THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Criminal Liability Actors to Follow Criminal Corruption in Indonesia

Robertson
Prosecutor, The District Attorney Tobasa Porsea, North Sumatra, Indonesia

Abstract:
Examined from an international perspective is basically corruption is one of the crimes in the classification of White Collar Crime and has resulted from the complexity and become the attention of the international community. Congress of the United Nations 8 on "Prevention Of Crime and treatment of offenders" who validate resolution "Corruption in government" in Havana in 1990 to formulate about the consequences of corruption, such as: Corruption among public officials (corrupt activities of public official): Can crush potential effectiveness of all kinds of government programs ("potential can destroy the effectiveness of all types of governmental Programmes"); Can hinder development ("hinder development"); Cause casualties individual community groups ("victimize individuals and groups"). There is a strong linkage between corruption and various forms of economic crime, organized crime and illicit money laundering. The assumption that context can be drawn a conclusion on the basis of accountability corruption is systemic, organized, transnational and multidimensional in the sense correlated with aspects of the system, juridical, sociological, cultural, economic, inter-country and others. Perpetrators of corruption held criminal liability, among others, the form of imprisonment, criminal fines, payment of compensation for the loss of state finances posed by the offender, the perpetrators of corruption, also known as imprisonment of at least that is: at least 4 (four) years for the criminal corruption in violation of Article 2 paragraph (1) of the Act PTPK and at least 1 (one) year for the perpetrators of corruption in violation of Article 3 of the Law PTPK.

1. Introduction

If the person or persons committing an offense, then happened turmoil balance, due to violations of the law can cause harm to the other party. Re-creating a balance in society, held sanction, namely the administrative sanctions in the field of Constitutional Law, civil penalties in the field of civil law, and criminal sanctions in the areas of Criminal Law. In its implementation if the civil and administrative sanctions have not been sufficient to achieve a balance in society, the criminal sanction is final sanction or ultimum remedium. Criminal law is the law that determines about his criminal deeds and determine on an error for offenders (substance Criminal Law) and the laws that determine the substance of the implementation of the Criminal Law (Criminal Procedure Code). Indonesia's Criminal Law is divided into two kinds, that is collected in a book of codification (the Code of Criminal abbreviated with the Criminal Code) which is the Criminal Law Public and scattered in various laws on certain things, which is the Law Special Crimes. Violation of the rules of the Penal Code can be qualified as a crime or offense.

According Soedjono Dirdjosisworo, crime prevention in general are conceptual, done by combining various elements relating to the mechanism of criminal justice and public participation:

a. Improvement and strengthening of law enforcement officials, including strengthening of organization, personnel and infrastructure for the settlement of the criminal case;
b. Legislation which can function analyze and stem crime and have reach into the future;
c. Effective criminal justice mechanisms that the terms of a fast, inexpensive and simple;
d. Coordination among law enforcement officials and other government personnel related, to increase the efficiency in the prevention of criminality;
e. Community participation to help facilitate the prevention of crime.

In connection with the "crime prevention" includes steps as follows: a. Settling coaching and Law Enforcement Apparatus that includes organizational structure, personnel, and equipment, which are aligned with the development pattern of criminality, which is influenced by the development of the communities and technologies; b. Utilizing the procedures and mechanisms of criminal justice, which is aligned with the image of crime prevention, such as the judiciary is fast, inexpensive, accurate and indiscriminate; c. The renewal legislation, in tune with the demands of social and technological developments; d. Coordination among law enforcement agencies, between government officials whose duties relate to the prevention of crime by law enforcement officials. Coordination is integral / integrated for the purpose of law enforcement; e. Community participation in crime prevention, through fostering a sense of security and sense of responsibility for the security and peace of the region.

The seriousness of the government to discuss and tackle corruption is borne Act No. 20 of 2001 on the Amendment of Act No. 31 of 1999 on the Eradication of Corruption (UUPTPK), which brings a change that provides legal certainty, removes various interpretations / interpretation and equitable treatment in discussing Corruption Act. Judging from the material side of the payload,

bringing substantial changes, so that philosophical, sociological and juridical expected to provide a strong prevailing power, in an effort to realize the supremacy of law based on justice, truth and the rule of law.

2. Discussion

2.1. Characteristics of Corruption

Characteristics of corruption is very different from the legal system adopted by norm Criminal Code, especially concerning the perpetrators of crimes. In the corruption of criminal responsibility is broader than general crime, namely:

a. The possibility of sentences in absentia (without the presence of the defendant). It is involved in Article 38 paragraph (1) s / d (3) UUPTPK.
b. The possibility of confiscation of goods that have been seized for a defendant who has died before the verdict of the court which cannot be changed anymore (Article 38 (5) UUPTPK. Decision Confiscation of the accused who have died may not be appealed (Article 38 paragraph (6) UUPTPK.
c. Formulation of corruption in UUPTPK very broad in scope, especially the third element in Article 2 s / d 13 UUPTPK. The element is "directly or indirectly detrimental to the financial and economy of the state or known or reasonably suspected by him, that the act was detrimental to state finance and economy of the country.

UUPTPK basically refers to the provisions contained in the Criminal Code, so that the legal framework used as the basis for the prosecution perpetrators of corruption as a criminal offense to use a legal norm Criminal Code (lex generalis). Provisions governing in UUPTPK only a few chapters from the formulation of the manufacturer's own UUPTPK (lex specialist), while the other was pulled from the formulation of the Criminal Code. As for clauses that, among others, Article 1,2,3,4,13,18,19,20,21,22,41,42 and 43. However, Articles 21, 22 and 24 is not about corruption in the sense of material and financial, because the three chapters of the acts that complicate the case investigation at the level of investigation, prosecution and court examination siding upfront. Crime in the material sense and finance as stipulated in Article 2 and 3 UUPTPK.

