



## Prison Penalty In Providing A Determination Effect For Criminal Actions Of Corruption

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### Abstract

*The case of corruption as a phenomenon of deviation from social, cultural and state life has many scientists and philosophers study and criticize it. One of the world's famous philosophers is Aristotle, who formulated what he calls moral corruption. Moral corruption refers to various forms of the constitution that have deviated so that the regime's rulers are included in the democratic system where by they are no longer led by law, but also on the other hand no longer serv themselves. The problem in this research is the Effectiveness of Imprisonment for Criminal Acts of Corruption, and Does Imprisonment Can Have a Deterrent Effect on Perpetrators of Criminal Acts of Corruption? This paper is a normative legal research. This normative legal research method is used because the approach in this paper is carried out by using a case approach and a statute approach.*

*The prison sentence is threatened for someone who has committed a crime. Imprisonment: consists of life imprisonment and temporary imprisonment or imprisonment for a specific time. The temporary prison sentence is a minimum of one day and a maximum of fifteen years. However, temporary imprisonment may be imposed for twenty years if the crime committed by a person is punishable by death or life imprisonment or is threatened with imprisonment of 20 (twenty) years if there is a combination of several criminal*



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*acts (same lop) the perpetrators of criminal acts of corruption deserve death penalty, as such being given the death penalty will provide a deterrent effect and also be a lesson for others not to do the same thing (corruption). Almost no judges generally impose the death penalty because it is associated with aggravating or mitigating reasons. The mitigating factor is far more dominant regarding the highest sentence limit, education, and others.*

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## A. Introduction

Cases of corruption are not new in our country, the development of this case has increased significantly from year to year, both from the number of state losses and from the quality that is increasingly structured and its scope is more comprehensive. The increasing prevalence of corruption cases does not only involve the legislative and executive circles but has become a phenomenon. Increasing cases of corruption that are getting out of control over time will be a disaster for the survival of this nation.<sup>1</sup>

Corruption is not only a problem for the Indonesian government but also a problem in the international world. The rampant practice of corruption threatens democratic principles that uphold transparency, accountability, and integrity, which are currently being echoed by the international community.<sup>2</sup>

The case of corruption as a phenomenon of deviation from the soc, cultural, community, and state life has many scientists and philosophers who study and criticize it. One of the world's famous philosophers is Aristotle, who formulated what he calls moral corruption. Moral corruption refers to various forms of the constitution that have deviated so that the regime's rulers are included in the democratic system, no longer led by law, but no longer serving themselves.<sup>3</sup>

Corruption is rotten, evil, and destructive.<sup>4</sup> Talking about corruption will indeed find such a reality because corruption involves moral aspects, rotten nature and conditions, positions in government agencies or apparatus, abuse of power in office due to gifts, economic and political factors, and placing families or into groups. Service under the authority of his position.<sup>5</sup>

From the above understanding, there are several keywords in the definition of corruption, namely "acts," "against the law," "enriching oneself or others," "harming the state's finances/economy," "abusing the authority, opportunities or facilities available to it." and "self-benefit."

Therefore, corruption can no longer be classified as an ordinary crime but has become extraordinary. This is because the conventional methods used so far have proven to be unable

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<sup>1</sup> Nyoman Serikat Putra Jaya, *Tindak Pidana Korupsi, Kolusi, dan Nepotisme di Indonesia*, (Semarang: Badan Penerbit Undip, 2005), h. 2.

<sup>2</sup> Yolanda, E., Usman, U., & Sudarti, E. "Pemidanaan Pelaku Tindak Pidana Korupsi". *PAMPAS: Journal of Criminal Law*, 3 No.2, (2022):126 doi: <https://doi.org/10.22437/pampas.v3i2.18153>

<sup>3</sup> Mansyur Semma, *Negara dan Korupsi: Pemikiran Mochtar Lubis atas Negara, Manusia dan Perilaku Politik*, (Yogyakarta: Yayasan Pustaka Obor Indonesia, 2008), h. 32.

