

Reformulation Of Additional Criminal Law Regarding Sanctions For Defendants Of Corruption Criminal Acts In Indonesia

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Article Info

Received:2022-11-10
Revised:2023-01-20
Accepted:2023-03-20

Keywords:
Reformulation,
Criminal Law,
Corruption.

Abstract

Indonesia has Law Number 20 of 2001Jo. Law Number 31 of 1999 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter abbreviated as the PTPK Law). Based on Article 6 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Unfortunately, the criminal provisions contained in Article 21 and Article 22 of Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators are contrary to the principles contained in the Criminal Code, namely that the Criminal Code does not use a special minimum criminal system and cumulative principal criminal penalties, so that the Criminal Code including the Criminal Procedure Code cannot be used in eradicating criminal acts of Collusion and Nepotism. In other words, violations of criminal acts of collusion and criminal acts of nepotism in our beloved country currently cannot be addressed penally based on Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators. Therefore, this law needs to be immediately updated in terms of its criminal aspects. Article 20 paragraph (7) of Law Number 31 of 1999, which states that the main punishment is only a fine with a maximum plus 1/3 (one third). The determination of this criminal fine is imperative, meaning that judges have no other choice in imposing criminal sanctions on corporations other than criminal fines.

I. Introduction

Corruption is one of the many major challenges that the Indonesian nation must face. To some extent, corruption not only threatens the environment, human rights, democratic institutions and basic rights and freedoms, but also hampers development and exacerbates poverty.

Efforts to eradicate corruption have been carried out in various ways, but the results have not been satisfactory. One of the efforts to eradicate corruption is to use criminal law with its sanctions in the form of criminal penalties. The stipulation of criminal sanctions in the legislation on corruption cannot be separated from one of the objectives to suppress and overcome the problem of corruption. On the other hand, corruption is increasingly widespread, which not only harms state finances, but also violates the social and economic rights of the wider community. The increase in crime is an indication of the inappropriateness of the policy in determining criminal sanctions that have been taken so far.¹

The imposition of criminal penalties as part of the problem of the mechanism of criminal law enforcement, is closely related to the problem of policies to combat criminal acts. Viewed as part of the mechanism of law enforcement (criminal), then ordinary punishment is also interpreted as the imposition of criminal penalties is nothing other than a policy process that is deliberately planned.²

From a legal perspective, corruption crimes broadly include elements that include: unlawful acts, abuse of authority, opportunities or means of activities that harm the country's finances or economy. In a broad sense, corruption is the abuse of official office for personal gain. Corruption is a classic problem that has been around for a long time. The problem is that the legal reality in force in this country seems half-hearted and selective in efforts to eradicate corruption. Half-heartedness is seen from efforts to trap and pursue perpetrators of corruption and in determining the maximum sentence so that it can provide the right psychological effect. The punishment for corruptors who have been clearly sentenced by the judge is very light, so it can be said that it is not in accordance with their actions who have abused their power for personal or group interests. The punishment for corruptors does not have a deterrent effect on other potential corruptors.

The problem in eradicating corruption in Indonesia is not actually in the law but in the imposition of criminal sanctions, namely the application of criminal sanctions that are not yet optimal. Criminal sanctions in the UUPTPK consist of imprisonment, fines, life imprisonment and the death penalty, and for civil servants the criminal sanctions can be increased by 1/3 of the sentence imposed. The formulation of the sentencing guidelines needs to pay attention to the classification and stratification of positions, the amount of state losses and gratification. Meanwhile, the imposition of criminal sanctions needs to be followed by additional penalties and administrative sanctions. Without these sentencing

¹ Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, (Semarang: Badan Penerbit Universitas Diponegoro, 2000), hlm. 4

² Muladi, Barda Nawawi A, *Teori-teori dan Kebijakan Pidana*, (Bandung: Alumni, 1998), hlm. 91

guidelines, it is difficult to guarantee that there will be no more light sentences for perpetrators of corruption, because judges in making decisions are always designed by laws.

