International Journal of Humanities
and Social Sciences (IJHSS)
ISSN(P): 2319-393X; ISSN(E): 2319-3948
Vol. 7, Issue 6, Oct - Sep 2018; 99-114

International Academy of Science,
Engineering and Technology
Connecting Researchers; Nurturing Innovations

RECONSTRUCTION OF CORRUPTION PENALTY FOR THE ABUSE OF AUTHORITY BASED ON VALUE OF JUSTICE

TirtaWinata[1], Gunarto[2] & Sri EndahWahyuningsih[3]

[1]Doctorate of Law, Sultan Agung Islamic University, Semarang, Indonesia

[2,3]Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

ABSTRACT

Application of criminal sanctions against perpetrators of corruption in Indonesia cause in justice, corruption is carried out with a certain purpose, misuse the authority, opportunity or means available to him because of his or her position as referred in Article 3 of the Corruption Eradication Act, the threat of minimum criminality in particular must be higher than the minimum criminal threat specifically in Article 2, in order to create a sense of justice. Reconstruction of criminal sanctions based on the value of justice in Article 3 of the Law on the Eradication of Criminal Acts of Corruption, namely: Every person who aims to benefit himself or another person or a corporation, misuses his authority, opportunity or means because of his position or her position that could harm the state's finances or the country's economy, sentenced to life imprisonment or imprisonment of ***at least 5 (five) years*** *and a maximum of 20 (twenty) years and or a fine of at least Rp.50,000,000 (fifty million rupiah) and a maximum of Rp.1,000,000,000 (one billion rupiah).*

KEYWORDS: ***Abuse of Authority, Corruption, Criminal Sanctions***

Article History

Received: *08 Oct 2018* **|** ***Revised:*** *15 Oct 2018* **|** ***Accepted:*** *30 Oct 2018*

INTRODUCTION

Preliminary

A Sustainable Development is carried out in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).The aim of the Indonesian people as stated in the Preamble of the 4th Constitution of the Republic of Indonesia NRI 1945, which is to protect the entire Indonesian nation, promote the general welfare, educate the lives of the nation and participate in carrying out world order.

Protection through legal means is an absolute thing to be realized, there is no meaning in protecting the entire nation and spilling blood if it turns out there is still the suffering of the people in the form of inequality of economic rights that reflects theinadequacy of all Indonesian people.[1]Welfare is encouraged and created by a system of government that is not socially just for all Indonesian people and does not take sides with the people.

One of the criminal acts that is the nation's enemy is corruption.[2]Eradication of corruption is a priority, and part of theprogram to restore the trust of the people and the international community. Corruption are put in a special criminal law section in addition to having certain specifications, in contrast to other criminal laws, such as irregularities in procedural law and if viewed from regulated material, corruption is intended to minimize the minimum possible leakage

and irregularities in the country's economy and economy, as well as it is expected that the economy and development will be carried out properly so as to bring about an increase in development and community welfare generally.[3]

Corruption as an *extraordinary crime* need eradication system that are also *extraordinary,* so the government is making efforts to renew the law from Act No. 31971 concerning the Eradication of Corruption, then replaced by Law Number 31 of 1999, concerning the Eradication of Corruption, and changed by Law No. 20 of 2001, concerning Amendment to Law Number 31 of 1999. In addition, Law Number 28 of 1999, concerning Implementation for a country that is clean and free from corruption, collusion and nepotism, regulations Government Number 71 of 2000, concerning Procedures for Implementing Participation Society and Awarding in Prevention and Eradication Corruption Crimes, Law Number 30 of 2002, concerning the Commission Corruption Eradication (KPK) and Presidential Instruction Number 5 of 2004,concerning Acceleration of Corruption Eradication and Law Number 7In 2006, about the 2003*United Nations* Anti-Corruption Convention (*United Nations Convention Against Corruption*2003).That the study and tracking of the legal literature on corruption provides an illustration of the difficulty and extent of the meaning of corruption itself.[4]This is due to the diversity of aspects contained in corruption behavior itself, so it is difficult to attract an understanding that intact.[5]

Starting from reality and facts, that corruption perpetrators, especially those who have had a purpose for corruption from the beginning, and are carried out by those who have authority because of their position or position are often sentenced to a low crime and some even escape from legal bondage, then in order to do legal education critical of Article 2 paragraph (1) with Article 3 of Law Number 20 of 2001,which is the main article in trapping corruptors need to be re-examined (reconstructed).Article 2 paragraph (1) and Article 3 of Law Number 20 Year 2001 stipulates the existence of criminal threats and special special and maximum minimum fines.[6]Whereas the offense in Article 3 even though it does not include elements against the law, does not mean that this offense can be carried out without violating the law. Elements against the law terbenih *(inhaerent)*in the overall formulation. With the misuse of authority, a chance going againstthe law.