<sup>4</sup> Hakim, A., & Bangsu, M. "RELEVANSI PENEGAKAN HUKUM DITINJAU MENURUT UNDANG-UNDANG PEMBERANTASAN TINDAK PIDANA KORUPSI Analisis Putusan Nomor: 05/Pid. Sus/TPK/2015/PN. Sby". *JURNAL LEGISIA*, 14 No.2, (2020):141

<sup>5</sup> Evi Hartanti, *Tindak Pidana Korupsi*, Edisi Kedua, (Jakarta: Sinar Grafika, 2007), h. 9.

to solve society's corruption problem. Thus, the handling must also use extraordinary methods (extraordinary).<sup>6</sup>

Imprisonment is a last resort (*ultimum remedium*) in the applicable criminal law system, for that, in its implementation, it must refer to human rights.<sup>7</sup> Based on Article 2 paragraph (1) of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is stated that anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the State's finances or the State's economy, shall be sentenced to imprisonment. 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 (two hundred million rupiahs) and a maximum of Rp. 1,000,000,000 (one billion rupiah).<sup>8</sup>

The stipulation of the criminal act of corruption as a great crime in criminal law policy in Indonesia means that to combat corruption, a special criminal law is needed that deviates from the general rules of criminal law regulated in the Criminal Code (KUHP) as well as the procedural law which is regulated in the Criminal Procedure Code (KUHAP). The case of corruption is an extraordinary criminal act, and its settlement must take precedence over other cases.<sup>9</sup>

Although the Constitution has stated that the punishment for a person who commits a criminal act of corruption is life imprisonment, the reality is very different, not infrequently court decisions in imposing very light decisions and even acquitting the perpetrators of criminal acts of corruption from all punishments.

This is unfortunate; even though the court is the front line in upholding justice, it destroys the sense of justice. How is it possible that corruption can be eradicated if the punishment for the perpetrators of corruption tends to be light and will not provide a deterrent effect for the perpetrators

The costs incurred by the state to process law enforcement are pretty expensive. Seeing this reality, it is natural for people to think that there is a political game in handling corruption cases. This condition is feared will make the purpose of punishment not achieved.

Based on the description above, the problems discussed in this paper can be formulated. How Effective is Imprisonment for Criminal Acts of Corruption? Can a prison sentence have a deterrent effect on perpetrators of criminal acts of corruption?

The novelty of this study is about prison sentences providing a decisive effect on criminal acts of corruption. The determination of corruption as an extraordinary crime requires efforts to eradicate corruption. One of the punishments for corruption is imprisonment, which is not very effective, regarding the effectiveness of prison. This paper is a normative legal research. This normative legal research method is used because the approach in this paper is carried out using a case approach and a statute approach.

## **B. Discussion**

### **1. The Crime of Corruption and Something Behind It**

Corruption is a problem that exists in almost all countries in the world. Corruption is a global problem that concerns everyone. Likewise, what happened in Indonesia, the problem of corruption is already an extraordinary crime (extraordinary crimes), so the demand for the availability of extraordinary and sophisticated legal instruments and institutions that are truly capable of handling every case of corruption cannot be resolved. Again. All Indonesian people

<sup>6</sup> Dwi Astrianti Defretes, Kristoforus Laga Kleden, "TINDAK PIDANA KORUPSI SEBAGAI KEJAHATAN LUAR BIASA" *Jurnal Hasil Penelitian*, 7 No.2 (2022):126 doi:<https://orcid.org/0000-0002-8482-4597>

<sup>7</sup> Djisman Samosir, *Fungsi Pidana Penjara Dalam Sistem Pemidanaan di Indonesia*, (Bandung: Bina Cipta, 1992), h. 81.

<sup>8</sup> Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi.

<sup>9</sup> Monang Siahaan, *Pembaharuan Hukum Pidana Indonesia*, (Jakarta: Grasindo, 2016), h. 40.

agree that corruption must be prevented and eradicated from the homeland because corruption has been proven to have afflicted the Indonesian people's economic and social rights.<sup>10</sup>

Corruption in Indonesia occurs systemically, massively, and structured, damaging the state's financial condition and violating the community's social and economic rights. By the opinion of Lord Acton (John Emerich Edward Dalberg Acton), in his letter to Bishop Mandell Creighton, wrote a phrase that connects corruption with power, namely, "Power tends to corrupt, and absolute power corrupts absolutely" that power tends to corruption and absolute power tends to corruption absolute.<sup>11</sup>

This expression is the current condition in Indonesia. If we look at the current journey of eradicating Corruption Crimes, we must keep it separate from the judiciary's critical role in law enforcement in Indonesia. Judges as law enforcers have the main task in the judicial field, namely to receive, examine, decide and settle every case addressed to them, such a task can be stated that judges are the core implementation that functionally carries out judicial power as mandated by Law Number 48 of 2008 regarding Judicial Power.