2.1.1. Article 2 (1) determines

Any person who is against the law acts to enrich themselves or another person or a corporation that can be detrimental to the state finance or economy of the state, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200.000.000, - (two hundred million rupiah) and Rp. 1.000.000.000, - (one billion rupiah) ".

The sound of this article requires several characteristic elements of criminal acts that one of them is an act against the law in its application become a problem in the practice of the judicial system of corruption, especially concerning the unlawful act materially. Conception of tort material by nature has been known in the criminal justice system in Indonesia but is not effective and less attention to the legal system in Indonesia with the following considerations: First, tort previously defined formally (wederwettelijk) has undergone a shift and which is considered a breakthrough in criminal law, because of the nature of the act is now interpreted also as material which includes any act that violates the norms of the decency of society or any act that is considered reprehensible by society, resulting in a change in the sense of being wederrechtelijk, particularly acts against material law in criminal law. Second, wederrechtelijk got a very strong influence on the understanding of tort clearly in civil law through Cohen-Lindenbaum arrest on January 31, 1919. Act No. 3 of 1971 on the Eradication of Corruption, in particular Article 1, paragraph (1) letter a and the Company generally closely related to the application of tort doctrine materially Cohen Lindenbaum arrest.

2.2. Grouping Corruption

In the Law No. 31 of 1999, the sound of those Articles shall not be specified in accordance with the elements of a criminal offense in the formulation of article, but simply refers only to articles related. While in Law No. 20 of 2001, which is an Act amend and add to Act No. 31 of 1999, the Articles designated or related, elements of criminal acts in the articles are detailed intended in the articles of the new corruption.

Of crimes designated or associated it can be classified as follows:

a. Group criminal offenses Bribery
b. Group of criminal acts Fraudulent Deeds
c. Group of criminal acts falsifying books or checklists.
d. Group of criminal acts Embezzlement
e. Group criminal offenses Receiving gifts or promises.

As for groups of any offense referred to in the above grouping can be described as follows:

2.2.1. Group Crime of Bribery

a. Against Bribery of Public Servant or State Officials

In this group included both active bribery (the bribe) and passive (who takes a bribe), namely Articles 209, 210, 418 s / d 420 Criminal Code. These chapters are paired (active and passive) are: Article 209 bribe giver with Article 418 and 419 (public servant who accepts a bribe) and article 210 (giving a bribe to the judge) to Article 420 (judges who accept bribes) of the cases are handled. Although Article 209 pairs with Article 418 and Article 419, but the prosecution is not necessarily in unison. So even if the bribe has not been /

is not required, the recipient of bribes can still be prosecuted, as can be seen from some of the decisions of the Supreme Court. More acts of bribery against the servants referred to in Article 5 of Law No. 20 of 2001, namely:

1) Punishable with imprisonment of 1 (one) year and a maximum of 5 (five) years or fined at least Rp.50.000.000, - (fifty million rupiah) and at most Rp.250.000.000, - (two hundred and fifty million rupiah) any person who:
a) Giving or promising something to an official or State administrators with the intention that public servants or the State administrator do or not do something in his post, which is contrary to his duty or
b) Give something to an official or State administrators because to relate to something contrary to his duty, do or not do in his position.

2) For civil servants or State administrators who receive gifts or promise as referred to in paragraph (1) letter a or b, shall be punished the same as referred to in paragraph (1). As mentioned, above, that there are two groups of actors are active bribery and passive.
Looking at the content of Article 5, paragraph (1) of this act is performed according to the formulation of this paragraph is an active act, which threatens with penalties for any person (whether individuals or corporations) who give or promise anything to Servant or State Officers. With the appointment of the civil servants concerned have to do something or not do something. Therefore, the act promises to civil servants or State administrators are prohibited by law. The notion of civil servants can be seen from the formulation of the laws of the following:
"The civil service is every citizen of the Republic of Indonesia which have been determined eligible, appointed by the competent authority and entrusted with the task in a country office, or assigned other duties, and paid based on the legislation in force".
In Article 92 the Criminal Code to formulate what is meant by public servants it is:

1. The entry mentions civil servants (employees), namely all those who have been selected according to general laws, as well as all those, who are not selected for the election to the Board of Law makers or people's representative government established by or on behalf of the government, etc. all the members of the Councils and the local area and all of the nation Indonesia and Foreign Orientals, who did the legitimate power.
2. The entry designation servants and judges, including the experts decide the dispute, which includes designation of judges, those who exercise power of administrative law, as well as chairman and members of the religion.
3. All that entered the army in defense of view as well as civil servants.

Law No. 31 of 1999 to formulate the civil servants referred to in Article 1, namely:

1) The Corporation is a group of people or properties either a legal entity or non-legal entity.
2) Servants are included:
a. civil servants referred to in the Act on Employment;
b. civil servants as defined in the Code of Criminal Law;
c. people who receive salaries or wages of state or regional finances;
d. people who receive salaries or wages of a corporation that receives financial assistance from the state or region; or
e. people who receive salaries or wages of other corporations that use capital or facilities from the state or society.