The act of abuse of authority is one form or form of an act against the law that is specifically regulated in Article 3 of Act Number 31 of 1999 jo. Law Number 20 of 2001.From the principle in the regulation setting, as for the one that underlies the difference in criminal threats in Article 2 with Article 3 of Law Number 31 of 1999 Jo. Law Number 20 of 2001 is the principle of *lex special is derogatlex general is*(the law is specific to the exclusion of general laws).The difference between the threat of minimum and maximum penalties in Article 2 and Article 3 of the Corruption Act resulted in the judge dropping a different sentence for the same case.

There is a reverse logic built by the Corruption Eradication Act maker. Delicacies that contain elements with the aim of benefiting themselves, others, or corporations, misusing their authority, opportunity or facilities because of their position or position are precisely the threat of minimum criminality, especially lighter than the offense which is not necessarily having a purpose or purpose and not having authority. Generally corruption cases begin with the abuse of authority carried out which has authority. Criminal punishment still lacks a sense of justice for the Defendant which causes the law not to work in accordance with the objectives, benefits and ideals of law in Indonesia.

DISCUSSIONS

Construction of Pancasila Value and the 1945 Constitution in Formulating Corruption Penalty Based on Justice Value

The philosophy of criminalization in Indonesia is more focused on the effort of rehabilitation and social reintegration of perpetrators of crimes. It has been established by the Constitutional Court as *the Guardian of Constitution* which decided in Decision Number 013 / PUU-1/2003: That the principle *of non-retroactivity* is referring to the philosophy of criminal prosecution based on vengeance (*retributive*), whereas this principle is no longer the main reference of siste m of punishment in Indonesia which refers to the principle of *preventive* and *educative.*[7]

Regarding the objective of sentencing, Herbert L. Packer said two conceptual view that has a different moral implications, the retributive view (*retributive view*) and views *utilitarian* (*utilitarian view*).[8]While Muladi divided the theory of criminal objectives into three groups, namely: a) Absolute theory (*retributive*) *;* b) Teleological theory; and c) *Teori retributive teleological.*[9]

Absolute theory views punishment as retaliation for wrongdoing that has been done so that it is oriented to the action and lies in the occurrence of the crime itself. Sanctions in criminal law imposed solely because the person has done something which is a result of absolute evil that must exist as a retaliation against those who do evil so that sanctions aimed to satisfy the demands of justice. Teleological theory (purpose) views prosecution not as retaliation for the wrongdoing of the perpetrator but a means of achieving a useful goal to protect the community towards the welfare of society. Sanctions are emphasized on their purpose, namely to prevent people from committing crimes, [10] it does not aim for absolute satisfaction in justice.

Teleological retributive theory views the goal of punishment as plural, because it combines teleological principles (goals) and retributives as a whole.[11] The theory is patterned double, which contains the character retributive sentencing as far as penal seen as a moral critique in answering the wrong action. While the teleological character lies in the idea that the aim of moral criticism is a reform or change in convicted behavior in the future. This theory advocates the possibility of articulating the criminal theory that integrates several functions while *retribution* which is *utilitarian* where prevention and rehabilitation are all seen as targets that must be achieved by a criminal plan. Because the purpose is integrative, the device for the purpose of prosecution is: a) General and special prevention; b) Community protection; c) Maintaining community solidarity and d) Balancing / balancing. Regarding the goal, which is a caseistic focus?

Criminal Law Formulation Formulate Guidelines in Punishment in the Rule of Law

Another factor that causes criminal disparity is that there is no criminal guideline for judges to impose criminal penalties. Guidelines for the granting of a criminal will make it easier for the Judge to determine the sentence, after it is proven that the Defendant committed the indictment. The criminal code guidelines contain matters that are objective regarding matters relating to the perpetrators, so that by paying attention to these matters the imposition of criminal penalties is more proportional and more understood why the penalties are the result of decisions handed down by the Judge, because the problem is not absolute disparity, but disparity must be rational.

The foregoing is in accordance with one of the points of the 1975 IKAHI symposium which states: To eliminate the feeling of dissatisfaction with the verdict of a criminal judge whose criminal penalties are very striking for the same violation of the law, then there is a need to make efforts to punish right and harmonious. But the absolute uniformity is not

what was intended, and therefore contrary to the principle of freedom of Justice, which need only harmony with the public sense of justice convictions da n is not detrimental to the nation's development by considering the sense of justice of the condemned. For this harmony, a guide / indicator is needed in the form of *checking points* which is compiled after holding a symposium or seminar, both regional and national in nature by involving experts who are called *behavior scientists.* (The term criminalization uniformity is felt to give rise to an incompatible understanding and therefore the word punctuality and harmony is more used).

Formulation of Criminal Law in Formulating Benchmarks for Crimes in Criminal Regulations

Another thing that can lead to criminal disparity is the absence of a standard of punishment in legislation or in practice in court. Without adequate guidelines in the criminal law, it is feared that the problem of criminal disputes will become worse. In the absence of guidelines in criminal law, criminal diversity will occur even though the Judge will carry out the criminal duties with full responsibility and as carefully as possible. The purpose of the conviction standard is the average crime imposed by a Judge in a particular court area, for example the Jakarta High Court. Thus criminality that is too extreme, too heavy, or too light can be limited. The benchmark is not absolute. Every panel of judges is free to keep the standard as long as it provides sufficient consideration in the decision.