Corruption cases do not only occur at the central level; in the regions, corruption cases are almost the same as those at the central level. This view is genuine by looking at the reality that developed after the Soeharto government; it turns out that corruption is not shrinking but is increasing, and the perpetrators start from the top (central) level to the lower (regional) level. The reformation era is the cause of the increasingly widespread corruption practices down to the lower levels. Although it must also be believed that the democratic system brings wide-open opportunities for eradicating corruption, at least various irregularities are easily exposed and mediated.<sup>12</sup>

Corruption can occur when there is opportunity and desire at the same time, which can start from any aspect in the form of a bribe being offered to an official, an official asking for or even extorting facilitation money, a person who bribes because he wants something that is not his right, and he bribes by ignoring the rules.<sup>13</sup>

The more developed the era / human civilization, the more developed their lifestyle. Today we are in the midst of very advanced material life. The measure of a person referred to as wealthy or successful is when he has a certain amount of wealth visible in his daily life. When someone occupies a space to access wealth, someone will do it to the fullest. In this world, many people are easily tempted by wealth. The perception of wealth as a measure of one's success causes a person to pursue wealth without considering how the wealth was obtained.<sup>14</sup> According to Aziz Syamsuddin, there are various reasons behind someone committing acts of corruption, including:

1. Weak religious, moral, and ethical education.
2. There are no harsh sanctions against perpetrators of corruption.
3. The absence of a transparent government system (good governance).
4. Economic factors
5. Poor management and the absence of effective and efficient supervision.
6. Modernization causes a shift in the values of life that develop in society.<sup>15</sup>

Corruption acts are carried out starting from markups for procurement of goods and services, procurement of goods and services that violate procedures, abuse of authority, bribes,

<sup>10</sup> Romli Atmasasmita, *Korupsi, Good Governance, Dan Komisi Anti Korupsi di Indonesia*, (Jakarta: Percetakan Negara RI, 2002), h. 9.

<sup>11</sup> Ermansjah Djaja, "*Memberantas Korupsi Bersama KPK*", (Jakarta: Sinar Grafika, 2008), h. 2.

<sup>12</sup> Robert Klitgaard, *Penuntun Pemberantasan Korupsi Dalam Pemerintahan Daerah*, (Jakarta: Yayasan Obor Indonesia, 2005), h. xxii.

<sup>13</sup> M. Akil Mochtar, *Pembalikan Beban Pembuktian Tindak Pidana Korupsi*, (Jakarta: Sekretariat Jenderal Kepaniteraan MK, 2009), h. 6.

<sup>14</sup> Aziz Syamsuddin, *Tindak Pidana Khusus*, (Jakarta: Sinar Grafika, 2011), h. 15.

<sup>15</sup> *Ibid.*

giving or receiving gratuities, use of funds that are not by budget postings, and others, all of which have the potential to cause financial harm. The country and the country's economy.<sup>16</sup>

## **2. Efforts to Eradicate Criminal Acts of Corruption and All Its Obstacles**

The problem of corruption is not new in legal and economic matters for a country because the problem of corruption has existed for thousands of years, both in developed and developing countries, including Indonesia. Corruption has slipped in various forms, or *modus operandi*, undermining state finances and the economy and harming the community's interests.<sup>17</sup>

Efforts to eradicate corruption have become a global problem, not only national or regional. Corruption is an act that can harm the state's finances and cause economic losses to the people.<sup>18</sup>

The crime of corruption that is developing in the world in general and in Indonesia, in particular, is very concerning, so it is essential for the law as an enforcer of justice to save the country from losses and uphold the people's right to get good results from development that is free from corruption.<sup>19</sup>