Meanwhile, the formulation of sentencing guidelines as a reference for judges in imposing criminal sanctions on state administrators who commit corruption in Indonesia is as follows: High-level State Administrators (Central) are the death penalty; or life imprisonment; or 20 years imprisonment, Middle-level State Administrators (Province) are a minimum of 10 years and a maximum of 15 years imprisonment and Lower-level State Administrators (District/City) are a minimum of 5 years and a maximum of 10 years imprisonment. The imposition of these criminal sanctions must be followed by additional administrative or criminal sanctions to deter, so as not to create negative perceptions, such as "It is better to corrupt billions of rupiah and be subject to minimal criminal sanctions", because after leaving the Correctional Institution the perpetrator can enjoy the remaining money from his corruption.

Legislation in Indonesia until now does not have a "national criminal system" which includes "sentencing patterns" and "sentencing guidelines". "Sentencing pattern", namely a reference/guideline for lawmakers in making/drafting laws and regulations containing criminal sanctions. The term sentencing pattern is also often called "legislative guidelines" or "formulative guidelines. While "sentencing guidelines" are guidelines for imposing/applying criminal penalties for judges ("judicial guidelines" / "applicative guidelines") Judging from the function of its existence, this sentencing pattern should have existed before criminal legislation was made, even before the national Criminal Code was made. The main problem in Indonesia is that until now it has not been answered, to what extent the authority of freedom owned by judges (judicial discretion) to "be able" to go down (to a certain extent) below the limits of special minimum criminal penalties in a legislative formulation, so that the implementation of just law enforcement remains within the corridor of legal certainty.

Correlation of Legal Reformulation of Corruption Cases that the intention in national legal politics related to the return of state financial losses as high as possible must start from Legal Reformulation which will then be made in the criminal regulation of Corruption cases related to additional penalties by making a percentage because in Article 3 of the Corruption Law there is a phrase of at least 1 (one) year in prison, while for additional penalties there is none. If an agreement can be reached regarding the sentencing standard, then the sentencing standard that will be determined by the Chief Justice is a joint decision between all Judges in the jurisdiction of the court. Here it means that what is called the Judge's freedom, if the sentencing standard has become a decision, becomes somewhat limited, in the sense that the Judge can only move between mitigated terms, base terms and aggravated terms.

2. Research Method

Soemitro said that normative legal research is also called library legal research, because it is mostly carried out on secondary data found in libraries.³ An approach is a

³ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri* (Jakarta: GhaliaIndonesia, 1990), hlm. 11

researcher's perspective in selecting a spectrum of discussion space which is expected to provide a clear description of the substance of a scientific work.⁴ The data sources needed in this study were obtained from libraries and documents, through secondary data. According to Sugiyono, secondary data is a source of data that does not directly provide data to data collectors, for example through other people or through documents. In research, the sources of secondary data can be laws, books, journals, articles related to the research topic.⁵

3. Result and Discussion

a. Legal Regulations And Sanctions For Corruption Criminal Acts In Indonesia

The legal basis for the emergence of regulations outside the Criminal Code (KUHP) above is Article 103 of the Criminal Code. In this article it is stated, "The provisions in Chapters I to VIII of this book also apply to acts that are threatened with criminal penalties by other statutory provisions, unless otherwise stipulated by law." In the case of provisions in statutory regulations regulating other than those regulated in the Criminal Code, it can be interpreted that a form of special regulation has overridden the general rule (*Lex Specialis Derogat Legi Generali*). In particular, crimes committed by officials related to corruption. However, the provisions on criminal acts of corruption contained in the Criminal Code are considered ineffective in anticipating or even overcoming the problem of criminal acts of corruption. Therefore, a statutory regulation was formed to eradicate the problem of corruption, with the hope of filling and perfecting the shortcomings contained in the Criminal Code. With the enactment of Law 20 of 2001 concerning Amendments to Law Number 31 of 1991 concerning the Eradication of Criminal Acts of Corruption, the provisions of Article 209 of the Criminal Code, Article 210 of the Criminal Code, Article 387 of the Criminal Code, Article 388 of the Criminal Code, Article 415, Article 416 of the Criminal Code, Article 417 of the Criminal Code, Article 418 of the Criminal Code, Article 419 of the Criminal Code, Article 420 of the Criminal Code, Article 423 of the Criminal Code, Article 425 of the Criminal Code, Article 434 of the Criminal Code are declared null and void.⁶

