Patologi Sosial*. Jakarta: PT. Raja Grafindo Persada.
- [44]. Kholis, EfiLaila. (2010). *Pembayaran Uang Pengganti dalam Perkara Korupsi*. Jakarta: Solusi Publishing.
- [45]. Kristiana, Yudi. (2006). *Independensi Kejaksaan dalam Penyidikan Korupsi*. Bandung: PT. Citra Aditya Bakti.
- [46]. Langseth, Petter, Stapenhurst, Rick, & Pope, Jeremy (Eds.). (1997). *The Rule of a National Integrity System in Fighting Corruption*. Warrington: The Economic Development Institute of the World Bank.
- [47]. Lopa, Baharuddin. (2001). *Kejahatan Korupsi dan Penegakan Hukum*. Jakarta: Kompas.
- [48]. MacIver, Robert Morrison. (1947). *The Web of Government*. London: Macmillan Education.

- [49]. Magnis-Suseno, Franz. (1999). *Etika Politik: Prinsip-Prinsip Moral Dasar Kenegaraan Modern*. Jakarta: PT. Gramedia Pustaka Utama.
- [50]. Manan, Bagir. (1999). *Lembaga Kepresidenan*. Yogyakarta: Gama Media.
- [51]. Manan, Bagir. (2005). *Sistem Peradilan Berwibawa: Suatu Pencarian*. Yogyakarta: UII Press.
- [52]. Marpaung, Leden. (2009). *Tindak Pidana Korupsi: Pemberantasan dan Pencegahan*. Jakarta: Djambatan.
- [53]. Mochtar, M. Akil. (2006). *Memberantas Korupsi: Efektivitas Sistem Pembalikan Beban Pembuktian dalam Gratifikasi*. Jakarta: Q-Communication.
- [54]. Mudzakkir. (1993). Sistem Pengancaman Pidana dalam Hukum Pidana. In *Seminar Nasional: Kriminalisasi dan Dekriminalisasi dalam Pembaharuan Hukum Pidana Indonesia*. Yogyakarta: Fakultas Hukum UII.
- [55]. Mudzakkir. (2009). Penelusuran, Penyitaan, Perampasan dan Pengelolaan Aset Tindak Pidana. In *Focus Group Discussion (FGD) tentang Penyitaan dan Perampasan Aset untuk Mendukung Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*. Yogyakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan Departemen bekerjasama dengan Departemen Hukum dan Hak Asasi manusia Republik Indonesia.
- [56]. Muhammad, Mukmin, & Husen, La Ode. (2019). State Civil Apparatus in Indonesia in the Conception of Welfare State: A Study of Legal Material Law Number 5 Year 2014 on State Civil Apparatus. *Asian Social Science*, 15(3), 64 - 72.
- [57]. Muhammad, Rusli. (2010). *Kemandirian Pengadilan Indonesia*. Yogyakarta: UII Press.
- [58]. Muladi. (1995). *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro.
- [59]. Muladi, & Arief, Barda Nawawi. (1992). *Teori-Teori dan Kebijakan Pidana*. Bandung: PT. Alumni.
- [60]. Napang, Marten, Husen, La Ode, & Mamonto, Lexsy. (2017). Refund Losses of State Assets of Perpetrators of Criminal Acts Of Tax Through Means Legal Penal And Non-Penal Law Systems in Indonesia. *IOSR Journal of Humanities and Social Science*, 22(11), 10-19.
- [61]. Nawi, Syahrudin. (2014). *Penelitian Hukum Normatif Versus Penelitian Hukum Empiris*. Makassar: PT. Umitoha Ukhuwah Grafika.
- [62]. Nitibaskara, Tubagus Ronny Rahman. (2006). *Ketika Kejahatan Berdaulat: Sebuah Pendekatan Kriminologi, Hukum dan Sosiologi*. Jakarta: Peradaban.
- [63]. Packer, Herbert L. (1968). *The Limits of the Criminal Sanction*. California: Stanford University Press.
- [64]. Pawennei, Mulyati, & Tomalili, Rahmanuddin. (2016). *Hukum Pidana*. Mitra Wacana Media.
- [65]. Poernomo, Bambang. (1992). *Asas-Asas Hukum Pidana*. Jakarta: Ghalia Indonesia.
- [66]. Pramusinto, Agus. (2009). Mencari Alternatif Strategi Pemberantasan Korupsi. *Jurnal Kebijakan dan Administrasi Publik, Universitas Gajah Mada*, 13(1), 1 – 17.
- [67]. Prasetyo, Teguh. (2010). *Hukum Pidana*. Jakarta: Rajawali Pers.
- [68]. Prasetyo, Teguh, & Barkatullah, Abdul Halim. (2005). *Politik Hukum Pidana: Kajian Kebijakan Kriminalisasi Dan Dekriminalisasi*. Yogyakarta: Pustaka Pelajar.
- [69]. Priyatna, Aan, Husen, La Ode, & Fadhila, M Nur. (2018). The Effectiveness Of Criminal Implementation On The Criminal Activities Of Marriage Drugs. *IOSR Journal of Humanities and Social Science*, 23(5), 01-07.
- [70]. Prodjohamidjojo, Martiman. (2009). *Penerapan Pembuktian Terbalik Dalam Delik Korupsi (Undang Undang Nomor 20 Tahun 2001)*. Bandung: CV. Mandar Maju.
- [71]. Purwoleksono, Didik Endro. (2008). Pengaturan Sanksi Pidana Dalam Ketentuan Undang-Undang. In *Pengukuhan Guru Besar*. Surabaya: Universitas Airlangga.
- [72]. Rahman, Sufirman, Qahar, Abdul, Qamar, Nurul, & Amiruddin. (2018). *Resolution of Land Rights Conflict Resolution of Customary Law Community at Foreign Investments Company*. Paper presented at the 2nd International Conference on Statistics, Mathematics, Teaching, and Research, Makassar, Indonesia.
- [73]. Rawls, John. (2006). *Teori Keadilan: Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dalam Negara* (Uzair Fauzan & Heru Prasetyo, Trans.). Yogyakarta: Pustaka Pelajar.
- [74]. Remmelink, Jan. (2003). *Hukum Pidana: Komentar atas Pasal-Pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia* (Tristam Pascal Moeliono, Trans.). Jakarta: PT. Gramedia Pustaka Utama.
- [75]. Rines, George Edwin (Ed.) (1977). *The Encyclopedia Americana*. New York: Americana Corp.
- [76]. Sadli, Saparinah. (1976). *Persepsi Sosial Mengenai Perilaku Menyimpang*. Jakarta: Bulan Bintang.
- [77]. Safii, Imron. (2014). Urgensi Pengadilan Tindak Pidana Korupsi dalam Mewujudkan Peradilan yang Bersih dan Berwibawa. *Pandecta, Universitas Negeri Semarang*, 9(1), 76 – 91.
- [78]. Saleh, Roeslan. (1978). *Stelsel Pidana Indonesia*. Jakarta: Aksara Baru.

