

# The Sentencing Guideline Formulation to the Corrupts State Official

Aulia

Faculty of Law, Pekalongan University, 8 Sriwijaya Street, Pekalongan, Central Java, Indonesia

E-mail: auliamilono@yahoo.co.id, auliamilono@gmail.co.id

## Abstract

The many criminal acts of corruption today are done by state officials (executive, legislative and judicative) from the central level to the local level with loss reach billion and trillion rupiahs. The corruption among the state officials is not done individually-traditionally but it has been done communally-professionally, but many of the doers have been charged by Article 2 Clause (1) and Article 3 Law No 31 Year 1999 jo Law No 20 Year 2001 about Eradication of Criminal Acts of Corruption. Criminal threats of article 2 clause (1) is life imprisonment or imprisonment 4-20 years and fine between RP 200 million – Rp 1 billion and criminal threat of article 3 is life imprisonment or imprisonment 1-20 years and /or fine between Rp 50 millions – Rp 1 billion. Criminal threats of article 2 clause (1) and article 3 is imprisonment 1-4 years and fine Rp 50 millions – Rp 200 billions so produce judge tendency to impose minimum punishment sentence minimum criminal sanctions (light verdict). In the sentencing to the corruption doers, the judge tend to sentence minimum verdict to the state officials and sentence severe verdict to the corruption that is done by civil servant or individuals, because there is no sentencing guidelines. The sentencing only based on the discretion judiciary principle as regulated in the Law No 48 Year 2009 about Judicial Power. Criminal sanctions that are imposed to the states officials that do corruption (executive, legislative, judicative) are severe criminal sanctions that followed with the punishment weighting down, so able to produce deterrent effect. It needs formulation of sentencing guidelines that can be used as reference for the judge in sentencing proportionally suitable with the criminal actions danger by considering the classification and stratification of the state official positions (executive, legislative, judicative) from the central level to the local level, the amount of state loss and the received gratification and the imposed punishment to the state officials added with one third of the main punishment imposed by the judge.

**Keywords:** formulation, sentencing guidelines, criminal sanction, criminal acts of corruption.

## 1. Introduction

Criminal actions of corruptions have been categorized as extraordinary crime and crime against humanity and very dangerous. The dangers of corruption was depicted by Athol Noffit as quoted Baharuddin Loppa: “once the corruption done , even if done by the higher officials, corruption will grow luxuriantly. There is no weaknesses to a nation that bigger than corruption that penetrate to various level of public services (Baharuddin Lopa, 2001). Corruption weakens the back line, either in peace or in war”. Today corruption able to produce destruction and torment a nation and bring down a regime” (Zaenuddin, 1999).

Corruption prone to be done by the state officials by embezzling the state money in huge amount illegally. The estimation of Transparency International (TI) , the embezzled fund by state officials including Indonesia, at least US\$ 400 billions per year in all the world ([http://www. Transparency.org/2004/cpi2004.en.html#cpi2004](http://www.Transparency.org/2004/cpi2004.en.html#cpi2004)). The corruption causes in the ruling group (state officials) is the desire to live in luxury and to fulfill the luxurious spending, they are interested in the corruption (Ibn Khaldun, 1958). Corruption among the state officials has occurred since 1950 that grow luxuriantly in the corrupt culture since Old Order, New Order and Reform Order. Corruption in Indonesia like crime without offender (Yesmil Anwar, 2009) and has gnawed the state power pillars (executive, legislative, and judicative).

The main problems in the corruption eradication in Indonesia is there is no clear time limit, whether begun before or after reform era or after the birth of Corruption Eradication Commission (KPK). The time limit is important for the departing point for the corruption eradication, especially corruption that is done by the state officials as in other countries (Hong Kong), that is done after collective agreement nationally.

Corruption eradication should be done consistently to reach the expected return, there are five reasons, first, corruption eradication in Indonesia has been begun since the Old Order, second, corruption has been categorized as extra ordinary crime, third, the corruption doers are the most rational criminal than general criminal actions doers, because they have calculated various facing risks (including the legal process), fourth, the criminal actions that is imposed to the state officials are minimum criminal sanctions (light verdict) although the threats are severe, and fifth, no agreed perception and good cooperation among the legal enforcer (police, attorney, KPK, and MA) because there is no “top leader” in the corruption eradication since the inquiry to the criminal sanctions imposition.

There are differences in the criminal sanctions impositions to the corruption doers between state officials to the civil servant and representative council’s member and individuals) to the state officials (Decision of High Court

of Jakarta No. 22/Pid.B/TPK/PTDKI, defendant of Social Minister of RI, Bachtiar Chamsyah) and sentenced criminal sanction heavier to the Civil Servants and Member of Regional Representative Council (Decision of Supreme Court No. 1198 K.Pid.Sus/2011, defendant of Gayus Tambunan and Decision of Supreme Court No. 905 K/Pid/2006/ defendant of H.M. Natsir Bin Djakfar), or individuals, because there is no sentencing guidelines.