Over time, the regulation of corruption crimes in the Criminal Code is considered problematic and ineffective. This is because it cannot reach other aspects in the enforcement of increasingly complex corruption laws. Therefore, furthermore, for the enforcement or eradication of corruption criminal law, a statutory regulation is also formed which applies as *lex specialis*, namely Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption Crimes or hereinafter

⁴ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan Kedua (Jakarta: Kencana, 2017), hlm. 11-12

⁵ Sugiyono, *Metode Penelitian Kuantitatif* (Bandung: Alfabeta, 2018), hlm. 456

⁶ Jur Andi Hamzah, *Korupsi Melalui Hukum Pidana Nasional dan Internasional (edisi revisi)*, (Jakarta: Raja Grafindo Persada, 2007), hlm. 39.

referred to as Law No. 20/2001.

It is stated in Article 2 of Law No. 20/2001 in full:

1. Any person who unlawfully commits an act of enriching himself or another person or a corporation that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
2. In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed. As well as Article 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption or hereinafter can be abbreviated as Law.No. 20/2001 explicitly states "Any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or means available to him because of a position or position that can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and a fine of at least Rp. 50,000,000,- (fifty million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah)". And it is emphasized in Article 4 that "The return of state financial losses or the state economy does not eliminate the criminal punishment of the perpetrator of the crime as referred to in Article 2 and Article 3." And until now the Republic of Indonesia does not have a special law on asset confiscation and the matter of asset confiscation is only regulated in Article 38 paragraph (5), Article 38 paragraph (6) and Article 38 B paragraph (2) of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001.

Indonesia has Law Number 20 of 2001Jo. Law Number 31 of 1999 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter abbreviated as the PTPK Law). Indonesia's corruption eradication is supported by an independent institution in eradicating corruption, namely the Corruption Eradication Commission (KPK), which is regulated in Law Number 30 of 2002 concerning the Corruption Eradication Commission which has been amended by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Based on Article 6 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

The legal subject of persons in the PTPK Law is determined in two ways, namely: the first way is stated as the legal subject of persons in general, meaning that their

personal qualities are not determined. The initial word in the sentence formulating a criminal act that describes or mentions the legal subject of criminal acts of people in general, which in case of criminal acts of corruption is mentioned with the words "everyone" (for example Articles 2, 3, 21, 22), but also the legal subject of criminal acts also placed in the middle of the formulation (for example Articles 5, 6).

while the second method mentions the personal qualities of the legal subject, which in casu has many qualities, including: civil servants and state administrators (for example Articles 8, 9, 10, 11, 12 letters a, b, e, f, g, h, i); expert building contractors (Article 7 paragraph 1 letter a); (3) judges (Article 12 letter c); advocates (Article 12 letter d); witnesses (Article 24); suspects can also be legal subjects (Article 22 in conjunction with 28). The legal subject of corporations as explained in Article 1 of the PTPK Law which states that "a corporation is a group of people and/or wealth that is organized, whether it is a legal entity or not a legal entity". Based on the definition of a corporation that can be a legal subject of corruption, this is much broader than the definition of *rechts persoon* which is generally interpreted as a legal entity in the context of civil law. Corruption crimes committed by a corporation in the PTPK Law are formulated in Article 20 which states as follows: in the case of corruption.

b. Legal Policy On Sanctions For Corruption In Indonesia

Based on the provisions of Article 43 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law No. 20 of 2001, the special body is called the Corruption Eradication Commission which has the authority to coordinate and supervise, including conducting investigations, inquiries, and prosecutions. In Law No. 30 of 1999, there are types of criminal sentences that can be interpreted by judges against defendants of corruption crimes, namely against people who commit corruption crimes.

Death Penalty The crime of corruption as referred to in paragraph 1 is committed in certain circumstances, such as when the country is in danger according to applicable laws, in corruption (recidivist), or when the country is in an economic and monetary crisis, then the death penalty can be imposed. The criminal threat is life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty years) and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

Life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) for anyone who unlawfully commits an act of enriching themselves or another person or a corporation that can harm the state finances or the state economy. (Article 2 paragraph 1).