- [79]. Sampara, Said, & Husen, La Ode. (2012). *Metodologi Penelitian Hukum*. Makassar: Kretakupa Print.
- [80]. Sisman, WandhiPratama Putra, Rahman, Sufirman, Qahar, Abdul, & Abbas, Ilham. (2019). Repositioning the Notary Code of Ethics as a Fair Legal Instrument. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 24(1), 75 – 88.
- [81]. Slamet, KusnuGoesniadhie. (2006). *Harmonisasi Hukum dalam Perspektif Perundang-Undangan: Lex Specialis Suatu Masalah*. Surabaya: JP Books.
- [82]. Soedarso, Boesono. (2009). *Latar Belakang Sejarah dan Kultural Korupsi di Indonesia*. Jakarta: UI Press.
- [83]. Sudarto. (2007). *Hukum dan Hukum Pidana*. Bandung: PT. Alumni.
- [84]. Sujata, Antonius. (2000). *Reformasi dalam Penegakan Hukum*. Jakarta: Djambatan.
- [85]. Sumaryanto, A. Djoko. (2009). *Pembalikan Beban Pembuktian Tindak Pidana Korupsi dalam Rangka Pengembalian Kerugian Keuangan Negara*. Jakarta: Prestasi Pustaka.
- [86]. Thalib, Hambali, Husen, La Ode, Pasamai, Syamsuddin, & Mulyawan. (2017). The Nature of Justice in Criminal Peneemby under the Minimal Limitation in Decision Judge of Corruption. *Imperial Journal of Interdisciplinary Research (IJIR)*, 3(9), 147-154.
- [87]. Wijaya, Firman. (2011). *Delik Penyalahgunaan Jabatan dan Suap dalam Praktek*. Jakarta: Penaku.
- [88]. Wijayanto, & Zachrie, Ridwan (Eds.). (2009). *Korupsi Mengorupsi Indonesia: Sebab, Akibat, dan Prospek Pemberantasan*. Jakarta: PT. Gramedia Pustaka Utama.
- [89]. Yusdiansyah, Efik. (2007). *Implikasi Keberadaan Mahkamah Konstitusi terhadap Pembentukan Hukum Nasional dalam Kerangka Negara Hukum*. (Doctor Disertasi), Universitas Padjadjaran, Bandung.
- [90]. Zulfa, Eva Achjani. (2011). *Pergeseran Paradigma Pidanaan*. Depok: UI Press.

Amiruddin. " The Essential of Criminal Sanction Against Perpetrators of Corruption Committed by State Administrators in Indonesia." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*. vol. 24 no. 09, 2019, pp. 34-48.