The state officials that do corruption mostly are imposed by Article 2 Clause (1) or Article 3 of UUPTPK and by the judges are imposed by minimum criminal sanctions (light verdicts) that is varied, either imprisonment or fine. As the consequences, many state officials (executive, legislative, and judicative) from the central level to local level do the corruption easily, because they have expectations. First, the corruption process will not end to the court and without criminal sanctions. Second, if the case reach to the court, the doer will “resist” to get acquittal. Third, if they are imposed by criminal sanctions, then the sanction is minimal so after undergo the punishment they will enjoy the remain of the corruption outcome, because up to now there is no corruption outcome that is brought back wholly to the state and the interest and the tax.

The sentencing to the state officials that do the criminal actions of corruption need sentencing guideline, so the judge able to sentence the proportional sentence suitable with the weight and the danger of the criminal action by considering the classification and stratification of the state officials (executive, legislative, and judicative) from the central and local level by considering the state loss or the received gratification. The state officials that do criminal actions of corruption should be imposed severe criminal sanctions and followed by weighting down of the punishment.

In the criminal justice system in Indonesia, the criminal sanction implementation principle to the doers is dynamic (I Gede Widhiana), one of them direct to the weighting down of punishment as regulated in the Article 52 of Criminal Code: If an official by committing a punishable act violates a special official duty or by committing a punishable act employs the power, opportunity or means conferred upon him by his office, the punishment may be enhanced with one third”. The weighting down of punishment because of the position can be imposed to the state officials that violate the special obligation, that is, employs the power, opportunity or means conferred upon him by his office. The state officials that violate one of the obligations in their position, the imposed criminal sanctions can be enhanced by one third (1/3) from the main punishment or additional punishment imposed by the judge.

## 2. Research Method

The research will investigate the laws and regulations in a coherent (Soetandyo Wignyosubroto, 1995) rule of law about law as the positive norms that prevail in certain time as a product of certain power. The research will be focused to the sentencing of corruption cases that today mostly done by the state officials, persons that are given trust to run a position of executive, legislative, or judicative, either in the central or local level. The sentencing to the state officials that do the criminal actions of corruption should be adjusted suitable with the classification or stratification of their post, either executive, legislative, or judicative from the central to local level.

The research aims to evaluate the sentencing of corruption cases done by the state officials from the central to local level, either executive, legislative, or judicative. So far, the sentencing only based on the discretion judiciary only because there is no sentencing guidelines that is used as reference in sentencing. The sentencing to the state officials that do criminal action of corruption needs formulation of sentencing, so the judge able to sentence proportionally suitable with the weight and the danger of the criminal action. The research was normative legal research, so the legal materials were observed from the law stipulation (UUPTPK) as the initial issues of the research, that was about sentencing guideline formulation to the corrupt state officials. The research is normative legal research or legal research that placed the law as building of norm system, such as principles, norm, law and regulation, court decision, agreement and doctrine (Mukti Fajar, 2010). Sutandyo Wignyosubroto (2002), called the normative legal research with term of doctrinal legal research, that is legal research that conceptualized and developed based on the hold and developed doctrine. Approach in the research was used to solve the research problems, by comparison to other countries, such as Hong Kong, India, China and South Korea. The comparison approach was used to know the similarities and the differences or consistence and philosophy in the law among the countries, so the results can be used as materials in the sentencing to the corrupt state officials. The research aims to give recommendation to the law enforcers, especially the judge for sentencing the corrupt state officials.

## 3. Result and Discussion

### 3.1 The history of law and regulations of the criminal action of corruption in Indonesia

The law and regulation of the corruption criminal action in Indonesia was begun since 1957 with the issuance of Regulation of Military Ruler No, Prt/PM-06/1957 of April 9 1957 about the Corruption Eradication that has taken over the KUHP (criminal code) stipulation about corruption in the *Wetboek van Strafrecht* (KUHP)

Chapter XXVIII about crime that is done in the office. Because there is no smoothness in eradicating the actions that damage financially and economically to the state (corruption), it should be determined soon the work procedures to break through the jam. The jam in eradicating corruption related with the determined stipulation for the offense that done by the state officials “have no power” in facing the corruption at the time (1957-1960). The laws and regulation of the corruption criminal action as given in table 1 below:

Table 1. The law and regulation of corruption criminal action In Indonesia (1957-1960)