3) Every person is an individual or a corporation
Definition of civil servants in article 1 of Law No. 31 of 1999 so vast, where in the formula include the formulation of public servants formulated in law number 43 of 1999 and be defined in the Book of the Law of Criminal Law.
Article 5, paragraph (1) a, Act 20 of 2001 states that the penalty for which provision or appointment to public servants or State administrators concerned in order to do something or not do something in a position which is contrary to the obligations, or because of his relationship with something which is contrary to the obligation, done or not done his be defined.
The notion to do something and not do something is an official who has the authority to issue permits of a product, should such products permit should not be issued, but because of a gift or a promise, then the license was issued or not to do something, it should be a clearance should be issued, the competent authority is not released the license intended.
While the definition contained in Article 5 (1) b is a gift to the State administrators with the aim that the organizers of the State concerned in a position to do something that is contrary to his duty. Liability issues of the organizers of the State or for civil servants, usually depending from work programs which have been prepared based on the regulations.
In Article 5, paragraph (1) b, this implies also that state administrators people are given something or promised something, something for which the member was threatened also by law as referred to in article 5, paragraph (2).
So in this legislation either person or corporation who gave anything or promise anything against public servants or State administrators, then the person or corporation who gave anything or promise anything that, threatened with the same punishment to civil servants or State administrators who receive gifts the. This is in contrast with the provisions stipulated in Article 418 and Article 419 Criminal Code that set penalties for giving something or promise, to civil servants or State administrators.

b. Judges and Advocates bribe bribery of judges actually judge is also a civil servant, but because the task of judges is to uphold the law, bribery of judges distinguished by bribery of ordinary civil servants or other State administrators.
Provisions concerning bribery of judges is regulated in Article 6 of the Law No.20 of 2001, that:

1. Punishable with a minimum of 3 (three) year and a maximum of 15 (fifteen) years and fined at least Rp.150.000.000, - (one hundred and fifty million rupiahs) any person who:
a) Giving or promising something to the judge with a view to influencing the decision to him cases submitted for prosecution; or
b) Giving or promising something to someone who according to the provisions of the legislation determined to be an advocate to attend court hearings with a view to influencing advice or received money will be given in connection with the case submitted to the court for trial.
2. For the judge who receive gifts or promise as referred to in paragraph (1) letter a or advocate who receive gifts or promise as referred to in the paragraph (1) letter b shall be punished with the same criminal as referred to paragraph (1).
From the wording of Article 1 paragraph (1) letter b, although lawyers are not civil servants or State administrators were appointed by public officials, and an obligation as well as law enforcement officers therefore for advocates who accept bribes from opposing litigants, the act was threatened with the provisions of article 1, paragraph (1) mentioned above.

2.2.2. Fraudulent Acts Relating to Works, suppliers and Partner

There are 2 Article regarding fraudulent acts criminal offenses stipulated in the Criminal Code, Article 423 and Article 425. Against this Article Susilo commented as follows:

a. Article 421, 423, 424, and 425 actually all meant to prevent and punish acts of fraud (corruption) that is a lot of variety of civil servants. Article 425 which includes crimes commonly called "knevelarij", because its formulation narrow (because here must be able to prove the elements, that the defendant did the act must have showed as if what she had gleaned it should be paid for, either her own, as well as to civil servants or the other or to the treasury of the country), then this article is powerless to punish unfair practices are common and carried out by civil servants. Skulduggery of civil servants in spite of the threat of Article 425, they may be charged with Article 424, 423, or 421, depending on the its constituent elements.
b. According to Article 7 of Law 20 of 2001 acts committed as stipulated in Article 423 and 387, 388 and 435 is an act of corruption is punishable by formulated as follows:

1) Punishable by imprisonment of at least 2 (two) years and a maximum of seven (7) years and or a fine of at least Rp 100,000,000.00 (one hundred million rupiah) and at most Rp 350,000,000.00 (three hundred fifty million rupiah):
a) contractor, a building which at the time of making a building, or sellers of building materials on time to deliver building materials, conduct fraudulent acts that may endanger the safety of persons or goods, or the safety of the country in a state of war;
b) any person charged with overseeing the development or delivery of construction material, accidentally let cheating as referred to in paragraph a;
c) any person who at the time to deliver goods for the Indonesian National Army and Indonesian Police or fraudulent conduct that could endanger the safety of the country in a state of war; or
d) any person who oversees the delivery of goods for the Indonesian National Army and Indonesian Police or knowingly allow unfair practices referred to in letter c.
2) For people who took delivery of building materials or the person receiving delivery of goods for the Indonesian National Army or the Police of the Republic of Indonesia and let the cheating as referred to in paragraph (1) letter a or c, convicted with similar sentences referred to in paragraph (1).
Actions formulated in this article contained in Articles 387, 388 and 435 Criminal Code, the third chapter of this rarely brought to justice, although it can be presumed that any violation of these provisions, especially in the atmosphere of today's rapid development. Not submitted articles are considered a threat because the law is too light, then in Law No.20 of 2001 criminal threat is not adopted, but the elements of a criminal offense remained was adopted, namely; Contractor or builder or seller materials building; at the time of making the building or on the delivery of construction materials; fraudulent acts; Which can cause harm to the safety of persons or goods or the safety of the State at the time of war. Danger referred to in the above elements do not need to happen first, if enough "could" occur.

- Elements of the Criminal Code Article 388.

Verse 1:
a. Time to deliver goods for the Navy or Army
b. Doing skullduggery
c. Which can cause harm to the state when there is a war

Verse 2:
a. Were told to oversee the delivery of goods;
b. intentionally;
c. Let skullduggery;

- Elements of the Criminal Code Article 435:
a. Government employees
b. deliberate
c. Both with directly or indirectly;
d. Participated in the works, delivery of goods or rental.

e. At the time the act was committed, he was assigned to take care of or watched.

Thus, if there is the company of someone or sometimes of his own family were against the spirit and content of Presidential Decree-presidential decree can be prosecuted in violation of Article 435 Criminal Code drawn in Article 1 paragraph 1.