Life imprisonment or a minimum imprisonment of 1 (one) year and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) for any person who, with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity, or means available to him due to his position or position which can harm the state finances or the state economy (Article 3).

A minimum of 3 (three) years and a maximum of 12 (twelve) years imprisonment and/or a minimum fine of Rp.150,000,000.00 (one hundred and fifty million rupiah) and a maximum fine of Rp.600,000,000.00 (six hundred million) for anyone who intentionally prevents, obstructs or thwarts directly or indirectly the investigation, prosecution and examination in court of suspects or defendants or witnesses in corruption cases. (Article 21).

The minimum prison sentence is 3 (three) years and the maximum is 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and at most Rp. 600,000,000.00 (six hundred million rupiah) for each person as referred to in Article 28, Article 29, Article 35, and Article 36. Confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including companies owned by convicts where corruption is committed, as well as goods that replace such goods. Payment of replacement money in an amount that is at most equal to the property obtained from corruption. There are several ways in which state losses occur, namely state losses related to various transactions: transactions in goods and services, transactions related to debts and receivables, and transactions related to costs and income. The three possibilities for state losses to occur give rise to several possible events that can harm state finances or the state economy.

The implementation of the death penalty based on Islamic views is not a taboo to also be used in the positive legal system of Indonesia, especially since it has been regulated in Law No. 13 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption. However, the law enforcement factor to enforce the punishment has so far seemed difficult to do. The view of the implementation of the death penalty for corruptors is a form of punishment that is attempted to create a deterrent effect for the perpetrators where the punishment in Indonesia currently for corruptors is very non-deterrent because of the light nature of the punishment. This is ironic with the extraordinary damaging effects caused by the act of corruption itself. There needs to be courage for law enforcers to enforce the death penalty.⁷

According to Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Corruption, corruption is a criminal act that is very detrimental to state finances or the state economy and hinders national development and also hinders the

⁷ Rida Ista Sitepu and Yusona Piadi, 'Implementasi Restoratif Justice Dalam Pemidanaan Pelaku Tindak Pidana Korupsi', *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 1.1 (2019), 67-75

growth and sustainability of national development which demands high efficiency. It is further stated in the consideration section of the law that corruption is said to be a violation of the social and economic rights of the community at large, so that corruption is classified as a crime whose eradication must be carried out in an extraordinary manner. Therefore, the regulation of criminal compensation and fines is one effort to restore state financial losses.

In fact, all corruption laws in Indonesia have regulated the issue of criminal compensation. Explanation of Article 1 number 1 of Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts. Human rights are a set of rights inherent in the nature and existence of every human being as a creature of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the honor and protection of human dignity and honor. This means that what is meant by human rights are rights that are inherent in every human being. Specifically, human rights based on national and international law are grouped into human rights that are derogable and non-derogable rights. Derogable rights are rights that may be limited in their fulfillment, consisting of the right to freedom of peaceful assembly, the right to freedom of association, including forming and becoming a member of a labor union, and the right to freedom of expression, including the freedom to seek, receive and impart information and all kinds of ideas without regard to limits (both verbally and in writing). Meanwhile, non-derogable rights are rights that cannot be suspended or limited (reduced) in their fulfillment by the state, even in emergency conditions. Human rights that cannot be reduced under any circumstances and by anyone are the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law and the right not to be prosecuted on the basis of retroactive laws.

Restrictions and reductions on human rights are regulated in national and international law. First, based on Article 28 J paragraph (2) of the 1945 Constitution, that in exercising their rights and freedoms, every person must submit to restrictions stipulated by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, religious values, security and public order in a democratic society. Second, restrictions and reductions on human rights are also regulated in Law Number 39 of 1999 concerning human rights, namely in Article 70, Article 73 and Article 74 which state that in exercising their rights and freedoms, every person must submit to restrictions stipulated by law with the purpose of guaranteeing recognition and respect for the rights and freedoms of others and to fulfill just demands in accordance with moral considerations, security and public order in a democratic society. Third, the declaration