Eddy DjunaediKarnasudirdja, outlines some techniques reduce / minimize disparity pad a decision of the judge, among others:[12]

- Using criminal data
- Using *checking list* or table of criminal prosecution
- Use*prediction table* or predictor table or
- Use criminal standards.

This objective can be realized in the form of punishment according to the severity of the crime committed by the Defendant who must be uniform with the sentence imposed on another Defendant who committed a similar crime with the same case.

Political Criminal Law in Minimizing the Disparity Factor in Corruption Cases Originating From Judge External Factors that Make the Judge is Free Convict Sourced Laws

Article 24 paragraph (1) of the 1945 Constitution provides a legal basis for the power of the Judge in which an independent judicial power organizes justice to enforce law and justice. This provision guarantees freedom of legal institutions as freedom, including freedom of Justice in doingtasks.

Disparities can be caused by the law itself and the use of the freedom of the Judge, who, despite the freedom of the judge, is recognized by law and is necessary to ensure justice, but often goes beyond the limits so as to reduce the authority of the law. Relating this case, formulation formulation of corruption in law arranged so that d isparitas can be minimized. Formulation formulas related to provisions include:

Criminal Philosophy

Yet the philosophy of punishment are clearly arranged in Corruption Eradication Act as well as the Criminal Code, the external influence varied philosophies of punishment which is believed to judge, and potentially disparity. For conservative (classic) Judges with the philosophy of punishment, they consider criminal law as revenge / revenge of the community or giving misery, tend to give severe punishment to the Defendant. On the contrary the progressive (*modern*) Judge with the philosophy of punishment considers criminal law as protection / protection tend member light sentences to the defendant;

Criminal Code

The growing disparity in law enforcement does not only occur in the same criminal act, but also in the level of seriousness of a criminal act, and from the judge's decision, both one assembly and a different panel of judges for the same case. Of course the reality of the scope of the growth of disparity creates inconsistencies in the judicial environment. Factor that Causes of disparity is the lack of sentencing guidelines for the judge in convict. Guidelines for granting criminal sanctions will facilitate the Judge to determine the sentence, after it has been proven that the Defendant has committed the indictment. The guideline for granting criminal acts contains objective matters concerning matters relating to the offender so that criminal imposition is more proportional and understood why the crime is like the result of the Judge's decision.[13]

Penal Code

The benchmark of sentencing is the average criminal in pengad region ilan particular. Thus criminality that is too extreme, too heavy, or too light can be limited. The benchmark is not absolute. Each panel of judges is free to deviate from the benchmark by giving consideration to the decision. In the absence of a benchmark of sentencing, the judge in deciding a case does not have a handle severity of punishment yan g will be dropped, and potentially causes disparity.

Regulation of the Formulation of Criminal Acts of Corruption and Formulation of Criminal Threats

Formulation of offenses and criminal threats that externally has the potential to cause disparities, among others, in the provisions:

- Article 2 (1) and Article 3 of Corruption Eradication Act, in Article 2 with the core of the offense in the form of unlawfully and Article 3 that the core of the offense of abuse of authority is often interpreted as not appropriate by the judge, and in relation to both passages is often judges made in correlation.
- P origin 3 (abuse of authority) and Article 8 (embezzlement of state funds) of Corruption eradication act. Often Judge erred in the application of this article, which should be applied by Article 3 is in fact applied in Article 8, and vice versa. The issue of the formulation of Article 3 in relation to Article 8 also often overlaps on the subject law perpetrators of these criminal acts, as well as criminal threats which are considered unfair.

Internal factors derived from the Judge himself

Regarding factors originating in the Judge, especially professionalism and integrity to pay attention to cases handled by remembering the purpose of the sentence, the same criminal act will be imposed differently. Disparity caused by a judge alone and the use of freedom of Justice, which, though admittedly Law and it is in fact necessary in order to ensure fairness, but often exceed the limits thus lowering the authority of the law. As a result of disparity, according to

Edward M. Kennedy, as quoted by Barda Nawawi are: [14]

- Can maintain the growth or development of cynicism society against criminal system yan g exist;
- Failure to prevent criminal acts;
- Encourage crime;
- Obstructing repairs to violators

As a result of disparity that is not in accordance with the objectives of criminal law and the spirit of criminal prosecution increasingly causes chaos in society, not only hurts the sense of justice, but encourages people to commit criminal acts. This condition then becomes a form of failure of criminal law enforcement, where law enforcement means something that is not important by the community. But the issue can be justified, in terms of:[15]

- Against the judgment of the offense rather heavy, namu n must be accompanied by a clear justification;
- If that is reasonable or reasonable.