2.2.3. Forge Books or the Special Register Inspection Administration

In Article 9 of Law No.20 of 2001 formulated as follows:

"Punishable by imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and fined at least US $ 50,000,000.00 (fifty million rupiah) and at most Rp. 250,000,000.00 (two hundred and fifty twenty million rupiah) civil servants or persons other than public servants who were given the task of running a public office continuously or temporarily, deliberately falsify books or lists that are specific to the administration of the examination. "

The penalty in this article is the act of deliberately falsifying books or lists that are specific to the administration of the examination. Even though the act was not to cause harm, falsifying deeds if it had done so for offender already be punished.

As is the books are stating in a company that is financial accounting, activities of the company, balance sheet of the company. While the special list is a list created to knowing about what items are bought and sold, payroll, list of participants of the company's partners. These lists are very important for the examination of their role as evidence against the authorities.

2.2.4. Embezzlement Crime Group

According to Article 10 of Law No. 20 of 2001 which elements draw on Article 415 s / d 417 Criminal Code, namely:

'Punishable by imprisonment for a minimum of 2 (two) years and a maximum of seven (7) years of imprisonment and a minimum fine of Rp 100,000,000.00 (one hundred million rupiah) and at most Rp 350,000,000.00 (three hundred and fifty million) civil servants or persons other than public servants who were given the task of running a public office continuously or temporarily, deliberately:

a. darken, destroy, destroy, or make unusable goods, certificates, letters or lists used to convince or prove in advance the competent authority, which controlled for the position; or

b. let others eliminate, destroy, destroy, or make unusable goods, certificates, letters, or the list; or

c. help others to eliminate, destroy, destroy, or make unusable goods, certificates, letters or lists.

Articles of the Criminal Code were drawn into UUPTPK and evasion is a criminal offense committed by public servants, namely Article 415 s / d 417 Criminal Code. Embezzlement committed public servants contained in Article 15 of the Criminal Code, whose elements are:

a. Civil servant or other person who is assigned to run a public office continuously for a while.

b. Done on purpose

c. Darkened in cash or in securities

d. Saved because of his position, or let money or securities was taken or stolen by another person, or as a helper to help another person in committing such acts.

The word "embezzlement" in this formulation has the same intent with embezzlement under Article 371 and 374 of Criminal Code, with the following differences:

- Article 415:

a. Subject / actors should be civil servants or other officials assigned continuously
b. Darkened in the form of goods, money or in securities
c. There are actors who are not civil servant's maid.

- Article 372:

a. The culprit anyone (impersonal)
b. Darkened in the form of goods.

Therefore, if civil servants or officials of embezzling goods instead of money or securities, so that civil servants cannot be prosecuted under Article 415 but under Article 372 or 474 Criminal Code.

Article 416 and Article 417 are also drawn into corruption, while its formulation may include embezzlement.

- Elements of Article 416 Criminal Code, namely:

a. Civil servant or other person assigned always or while running position.
b. done on purpose
c. Make it a fake or falsified books or lists that are specific to the administration of the examination.

The first and second elements together with Article 415, which is different is the third element of the forgery of a list which is solely for administrative examination. Thus, this article is important in tasks of supervision and examination of the person in charge of project development and finance in particular, for example regarding the procedures, administrative partner, routine and projects financial accountability.

- Elements of Article 417 Criminal Code, namely:

a. Public servants or others who were given the task of running a public office continuously or temporarily.
b. Done on purpose

c. Darken, destroy, damage or make unusable goods intended to convince or prove in advance the competent authority, deeds, letters or a list.
d. Stored / controlled because of his position, or allow others to eliminate, destroy, destroy or make unusable the goods, or helping as a helper in doing the deed.
Seen that between Article 417 and Article 415 there are many similarities elements. The difference is the third element. Where the object of Article 415 is money or securities, while Article 417 object is goods used to convince or prove in advance the competent authority.

2.2.5. Receiving Gifts or Promise
In Article 11 and Article 12 of Law 20 of 2001 regulates accepting gifts or promises, namely:
"Punishable by imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and or a fine of at least Rp 50,000,000.00 (fifty million rupiah) and at most Rp. 250,000,000.00 (two hundred fifty million rupiah) civil servants or state officials who accept gifts or promise when known, or suspected, that the promise or gift is given because of power or authority associated with his position, or according to the person giving the gift or promise that there is a relationship with office.
For someone officer or public servant when someone gives a gift or promise something, then it was to be expected that the gift or promise is related to the interest of the position he's lap, or by the person giving the gift or promise anything to do with his position. The prize was a variety of forms, can be goods, money or a form of service.
So without any relationship to an office or authority of an official, it is impossible a gift or pledge will be given.

- UUPTPK Article 12 states:

"Sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and fined at least US $ 200,000,000.00 (two hundred million rupiah) and at most Rp 1,000,000,000, 00 (one billion rupiah):
a. civil servants or state officials who accept gifts or promises, whereas the known or reasonably suspected that such gift or promises given to move in order to do or not do something in his post, which is contrary to his duty;
b. civil servants or state officials who received a gift even known or reasonably suspected that the gift was given as a result of or caused by doing or not doing something in the office that is contrary to his duty;
c. judges who receive gifts or promises, whereas the known or reasonably suspected that such gift or promises given to influence a decision of the case submitted to him for trial;
d. a person who under the provisions of the legislation determined to be an advocate to attend the trial, accept gifts or promises, whereas the known or reasonably suspected that such gift or promises to influence the advice or opinions to be given, in connection with the case submitted to court for trial;
e. civil servants or state officials that with the intent of enriching himself or another person unlawfully, or by abusing his power to force someone to give something, pay or accept payment by piece, or do something for himself;
f. civil servants or state officials who at the time running errands, asks receives, or cut payments to government officials or organizers of other countries or to the public treasury, as if the civil servants or state officials the other or the public treasury that have debts to him, although unknown that it is not a debt;
g. civil servants or state officials who at the time running errands, solicit or accept a job, or delivery of the goods, as if this is owed to him, but it is known that it is not the debt;
h. civil servants or state officials who at the time of duty, has been using state land on which there is a right to use, as if in accordance with the legislation, has been detrimental to the person entitled, even though knowing that the act was contrary to the legislation; or
i. civil servants or state officials either directly or indirectly knowingly participated in contracting, procurement, or rental, which at the time of the act, for all or part assigned to administer or monitor her. "