The Indonesian Corruption Watch (ICW) Investigation Division researcher Wana Alamsyah said there were 576 corruption cases throughout 2017. This figure has increased compared to 2016 with a total of 482 cases, with an increase in state losses of 6.5 trillion and bribes of 211 billion compared to 2016. The handling of corruption cases in 2017 experienced a significant increase in state losses, which rose from 1.5 trillion in 2016 to 6.5 trillion in 2017. significant state losses, which is around Rp. 2.3 trillion. Within a year, the number of suspects also increased from 1,101 people to 1,298 people.<sup>20</sup>

Efforts to eradicate corruption, which have yet to be running as expected, are related to prevention efforts that still need to meet the community's expectations. Indonesia's positive law has regulated efforts to prevent and eradicate corruption, namely in the Criminal Code (KUHP), which enacted Law Number 24 of 1960 concerning Investigation, Prosecution, and Examination of Corruption in urgent circumstances. Crimes were later replaced by Law no. 3 of 1971. Then, there was a development regarding criminal acts of corruption involving administrators and entrepreneurs.<sup>21</sup>

The law was deemed no longer appropriate, so Law no. 31 of 1999 concerning the Eradication of Corruption Crimes replaced the previous law. Then, again, the law changed and was ratified by Law no. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Crimes.<sup>22</sup> There are several efforts made to eradicate corruption, including:

- a. Strategy Preventive, This strategy must be implemented by being directed at the things that cause corruption. Every cause that is indicated must be made preventive efforts to minimize the causes of corruption. Besides that, it is necessary to make efforts to minimize corr. This effort involves many parties in its implementation to be successful and prevent corruption.
- b. Strategy Deduktif, This strategy must be implemented primarily with the aim that if an act of corruption has already occurred, then the act will be known in the shortest possible time and as accurately as possible so that it can be followed up appropriately. With this premise, many systems must be addressed so that these systems can function as rules

<sup>16</sup> Djoko Sumaryanto, *Pembalikan Beban Pembuktian*, Cet. I, (Jakarta: Prestasi Pustakarya, 2009), h. 6.

<sup>17</sup> Igm Nurjana, *Sistem Hukum Pidana dan Bahaya Laten Korupsi*, (Yogyakarta: Pustaka Pelajar, 2010), h. 14.

<sup>18</sup> Andi Hamzah, *Perbandingan Pemberantasan Korupsi di Berbagai Negara*, (Jakarta: Sinar Grafika, 2005), h. 5.

<sup>19</sup> R. Wiyono, *Pembahasan Undang-Undang Pemberantasan Tindak Pidana Korupsi*, (Jakarta: Sinar Grafika, 2005), h. 33.

<sup>20</sup> Putra, I. S. "TINDAK PIDANA KORUPSI DITINJAU DARI HAM DI INDONESIA". *Res Justitia: Jurnal Ilmu Hukum*, 2 No (2022):92 doi: <https://doi.org/10.46306/rj.v2i1.27>

<sup>21</sup> Ermansjah Djaja, *Memberantas Korupsi Bersama KPK (Komisi Pemberantasan Korupsi di Indonesia)*, (Bandung: Refika Aditama, 2008), h. 8.

<sup>22</sup> *Ibid.*

that are precise in giving signals when an act of corruption occurs. This requires various disciplines, law, economics, or political and social sciences.

- c. Strategy Represif: This strategy must be developed and implemented, mainly to provide appropriate legal sanctions quickly and appropriately to parties involved in corruption. With this premise, handling corruption from the investigation, investigation, and prosecution stage to the judiciary needs to be reviewed to perfect all its aspects so that the handling process can be carried out quickly and precisely. However, its implementation must be done in an integrated manner.<sup>23</sup>

Efforts to eradicate corruption are not an easy thing. Although various efforts have been made to eradicate corruption, there are still some obstacles. The KPK often carries out hand arrest operations (OTT), and the demands and decisions handed down by law enforcement are also quite harsh, but corruption is still being carried out. There is an opinion that those who get OTT are "unlucky or unlucky." Obstacles in eradicating corruption can be classified as follows:

- a. Structural Barriers, namely obstacles that stem from state and government administration practices that make the handling of corruption crimes not run properly. Included in this group are sectoral and institutional egoism, which leads to the application of as many funds as possible for the sector and its agencies without taking into account the national needs as a whole and trying to cover up irregularities in the sector and the agencies concerned; not yet functioning effectively supervision function; weak coordination between supervisory officers and law enforcement officers; and the weakness of the internal control system which has a positive correlation with various irregularities and inefficiencies in the management of state assets and the low quality of public services.
- b. Cultural Barriers, namely obstacles that originate from negative habits that develop in society. Included in this group are: there is still a "reluctant attitude" and tolerance among government officials that can hinder the handling of criminal acts of corruption; lack of openness of agency leaders so that they often seem tolerant and protect perpetrators of corruption, the intervention of the executive, legislative and judiciary in handling corruption crimes, low commitment to dealing with corruption firmly and thoroughly, and the permissive attitude (ignorant) of the majority of the community towards efforts to eradicate corruption.<sup>24</sup>
- c. Instrumental Barriers, namely obstacles that stem from the lack of supporting instruments in the form of laws and regulations that make handling corruption crimes not run properly. Included in this group are: there are still overlapping laws and regulations<sup>21</sup> that give rise to corrupt actions in the form of inflating funds within government agencies; the absence of a "single identification number" or an identification that applies to all public needs (driving license, tax, bank, etc.) that can reduce opportunities for misuse by every member of the community; weak law enforcement in dealing with corruption; and the difficulty of proving corruption.
- d. Management Barriers, namely the obstacles that stem from the neglect or non-application of sound management principles (high commitment is carried out in a fair, transparent, and accountable manner), make the handling of corruption crimes not run properly. Included in this group is a lack of commitment by management (Government) in following up on the results of supervision; weak coordination between the

<sup>23</sup> Bandaharo Saifuddin, *Dampak dan Upaya Pemberantasan Tindak Pidana Korupsi di Indonesia*, Jurnal Warta Edisi: 52, April 2017, h. 9.

<sup>24</sup> Lasmauli Noverita Simarmata, *Korupsi Sekarang dan Yang Akan Datang*, Jurnal Ilmiah Hukum Dirgantara, Vol. 11, No. 2, Maret 2021, h. 93.

supervisory apparatus as well as between the supervisory apparatus and law enforcement officers; lack of information technology support in the administration of government; the non-independence of a supervisory organization; the lack of professionalism of most of the supervisory officers; lack of support for monitoring systems and procedures in dealing with corruption, as well as inadequate staffing systems including the recruitment system, low “formal salary” for civil servants, performance appraisal and reward and punishment.<sup>25</sup>

Crime prevention efforts can be divided into two: through the penal route, namely by criminal law, and the non-penal route, which is resolved outside of criminal law by non-penal means. Efforts to overcome crime through the penal route are more focused on the repressive nature (suppression/suppression/eradication) after the crime has occurred, while non-penal is more preventive (prevention).<sup>26</sup>

### 3. The Effectiveness of Imprisonment for Criminal Acts of Corruption

The Unitary State of the Republic of Indonesia is based on law, not on power alone. This is emphasized in the Constitution of the Republic of Indonesia, which states that the State of Indonesia is a state of law. All national and state life aspects must be based on applicable legal provisions. Thus, everything must comply with legal provisions as a comprehensive effort to realize Indonesia as a democratic legal state, upholding human rights and ensuring the upholding of the rule of law with no exceptions to anyone in the eyes of the law. To keep the legal regulations straight and accepted by the community, the existing legal regulations must be appropriate. They should not conflict with the principles of justice of the community.<sup>27</sup>

The criminal law that regulates corruption is based on a particular criminal law; in addition to containing material criminal law, it also contains formal criminal law. Corruption Crimes, Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, and accompanied by Law Number 28 of 1999 concerning State Administrators that are Clean and Free from Corruption, Collusion, and Nepotism. While general law still applies criminal law in the Criminal Code and formal criminal law.<sup>28</sup>

Punishing a corrupt person to the maximum can be a lesson for convicted corruptors and millions of people not to commit or undo the intention of robbing state money (corruption). Prison is not a place for revenge. However, prison is also not a place for criminals who can enjoy privileges, including remission. Imprisonment is still recognized as effective in preventing or fostering criminals, but it is time to develop punishments not oriented toward imprisonment.<sup>29</sup>

In the context of the effectiveness of statutory laws, according to Achmad Ali, whenever a rule or law is deemed ineffective, the answer is, of course, that most of the community members do not obey it. However, if most of the community members seem to obey the rules or laws, then the effectiveness of the rules or laws can still be questioned. The more citizens who obey a law only with compliance and identification only, it means that the quality of the effectiveness of the rule of law is still low; On the other hand, the more citizens who obey the rules or laws with internalized obedience, the higher the quality of the effectiveness of the rules or laws.

