

## ADDITIONAL CRIMINAL SANCTIONS AGAINST CORRUPTION CRIMES IN INDONESIA

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**Abstract:** One of the phenomenal crimes today is corruption. This crime is not only detrimental to state finances, but is also a violation of the social and economic rights of the people. Corruption has destroyed the foundations of religion, moral and ethical values. Additional Criminal Sanctions against corruption in the form of confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including companies owned by the convicted person where the criminal act of corruption was committed, as well as goods that replace goods - the goods, payment of replacement money in the same amount as the corrupted property, closure of all or part of the company for a maximum period of 1 (one) year and revocation of all or part of certain rights or elimination of all or part of certain profits, which have been or can be given by the Government to the convict.

**Keywords:** *Criminal Sanctions, Additional, Corruption.*

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### Introduction

Criminal policies or efforts to protect society from crimes or acts against the law are an integral part of efforts to achieve social welfare which is the goal of development policies. Thus, the two policies influence and complement each other. Development policies will be achieved if supported by a good criminal policy. Conversely, crime prevention policies will not mean much if development policies actually stimulate the growth of crime. In order to achieve the goals of criminal policy, a penal policy is needed, which in essence is an effort to overcome crime through good criminal efforts. In other words, from the point of view of criminal policy, criminal law policy is synonymous with the notion of "crime prevention policy with criminal law" (Muladi & Arief, 2005).

One of the phenomenal crimes today is corruption. This crime is not only detrimental to state finances, but is also a violation of the social and economic rights of the people. Corruption has destroyed the foundations of religion, moral and ethical values. It has also pawned the nation's dignity, turning Indonesia into a backward, poor and debt-ridden nation. People's money worth thousands of trillions of rupiah, which should be used to eradicate poverty and unemployment, create jobs, stimulate the real sector and increase the nation's competitiveness, has instead entered the pockets of corrupt officials. They enjoy a luxurious, abundant and easy life amidst the screams of hundreds of millions of people who live in unimaginable economic pressure. On the other hand, corruption has destroyed a culture of shame among state administrators so that they regard corruption as a tradition. If this condition continues to develop, you can imagine how serious the consequences will be. The gap in life will continue to increase and become more striking and in turn can turn into an explosion of social jealousy which will seriously endanger the stability and security of the country. Thus, it seems clear that corruption can no longer be classified as an ordinary crime

that can be eradicated by conventional means. Judging from its characteristics, corruption has become a special crime that is extraordinary (extra ordinary crime) so that it requires extraordinary eradication efforts as well (Mulatua & Nggeboe, 2017).

One of the elements of corruption offenses in Indonesia is the loss of state finances, especially in Article 2 paragraph (1) and Article 3 of Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which has been amended by Law no. 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes. The element of loss to state finances, in the judge's decision, is closely related to criminal sanctions known as replacement money, in order to fulfill the element of justice in law enforcement.

## **Literature Review**

### **Corruption Crimes in Indonesia**

Regarding the notion of corruption, it must first be seen at the origin of the word, namely from the Latin word: corruption, which means bad deeds, or honest, immoral, or can be bribed (Mas, 2014). In the Modern Practical Dictionary of the Indonesian Language, compiled by Budiono, the definition of corruption is an act of accepting bribes (Boediono, 2008). The term corruption appears in several languages in Europe such as English, namely corruption, French with the word corruption, and Dutch uses the word corruptie which then becomes "corruption" in Indonesian. Meanwhile, in neighboring Malaysia, the term resuah is found which comes from Arabic (riswah) which means the same as corruption in Indonesian (Jahja, 2012).

There are many definitions of corruption, in a broad sense corruption means using one's position for personal gain. Position is a position of trust, someone who is given authority or power to act on behalf of an institution, that institution can be a private institution, government agency, or non-profit organization. Corruption means charging money for services that are supposed to be rendered or using authority to achieve illegitimate ends. Corruption is failure to carry out one's duties due to negligence or on purpose. Corruption can occur within the organization (eg embezzlement) or outside the organization (eg extortion). Corruption can sometimes have positive impacts in the social field, but in general corruption results in inefficiency, injustice, and inequality (Klitgaard, et al, 2002).