of human rights also regulates the limitation and reduction of human rights, namely in Article 29 paragraph (2) which states that in exercising his rights and freedoms, everyone must be subject only to limitations established by law whose sole purpose is to guarantee due recognition and respect for the rights and freedoms of others, and to meet the just requirements of morality, public order and the general welfare in a democratic society. Fourth, based on the provisions contained in Article 4 of Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights (ICCPR), it is stated that: (a) In a state of emergency that threatens the life of the nation and its existence, which has been officially declared, States parties to this Covenant may take steps that reduce their obligations under this Covenant, to the extent that it is strictly necessary in the emergency situation, as long as such steps do not conflict with other obligations based on race, color, sex, language, religion or social origin; (b) Reduction of obligations under articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 cannot be justified at all based on this provision.

The eradication of corruption crimes by penalty in Indonesia currently uses Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which was updated by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999. Meanwhile, the eradication of crimes of Collusion and Nepotism is contained in Law Number 28 of 1999 concerning Clean and Corruption-Free State Administrators. Based on the provisions of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, the scope of criminal acts of corruption consists of 2 (two) groups of criminal acts. Based on the division of criminal acts of corruption above, the form of action that constitutes a "pure" criminal act of corruption is an action as regulated in Article 2 and Article 3 of Law Number 31 of 1999, namely (1) unlawfully carrying out an act to enrich oneself or another person or a corporation that can harm state finances or the state economy; (2) benefiting oneself or another person or a corporation, abusing the authority, opportunity or means available to him because of a position or position that can harm state finances or the state economy.

Corruption Crimes originating from crimes originating from the Criminal Code as regulated in Article 5 to Article 12 of Law Number 31 of 1999 in conjunction with Article 1 of Law Number 20 of 2001 amount to 23 forms of acts. There is one form of bribery as a criminal act of corruption formulated by the makers of Law Number 31 of 1999 as regulated in Article 13, namely anyone who gives gifts or promises to civil servants by considering the power or authority attached to their position or position, or by the giver of gifts or promises is considered attached to the position or position. Meanwhile, the form of act as a criminal act of corruption that qualifies as 'other criminal acts related to criminal acts of corruption' is a criminal act of corruption (corruption crimes) related to the process of investigation, prosecution, and trial of corruption cases, as regulated in

Article 21 to Article 24 of Law Number 31 of 1999.

Eradication of the crime of Collusion is regulated in Article 21 of Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators, namely that every State Administrator or Member of the Audit Commission who commits collusion as referred to in Article 5 number 4 shall be punished with imprisonment of at least 2 (two) years and a maximum of 12 (twelve) years and a fine of at least Rp. 200,000,000,- (two hundred million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah). While the crime of Nepotism is regulated in Article 22 of Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators, namely that every State Administrator or Member of the Audit Commission who commits nepotism as referred to in Article 5 number 4 shall be punished with imprisonment of at least 2 (two) years and a maximum of 12 (twelve) years and a fine of at least Rp. 200,000,000,- (two hundred million rupiah) and a maximum of Rp. 1,000,000,000,- (one billion rupiah).

The above criminal policy for combating Collusion and Nepotism crimes has a weakness in its legal substance because it does not specifically regulate how to enforce the law. Given that it does not specifically regulate it, based on the provisions of Article 103 of the Criminal Code, its enforcement is returned to the methods applicable in the Criminal Code and the Criminal Procedure Code. Unfortunately, the criminal provisions contained in Article 21 and Article 22 of Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators are contrary to the principles contained in the Criminal Code, namely that the Criminal Code does not use a special minimum criminal system and cumulative principal criminal penalties, so that the Criminal Code including the Criminal Procedure Code cannot be used in eradicating criminal acts of Collusion and Nepotism. In other words, violations of criminal acts of collusion and criminal acts of nepotism in our beloved country currently cannot be addressed penally based on Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators. Therefore, this law needs to be immediately updated in terms of its criminal aspects.