No.	Law and Regulation of Corruption Criminal Actions	Explanation
1	Regulation of Military Ruler (PPM) No. Prt/PM-06/1957 of April 9 1957, No. Prt/PM/08/1957 May 27 1957 and NO. Prt/011/1957 July 1 1957	<ol style="list-style-type: none"> <li>1. Took over the article 209, 210, 387, 388, 415, 416, 417, 418, 419, 429, 423, 425, and 435 of Criminal code</li> <li>2. Replaced by Regulation of Central Ware Ruler because the prevailing of Article 60 Law No 74 Year 1957 about Dangerous Situation</li> </ol>
2	Regulation of Central War Ruler of Army Staff Head No. Prt/Peperpu/013/1958 April 16 1958 and the implementing regulation and Regulation of Central War Ruler of Navy Staff Head No. Prt/Z1/1/7 April 17 1958	<ol style="list-style-type: none"> <li>1. Took over the stipulation of Military Ruler Regulation</li> <li>2. The Regulation of Central War Ruler was temporary</li> <li>3. Replaced by the Governmental Regulation of Law Substitution (Perpu) No. 24 Year 1960</li> </ol>
3	Governmental Regulation of Law Substitution (Perpu) No. 24 Year 1960 About Examination, Prosecution, and Examination of Corruption Criminal Action	<ol style="list-style-type: none"> <li>1. Took over the stipulation of the regulation of central war ruler</li> <li>2. Replaced with Law No 24 Year 1960 because the prevailing of Law NO 1 Year 1960 about The Determination of All Emergency Law and all of existing Governmental Regulation of Law Substitution before become law.</li> </ol>
4	Law (Prp) No 24 Year 1960 About Examination, Prosecution, and Examination of Corruption Criminal Action	<ol style="list-style-type: none"> <li>1. Took over the stipulation of the Governmental Regulation of Law Substitution (Perpu)</li> <li>2. Withdrawn with Article 36 No 3 Year 1971 about Eradication of Criminal Action of Corrruption.</li> </ol>

Source: Premier Data Processed

Law and regulation of corruption criminal action from 1957-1960 only took over the previous law and regulations. The corruption eradication should be supported with seriousness of the law, because the seriousness and the willingness of a state to eradicate the corruption is assessed from the determined law and the governmental action in implementing the law. The war to the corruption need four elements (1) legal infrastructure of anti corruption that is domestic and effective, (2) international cooperation to help each other in the legal field (3) active support from the people of the state, and (4) political willingness to make anti corruption strategy of the government can run well.

### 3.2 The sentencing to the corrupt state officials

#### 3.2.1 Stipulations of Law No 31 Year 1999 about the Eradication of Criminal Action of Corruption done by state officials

Law No 31 Year 1999 regulates corruption that is done by the state officials in the article 3, article 8, article 11 and article 12 related with the state officials corruption, from central to local level either executive, legislative, judicative. The corruption actions that are regulated in the articles related with the action of against the law in the formal meaning as given in table 2 below:

Table. 2 Criminal Sanction to the TPK That is Done By State Officials In Law No 31 Year 1999 About Eradication of Corruption Criminal Action

No.	Article Stipulation	Subject of Criminal Action	Criminal Sanctions
1.	Article 3	a. Each person b. State officials	Imprisonment at shortest 1 year and at longest 20 years and / or fine at least Rp 50 millions and at most Rp 1 billions
2.	Article 8	a. Civil servants b. Persons who run the public position	Imprisonment at shortest 1 year and at longest 15 years and / or fine at least Rp 150millions and at most Rp 750 millions
3.	Article 11	Civil servant	Imprisonment at shortest 1 year and at longest 5 years and / or fine at least Rp 50 millions and at most Rp 250 millions
4.	Article 12	a. Civil servants b. Judge / advocates	Life imprisonment or imprisonment at shortest 4 years and at longest 20 years and / or fine at least Rp 200 millions and at most Rp 1 billions

Source: processed secondary legal materials

In the explanation of Article 3, the word “able” has similar mean with the explanation of article 2. According to article 2 clause (1): what is meant by “against the law” including the action of against the law in the formal and material meaning. With the decision of constitutional court No. 003/PUU-IV/2006 July 25 Year 2006, the explanation of article 2 clause (1) Law No 31 Year 1999 is withdrawn and against the law (*wederrechtelijkheid*) and limited only against the law in the formal meaning (*formiele wederrechtelijkheid*), because the nature of against the law in material meaning (*materiele wederrechtelijkheid*) contrast with the Constitution 1945 and Article 1 Clause (1) KUHP.

