

## Concept of Sentencing by Impoverishing Corruptor in the Criminal Act of Corruption in Indonesia

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### ABSTRACT

*Corruption in Indonesia is increasingly rampant every year. More and more public officers caught because of corruption cases. Even corrupted quantity is extraordinary. The existing Act concerning eradication of the corruption criminal act cannot stem and decrease corruption in Indonesia It needs new breakthrough and concrete action to cope with corruptors, when imprisonment is not effective. The new breakthrough widely discussed by lawyers today is the idea of corruptor impoverishment. The idea is suggested by chairman of Constitutional Court, Mahfud MD. The punishment is considered appropriate by most people to be applied in Indonesia. But a few things should be considered well before the application. Among other thing is to straighten and equate the perception of corruptor impoverishment, definition of impoverishment imposed on corruptor, so that punishment to the corruptor is proportionate, not lighter or heavier. The impoverishment should be able to indicate as protection to the public as well.*

**Keywords:** Corruption, Impoverishing Corruptor In The Criminal Act Of Corruption

### INTRODUCTION

Every year, corruption case keeps on increasing in Indonesia. In 2011, there were 1058 suspects for corruption case. In 2013, there were 1271 suspects.<sup>1</sup> In 2010 state sustained a loss Rp. 2.1 trillion. In 2013 it reached Rp. 7.4 trillion. In 2011 it reached Rp. 10 trillions.<sup>2</sup>

Corruption is rampant in almost all public offices, in all echelons of government, central and regional.<sup>3</sup> Corruption in Indonesia is like virus spreading to the whole body of government since 1960s. Corruption is also related to power, because the ruler can misuse his or her power for vested interest, his or her family and crony.

According to legal dictionary, corruption is to commit a criminal action to enrich the actor who directly or indirectly inflicts a financial loss to the state. In Undang-Undang No 31 Tahun 1999 jo. Undang-Undang No 29 Tahun 2001 about corruption, corruption is deed or action against the law aiming to benefit or enrich himself or someone else or a corporation to the detriment of public finance or economy.

According to Busyro Muqqodas, corruption in Indonesia is related to family problem. Because honesty, integrity, and morale are characters shaped within a family. According to Artidjo, corruption is like cancer gnawing body of the state. Based on these assumptions, corruptor crime is holdup of human rights; people rights for prosperous life. Artidjo also said

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<sup>1</sup> Andylala Waluyo, *ICW: Pemberantasan Korupsi di Indonesia dalam 3 Tahun Terakhir Meningkat*, <http://www.voaindonesia.com/content/icw-pemberantasan-korupsi-di-indonesia-dalam-3-tahun-terakhir-meningkat/1847983.html>, diakses tanggal 16 September 2014.

<sup>2</sup> *Ibid.*

<sup>3</sup> J. E. Sahetapy, [http://www.komisihukum.go.id/index.php?option=com\\_content&view=article&id=240:korupsi-di-indonesia&catid=161:catatan-ketua-khn&Itemid=621](http://www.komisihukum.go.id/index.php?option=com_content&view=article&id=240:korupsi-di-indonesia&catid=161:catatan-ketua-khn&Itemid=621), diakses tanggal 16 September 2014.

that corruption is humanity crime that causes multi-effect. Negative effect on the body of the state. That's why Artijo always passes maximal sentence on corruption defendants. In addition to maximal sentence, Artidjo in some decisions also extends additional punishment; disfranchisement

According to Nyoman Serikat Putra Jaya in his book, there are 7 typologies of corruption, those are:

1. Trans active corruption. Here there is mutual agreement between the man who give (supplier) and the man who accept (recipient) for the benefit of both sides;
2. Extortive corruption. It is corruption where supplier is forced to bribe in order to prevent a loss threatening him, his interest, or people and so forth;
3. Invective corruption is action from corruption victim by blackmailing. The corruption is in order to defend himself, such as supply goods and service without any direct correlation with certain benefit other than one imagined by him that he will get it in the future;
4. Nepotistic corruption is illegal appointment to a friend or kin for holding office in government, or action that gives special treatment in the form of money or other forms, to them, against prevailing norm or regulation;
5. Defensive corruption. Here the supplier is not guilty, but the recipient is.
6. Autogenic corruption is corruption that does not involve in other people and the actor is all alone.
7. Supportive corruption. It does not concern money or other form. Action committed is for protecting and strengthening the existing corruption.

Robert Klitgaard described a few things as a result of corruption, among other things, are:

- a. Bribe causes fund for development of cheap houses to be accepted by people who don't have the rights for it.
- b. Commission for those who are responsible for supplying goods and service to regional government means that contract falls on unqualified corporation.
- c. Police frequently because of being bribed doesn't care about criminal act supposed to be investigated by him.
- d. Public servant uses public utility (media) for vested interest.
- e. In order to get license, people have to give money to officer, even sometimes they must bribe for it.
- f. By bribing, people can do as they like to break the rule of work security, health regulation, or other rules so that it endangers other people.
- g. Regional government service is available whenever people have paid it with a sum of additional money other than official cost.
- h. Decisions concerning utilization of land in the city are frequently influenced by corruption.
- i. Tax collector/officers blackmail people, or they are in cahoots with taxpayer.

Criminal act of corruption also inhibits growth and continuity of national development which demand high efficiency, so that it has to be eradicated in order to embody fair and prosperous people based on Pancasila and Constitution 1945.