Against the negative influence of disparity is not above i by uni forming the criminal in the same case, but the decision should be based on the reason or basically rational. Criminal disparity is a justification, with the provision of disparity must be based on clear and justifiable reasons.[16]

In essentially according dictum weigh letters b and General Explanation of paragraph three of Law No. 31 of 1999, as well as obiter weigh letters a General Explanation of the second paragraph of Act No. 20 of 2001, so it makes sense to act against the law in a criminal act of corruption, must be understood and proven materially and or formally. From the formulation of explanations of Corruption Eradication Act, that the position taken by the legislature, namely:

- Adhering to the teachings of nature against formal law and the nature of opposing material law;
- Adhering to the teaching of the nature of the material against the law in its positive function with the criteria that the act which is not regulated in the legislation is seen as a disgraceful act because:
- Not in accordance with the sense of justice, or
- Not in accordance with the norms of social life in society.

Although it is not explicitly explained in the explanation above, that the legislators naturally adhere to the material nature of the law in its negative function, especially the nature of the fight against extensive material law, but limited to acts of corruption. However suit changing times tort Article 2 paragraph (1) Corruption Eradication Act, has been declared not legally binding by the Constitutional Court Decision No. mor 003 / PUU-IV / 2006, between others mention:

The Concept against the Material Law (*materilewederrechtelijk*), which refers to the unwritten law in the measure of propriety, prudence and accuracy in society, as a norm of justice, is an uncertain measure, and varies from one community to another other societies, so that what is against the law in one place may be accepted and recognized as something that is legitimate and not against the law, according to a measure known in the lives of local people;

Elucidation of Article 2 paragraph (1) of the Law on Eradication of Criminal Acts of Corruption is a matter that is not in accordance with the protection and guarantee of fair legal certainty contained in Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia NRI;

Elucidation of Article 2 (1) Corruption Eradication Actcontrary to the Constitution NRI 1945, while stating that the explanations of Article 2 (1) are not legally binding;

From the sound of Article 3 of the Law on Eradicating Corruption, that the perpetrators of corruption are corporations and individuals (*persoonlijkheid*). But the sentence of each person who aims to benefit himself or another person or a corporation, misusing authority, opportunity or means that exists because of the position or position shows the perpetrators of corruption must be individuals in this case state officials, civil servants and private parties who has authority or position.

In Law Number 31 of 1999 jo Law Number 20 of 2001, it turns out that it does not provide an explanation of the meaning of abusing authority. Misuse of authority is the act of abusing rights and power to act or abuse power to make decisions.[17] According to HermienHadiatiKoeswadji, misusing the authority, opportunity or means that is available to the perpetrator because of his position or position, this means that the authority is not used in accordance with the way the management should be.[18]

The element consists of several sub-elements, each of which is an alternative means in proving that the element does not need all of its sub-elements to be fulfilled, but only one sub-element is fulfilled, then it is considered that the element has been fulfilled perfectly; If the sub-elements described in the element article - the article is comprised of:

- Abusing the authority that exists because of his position or position;or
- Abusing the opportunity that exists for him because of his position or position ;or
- Misuse existing facilities because of position or position;

Authority is a set of rights inherent in the position or position to take the necessary actions so that the job can be carried out properly and the opportunity is an opportunity that can be exploited by the perpetrators of corruption, the opportunity is stated in the working procedures related to the position or position held by the perpetrator criminal act. The definition of position is among other tasks in government or organization, while the position is defined as status. Position is the position that shows the duties, responsibilities, authority and rights of a civil servant in a state organization unit or other institution that has the duty and authority, while the position is the position of a person related to his authority.

People who because of having a position or position, so that he has the authority or right to carry out certain actions and to carry out his duties, ownership of authority is often caused by legal provisions that come from a habit if this authority is used wrongly to do certain actions is what is called abuse authority. So abusing authority can be defined as an act committed by a person who is actually entitled to do so but done wrongly or directed at things that are wrong and contrary to law or custom.

A person with a certain position or position will have certain powers, opportunities and means that he can use to carry out his duties and obligations. These powers, opportunities and facilities are provided with certain signs. If it is later violated or if the authority, opportunity, and facilities are not used properly, then there has been an abuse of authority, opportunity and facilities because of its position or position. According to the doctrine and jurisprudence, that misusing authority, opportunity or facilities that exist because of their position or position is one form or form of action against the law, both formal and material.

The existence of a special minimum threat in a law, including the Act on Eradicating Corruption, basically has a correlation with the aim of criminal prosecution or imposition. Where punishment is the most important part in criminal law, because the culmination of the entire process is responsible for someone who has been guilty of a criminal offense. In connection with this criminal imposition, there are 3 (three) groups of theories that justify criminal penalties, namely:[19]

Absolute Theory or Retribution (*Theorienvergeldings*)

The essence of the crime is retribution. Crimes are not practical purposes, such as repairing criminals. Crime contains elements for criminal imposition. Criminally there is absolutely the benefit of imposing criminal penalties. Any crime resulting in a criminal offense against the offender. Criminal punishment is an absolute demand, not something that needs to be dropped but a necessity.