This article is basically regulating public servants act contrary to the duties or obligations. The duties and responsibilities of each official or the State administrator's assortment and actions contrary to the duties and obligations that vary also, for example, there is enriching themselves or others. Additionally, although not civil servants, the duty of an advocate member of advice that could affect the decision of the court, while he knew the act was contrary to the legislation in force. For employee country or State administrators and advocates who engage in actions contrary to the duties and obligations threatened with criminal law as referred to in this article.
Within the framework of changes and additions to Law No. 31 of 1999, then between Article 12 and Article 13 inserted 3 (three) new article, Article 12a, Article 12b and Article 12c. As for the purpose of insertion of new clauses because it is not regulated in Law Number 31 of 1999 referred to in Articles inserts intended:

- Article 12 a UUPTPK states:

1) The provisions concerning imprisonment and a fine as referred to in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 shall not apply to the crime of corruption of less than Rp 5,000,000, 00 (five million rupiah).
2) For the perpetrators of corruption are worth less than US $ 5,000,000.00 (five million rupiah) as referred to in paragraph (1) shall be punished with imprisonment of three (3) years and a maximum fine of Rp 50 million, 00 (fifty million rupiah)
Based on the wording of Article 5 of the new law shows the change in the sense of justice, in which the perpetrators of corruption of less than IDR 5.000.000, - (five million rupiah) then for him is punishable by a maximum of 3 (three) years in prison. Imprisonment of

change of a maximum of 5 (five) year to 3 (three) years in prison. While the threat of criminal penalties changed from a maximum of Rp. 250.000.000, - (two hundred and fifty million rupiah) to a maximum of Rp. 50.000.000, - (fifty million rupiah).

So the act of corruption committed by the organizers of the State even though its value, a little bit, but for offender it should be subject to punishment. The result of corruption that the harm the interests of the State and society. Only acts of corruption according to the author of less than Rp. 5.000.000, - (five million rupiah), then the threat of criminal not need as heavy as the provisions above, enough with the threat of penalties for acts of corruption as much of the value of it, or at most Rp. 10.000.000, - (ten million rupiah) or Rp.15.000.000, - (fifteen million rupiah). It is based on the premise that the organizers state that corruption is less than IDR 5.000.000, - (five million rupiah) the circumstances of life can be estimated very concern. This is where the consideration of the judge overseeing the case is tested in a way to decide which case.

New formula is also created by the makers of laws that are regulated in Law No. 31 of 1999 as provided for in Article 12 B, namely:

1) Every gratuity to an official or state officials considered bribery, as they relate to the position and contrary to the obligation or duty, to the following provisions:

a) the value of Rp 10,000,000.00 (ten million) or more, proving that the gratuity is not a bribe done by gratification receiver;

b) with a value of less than US $ 10,000,000.00 (ten million), proving that such gratification bribery carried out by the public prosecutor.

2) criminal to civil servants or state officials referred to in paragraph (1) is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years, and fined at least Rp 200 million, 00 (two hundred million rupiah) and at most Rp 1,000,000,000.00 (one billion rupiah).

In the explanation, explaining that the definition of "gratification" is the provision in a broad sense, including money, goods, rebates, (discount), commissions, interest-free loans, travel tickets, lodging, travel, treatment Free of Charge and other amenities. Gratuities are well received at home and abroad and carried out by using electronic or without electronic means.

In addition, the following article, Article 12 C, the legislator sets free the gratification of penalty so long as the perpetrators reports funds received by it to the Corruption Eradication Commission.

The provisions stipulated in Article 12 C of the more as follows:

1) The provisions referred to in Article 12 B of paragraph (1) shall not apply if the recipient receives gratification report to the Corruption Eradication Commission.

2) The report referred to in paragraph (1) shall be conducted by gratification receiver later than 30 (thirty) business days after the date of such received gratification.

3) The Corruption Eradication Commission no later than 30 (thirty) business days from the date of receiving the report shall set gratification can be the receiver or the property of the State

2.3. Perpetrators of Criminal Liability of Corruption

Barda Nawawi Arief, said that seen in the functional and operational, criminalization is a series of processes and policies that concretization deliberately planned through several stages. Starting from the stage of "formulation" by legislators, then the stage of "application" by regulatory agencies and finally the stage of "execution" by competent authorities and finally the stage of "execution" by authorities / agencies implementing criminal.

If the notion of punishment is widely interpreted as a process of granting or sentencing by a judge, it can be said that the criminal system covers all statutory provisions that govern how criminal law is upheld, or operationalized concretely, so that a person convicted or criminal.

If you look at and discuss the goals of punishment, not off to do with discussing the theories of punishment is this:

1) The theory of Absolut or absolute, that every crime must be followed by a criminal, and should not be no penalty goal is revenge. This theory is known and adhered to scholars such as Immanuel Kant, Van Bemmelen, Van Hattum, and Hegel.

2) Theory of Relative or relative, that is to say that crime does not absolutely have to be followed by a criminal, where the purpose of punishment is that the crime committed was not repeated again and also to improve the villain.

3) Combined Theory is a combination of both of the above theory, adherents are Pompe, Hugo de Groot and Rossi.