Literally, corruption means the behavior of public officials, both political elites and civil servants, who improperly or illegally enrich themselves by misusing the state treasury, with the intention of deliberately taking property that is not rightfully theirs for personal gain. The existence of acts of corruption committed, it will automatically cause a lot of losses for various parties. One definition of corruption is all forms of abuse of authority and power to enrich oneself or one's own circle which is kept secret from outsiders. This definition of corruption has an important note regarding corruption cases, namely corruption is not only carried out by the government. Corruption is also carried out by private employees or other community service officers (Harahap, 2013).

The criminal act of corruption is a special crime whose regulation is outside the Criminal Code. The criminal act of corruption is a criminal act by means of bribery, manipulation and acts against the law which harm or can harm the state's finances or the country's economy, harm the welfare or interests of the people/public. Actions that are detrimental to the country's finances or economy are corruption in the material sector, while corruption in the political sector can manifest itself in the form of manipulating voting by means of bribery, intimidation, coercion and/or interference that affects freedom of choice, commercialization

of voting in legislative bodies or in decisions that are administrative in nature. government implementation.

Corruption crimes generally contain effectiveness which is a manifestation of acts of corruption in the broad sense of using the power or influence attached to a civil servant or special person in a public position that is proper or beneficial to oneself or the person who bribes so that it is qualified as a crime. corruption with all its legal consequences related to criminal law.

If viewed based on Indonesia's positive law, namely based on Law Number 19 of 2019 concerning the Commission for the Eradication of Corruption Crimes, precisely in Article 1 point 1 it states that Corruption Crime is a crime as referred to in the law governing the Eradication of Corruption Crimes.

## **Method**

A study cannot be said to be research if it does not have a research method (Koto, 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto, 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

## **Result and Discussion**

### **1. Setting Criminal Sanctions in Indonesia**

The meaning of criminal is often synonymous with the term punishment, although there is a slight difference in its use. The term punishment can be used by people outside the criminal law. Punishment is a general name for all legal consequences for violating a legal norm. If those who violate the norms of disciplinary law, the reward is disciplinary punishment, for violations of civil law, the reward is civil punishment, as well as for violations of administrative law are given administrative punishment. Sometimes people say that punishment is also interpreted as a sanction, although the meaning is slightly different because the term sanction is interpreted as a threat or risk. In KBBI (Big Indonesian Dictionary) it is stated that sanctions have several meanings, including negative and positive meanings. The negative meaning is the reward in the form of burdening or suffering, while the positive meaning is the reward in the form of a gift or gift determined in law. In everyday life, the meaning of sanctions is often interpreted as a negative reward. In law, the term sanction is sometimes used to group punishment parts to enforce the law itself, namely in the form of administrative sanctions, civil sanctions, and criminal sanctions in one chapter or part. The term "criminal sanction" is somewhat difficult to understand if the term sanction is interpreted as "punishment" because it will mean "criminal punishment", and it will be even more complicated if the term criminal is interpreted as a punishment so that it becomes "punishment". Sanctions or sanctions in English legal language are defined as "the penalty or punishment provided as a means of enforcing obedience to law". Sanctie in Dutch means "agreement" and "a tool of coercion as a punishment if you don't comply with the agreement" (Suhariyono, 2009).