The non-penal policy is carried out by updating provisions related to bureaucratic activities, including realizing programs in the Regional Action Plan for Corruption Eradication (RAD-PK) as an implementation of the regional government's commitment to overcoming corruption. Corruption is one of the major problems faced by Indonesia, and has even become chronic. Zainuri revealed that corruption in this country has spread to all lines like an octopus. This deviation has not only penetrated areas that have been perceived by the public as nests of corruption, but has also traveled down corridors of agencies that were previously unimaginable that corruption existed there. One by one financial scandals in various state agencies have been exposed.

In handling corruption, the government has a rational effort through a penal (repressive) approach by imposing sanctions on legal subjects who commit crimes. Thus,

imposing sanctions on corruption is a reaction to the corrupt acts committed. However, in the process of overcoming criminal acts including corruption, not only using penal efforts that tend to be reactive, but there must also be non-penal efforts with a preventive approach by preventing someone from committing a crime.

Overcoming crime through non-penal means must be done because penal means have weaknesses or inability of criminal law from the perspective of the functioning or working of criminal law (sanctions) itself. Meanwhile, when viewed from crime as social, there are many factors that cause a crime to occur. It is natural that criminal law has limited ability to overcome as Sudarto said that the use of criminal law is a symptomatic response (Kuren am Symton) and not a solution by eliminating the causes. Necessitating steps to overcome crime with non-penal means, the process of its realization through education has a key role. Non-penal means have an intellectual conscience that focuses on improving social conditions, but implicitly have a preventive influence on crime. These non-penal efforts, for example, social assistance and education in order to develop social responsibility of community members, the cultivation of community mental health through moral, religious, or other moralistic education, increasing child and adolescent welfare efforts, patrol activities and other supervision. No less important is increasing abolitionist efforts, namely efforts that can directly erode the conducive factors that cause crime.

c. Form Of Legal Reformulation On Sanctions For Corruption Criminal Acts In Indonesia

Inappropriate formulation of sanctions in eradicating corruption is one of the factors of various factors that cause the increasing number of corruption perpetrators. This can be seen that corruption perpetrators emerge with various modes of operation. The perpetrators range from people who are educated, have high socio-economic conditions and live as respected people to those who are lowly educated, live in poverty but have opportunities.

Currently, the types of sanctions listed in the Criminal Code in Indonesia are principal and additional penalties. Article 10 of the Criminal Code states that principal penalties are the death penalty, imprisonment, detention and fines. In the Criminal Code translated by the BPHN (National Legal Development Agency), under fines, a closed penalty is listed. These penalties also apply to criminal acts outside the Criminal Code, unless the law stipulates otherwise. Meanwhile, additional penalties include the revocation of certain rights, confiscation of certain goods and the announcement of the judge's decision. In criminal legislation outside the Criminal Code, there is a tendency to use a two-track system in its sanction system, which means that criminal sanctions and action sanctions are regulated simultaneously. Modern criminal law, which is characterized by an orientation towards actions and perpetrators (daad-dader strafrecht),

its sanction system does not only include criminal (straf, punishment) which is of a suffering nature, but also disciplinary actions (maatregel, treatment) which are relatively more educational in nature.⁸

Based on its purpose, criminal sanctions aim to give special suffering (Bijzonder leed) to the offender so that he feels the consequences of his actions. In addition to being aimed at imposing suffering on the perpetrator, criminal sanctions are also a form of statement of reproach against the perpetrator's actions. Thus, the difference in principle with action sanctions lies in the presence or absence of an element of reproach, not in the presence or absence of an element of suffering. Determining the type and form of sanctions is actually part of a criminal policy that requires the use or application of rational methods. It is clear that the policy of determining a sanction is a rational way, method, and/or action that is directed at a predetermined goal. In other words, the first step in determining a type of sanction is to determine the goal to be achieved by the sanction itself.