### 3..2.2 The stipulation of Law No 20 Year 2001 About The Change of Law No 31 Year 1999 About Eradication of Corruption Criminal action done by State Officials

In the development the Law No 31 Year 1999 be changed become Law No 20 Year 2001 about the Change of Law No 31 Year 1999 about Eradication of Corruption Criminal Action. The stipulation of Law No 20 Year 2001 regulate corruption that is done by the state officials in the article 2, article 5 clause (2), article 6 clause (2), article 10, article 11, article 12 and article 12B as seen in table 3 below:

Table. 3 Criminal Sanctions To TPK Done By State Officials In Law No 20 Year 2001 About The Change To Law No 31 Year 1999 About Eradication of Corruption Criminal Actions

No.	Article Stipulation	Subject of Criminal Action	Criminal sanction
1.	Financial / Economy of the State Article 2	Individuals State officials	Life imprisonment or imprisonment at shortest 4 and at longest 20 years and / or fine at least Rp 200 millions and at most Rp 1 billions
2.	Gratification Article 4 clause (2) Article 6 clause (2) Article 11 Article 12 Article 12B	a. Civil servants b. Judge or advocate c. Civil servants d. Civil servants / judge/ advocates e. Civil servants	a. at shortest 1 year and at longest 5 years and / or fine at least Rp 50 millions and at most Rp 250 millions b. Imprisonment at shortest 3 year and at longest 15 years and / or fine at least Rp 150 millions and at most Rp 750 millions c. Imprisonment at shortest 1 year and at longest 5 years and / or fine at least Rp 50 millions and at most Rp 250 millions d. Life imprisonment or imprisonment at shortest 4 years and at longest 20 years and / or fine at least Rp 200 millions and at most Rp 1 billions e. Imprisonment at shortest 4 years and at longest 20 years and / or fine at least Rp 200 millions and at most Rp 1 billions
3.	Falsification Article 9	a. Civil servants b. Individuals	Imprisonment at shortest 1 year and at longest 5 years and / or fine at least Rp 50 millions and at most Rp 250 millions
4.	Embezzlement in office Article 8 Article 10	a. Civil servants b. Individuals	a. Imprisonment at shortest 3 year and at longest 15 years and / or fine at least Rp 150 millions and at most Rp 750 millions b. Imprisonment at shortest 2 year and at longest 7 years and / or fine at least Rp 100 millions and at most Rp 350 millions

Source: processed Premier legal materials

Law No 20 Year 2001 about the Change of Law No 31 Year 1999 about the Eradication of Criminal Action of Corruption (UUPTPK) regulates corruption that is done by the state officials in article 2, article 5 clause 2, article 6 clause 2, article 8, article 9, article 10, article 11, article 12 and article 12B. Criminal actions that are regulated in Law No 20 Year 2001 About The Change of Law No 31 Year 1999 about the Criminal Action of

Corruption Eradication, that is imprisonment at shortest 1-4 years and fine at least Rp 50 million – Rp 200 millions.

### 3.2.3 Stipulations in the bill of eradication of corruption criminal actions (RUU-PTPK) year 2008 about the corruption that done by the state officials

The used terms in RUUPTK 2008 such as corporation, public officials, foreign public officials, and officials of public international organizations. The concept of RUUPTK 2008 regulates corruption that is done by the state officials and the public officials in article 2 clause (2), article 2 clause (3), article 4 clause (2), article 5, article 6, article 7 clause (2), article 9 clause (1), (1), (3) and (4), article 10 clause (1) and (2) and article 11. The corruption criminal action that is regulated in the RUUPTK 2008 is formal offense, so RUUPTK 2008 does not follow the nature of against the law materially (*materiele wederrechtelijkheid*), but follow the against the law formally (*formiele wederrechtelijkheid*) as regulated in article 11 RUUPTK 2008. The principle that is followed by RUUPTK 2008 similar with the principle that is followed by Law No 20 Year 2001 about the Change for Law No 31 Year 1999 about The Eradication of Corruption Criminal Actions after the Decision of Constitutional Court NO 003/PUU-IV/2006 July 25 2006 that withdrew the explanation of Article 2 clause (1) Law No 31 Year 1999 as be changed by Law No 20 Year 2001 about Change for Law No 31 Year 1999 about the Eradication of Corruption Criminal Actions that is against the law materially (*materiele wederrechtelijkheid*). The article stipulations in the RUUPTK 2008 that regulates about the criminal action of corruption that done by state official or public officials as seen in table 4 below:

Table. 4 Criminal Sanction To The Corruption Criminal Acts That Done By The Public Official In the RUUPTK Year 2008