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<sup>25</sup> *Ibid.*

<sup>26</sup> Pahlevi, F. S. (2022). Strategi Ideal Pemberantasan Korupsi di Indonesia. *Al-Syakhsiyyah: Journal of Law & Family Studies*, 4 No.1, (2022):37 doi: 10.21154/syakhsiyyah.v4i1.4251

<sup>27</sup> C.S.T. Kamsil, *Pengantar Ilmu Hukum*, (Jakarta: Balai Pustaka, 2008), h. 14.

<sup>28</sup> Adami Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi*, (Bandung: Alumni, 2006), h. 5.

<sup>29</sup> Waluyo, D., Sumardi, S., Mofea, S., & Tamara, B. “PEMBAHARUAN SISTEM PEMIDANAAN, KHUSUSNYA PIDANA PENJARA (STUDI KEMASYARAKATAN)”. *SUPREMASI HUKUM*, 18 No.1,(2022): 40 doi: <https://doi.org/10.33592/jsh.v18i01.2282>

Imprisonment: life imprisonment and temporary imprisonment or imprisonment for a specific time. Imprisonment is the second main crime after the death penalty. The prison sentence is threatened for someone who has committed a crime. The temporary prison sentence is a minimum of one day and a maximum of fifteen years; however, the temporary imprisonment may be imposed for twenty years if the criminal act committed by the person is punishable by death or life imprisonment or is threatened with imprisonment of 20 (twenty) years or if there is a combination of several criminal acts (same lop).<sup>30</sup>

Imprisonment is one of the leading crimes that limit the freedom of movement of prisoners and their implementation by placing prisoners in correctional institutions. With the intention that others are not affected by the evil nature of the prisoner, so that young correctional officers carry out coaching for the prisoners themselves; as well as so that prisoners do not repeat their actions after being released from prison, and also so that they do not run away, and as a form of accountability for violating the law and as evidence for victims or victims' families that the government pays attention to their rights as citizens that must be protected.<sup>31</sup>

According to Djisman Samosir, if you look at book II of the Criminal Code, which regulates crime, it can be seen that the many basic crimes (death penalty, imprisonment, confinement, and fines) which are included in Article 10 of the Criminal Code, imprisonment is the most are threatened against the perpetrators of the crime in Book II of the Criminal Code. Why is imprisonment more than other crimes, such as capital punishment, imprisonment, and fines? There is no explanation in the Criminal Code. According to D. Samosir, imprisonment is more included in the Criminal Code than the death penalty, imprisonment, and fines, because imprisonment is the only major crime in the Criminal Code that allows the holding of planned and directed coaching against the convict. Through the death penalty with a fine, coaching for the convict is not possible at all, while through confinement, coaching for the convict is very limited. So, related to efforts to foster convicts to be helpful, the most appropriate way is through imprisonment.<sup>32</sup>

Heavy sanctions often ensnare lower-level prison officials in direct contact with inmates. Meanwhile, the perpetrators of high-ranking officials only receive administrative sanctions and removal from office without dismissal or transfer.<sup>33</sup>

The appropriate punishment for convicts of corruption is exile or revocation of political rights and public office rights related to the use of state money. Besides the sanction of impoverishment, a fine of 3 (three) times the corrupted money. Rewarded with social work sanctions or hired voluntarily. This is because the purpose of punishment is to keep people away from society because the crime of corruption is more at the state's expense, not causing direct harm to individuals or society. With the revocation of the right for life to occupy positions related to the use of state money, he will no longer be able to repeat his actions, as is the purpose of the punishment itself.