Relative Theory for Purpose (*Doeltheorien*)

The basis of criminal law in organizing public order and the consequences of the purpose of prevention of crime. This criminal form is different: frightening, repairing, or destroying. General prevention requires people not to commit offenses. While special prevention aims to prevent bad intentions of the offender (*dader*), prevent the offender from repeating the act, or prevent the offender from carrying out the evil deeds he planned.

Combined Theory (*werenigingstheorien*)

It is a combination of retaliation theory and goal theory, in which the theory of retaliation and the theory of objectives each have weaknesses.

Regarding the purpose of punishment, associated with 2 (two) major views, namely *retributivism* and *utilitarianism,* can be described as follows:

Retributivism View

This understanding is very influential in criminal law, especially in determining the purpose of prosecution. That the purpose of criminal imposition or punishment is to repay the perpetrator's actions (as explained in the theory of retaliation). According to Van Bemmelen, basically every criminal is retaliation.[20] Knigge said punishing is basically retaliation, and that it is not a bad thing in itself, retaliation as a reaction to behavior that violates the norm is a very reasonable human action.[21]

Utilitarianism View

This view determines that punishment has a purpose based on benefits (benefit theory or goal theory) and not just retaliation. Jeremy Bentham as a pioneer of the idea of the purpose of punishment which put forward a utilitarian theory, which resulted in utilitarianism.[22]According to this theory crime does not have to be punished with a punishment but there must be benefits both for the perpetrator and the community. Punishment is given not only because of what the perpetrator caused in the past, but there is a primary goal for the future. So that punishment serves to prevent crimes from being repeated, and frighten members of society so that they become afraid of committing crimes.[23]

The establishment of special criminal laws is included in the context of criminal politics, namely the efforts of the community through the mediation of various organs of the government to rationally tackle crime, so that it is hoped that the emergence of this special minimum criminal threat can support the achievement of the goals of criminal politics.

The difference between the threat of minimum and maximum penalties in Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption causes the judge to impose a different sentence for the same case. There is a reverse logic built by the legislator. Delicacies that contain elements with the aim of benefiting themselves, others, or corporations, misusing their authority, opportunity or facilities because of their position or position are precisely the threat of minimum criminality, especially lighter than the offense which is not necessarily having a purpose or purpose and not having authority. generally corruption begins with abuse of authority.

The law gives freedom to the Judge in dropping the weight of the penalty, which is a minimum or maximum, but the freedom referred to must be in accordance with Article 12 of the Criminal Code. The judge as the executor of the law so that the decision must be based on normative law namely positive law, so that the application of the minimum criminal threat in the Judge's decision is in accordance with the principle of legality. Judges in making decisions other than based on normative law are also based on a sense of justice, namely the values that live in the community and also on the conscience (objective and subjective justice).

Basically, the conception and application of criminal justice and law are oriented towards justice. According to Aristotle in *The Ethics of Aristotle* there are 2 (two) theories of justice namely distributive justice and corrective / commutative justice. Distributive justice is justice which gives part to each person according to his services, and which division is not based on the same part but on balance. While corrective / commutative justice is justice that gives everyone as much as not remembering one's services.

Legal objectives that refer to justice must be reflected in legal provisions. In the context of justice according to law, it means what is explicitly required by lawmakers.[24]The starting point of sentencing, which refers to the philosophy of punishment integrative then examined from the perspective of the theory of punishment, sentences by Judge oriented to the nature of retaliation (*retributive*), prevention of other actors (*detterence*) and their education for the perpetrators to be public useful later (*rehabilitation*). The formulation in Article 2 and Article 3 is a formulation that is abstract and has a broad scope. According to AdamiChazawi, the positive aspects of the formulation of Article 2 and Article 3 are very broad in scope, which is why it is easier to ensnare the perpetrator. Besides that the abstract formulation is easier to follow the flow of community development, through the interpretation of the Judge. But the negative aspect is reducing legal certainty, due to the opening of opportunities and tendencies for Prosecutors and Judges who are not good to use this article haphazardly. Moreover, if the case has been scenarios since the beginning or arranged in such a way by strong people behind it.[25]

Judging from the explanation above, it is very clear that the protection of the Corruption Eradication Act is focused more on protecting the interests and authority of the state and the community not on the perpetrators as legal subjects. When examined in the formulation of Article 3 this must be done with a specific purpose in this case the element with the aim of benefiting oneself or another person or a corporation, is an ordinary element in criminal law, such as Article 378 of the Criminal Code and or Article 423 of the Criminal Code. Therefore, the element of benefiting oneself or others by fighting the law is not an element of behavior, but the element that is intended by the mind or error in the form of intent. So, the intention to do an act is intended to benefit yourself (yourself or others) by violating the law.

Here the element against the law is subjective. So the element of benefiting oneself or others is that the offender must have the purpose of acquiring wealth, because the profit is an advantage for himself or others. Gaining profits is the

same as gaining wealth, because profits are profits in relation to wealth (material) not immaterial benefits such as inner satisfaction when getting an award.

Thus in this element there is an understanding of intentions, in order to achieve what is desired or in other words the act is carried out for a particular purpose, in this case to benefit yourself or others or a corporation.