## **CRIMINAL DECISION FOR CORRUPTOR IN CRIMINAL ACT OF CORRUPTION**

Based on black's Law Dictionary, corruption is an act committed to give unofficial advantage with rights of other part misuses his or her position or character to get an advantage or benefit for himself or herself or other people. Corruption is a crime committed by middle-top class, or called with white collar crime

### **Imprisonment**

1. Life imprisonment or imprisonment the shortest 4 (four) years and the longest 20 (twenty) years and fine at least Rp 200.000.000 and at most Rp 1000.000.000 for everyone who against the law commit an act to enrich himself or other person or a corporation which can sustain a financial or economic loss to the state (Article 2 point 1)
2. Life imprisonment or prison sentence the shortest 1 year and/or fine at least Rp 50.000.000 and at most Rp 1000.000.000 for everyone who benefits himself or other person or a corporation, misuses authority, opportunity, or facility that is available to him because of his position that can sustains a state financial or economic loss (article 3)
3. Prison sentence the shortest 3 years and the longest 12 years and/or fine at least Rp 150.000.000 and at most Rp 600.000.000 for everybody purposely prevent, hamper directly or indirectly investigation, lawsuit, interrogation in trial against the suspect or defendant or witnesses in the case of corruption (Article 21)
4. Prison sentence the shortest 3 years and the longest 12 years and/or fine at least Rp 150.000.000 and at most Rp 600.000.000 for everybody as indicated in Articles 28, 29, 35, and 36.

### **Additional Sentence**

1. Expropriation of tangible or intangible moveable goods or unmovable goods from criminal act of corruption, including corporation belongs to convict where the criminal act is committed.
2. Payment of substitute money with the same amount as property obtained from criminal act of corruption.
3. Closure of all or part of corporation for the longest time 1 year.
4. Abolishment of all or part of certain rights or abolishment of all or part of certain privilege granted by government.

### **Concept of Corruptor Impoverishment**

Corruption in Indonesia is increasingly rampant every year. More and more public officers caught because of corruption cases. Even the corrupted number, sum of money, is extraordinary. The existing Act concerning eradication of the corruption criminal act cannot stem and decrease corruption in Indonesia It needs new breakthrough and concrete action to cope with corruptors, when imprisonment is not effective. According to Muhammad Yusuf, the head of center of report and analysis of financial transaction, breakthrough that might be implemented in eradicating corruption in Indonesia is impoverishment of corruptor.

The idea of corruptor impoverishment is suggested by Mahfud MD. Although quantity of corruption is increasing every year, but the idea of impoverishment against corruptors is not considered as an effective solution in eradicating corruption. Many people and lawyers disagree with this idea.

According to Muladi, former Governor of Lemhamnas, the idea of impoverishing the corruptor by seizing all possession he has is not proportional. If criminal act of corruption causes the state sustains a loss, the money is returned to the state. In viewpoint of law, terminology of impoverishment should be avoided.

According to Mas Hikam, idea of corruptor impoverishment is proportional and it is also appropriate with principle of fairness. It is proportional because intention of the corruptor is to become rich man illegally. One can be said to commit corruption if he has intention and opportunity to enrich himself illegally.

Impoverishment is also in accordance with fairness, because the act of corruption committed in Indonesia, according to Mas Hikam, disparages fairness because of existing poverty and rare law enforcement.

Moreover, President SBY said that he supported impoverishment of corruptor. Based on record suggested by Indonesian Corruption Watch, since the regional court of corruption criminal act (Pengadilan Tipikor) was established, at least 51 defendants were stated free with the highest score went to Pengadilan Tipikor Surabaya and Samarinda. In 2011, 55 corruptors were executed by KPK, on average they were sentenced for only 3 years 2 months.

Pramono Edhi Wibowo said that corruptors should be impoverished instead of death sentence, because the corrupters can see their family in misery living condition. Ali Masykur Musa suggests corruptor impoverishment as well.

Saldi Isra suggests that corruptor is sentenced with various punishments resulting in the corruptor becomes poor. Because long imprisonment does not have significant effect on the corruptor.

Concept suggested by UNCAC (United Nations Convention against Corruption only stresses on stolen state asset recovery via extraordinary measures, in addition to sentencing in form of corporal punishment.

Corruptor impoverishment still should be well considered so that the system works fairly and exactly to the target as supposed to be. First is straighten and equate perception of corruptor impoverishment. According to Adnan Buyung Nasution, there is no regulation containing sanction of impoverishment in our legal system. Policy of corruptor impoverishment will only increase burden of the state because new poor people will increase.

It also needs to define limits of impoverishment against corruptor in order to punishment imposed on the corruptor is proportional to his action, cannot be lighter or heavier. According to Adnan Buyung Nasution, punishment has to be proportional to mistake someone makes.

Property that can be dispossessed only that coming from crime; otherwise it can be not proportional and violates human rights. Moreover, it needs to be considered too, whether impoverishment can be seen as public protection. As suggested by Bambang Widjojanto, application of idea of corruptor impoverishment must result in better change to the public, because effect of corruption can be felt by public, the law enforcement has to able to felt by the public as well.

The idea of corruptor impoverishment, according to Akil Mochtar, former Justice of Constitutional Court, is one of restorative justice; that is the corruptor restores the condition to one before the crime is committed.

## **CONCLUSION**

Most people consider the punitive concept of impoverishment to the corruptors as appropriate to be applied in Indonesia. But still it should be considered well about concepts of regulation

and enforcement; among other things are to straighten and equate perception on terminology of corruptor impoverishment, definition of impoverishment to the corruptors, so that punishment imposed on them is proportionate compared to the acts committed by them. The Impoverishment of corruptor can be seen as protection to the public.

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