The existence of criminal sanction arrangements is positioned as the last sanction stage. Intended in a law - the first law exists, namely administrative sanctions, then the realm of civil

law then regulates criminal sanctions. Criminal law is the last remedy, when other sanctions cannot be enforced. For example, the law on trademarks, the law on consumer protection, the law on psychotropics. A person who has been decided is sentenced to imprisonment by a judge, based on the provisions of laws and regulations which have eliminated the criminal nature of retaliation and torture, and replaced it with guidance and coaching punishment. There is an assumption that since a person is found guilty by a judge, the nature of retaliation and torture has been completed and after that it is continued with criminal coaching and guidance. Over time, the objectives of criminal law have experienced a lot of development and progress. The next development is the goal of Indonesian crime, namely that criminal law policy is oriented towards the goal of social law protection (social defense). The concept of modern social defense does not only pay attention to the protection of society, but also includes coaching and rehabilitation for the perpetrators.

## **2. Criminal Sanctions for Corruption Crimes**

The sentence imposed in the criminal act of corruption contains 3 elements of punishment, namely the main criminal sanction, fine criminal sanction, and additional criminal sanction. Whereas the legal sanction of fines has weaknesses, fines with the existence of Article 30 of the Criminal Code, which can be subsidized for a maximum of 6 months in prison and when the fine is paid the convict is given a period of one month to pay the fine. And besides that, in Article 18 paragraph (1) letter b of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes, it is explained that there is a payment of replacement money in the maximum amount equal to the assets obtained from criminal acts of corruption.

A sentencing decision given by the Judge in a criminal case will give the Defendant a criminal sanction (*straffen*) in the form of a principal criminal sanction which may be accompanied by additional criminal sanctions (or by action/*maatregelen*). The main criminal sanctions are punishments in criminal law which cannot be combined among themselves (unless specifically stipulated in the relevant criminal rules) and are independent (can be imposed without additional criminal sanctions). Meanwhile, additional criminal sanctions are punishments in criminal law that are optional (can be given or not given by the judge) and cannot stand alone in imposition because they must be given with the main criminal action. Action is a treatment given to the perpetrators of criminal acts through a judge's verdict and functions as a special prevention. The imposition of criminal sanctions by action in a sentencing decision is also known as the double track system, in which this system develops as a solution to the differences between the views of the classical school which is based on retributive justice and the view of the modern school which is based on protection for society.

Furthermore, based on Article 10 of the Criminal Code, it describes several types of punishment in the principal crimes, namely:

1. Death penalty
2. Imprisonment
3. Imprisonment sentence
4. Criminal fines
5. Concealment crime (BPHN translation).

The following will discuss the principal crimes related to this research, namely imprisonment, confinement and fines.

1. Imprisonment. One type of punishment that exists in the criminal law system in Indonesia as stated in Article 10 of the Criminal Code is imprisonment, which based on Article 12 paragraph (1) consists of life imprisonment and imprisonment for a certain time. Imprisonment is a crime of revocation of independence. Imprisonment is carried out by closing the convict in a prison, by requiring that person to comply with all the rules and regulations that apply in prison.
2. Imprisonment, Imprisonment is a form of punishment for deprivation of liberty for the convict, namely the separation of the convict from the social life of the bustling community for a certain time which is the same as a prison sentence, namely deprivation of one's freedom. Imprisonment sentences are lighter than prison sentences. It is lighter, among other things, in terms of doing the work that is required and the ability to carry equipment needed by the prisoner on a daily basis, for example: beds, blankets, and so on. The length of this imprisonment is determined in article 18 of the Criminal Code which reads :(1). The length of imprisonment is at least one day and a maximum of one year. (2). The sentence can be imposed for a maximum of one year and four months if there is a criminal aggravation caused by a combination of crimes or repetition, or the provisions in articles 52 and 52 a.
3. Fines, fines are threatened or imposed for minor offenses, in the form of violations or minor crimes. Therefore also, fines are the only punishment that can be borne by someone other than the convict. Even though the fine is imposed on the convict personally, there is no prohibition if the fine is voluntarily paid by a person on behalf of the convict.