If you look at the theories mentioned above, then we can know that the penalty is retaliation for a criminal offense committed person. Where it initially sentenced at the time of the birth of this theory is contrary to humanely and in practice have the intent to frighten or deter others. For the execution of the sentence like a death sentence carried out in public in order to be known by the public.

On the Theory of Relative or relative, the sentences handed down to a person is based on guaranteeing the rule of law and order in society. The purpose of punishment is based on the theory are:

a. Interest repressive namely recover losses suffered by the community as a result of the crime.

b. The purpose of preventive namely to prevent the crime in order not to happen again. While this preventive purposes can be divided into two parts:

1) generale preventie, namely the threat of punishment aimed at the general public so that they do evil;

2) speciale preventie, namely that the threat of punishment is addressed to the inmate so that he could no longer commit evil deeds in the future.

Relating to the merger theory is a combination of theory with the theory of Absolute Relative. The emergence of this theory due consideration:

a. The theory of retaliation may lead to acts of unfair, because the problems that affect a person to commit a crime, is not taken into account by this theory;
b. Relative theory or the theory of relative also considered biased by merger theory, because by improving the nature of the criminal alone is not enough, because thus the legal consciousness rather than the general public or society not given steadiness. According to the theory also must take into account the combined considered against the inmate.

Lost rights of a person's liberty only inmates, while the rights of others are not necessarily lost. Punitive essence is an effort so that the convict can return to society. For that already righteously prisoners' rights equal to the rights of individuals in general. "The rules of minimum standards should serve as a barometer of the access rights-prisoners as well as general guidelines for officers Correctional Institutions / State Prison in delivering services to convicts.

Perpetrators of corruption cannot be imposed imprisonment, but dropped criminal or criminal impoverishment of mandatory work for the perpetrators of corruption, whose salary is deposited into the state treasury. It is on the basis that the perpetrators of corruption are many highly educated and experienced extensive, so if imprisoned not produce. It could be the perpetrator of a criminal act of corruption because the system is forced to do corruption and unavoidable.

A criminal decisions handed down by the judge could have sweeping impact, not only for the perpetrators of criminal acts are concerned, but also for the victims and society. This is because in the process of criminal punishment, in addition to contact with the judicial aspect, therein also associated with the sociological aspects and philosophical aspects. Finally, many arise discourse among observers of the law, that for a criminal punishment on offenses specified, which one should be prioritized between the interests of legal certainty on the one hand or the interests of justice on the other hand, as well, which one should be prioritized between the interests of public protection on the one hand, the interests of individual coaching the criminal on the other. This is an action and a critical attitude toward "diversity" strafmaat decided by the courts on case-specific criminal assault them. The outward appearance of the problem is the emergence of a criminal issue disparity of sentencing disparity between offenses in particular. In general, it can be said, that the views of the source, then the causes of disparity in criminal aside came from Judge (who dropped the criminal verdict), also mainly comes from the weakness of positive law (legislation), which is motivated by factors:

a) first, the fact that a very striking disparity of criminal offenses for which is essentially no different quality, and

b) second, the desire to meet the demands of people who want an objective minimum standards for certain offense very heckled and harm / endanger society / state, and the third, in order to more effectively influence the prevention general (prevention) against offenses certain deemed dangerous and disturbing the public, the law-making body later determine that for a particular offense, in addition there is a maximum punishment in particular, also simultaneously prescribed minimum punishment in particular.

The law is for humans; law enforcement must provide a benefit or usefulness to society. Society is very concerned that in the implementation or enforcement of the law, justice noted. Arief B. Sidharta said that the legal order that operates in a society is basically the embodiment of ideals of law adhered to by the communities concerned in the various legislation, legal institutions and processes (the behavior of the government bureaucracy and citizens).

In criminal law enforcement 4 (four) aspects of public protection that should receive attention, namely:

a. Society needs protection against anti-social acts that harm and endanger the public. Starting from this aspect it is only natural that law enforcement aimed at crime prevention.
b. Society needs protection against the dangerous nature of a person. Naturally, if the enforcement of Criminal Law also aims to improve offender crime or trying to change and influence its behavior in order to re-comply with the law and being good citizens and useful.
c. Society needs protection also against the abuse of sanctions or the reaction of law enforcement as well as from the public at large. Naturally, if the criminal law enforcement also has to prevent the conduct or actions that arbitrary extrajudicial.
d. Society needs protection against balance or alignment of interests and values are disrupted as a result of the crime. Naturally, also when a criminal law enforcement should be able to resolve conflicts caused by a criminal act, can restore balance and bring a sense of peace in society.

Corruption in Indonesia which have different characteristics to the offense in general, so that is one form of extraordinary crime (extraordinary crime) and is a serious crime. It has also been recognized by the international community as defined by the Convention of the United Nations (UN) Anti-Corruption, 2003 (United Nations Convention Against Corruption (UNCAC), 2003). Describing the problem of corruption has been a serious threat to the stability, security and national and international community, has weakened the institution of democratic values and justice jeopardize sustainable development and enforcement. The UN Convention Against Corruption in 2003 which has been ratified by Law (UU) No. 7 of 2006, the implications characteristics and substance of a combination of two legal systems, namely "Civil Law" and "Cammon Law", that would affect the positive law governing criminal offenses corruption in Indonesia. Romli Atmasasmita mention the juridical implications, that:

"It appears the criminalization of acts enrich themselves (illicit enrichment) where the provisions of Article 20 of the United Nations Convention Against Corruption (UNCAC) in 2003 determined that: .... each state Party shall Consider Adopting .... to establish as a criminal offense, when committed intentionally, illicit enrichment, that is, a significant increase is in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income ".