No.	No. Article Stipulation	Subject of Criminal Actions	Criminal Sanction
1.	Article 2 clause 2	Public officials	Imprisonment at shortest 1 year and at longest 7 years and / or fine at least Rp 50 millions and at most Rp 350 millions
2.	Article 2 clause 3	Judge	Imprisonment at shortest 1 year and at longest 7 years and / or fine at least Rp 50 millions and at most Rp 350 millions added with one third
3.	Article 4 clause 2	a. Public officials b. Other people	Imprisonment at shortest 1 year and at longest 9 years and / or fine at least Rp 50 millions and at most Rp 450 millions
4.	Article 5	Public officials	Imprisonment at shortest 1 year and at longest 6 years and / or fine at least Rp 50 millions and at most Rp 300 millions
5	Article 6	Public officials	Punishment of the wealth expropriation
6	Article 7 clause 2	Public officials	Imprisonment at shortest 1 year and at longest 7 years and / or fine at least Rp 50 millions and at most Rp 350 millions
7	Article 9 clause 1, 2, 3 and 4	Public officials	1. Imprisonment at shortest 1 year and at longest 7 years and / or fine at least Rp 50 millions and at most Rp 350 millions 2. Imprisonment at shortest 1 year and at longest 5 years and / or fine at least Rp 50 millions and at most Rp 100 millions 3. Life imprisonment / at longest 20 years 4. Life imprisonment or at longest 20 years
8	Article 10 clause 1 letter a, b, and c and clause 2	Public officials	1. Imprisonment at longest 10 years and fine at most Rp 500 2. Imprisonment at longest 3 years and fine at most Rp 150 millions
9	Article 11	Public officials	Imprisonment at longest 5 years

Source: processed secondary legal materials



Subjects of criminal action in Law No 31 Year 1999 and Law No 20 Year 2001 consist of state officials, civil servant, individuals, public officials, judge and advocate; subjects of the criminal action in the RUUPTK Year 2009 consist of individuals, public officials and judge. Law No 31 Year 1999 does not regulate minimum limitation of corrupted or received money as gratification, Law No 20 Year 2001 regulates the minimum corrupted money of Rp 10 millions or more or receive gratification less than 10 millions, and RUUPTK Year 2008 regulate the limitation of corrupted money of Rp 100 millions or more or above Rp 100 millions and Rp 5 billions or more. The criminal sanction type in the Law No 31 Year 1999 and Law No 20 Year 2001 consist of life imprisonment, certain imprisonment, and fine. The criminal sanctions in the RUUPTK 2008 consist of life imprisonment, certain imprisonment, and expropriation. The criminal sanction in Law No 31 Year 1999 and Law No 20 Year 2001 and RUUPTK 2008 is same, that is the imprisonment an fine, except criminal sanction of expropriation for the corrupted wealth.

### 3.2.4 The state officials in the legislation of eradication of corruption criminal action to the state officials that do corruption criminal actions

The criminal sanction implementation to the doers is dynamic in nature and direct to the elimination, commutation, and weighting down of the punishment. In what case the criminal action doers, is not imposed punishment or commuted or in what case the doer can be weighted down. The state officials are persons that run the executive, legislative, or judicative functions, and other officials whose the task is to run the state, such as minister, governor, regent, and major, representative council, regional, regency and city representative councils, and police, attorney and advocate. The state officials consist of central and local state officials. The central level state officials consist of high rank officials of state and other high rank officials of state. Local state officials consist of provincial officials, regency and city level officials, and other as given in table 5 below:

Table. 5 State officials that run the executive, legislative, and judicative functions

No	State officials	Explanation
1	Central state officials	1. High rank official of state 2. Other high rank official of state
2	Local state officials	1. Provincial, regency and city officials 2. Other provincial, regency and city officials 3. Low rank local officials

Source: processed primary materials

Classification of state officials that run the executive, legislative, and judicative functions consist of high rank official of state and other high rank official of state; provincial, regency-city official, low rank local officials. Stratification of state officials that run the executive, legislative, and judicative functions consist of high, middle, and low level. The corrupt state officials must be sentenced severe criminal sanctions and followed by weighting down, that is the punishment added with one third of the main punishment. The weighting down because the officials have violate the special obligation of their position as regulated in article 52 KUHP.

### 3.2.5 Analysis of sentencing to the state officials that do corruption criminal actions

The stipulation of Law No 31 Year 1999 and Law No 20 Year 2001 that regulate the TPK of the state officials do not give classification and stratification of the state official level of central, provincial, regency-city level and low level. According to the consideration of Law No 31 Year 1999 letter a: corruption damages the state finance and economy and according to Law No 20 Year 2001 letter a, corruption is extraordinary crime". Both law do not regulate the sentencing. The sentencing to the corrupt officials based on discretion judiciary that is regulated in the Law No 48 Year 2009 about the judicial power. The sentencing of minimum punishment to the corrupt state officials is proper matter. If the defendant of corruption case be punished suitable with the corrupted money and the returned money. For example, the minimum 4 years punishment if the done corruption not too much and the corrupted money has been returned, should they be sentenced 4 years? The judge should sentence suitable with the actions (as stated by the Supreme Court Chairman, Harifin Tumpa). Judge in sentencing only look at the normative juridical stipulations and the punishment does not fulfill the justice feeling and produce deterrent effect, because the judge only use the law not the law enforcement (Ronny Rahman Nitibaskara).