The next criminal sanction is a fine criminal sanction. The policy of imposing fine criminal sanctions within the Criminal Code and outside the Criminal Code (Special Crime Law) is essentially aimed at being operationalized in order to tackle criminal acts. Discussing the policy of determining/formulating fines in the Criminal Code, of course, cannot be separated from the problem of classifying the types of criminal acts defined in the Criminal Code. However, it is not explained what is the basis for the policy making of the Criminal Code. Determination of fines is formulated by adhering to the Alternative System and the Single System. The logical consequence of this policy is that the operation of fines can only function as a type of sanction that stands alone (independent sanction) without the possibility of operationalizing it cumulatively with other types of principal punishment (death penalty, imprisonment or imprisonment). Determination of the amount/measurement of fines is formulated by adhering to the General Minimum and Special Maximum Systems. The general minimum threat of fines is set at Rp. 25 cents (later became 3.75 cents): Meanwhile, the maximum specific threats for crimes qualifying for crimes ranged from Rp. 900.00 (nine hundred rupiahs) (previously 60 guilders) and Rp. 150,000.00 (one hundred and fifty thousand rupiahs) (previously 10,000 guilders); However, the threat of a fine that is often threatened is IDR 4,500.00 (four thousand five hundred rupiah) (previously 500 guilders); And the maximum amount of special criminal threats for offenses ranges from Rp. 225,- (Two hundred and twenty five rupiahs) (formerly 15 guilders) and Rp. 75,000.00 (seven five thousand rupiahs) (previously 500 guilders); However, the highest threats were only Rp. 375, - (Three hundred seventy five rupiah) (25 guilders before) and Rp. 4,500.00 (four thousand five hundred rupiah) (300 guilders before). Overall, with the existence of several laws and regulations that make changes to the threat of fines, the maximum specific maximum fine for a crime is Rp. 150,000.00 (one hundred and fifty thousand rupiah) (10,000 guilders), and for a maximum violation IDR 75,000.00 (Seventy five thousand rupiah) (5000 guilders).

Determination of the implementation/execution of fines is determined, that the payment of fines is made in cash. However, the deadline for payment is not specified; and if the fine is not paid, it is stipulated that a replacement/subsidiary imprisonment shall be imposed for a period of at least 1 day and a maximum of 6 months; This amount can be increased to 8 months if there is an aggravation caused by concurrent criminal acts (*concursum*), repetition of criminal acts (*recidive*) or criminal acts related to the position specified in Articles 52 and 52 a. In general, the policy of determining the Fine Criminal System in the Criminal Code shows an outdated policy with an inelastic/rigid character because it does not give freedom to judges in operationalizing the types of fines, determining the amount/size of fines and the implementation of fines (Juarsa, 2019).

The next type of criminal sanction is additional criminal sanction. There are several types of additional crimes regulated in the Criminal Code, as follows:

1. Revocation of certain rights;
2. Confiscation of certain goods; And
3. Announcement of the judge's decision

Arrangements regarding additional punishment are also contained in several other laws and regulations. The Criminal Code itself does not limit that the additional punishment is limited to the 3 forms above. In Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (“UU 31/1999”) as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, for example, It also regulates other additional punishments apart from these 3 forms, such as:

1. confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by the convict where the criminal act of corruption was committed, as well as from goods that replace these goods;
2. payment of replacement money in the same amount as the corrupted property;
3. closure of all or part of the company for a maximum period of 1 (one) year; And
4. revocation of all or part of certain rights or elimination of all or part of certain benefits, which have been or may be given by the Government to convicts.

## **Conclusion**

Additional Criminal Sanctions against corruption in the form of confiscation of tangible or intangible movable property or immovable property used for or obtained from corruption, including companies owned by the convicted person where the criminal act of corruption was committed, as well as goods that replace goods - the goods, payment of replacement money in the same amount as the corrupted property, closure of all or part of the company for a maximum period of 1 (one) year and revocation of all or part of certain rights or elimination of all or part of certain profits, which have been or can be given by the Government to the convict.

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