Additionally, studied from an international perspective is basically corruption is one of the crimes in the classification of White Collar Crime and has resulted from the complexity and become the attention of the international community. 8th UN Congress on "Prevention of Crime and treatment of offenders" who ratify resolution "Corruption in government" in Havana in 1990 to formulate about the consequences of corruption, such as:

1. Corruption among public officials (corrupt activities of public official):

a. Can crush potential effectiveness of all kinds of government programs ("potential can destroy the effectiveness of all types of governmental Programmes")
b. Can hinder development ("hinder development")
c. Cause casualty's individual community groups ("victimize individuals and groups").

2. There is a strong linkage between corruption and various forms of economic crime, organized crime and illicit money laundering.

The assumption that context can be drawn a conclusion on the basis of accountability corruption is systemic, organized, transnational and multidimensional in the sense correlated with aspects of the system, juridical, sociological, cultural, economic, inter-country and others.

Determination to the accountability of perpetrators of corruption in the event of an unlawful act cannot be separated on the formulation of the provisions of Article 14 of Law No. 31 of 1999 jo Law No. 20 of 2001 which provides that:

"Any person violating the provisions of the Act which expressly states that the violation of the provisions of the Act such as corruption, apply the provisions stipulated in this law".

The provisions of Article abovementioned uphold the principle of lex specialis derogate lex generalis to act against the law because through interpretation a contrario Article 14 determines, in addition to legislation combating corruption is not confirmed that a violation of the criminal provisions in other laws constitute corruption,

Laws combating corruption as lex basically refers to the provisions contained in the Criminal Code, so that the legal framework used as the basis for the prosecution perpetrators of corruption as a criminal act using the legal norms of the Criminal Code (lex generalis).

3. Conclusion

1. The system of accountability perpetrators of corruption in the current budget funds is that the perpetrators of corruption held criminal liability, among others, the form of imprisonment, criminal fines, payment of compensation for losses incurred by the state financial actors, the perpetrators of corruption, also known as imprisonment of at least that is: at least 4 (four) years for the perpetrators of corruption in violation of Article 2 paragraph (1) of the Act PTPK and at least 1 (one) year for the perpetrators of corruption in violation of Article 3 of the Law PTPK.
2. Any weakness in the system of accountability of perpetrators of corruption in budget funds are: imprisonment of at least 4 (four) years for the perpetrators of corruption in violation of Article 2 paragraph (1) of the Act PTPK and at least 1 (one) year for perpetrators of corruption in violation of Article 3 of Law PTPK is not reflected justice because it does not base the losses incurred (the perpetrators of corruption are causing losses of more equal to the minimum criminal offenders who cause harm smaller); There is no explicit provision in the law regarding asset PTPK perpetrators of corruption if they are unable to pay fines; There is no explicit provision in the Act concerning the high and low PTPK imprisonment demanded by the public prosecutor if the defendant before (at the stage of investigation), has returned the state's loss entirely, or partially or completely restore the loss of the State; In Act PTPK no explicit provision about the criteria or restrictions are expressly acts categorized as corruption, administrative violations, violations of civil, because it could have happened violations of administration / procedures that do not cause losses to the state but is included as corruption.

4. References

i. Barda Nawawi Arief.2002. Bunga Rampai Kebijakan Hukum Pidana. Bandung: Citra Aditya Bakti.
ii. Bismar Nasution, Metode Penelitian Hukum Normatif dan Perbandingan Hukum. Makalah, Disampaikan pada Dialog Interaktif Tentang Penelitian Hukum dan Hasil Penulisan Hukum pada Majalah Akreditasi, Fakultas Hukum USU, Medan, tanggal 18 Pebruari 2003.
iii. Barda Nawawi Arief, Pokok-Pokok Pikiran Kebijakan Pembaharuan Undang-Undang Pemberantasan Korupsi, Makalah Seminar di Unsoed, Purwokerto, 1999 bahwa The Asian Wall Street Journal pada tahun 1997 saja sudah menuliskan corruption ranking in 1996, based on the level of corruption in a country, Indonesia masuk
iv. Dwidja Priyatno, Dwidja Priyatno, Kapita Selekta Hukum Pidana, Bandung STHB Press, 2005.
v. Komariah Emong Sapardjaja, Ajaran Sifat Melawan Hukum Materiel Dalam Hukum Pidana Indonesia, Studi Kasus tentang Penerapan dan Perkembangannya dalam Yurisprudensi, Bandung: Alumni, 2002.
vi. Lilik Mulyadi, Tindak Pidana Korupsi Di Indonesia (Normatif, Teoretis, Praktik dan Masalahnya), Bandung. Penerbit PT Alumni, 2007.
vii. Mardjono Reksodiputro, Hak Asasi Manusia dalam Sistem Peradilan Pidana, edisi pertama, Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, Jakarta, 1994.
viii. Muladi, Kapita Selekta Sistem Peradilan Pidana. Semarang: Badan Penerbit Universitas Diponegoro, 1995.
ix. ---------,Konsep Indonesia Tentang Tindak Pidana di Bidang Perekonomian, Bandung: Penataran Tindak Pidana di Bidang Ekonomi, Fakultas Hukum UNPAR, 1994).
x. Muladi, Barda Nawawi Arief, Bunga Rampai Hukum Pidana, Bandung: Alumni, 1992.
xi. ----------, Teori-teori dan Kebijakan Pidana, Alumni, Bandung, 2005.
xii. Mulyanto dalam Faisal Salam, Pemberantasan Tindak Pidana Korupsi, Bandung: Pustaka, 2004.
xiii. M. Solly Lubis, Filsafat Ilmu dan Penelitian, Bandung: Mandar Maju, 1994.
xiv. Paulus Hadisuprapto. Juvenile Delinquency Pemahaman dan Penanggulangannya. Bandung: Citra Aditya Bakti, 1997.
xv. Purnadi Purbacaraka dan Soerjono Soekanto, Perihal Kaedah Hukum, Bandung: Alumni, 1982.