#### **4. A deterrent effect for perpetrators of criminal acts of corruption**

The meaning of corruption is the abuse of public power for personal or private interests that harm the public in ways contrary to applicable legal provisions. Corruption in human life is not new, but it has existed throughout the human age. Corruption at this time has become very familiar to the ears and is considered harmful and causes the nation's decline. This problem needs to be made into something that must be tackled together and fought together.

<sup>30</sup> Nasaruddin Umar, *Hukum Tindak Pidana Korupsi di Indonesia & Strategi Khusus Pembinaan Narapidana Korupsi*, (Ambon: LP2M IAIN Ambon, 2019), h. 82.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> Indria, Laila Nurul, and Ali Muhammad. "EFEKTIVITAS HUKUMAN PIDANA PENJARA SEBAGAI EFEK JERA TERHADAP PELAKU KORUPSI DI INDONESIA." *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 9.No.3 (2022): 1447 doi: <http://dx.doi.org/10.31604/justitia.v9i3.1445-1450>



Corruption occurs if it fulfills three things: first if someone has the power to determine public policy and administer it. Second, the existence of economic rent, namely the economic benefits of public policy. Third, the existing system opens up opportunities for violations by public officials.<sup>34</sup>

In a country, the law that governs is the law, not humans. Law is interpreted as a hierarchical unit of legal norm order culminating in the constitution. This means that a state of law requires the supremacy of the constitution<sup>35</sup>. The supremacy of the constitution, besides being a consequence of the concept of the rule of law, is also the implementation of democracy because the constitution is the highest form of social agreement.<sup>36</sup> Democracy gives freedom to every citizen to express themselves freely. The freedom referred to is by the legal provisions in Indonesia. Therefore, a good lawyer will guarantee justice to every citizen regardless of social status and position.

The government's efforts of the Republic of Indonesia in eradicating corruption have been carried out since President B.J. Habibie invited Komnas HAM to discuss forming an Independent Committee on eradicating KKN. As a form of a state of law, the Indonesian government's first step is to be guided by the legislation on acts of corruption, including Law Number 3 of 1971 and Law of the Republic of Indonesia Number 31 of 1999. Then there is Law No. 20 of 2001 as an amendment to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. The law was made as a form of prevention and threat to potential perpetrators of corruption.<sup>37</sup>

The government also established the Corruption Eradication Commission (PKP) in 2003. This commission was established based on the Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission. In 2010, the government enacted Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.<sup>38</sup>

Supposedly the perpetrators of criminal acts of corruption deserve the death penalty because being given the death penalty will provide a deterrent effect and teach others not to do the same thing (corruption). It's just that in practice, in general practice, almost no judges impose the death penalty because it is associated with aggravating or mitigating reasons, and the mitigating factor is far more dominant in terms of the highest sentence limit, education, and others.<sup>39</sup>

In imposing a criminal under the minimum threat to perpetrators of criminal acts of corruption by the judge, the judge's decision contradicted the constitution contained in Article 1, paragraph 3 of the 1945 Constitution of the IV amendment, which states that the state of Indonesia is a state of law. The state apparatus must refer to the applicable legal rules in its duties and authorities.<sup>40</sup>

The judicial power exercised by the Supreme Court is independent, accessible, and may not be interfered with by anyone in carrying out their duties and authorities; judges in adjudicating and deciding cases of criminal acts of corruption may not arbitrarily impose criminal penalties on defendants, especially if the judge is in imposing the criminal verdict against the defendant

<sup>34</sup> Ridwan dan Wijayanto, *Korupsi Mengkorupsi Indonesia*, (Jakarta: Gramdeia Pustaka Utama, 2009), h. 9.

<sup>35</sup> Ade Fartini, "Politik Hukum: Otonomi Daerah Pasca Amendemen UUD 1945 Upaya Menjaga Keseimbangan Antara Prinsip Unity dan Diversity" *Pledoi Jurnal Hukum Dan Keadilan*, 1 No.1 (2022):2

<sup>36</sup> Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia*, Edisi Revisi, (Jakarta: Konstitusi Press, 2005), h. 152.

<sup>37</sup> Mutiara Aerlang, dkk, *Pakar Rupia (Apa Kerja Keras Koruptor Indonesia?): Membangun Sanksi Psikososial Bagi Terpidana Kasus Korupsi*, Jurnal Integritas, Vol. 2, No. 1, Agustus 2016, h. 182.