Corruption that is currently systemic has been categorized as an extraordinary form of crime. Extraordinary, both in terms of the impact it causes, which has damaged the joints of national and state life, and in terms of the development of the crime which is very rapid so that it also requires extraordinary handling. Talking about efforts to eradicate criminal acts of corruption means talking about how to enforce the law. Comprehensive efforts are needed to overcome it, namely through efforts to develop a legal system, because basically corruption is a systemic crime that is closely related to power. According to Indriyanto Seno Adji, this form of structural crime is what includes the format of corruption as part of organized crime. Corruption that has hit almost the entire world is a structural crime that includes a good system, organization and structure.⁹

Seeing the development of corruption which has become an extraordinary crime, the criminal law path in eradicating corruption is no longer the ultimum remedium but must become the primum remedium. In the Explanation of Law Number 31 of 1999, it is stated that Law Number 31 of 1999 was made with the intention of replacing Law Number 3 of 1971, which is expected to be able to meet and anticipate the development of the legal needs of the community in order to prevent and eradicate more effectively every form of corruption that is very detrimental to state finances or the state economy in particular and society in general.

In order to achieve the goal of preventing and eradicating corruption, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 contains criminal provisions that

⁸ Muladi, Hak Azazi Manusia, *Politik dan Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 1997), hlm. 151

⁹ Indriyanto Seno Adji, *Korupsi dan Hukum Pidana*, Cetakan 1, Jakarta, 2001, hlm. 236

are different from previous laws, namely determining the threat of a special minimum sentence, a higher fine, and the threat of the death penalty which is an aggravation of the sentence. In addition, this law also contains imprisonment for perpetrators of corruption who cannot pay additional penalties in the form of compensation for state losses.

Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 stipulates the threat of a high fine, but the formulation of the high fine is not accompanied by guidelines for imposing it, so even though the heaviest threat is 1 billion rupiah, then applied in the application stage, it will still be subsidiary to imprisonment for 6 months and there are no provisions for how long the fine must be paid in accordance with the guidelines in the Criminal Code.

So, to operationalize the high criminal fines in Law Number 31 of 1999, guidelines for sentencing are needed. Likewise, regarding additional criminal penalties in the form of replacement money which is expected to be fully entered into the state treasury with the aim of returning corrupted state finances, its success has not been seen, because only a small part can be executed, there are even additional criminal decisions to pay replacement money that cannot be executed at all.

Viewed from the perspective of criminal policy, especially the formulation policy in the context of developing criminal law in Indonesia, the rational effort that must be made is the reformulation of sanctions in the Corruption Eradication Law, so that it can realize regulations that are in accordance with the circumstances and situations at a time and for the future, and reflect the principles of law, realize a sense of justice and legal certainty based on Pancasila and the 1945 Constitution. The effect of a sanction is an empirical problem, because humans have different perceptions regarding these sanctions. Conventionally, a distinction can be made between positive sanctions which are rewards, and negative sanctions which are punishments. The basis of this idea is that legal subjects will choose one and avoid the other.

Currently, the sanctions formulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 are criminal sanctions, both in the form of principal penalties and additional penalties. Action sanctions are not formulated, but the form of the action sanctions themselves are formulated as additional penalties. So that there is an overlap in the use of this sanction.

Viewed from the sanction system, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 uses the Single Track System, because it does not place action sanctions on a par with criminal sanctions. While the sanction system in modern criminal law places criminal sanctions and action sanctions on an equal footing or what is called the Double Track System.

According to Barda Nawawi Arief, specifically concerning the issue of the types of sanctions that must be determined as precisely as possible, it is necessary to re-emphasize

the concepts or thoughts on the development of criminal law, especially the problem of criminal and criminal punishment. In terms of punishment, modern criminal law is also oriented towards the perpetrator factor of the crime. Therefore, the idea of individualizing criminal acts must also be the background of thinking at the legislative policy stage. This is necessary because the other side of "criminal individualization" is the need for judges to have the freedom to choose and determine what sanctions (criminal or action) are appropriate for the individual/perpetrator of the crime in question. So flexibility or elasticity of punishment is needed, although it remains within the limits of freedom according to the law.