The subjective element that is attached to the mind of the maker, is the purpose of the maker in doing actions to benefit themselves or others. The purpose element (*doel*) is not different in meaning with intent or error as the purpose (*opsetalsoogmerk*) or deliberate in the narrow sense as in extortion, threats, or fraud (Article 368, 369 and 378 of the Criminal Code). What is meant by the goal is a will that is in the mind or in the mind of the maker that is intended to obtain a benefit (beneficial) for himself or others.[27]

According to the judicial doctrine and practice that intentionally (*opzet*) there are three forms: *first* is deliberate intentions with the aim of achieving something (*opzetalsoogmerk*), *second* is deliberate intentions that do not contain a purpose, but are accompanied by conviction, that an effect will surely occur (*opzetbijzekerheidsbewustzijri*) or deliberate conviction of certainty, and *thirdly* is intentionally like the second form but accompanied by *conversion* there is only the possibility (*opzetbijmogelijkheidsbewustzijn*) or possible *conversion* intentions).[28]

The Supreme Court with its decision dated June 29, 1989, Number 813K / Pid / 1987 in its legal considerations stated, among other things, that the element of benefiting oneself or another person or an entity is sufficiently judged by the facts that occur or are related to the behavior of the defendant in accordance with the authority he has because of his position or position.

In order to prove the intentions of the defendant in favor of himself or another person or a corporation, the author cites the opinion of Jan Remmelink which basically states that: The proof of intentional elements is often very difficult, especially intentionally refers to the psychological process that occurs in a person.[29] To conclude that intentions can be used external situations and conditions (data) are collected and selected with guidance on general human experience, reason and sense of responsibility.

Taking into account the situation, conditions and based on the way in which a person commits a crime is done intentionally, also taking into account the factors of familiarity or appropriateness. So as to said that of natural things always involved process objectivation intent or inference about the values of the associated norm. When a crime has the full character of an act that is carried out intentionally and is accepted by everyone, then also from the legal point of view such an action deserves to be seen as intentional.

The word or between words favoring yourself or others or a corporation in this element is an alternative element, because if one element is proven, then this element has been proven. Profitable is tantamount to profit, that is, the income earned is greater than the expenditure, regardless of the further use of the income earned, thus what is meant by the element of benefiting oneself or others or a corporation is the same as getting profit for yourself, other people, or corporations, in the provisions of Article 3 of the Corruption Eradication Actbenefit yourself or others or a corporation.

Understanding with a beneficial purpose containing the meaning of the Defendant 's actions is a deed desired and realized by him. In criminal law theory, there are several forms of intent, namely:

- Intentional intent;
- Deliberation as certainty / necessity;
- Intentions with possibilities;

In connection with the above description, Article 3 of the Act on Eradication of Corruption since the beginning has had the purpose of benefiting oneself, others and corporations, which could harm the state's finances or the country's economy which is under the supervision of the perpetrators, but precisely the perpetrators of corruption those who have had a goal since the beginning, so that the threat of special minimum criminal penalties in Article 3 must be higher than the threat of a special minimum crime in Article 2.

As a comparison, in the Criminal Code itself, a person who commits a criminal act against a person under his supervision has a higher criminal threat, in this case, among others, in Article 294 paragraph (1) of the Criminal Code which states: Whoever commits an obscene act with his child, stepson, adopted child, a child under his supervision who is not yet an adult, or with an immature person whose maintenance, education or guardianship is handed over to him or with his servant or subordinate who is not yet an adult, is threatened with a maximum imprisonment of seven years. And Article 293 a yat(1): Whoever gives or promises money or goods, misuses the carrier arising from a state of affairs, or by misdirection intentionally moves an immature person and whether his behavior is to commit or allow obscene acts with him, even though it is not yet matured, it is known or should be he suspected, was threatened with a maximum imprisonment of five years.

Likewise, it should also be that Article 3 of the Act on Eradication of Corruption Crimes, especially the minimum criminal threat must be heavier than the minimum criminal threat in Article 2 paragraph (1), because in general corruption acts occur beginning with the perpetrators who have the authority. In the future, Article 2 and Article 3 of the Law on Corruption Eradication should be reformulated, especially the minimum threat of criminal sanctions specifically so that justice can be achieved, so that the law can be beneficial for justice seekers, especially those who do not realize that what they are doing it is a form of crime which is categorized as *an extraordinarily* criminal act.

Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes before and after reconstruction

Table 1

Before Reconstruction	After Being Reconstructed
Anyone who aims to benefit themselves or another person or a corporation, misuses their authority, opportunity or means because of their position or position that could harm the state's finances or the country's economy, subject to life imprisonment or the shortest imprisonment of 1 (one) year and no later than 20 (twenty) years and or a fine of at least Rp. 50,000,000, - (fifty million rupiah) and at most Rp. 1.000.000.000, - (one billion rupiah).	Anyone who aims to benefit themselves or another person or a corporation, misuses their authority, opportunity or means because of their position or position that could harm the state's finances or the country's economy, subject to life imprisonment or the **shortest** imprisonment **of 5 (five) years** and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000, - (fifty million rupiah) and at most Rp. 1.000.000.000, - (one billion rupiah).