xvi. Raymond J. Michalowski, 1977. "Perspective and Paradigm: Structuring Criminology Thought", dalam Robert F. Meier, Theory in Criminology: Contemporary Views, Sage Publication, Beverly Hills, Michalowsky.
xvii. Soedjono Dirdjosisworo. Ruang Lingkup Kriminologi. Bandung: Remadja Karya, 1984.
xviii. Soedjono Dirdjosisworo. Pemeriksaan Pendahuluan Menurut KUHAP. Bandung: Alumni, 1982.
xix. Soerjono Soekanto dan Sri Mahmudji. Penelitian Hukum Normatif Suatu Tinjauan Singkat. Rajawali Pers, Jakarta, 1995.
xx. Sudarto, Hukum Pidana I, Semarang: Yayasan Sudarto d/a Fakultas Hukum Undip , 1990.
xxi. Sudarto,Hukum Pidana 1, Semarang: Badan Penyediaan Bahan-BahanKuliah FH Undip, 1987/1988.
xxii. Syed Hussein Alatas, Sosiologi Korupsi, Sebuah Penjelajahan dengan Data Kontemporer, Jakarta: LP3ES, 1983.
xxiii. Travis Hirschi, Causes of Delinquency, University of California, Barkeley : 1969.
xxiv. Nawawi Arief, Barda, Bunga Rampai Kebijakan Hukum Pidana. Bandung: Citra Aditya Bakti, 2002.
xxv. ----------. Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana. Penerbit Citra Aditya Bakti, Bandung.1998.
xxvi. ....., Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan. Penerbit Citra Aditya Bakti, Bandung. 2001.
xxvii. ……,Perbandingan Hukum Pidana. Penerbit Raja Grafindo Persada, Jakarta.2002.
xxviii. ---------- Bunga Rampai Kebijakan Hukum Pidana. Bandung: Citra Aditya Bakti. 1996.
xxix. ----------Kebijaksanaan Hukum Pidana Dalam Konsep KUHP Baru. Bahan Penataran Kriminologi Angkatan III di Universitas Andalas Padang.
xxx. Nasution, Bismar, Metode Penelitian Hukum Normatif dan Perbandingan Hukum. Makalah, Disampaikan pada Dialog Interaktif Tentang Penelitian Hukum dan Hasil Penulisan Hukum pada Majalah Akreditasi, Fakultas Hukum USU, 18 Pebruari 2003.
xxxi. Rasjidi, Lili, Dasar-dasar Filsafat dan Teori Hukum, Citra Aditya Bakti, Bandung, 2004.
xxxii. Reksodiputro, Mardjono, HAM Dalam Sistem Peradilan Pidana, Jakarta; Pusat Pelayanan Keadilan dan Pengabdian Hukum UI, 1997.
xxxiii. ---------- Sistem Peradilan Pidana, Pusat Dokumetasi Hukum Universitas Indonesia, Jakarta, 1991.
xxxiv. Poernomo, Bambang. Pandangan Terhadap Asas-Asas Umum Hukum Acara Pidana.Yogyakarta: Liberty, 1982.
xxxv. Purnomo, Bambang, Azas-Azas Hukum Pidana**,** Ghalia Indonesia, Jakarta, 1995.
xxxvi. Sahetapy, J.E. Paradoks Kriminologi, Rajawali Pers, Surabaya, 1995.
xxxvii. ---------- Suatu Studi Kasus Mengenai Ancaman Pidana Terhadap Pembunuhan Berencana. Rajawali Pers, Surabaya, 1993.
xxxviii. Sakidjo, Arun dan Bambang Purnomo, Hukum Pidana Dasar Aturan Umum Hukum Pidana Kodifikasi**,** Jakarta, Ghalis Indonesia, 1990.
xxxix. Sidharta. B. Arief, Refleksi Tentang Struktur Ilmu Hukum (Sebuah Penelitian Tentang Fundasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia). Bandung: Mandar Maju.1999.
xl. Setiardja, A. Gunawan. Hak-hak Asasi Manusia Berdasarkan IdeologiPancasila. Yogyakarta: Kanisius.1993.
xli. Soekanto Soerjono, dan Sri Mahmudji. Penelitian Hukum Normatif Suatu Tinjauan Singkat. Rajawali Pers, Jakarta, 1995.
xlii. Soemadipradja, R. Achmad S. dan Romli Atmasasmita. Sistem Pemasyarakatan di Indonesia. Jakarta: BPHN Departemen Kehakiman-Bina Ciupta, 1979.
xliii. Sudarto, Hukum dan Hukum Pidana, Bandung, Alumni, 1977
xliv. ----------, Hukum Pidana Dan Perkembangan Masyarakat: Kajian Terhadap Pembaharuan Hukum Pidana, Sinar Baru, Bandung, 1983.
xlv. Taufik, Mohammad, Pembaharuan Hukum Pidana, Kreasi Wacana, Yogyakarta, 2005.
xlvi. Tongat, Pidana Kerja Sosial dalam Pembaharuan Hukum Pidana Indonesia, Djambatan, Jakarta, 2001.
xlvii. Wahid, Abdul. Menggugat Idealisme KUHAP. Penerbit Tarsito, Bandung. 1993.
xlviii. Widjaja, H.A. W. Penerapan Nilai-nilai Pancasila dan HAM di Indonesia, Jakarta: Rineka Cipta, 2000.