<sup>38</sup> *Ibid.*

<sup>39</sup> Monang Siahaan, *Korupsi Penyakit Sosial yang Mematikan*, (Jakarta: Elex Media Komputindo, 2014), h. 93.

<sup>40</sup> Harefa, A. "Analisis Hukum Terhadap Penjatuhan Pidana Di Bawah Ancaman Minimum Kepada Pelaku Tindak Pidana Korupsi". *Jurnal Education and Development*, 8 No.1, (2020):436.

is not by the applicable legal provisions, even the judge breaks the provisions with a criminal under the minimum threat in the PTPK Law.

In every act that contains an element of error or crime, then the crime or error is what the crime or error causes a person to be punished. In the case of corruption, the perpetrators can be sentenced to the maximum punishment because they must be held accountable for their actions. In this case, the principle of no punishment without guilt is known (*Geen Straf Zonder Schuld* or no punishment without guilt),<sup>41</sup> which is the main principle in the responsibility of the maker of the crime committed. Strict and vicarious liability violates this principle of no crime without fault. This unwritten law principle is embraced by Indonesian criminal law today.<sup>42</sup>

If the death penalty is considered a violation of human rights, then there are other punishment options, namely being impoverished. The impoverishment of corruptors has excellent potential to eradicate corruption in Indonesia. Humanly no one wants to be poor. Of course, corruptors who usually live well and even tend to be luxurious will be afraid of living in poverty. The impoverishment of corruptors must be confirmed in a precise regulation so that they remain in the corridor of legal principles and do not lead to human rights violations. When corruptors are impoverished, not only he feels the effects, but also his family.

But unfortunately, the criminal sanction of impoverishment for corruptors has not yet received a clear and established concept, and there is not even a common perception among anti-corruption activists regarding this. Many parties agree with the impoverishment of corruptors, but on the other hand, various parties disagree with the impoverishment of corruptors for perpetrators of corruption.

The impoverishment of corruptors has been carried out only by confiscating assets resulting from criminal acts. The confiscation of these assets is by confiscating all objects that result from a criminal act of corruption and by payment of replacement money, which is by the state's financial loss from a criminal act of corruption. This cannot be said to impoverish corruptors because corruptors can still freely use their assets that are not confiscated.

The novelty of this research is about the effectiveness of imprisonment for perpetrators of corruption and its eradication efforts that have obstacles or obstacles in their eradication efforts. Imprisoning perpetrators of criminal acts of corruption is considered to have not provided a deterrent effect for perpetrators of criminal acts of corruption.

### C. Conclusion

Based on the results of data analysis and discussion that the author has described previously, it can be concluded as an answer to the existing problem formulation; the description is as follows:

1. Imprisonment is one of the major crimes that limit the freedom of movement of prisoners and their implementation by placing prisoners in correctional institutions. With the intention that others are not affected by the evil nature of the prisoner; so that young correctional officers carry out coaching for the prisoners themselves; and so that inmates do not repeat their actions after leaving prison. Imprisonment for perpetrators of corruption is considered less effective because, based on the facts, the perpetrators of corruption are treated like kings who get luxurious facilities even though they are in detention cells.
2. Supposedly, the perpetrators of criminal acts of corruption deserve the death penalty because being given the death penalty will provide a deterrent effect and teach others not to do the same thing (corruption). Almost no judges impose the death penalty because it is

<sup>41</sup> Syahrir, K. A., Karim, M. S., & Mirzana, H. A. "Pembaharuan Metode Pembuktian Subjek Hukum Korporasi sebagai Pelaku Tindak Pidana Korupsi". *Tumou Tou Law Review*, 1 No.1 (2022):35

<sup>42</sup> Yeni Widowaty, *Criminal Corporate Liability In Favor of The Victims In The Case Of Environmental Crime*, Jurnal Yudisial, Vol. 5 No. 2 Agustus 2012, h. 157.

associated with aggravating or mitigating reasons. The mitigating factor is far more dominant regarding the highest sentence limit, education, and others.

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## **C. Regulation**

Criminal law code

Law number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption

Law number 30 of 2002 concerning the Corruption Eradication Commission

Law number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money  
Laundering