## 3.3 Sentencing guideline formulation to the corrupt state officials

### 3.3.1 Sentencing to the corrupt state officials in other countries

In Hong Kong, the corrupt state officials are sentenced by imprisonment and administrative sanctions in the form of disrespectful discharge, such as Max Hunt and Peter Godber (<http://www.hklii.hk/eng/hk/cases/hkca/1974/111.html>) and India V. Iyer (<http://www.liiofindia.org/in/cases/cen/INSC/1957/79.html>) that were imprisoned and required to hand over bonds warranty as given in table 6.

Table. 6 Sentencing to the corrupt state officials in Hong Kong and India

No.	No Subject	Decision	Verdict
1.	<b>Hong Kong</b> Max Hunt, Royal Superintendent of Hong Kong Police. Official Salary \$156.559 Living standard \$222.682.06 \$ 207.404.52	1. Decision of First Level Court of Hong Kong July 6 1973 2. High Court Of Hong Kong Februari 15 1974	Imprisonment 1 year 1. Corroborate the decision of First Level Court of Hong Kong 2. Dismissal as Police Member of Hong Kong
2	PF Godber, Police Head of Hong Kong Receive \$ 25.000	1. Decision of First Level Court of Hong Kong, February 15 1974 2. Decision of High Court of Hong Kong, April 28 1975	Imprisonment 1 year 1. Reject the appeal of the petitioner 2. Corroborate the decision of First Level Court 3. Dismissal as member of Hong Kong police
1	<b>India</b> Vaidyanatha Iyer Officer of Taxation Revenue of India received Rs 800	1. Decision of First Level Court of Madras 2. Decision of High Court of Madras 3. Decision of Indian Supreme Court	Imprisonment 6 month Release the defendant 1. Abrogate the Decision of High Court of Madras 2. Corroborate the Decision of First Level Court of Madras 3. Hand over the bond warranty

Source: processed secondary legal materials

Criminal sanctions for corruption in China is life imprisonment or capital punishment through careful legal process. If the state officials do corruption that reached billion rupiah (Rp 3.9 billions), the sanction is capital punishment (<http://forum.detikcom/cina-hukum-mati-100-koruptor-bagaimana-indonesia-t260759.html?s=c67881754e6b3a051bab8ece9e72ca65&>). The state officials that sentenced by capital punishment such as 1) Hu Chang ging, former vice governor of Jiangxi Province, receive bribe of car and jewel worth Rp 5 billions, 2) Cheng Kejie (former Vice Permanent Committee of National Congress) involved in bribing worth US\$5 million; 3) Xiao Hongbo (37 years) Deputy Manager of China Construction Bank Branch (state owned) damage financially the bank 4 millions yuan or about RP 3.9 billion; 4) Bi Yuxi (administrator of highway of Beijing) received bribe of US\$ 1.2 million and public fund embezzlement US\$ 360.000; 5) Li Baojin (former Prosecuting Attorney of North Tianjin city) involved in the bribe an embezzlement of Rp US\$ 2.66 millions; 6) Zheng Xiaoyu (Health and Food Agency official) received bribe of US\$ 850.000 as the return to agree untested drugs and false drug, 7) Chen Tonghai (former Chariman of Chine Petroleum and Chemical Corporation) received bribe of US\$28 millions; 8) Li Pelying (former President of Capital Airports Holding Company) because of bribe of USD 4.1 million; 9) and Zhang Chunjiang (former official of China Mobile) received USD. 1.150.000 (<http://epmnewsintl.wordpress.com/2012/04/16/teladan-zhu-rongji-dan-hakim-illinois-2/REPORT>). In China, corruption is serious crime and whoever the doers especially the state officials must be imposed severe punishment without tolerance. In the South Korea, if the state officials are accused as corruptor, the attorney will do investigation up to sentencing suitable with the action. The corruption eradication in South Korea is no state officials that is immune to the corruption. President Chun Doo-Hwan (1980-1985) accumulated wealth. The Seoul court decided to seize his wealth, because of late in paying the fine for the obtained wealth illegally, luxurious condominium and Mercedes Benz car. Roh Tae Woo the successor involved in bribing during in office. Presiden Kim Young Sam stated Chun Doo-Hwan and Roh Tae Woo has stolen 400.000.000.000 won or about \$350.000.000 in March 1996, their court session begun from August 26 1996. The District Court of Seoul sentenced capital punishment. While Roh Tae Woo was sentenced with imprisonment for 22.5 years (<http://en.wikipedia.org/wik/Chun Doo-hwan>).