CONCLUSIONS

The application of criminal sanctions against perpetrators of corruption in Indonesia causes injustice, corruption is

carried out with a specific purpose, misuse of authority, opportunity or facilities that exist because of the position or position referred to in Article 3 of the Corruption Eradication Act, should be a criminal threat in particular, the minimum must be higher than the threat of a special minimum crime in Article 2, in order to create a sense of justice. R construction of criminal sanctions based on the value of justice in Article 3 of the Eradication Act Corruption Crimes, namely: Every person who aims to benefit themselves or another person or a corporation, misuses their authority, opportunity or means because of their position or position that can harm the state's finances or the country's economy, subject to life imprisonment or imprisonment of ***at least 5 (five) years*** and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 1,000,000,000 (one billion rupiah).

REFERENCES

1. *Ridwan, Criminal Law Enforcement Policy in Combating Corruption in Indonesia, Jure Humano Journal, Volume1 Number 1 of 2009, page 74.*
2. *The phenomenon of corruption has existed since Indonesia was not yet independent, namely the tradition of giving tribute by the people to the authorities. Corruption is now a global problem, classified as transnational crime. even with the bad implications of multidimensional economic and financial losses, corruption is classified as an extraordinary crime. In the Resolution of Corruption in Government (Results of the 8th United Nations Congress in 1990) the idea of corruption is not only related to various Economic Crime activities, but also with Organized Crime, Illicit Drug Trafficking, Money Laundering, Political Crime, Top Hat Crime, and even Transnational Crime. See Nashriana, Asset RecoveryIn Corruption: State Financial Losses Recovery Effort, Faculty of Law, Brawijaya University, Ta n pa Year, page 1. Extra Ordinary Crime showed eradication of corruption carried out by way of extraordinary and special. Corruption is generally a crime by the upper middle class, or white collar crime, which is a crime by people who have excess wealth and is considered honorable, because it has an important position both in government and in the world of the economy.Sudarto, Criminal Law and Law, Alumni, Bandung, 1997, page 102. See also J. Pope, the Strategy to Eradicate Corruption,The Indonesian Torch Foundation, Jakarta, 2003, page 6, Transparency International Indonesia defines corruption as misusing public power and trust for personal gain. HarkristutiHarkrisnowo, Corruption, Conspiracy and Justice in Indonesia,Journal of Dictum LeIP, Issue I, LenteraHati, Jakarta, 2002, page 67. Corruption is a misuse of public office for personal gain by means of bribery or illegal commissions. Hans Otto Sano, et al, Human Rights and Good Governance, Building Order, Ministry of Law and Human Rights, Jakarta, 2003, page 157.*
3. *LilikMulyadi, Criminal Act of Corruption (Special Review of the Process of Investigation, Prosecution, Judicial and Legal Remedies According to Law Number 31 of 1999),Citrra Aditya Bakti, Bandung, 2000, page 1.*
4. *The meaning of corruption from various perspectives or multi-disciplinary approaches is very important for the legal community to examine and understand the meaning of corruption more broadly and comprehensively. The granting of meaning from several aspects of reviewing the meaning of corruption is relevant and useful to find ways that can be taken to make remedial efforts in terms of criminal law. Broad understanding of the meaning of political corruption will help criminal get clarity aspects that have not been disclosed in the formulation of the criminal law, so it can be assessed perfection formulation of criminal law related to the meaning or significance of corruption.Elwi Daniel, Corruption, Concepts, Crimes and Eradication,RajaGrafindoPersada, Jakarta, 2012, page 2.*