Starting from such a position of thought, a theoretical stance is proposed that demands that sanctions for action be treated as independent sanctions. This concept is based on the basic idea that sanctions in criminal law are no longer solely dependent on retribution for the perpetrator's mistakes, but also on rehabilitation and protection of society. The consequences of such a view demand a strict separation of the types of criminal sanctions and sanctions for action and both must be placed equally and applied proportionally. This is the deepest meaning of the double track system concept. The Corruption Eradication Law, which has made corporations the subject of criminal acts of corruption, regulates its criminalization by including Article 20 paragraph (7) of Law Number 31 of 1999, which states that the main punishment is only a fine with a maximum plus 1/3 (one third). The determination of this criminal fine is imperative, meaning that judges have no other choice in imposing criminal sanctions on corporations other than criminal fines. It is different if the type of sanctions for action is included in the Corruption Crime Law, then judges can choose the type and form of sanctions that are in accordance with the purpose of criminalizing the corporation. The main objective of criminal punishment and punishment for corruption crimes is the return of state losses, which is in line with the objective of punishment which is oriented towards retribution aimed at the losses caused by the criminal acts of the perpetrator, and is intended to ensure that the perpetrator pays for the crime he has committed.

4. Conclusion

Indonesia has Law Number 20 of 2001Jo. Law Number 31 of 1999 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption (hereinafter abbreviated as the PTPK Law). Indonesia's corruption eradication is supported by an independent institution in eradicating corruption, namely the Corruption Eradication Commission (KPK), which is regulated in Law Number 30 of 2002 concerning the Corruption Eradication Commission which has been amended by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission. Based on Article 6 of Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.

The above criminal policy for combating Collusion and Nepotism crimes has a weakness in its legal substance because it does not specifically regulate how to enforce the

law. Given that it does not specifically regulate it, based on the provisions of Article 103 of the Criminal Code, its enforcement is returned to the methods applicable in the Criminal Code and the Criminal Procedure Code. Unfortunately, the criminal provisions contained in Article 21 and Article 22 of Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators are contrary to the principles contained in the Criminal Code, namely that the Criminal Code does not use a special minimum criminal system and cumulative principal criminal penalties, so that the Criminal Code including the Criminal Procedure Code cannot be used in eradicating criminal acts of Collusion and Nepotism. In other words, violations of criminal acts of collusion and criminal acts of nepotism in our beloved country currently cannot be addressed penally based on Law No. 28 of 1999 concerning Clean and Corruption-Free State Administrators. Therefore, this law needs to be immediately updated in terms of its criminal aspects.

Starting from such a position of thought, a theoretical stance is proposed that demands that sanctions for action be treated as independent sanctions. This concept is based on the basic idea that sanctions in criminal law are no longer solely dependent on retribution for the perpetrator's mistakes, but also on rehabilitation and protection of society. The consequences of such a view demand a strict separation of the types of criminal sanctions and sanctions for action and both must be placed equally and applied proportionally. This is the deepest meaning of the double track system concept. The Corruption Eradication Law, which has made corporations the subject of criminal acts of corruption, regulates its criminalization by including Article 20 paragraph (7) of Law Number 31 of 1999, which states that the main punishment is only a fine with a maximum plus 1/3 (one third). The determination of this criminal fine is imperative, meaning that judges have no other choice in imposing criminal sanctions on corporations other than criminal fines. It is different if the type of sanctions for action is included in the Corruption Crime Law, then judges can choose the type and form of sanctions that are in accordance with the purpose of criminalizing the corporation.

References

- Barda Nawawi Arief. 2000. *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Semarang: Badan Penerbit Universitas Diponegoro.
- I Made Pasek Diantha. 2017. *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Cetakan Kedua, Jakarta: Kencana.
- Indriyanto Seno Adji. 2001. *Korupsi dan Hukum Pidana*, Cetakan 1, Jakarta.
- Jur Andi Hamzah. 2007. *Korupsi Melalui Hukum Pidana Nasional dan Internasional (edisi revisi)*, Jakarta: Raja Grafindo Persada.
- Muladi, Barda Nawawi A. 1998. *Teori-teori dan Kebijakan Pidana*, Bandung: Alumni.
- Ronny Hanitijo Soemitro. 1990. *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1990.
- Sugiyono. 2018. *Metode Penelitian Kuantitatif*, Bandung: Alfabeta.
- Rida Ista Sitepu and Yusona Piadi. 2019. 'Implementasi Restoratif Justice Dalam Pemidanaan Pelaku Tindak Pidana Korupsi', *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia*, 1.1.