### 3.3.2 Sentencing to the corrupt state officials in Indonesia

In corruption eradication in Indonesia, the tendency of the judge to sentence minimum and different verdict, as the Decision of High Court of Jakarta No 22/Pid.b/TPK/2011/PTDKI, the defendant of Social Minister Bachtiar Chamsyah, but the sentencing for corruption done by Civil Servant and Regional Representative Council Member tend to be heavier, as the Decision of Supreme Court No. 1198 K/Pid.Sus/2011, the defendant of Gayus Tambunan and Decision of Supreme Court No. 905 K/Pid/2006, the defendant of H.M. Natsir Djakfar. The different sanctions for state officials in Indonesia given in table 7 below:

Table. 7 Sentencing To Corrupt State Officials in Indonesia

No.	Subject	Decisions	Verdicts
1.	Social Minister of Dr. (HC) Bachtiar Chamsyah. Damage financially to the state Rp 36.688.865.603	1. Corruption Criminal Action Court of District Court of Central Jakarta No . 31/ Pid.B/TPK/2010/PN. Jkt.Pst Marc 22 2011 2. Corruption Court of High Court of Jakarta No.22/Pid.B/TPK/2011/PTDKI	Imprisonment 1 year 8 month and fine RP 500 million 1. Accept the appeal of defendant and prosecuting attorney 2. Corroborate the decision of corruption criminal action court at District Court of Central Jakarta
2.	Gayus Tambunan. Civil Servant, Group IIIA. Damage financially the state of Rp 570.952.000,-	1. Decision of corruption criminal court at District Court of South Jakarta No 11950 Pid.B/2010/ District Court. South Jakarta. No 06/PID/TPK/2011/PT.DKI April 29 2011 2. Decision of corruption criminal court at High Court of Jakarta No 06/PID/TPK/2011/PT.DKI April 29 2011 3. Supreme Court No. 1198 K/Pid.Sus/2011	Imprisonment 7 years  Imprisonment 10 years and fine Rp 500 millions  Imprisonment 12 years and fine Rp 500 millions
3	H.M. Natsir Bin Djakfar, member of Regional Representative Council. Damage financially to state Rp 25 million	1. Decision of District Court No 634 /Pid.B/2005/PN. PLG 28 December 2005 2. Supreme Court No 905 K /Pid/ 2006 January 29 2007, free from prejudgment	Free from various legal indictment Abrogate the decision of district court of Palembang and sentence 1 year imprisonment.

Source: secondary legal material

The different sentences among high rank state officials, civil servant, first, the difference of minimum criminal threat in article 2 and article 3 of UUPTPK, second, the presence of judiciary discretion that is warranted by the Law, and third, there is not sentencing guideline that can be used as reference for sentencing. And also, the sentencing to the corruption action done by Representative Council of Province, Regency, and City and individuals, that is the tendency for the judge to sentence heavier than to high rank state official as be shown by the research results. (table 15 and 16, corruption done by state officials/individual). The sentencing need guideline as reference for the judge, that is sentencing guideline to the corrupt state official by considering the classification and stratification of the official position or the corrupted money as given in table 17 below:

Table. 8 Sentencing guideline formulation to the corrupted state officials

No.	PTK Category	Position classification	Position stratification	Criminal threat
1	Severe	High rank official (central)	President Vice presiden Minister, vice minister, chairman, vice chairman, and member of representative council of Indonesian republic	Capital punishment Life imprisonment Imprisonment 20 years – life imprisonment
2	Moderate	Middle rank officials (provincial)	Governor Vice governor Chairman, vice chairman and member of regional representative council	10-20 years imprisonment
3	Light	Low rank official (Regency and city)	Regent Vice regent Major Vice major Chairman, vice chairman and member of local representative council	5-10 years imprisonment

Source: secondary legal material

Explanation: Sentencing to state officials must be followed with the weighting down of one third and dismissal



disrespectfully

### 3.3.3 Sentencing guideline in New Zealand

Effort to minimizing the judge decision differences by making sentencing guideline. The sentencing guideline was firstly made by USA as research results of National Center for State Court (NCSC, 2008). The sentencing guideline then be adopted by other countries in the world, such as Finland (1976), Swedia (1988), Canada (1988), and New Zealand (2002) by adopting the basic principles and modified the models as the sentencing guidelines for the young criminals (Eva Achjani Zulfa, 2011).

Sentencing guideline in New Zealand is regulated in the Sentencing Guideline and Parole Reform, 2006 as the combination of both law that regulate the conditional release and sentencing statute 2002 is the special law of sentencing, because the problems in the sentencing by the judge to the criminal actions doers, that is the judge often impose minimal verdict, even more minimal verdict to the doers with goals to get conditionals release as regulated in the Parole Act 2002. The change is done because the requirement to get the conditional release after experience 2/3 punishment produce problems, that is the minimum sentence produce differences between the imposed punishment by the judge and the punishment that should be done is too light ([www.lawcom.govt.nz](http://www.lawcom.govt.nz)).

### 3.3.4 Analysis of sentencing guideline formulation to the corrupt state officials

The sentencing guideline is very important to limit the judiciary discretion. The legislator should give criteria, so the judge before imposing punishment should considers the basic things. The sentencing guidelines in New Zealand can be used as materials for the guideline making for corruption criminal actions done by the state officials in Indonesia. UUPTPK has regulated the general sentencing and “floating” or waiting “further explanation” (Dewabrata term in the book of Eddy Djunaedi: some sentencing guideline and observation of prisoners) then it needs sentencing standard for the criminal actions that bring anxiety to the societies and damage the state interest. The sentencing guideline is aspirative regulation and able to bring trust from societies to the court decision an remove negative opinion of the societies. The sentencing guideline formulation for the corrupt state officials is needed because the imposed punishment unable to inhibit yet the corruption rate. The used method and values not only to get the truth but to reveal the essence. The sentencing guideline formulation is expected able to embody the justice and legal certainty and the judge in sentencing not only based on the written law but also based on the values owned by Indonesia, that is The Five Principles and Constitution of Indonesian Republic 1945.

## 4. Conclusions

Based on the explained research then it can be explained the conclusions as follows:

1. a. In sentencing the corrupt state officials, there is tendency to the corrupt state officials for the judge to sentence minimum verdict because of the stipulation in the Law No 31 Year 1999 as be changed by Law No 20 Year 2001 in the form of sentence with stipulation of minimal and maximal, either imprisonment or fine.
  - b. Sentencing to the corrupt state officials is minimum punishment, either imprisonment or fine with the substitutive money, if the substitutive money is not paid, it will be replaced by jail, the sentencing is not followed by weighting down the punishment or administrative sanctions, such as dismissal disrespectfully as the state officials suitable with the classification and stratification of the officials positions.
  - c. The sentencing to the corrupt state officials in Hong Kong, the doers are sentenced by criminal sanctions and followed by other sanctions, that is dismissal disrespectfully as the state officials, while the sentencing to the corrupt officials in India beside the criminal sanctions also imposed with other sanctions, that is obligation to give bond warranty.
  - d. The sentencing to the corrupt state officials in china, the doers are sentenced severely, that is capital punishment; and also in South Korea, the doers are also imposed by severe punishment, that is capital punishment.
2. Sentencing guideline formulation to the corrupt state officials as follows
  - a. The high rank state officials, that is president and vice president, member of representative council of Indonesian Republic, is life imprisonment or 20 years imprisonment;
  - b. The provincial state officials, governor, vice governor, chairman, vice chairman and member of regional representative council, is imprisonment at shortest 10 years and at longest 20 years.
  - c. The local state officials, Regent, Vice regent, Major, Vice major Chairman, vice chairman and member of local representative council, is at shortest 5 years and at longest 10 years.

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Aulia, born in Pekalongan, 9 August 1965, Finished Doctor (S3) Program (2012) and Law Magister (2004) at The post degree of Malang Brawijaya University, Graduate from Law degree (S1) From (UNIKAL) Pekalongan University Law Faculty.

In 1991 became temporary lecture assistant and I have been teacher staff in Pekalongan University since 1993. Becoming The Secretary of LPPM of UNIKAL (1991 – 1996), The Secretary of “PENA” UNIKAL Magazine (1994 – 1996), The Secretary of student executive Board of Law Faculty (1999 – 2001), The Assistant of The Dean III Law Faculty of UNIKAL (2000 – 2004), The Member of UNIKAL Senate (2006 – 2008).

Participatory in Various Regional Training of Politic held by Rector – forum – KP3KD/JAPTUR Simpul Central Java on 18 – 21 April 1999 in Semarang; The Seminar of Writing Proposal of Dedication and Research to Society, The High Education General Directorate on 22 – 23 November 2006 in Pekalongan; The Training of Special Issue Supervisor (Campaign fund, money politic and Missuse of Position) for The General Election official of municipality/Regency That was held by BAWASLU RI world together with UNDP and Partnership, on 28 February – 2 Marc 2009 in Yogyakarta.

The member of General Election Supervisor at Regional General Election of Pekalongan Regency (2006 and 2011); Central Java Governor Election (2008) and President/Legislative Election (2009); The member of Monitoring Program RASKIN Pekalongan Territory (1998 -2000); The Chairman of special Advocacy Profession Education (PKPA) UNIKAL Law Faculty in 2005 and The member of Monitoring Team for ADIPURA Program Central Java Province in 2006 and 2007; The member of Selection Team for The General Election Commission Member for Batang Regency in 2008 and 2013.