5. *Ibid, p people experience 1. The difference in the meaning of corruption is also due to different approaches in giving meaning corruption. Use of the judicial approach to understanding the meaning of corruption konseptual, will result in a sense different from other approaches such as sociological, krimonologis, and even political perspective. Roberto Tilman. The emergence of Dark Market Bureaucracy : Administration of Development and Corruption in New Countries in MuchtarLubis and James C Scoot, Interest in Corruption, LP3ES, Jakarta, 1988, see also Elwi Daniel, Op, Cit, page 2.*
6. *Specific minimum criminal penalties are exceptions, for certain offenses that are deemed very detrimental, endangering or unsettling to the public and consequently qualified (erfolsqualifiziertedelikte) as a quantitative measure that can be used as a benchmark that the offense is threatened with imprisonment of more than 7 (seven) years which can be threatened special minimum, because the offense is classified as very heavy. Dianutnya s i stem specific minimum threat that has not known the Criminal Code is based on the principal idea : To avoid the existence of criminal disparity for offenses that are not significantly different in quality; To make more effective the general prevention, especially for the offenses that are seen as endangering and disturbing the public; It is analogous to thinking, if in certain cases the maximum criminal (general or special) can be aggravated, then the minimum penalty can be exacerbated in certain cases. BardaNawawiArief, BungaRampai Criminal Law Policy, Citra Aditya Bakti, Bandung, 2002, page 128.*
7. *Ridwan HR, State Administration Law, Raja GrafindoPersada, Jakarta, 2013, page 2.*
8. *Ibid, page 3.*
9. *Marbun SF et al, Dimensional Thinking the State Administration Law, U niversitas I slam I ndonesia Press, Yogyakarta, 2001, page 8.*
10. *RamdonNaning, Cita and Image of Human Rights in Indonesia, Criminology Institute of the University of Indonesia Indonesian Legal Aid Support Program, Jakarta, 1983, page 27.*
11. *SatjiptoRahardjo, Law Sciences, Alumni, Bandung, 1986, page 85.*
12. *M. Mahfud, M. D, Political and Legal Struggle in Indonesia, Gama Media, Yogyakarta, 1999, page 7.*
13. *HarmienHadiatiKoeswadji, Development of Various Crimes and Criminal Law Development, Citra Aditya Bakti, Bandung, 1995, page 121.*
14. *BardaNawawiArief, Law Enforcement Problems and Crime Management Policies, Citra Aditya Bakti, Bandung, 2001, page 75.*
15. *BardaNawawiArief,KapitaSelekta of Criminal Law, Citra Aditya Bakti, Bandung, 2003, page 119.*
16. *BardaNawawiArief, Several Aspects of Criminal Law Enforcement and Development Policy, Citra Aditya Bakti, Bandung, 1998, page 111.*
17. *CST Kancil, Introduction to Indonesian Law and Legal Studies,BalaiPustaka, Jakarta, 1984, page 27.*

18. *This principle is known as the adigiumlexspecialisderogatlexgeneralis, meaning that special laws take precedence over general laws; that the juridical level is that if a certain matter is regulated by general law and also regulated by a special law, then the one that is treated / prioritized is a special regulation.*
19. *Muladi, Human Rights, Politics and Criminal Justice System,Diponegoro University Publishing Board, Semarang, 2002, page 154.*
20. *Criminal disparity is the application of a criminal that is not the same as a criminal act whose dangerous nature can be compared without a clear justification. Criminal disparity has a profound impact, because it contains constitutional considerations between individual habits and the state's right to convict. Criminal disparity will be fatal if it is associated with the administration of prisoners. The convicted person who compares the crimes imposed on him with a criminal offense imposed on another person, will feel a victim of uncertainty or irregularity in the court. In its development, inmates will become people who do not respect the law, even though the appreciation of the law is one of the results to be achieved in the purpose of punishment. Muladi and BardaNawawiArief, Criminal Theories and Policies, Alumni, Bandung, 1998, page 52.*
21. *Muladi, Op, Cit,page 155.*
22. *HarkristutiHarkrisnowo, Reconstruction of the Concept of Criminal Lawsuits Against Legislation and Criminal Processes in Indonesia, Oration at the Inauguration Ceremony of Permanent Professor in Criminal Law Faculty, University of Indonesia Law at the University of Indonesia Convention Hall, March 8, 2003.*
23. *M Yahya Harahap, Discussion of Problems and Application of KUHAP, Jakarta, SinarGrafika, 2006, page 354.*
24. *Topo Santoso and Eva AchjaniZulva, Criminology, Raja GrafindoPersada, Jakarta, 2000, page 17.*
25. *Specific maximum in the sense for each type of criminal there is a maximum criminal threat, while for the lowest criminal limit set a general minimum. The general minimum for imprisonment is one day. Minimum specifically for unsettling criminal acts the community. Elucidation of Article 69 of the Criminal Code Bill.*
26. *Elucidation of Article 60 : Even though the Judge has the option of dealing with alternative criminal formulations, but in making such choices the Judge is always oriented towards the purpose of the sentence, by prioritizing or prioritizing a lighter type of crime if it has fulfilled the purpose of the sentence.*
27. *odungMulyaLubis, the Death Penalty Controversy, Kompas Media Nusantara, Jakarta, 2009, page 63.*
28. *The views retributive sentencing as a reward presupposes negative deviant behavior of citizens so pemindanaan only as retaliation terhada p mistakes made on the basis of Java responsibilities b morals respectively. The utilitarian view looks at punishment in terms of its usefulness or usefulness where what is seen is the situation or circumstances that want to be produced by the imposition of the criminal. Criminal punishment is intended to improve the attitude or behavior of the convicted person and on the other hand the punishment is also intended to prevent others from the possibility of committing similar acts. This view is forward-oriented and at the same time a preventive nature. Herbert L Packer, The Limits of the Criminal Sanction, Stanford University Press, California, 1968, page 9.*

29. *Muladi, Conditional Criminal Institution, Alumni, Bandung, 2002, page 49. Bambang Poernomo and Van Bemmelen also stated that there are 3 disciplinary theories as stated by Muladi, namely the theory of retribution (absolutetheorien), the theory of goals (relatievetheorien) and combined theory or (verenigingstheorien). Bambang Poernomo, Principles of Criminal Law, Ghalia Indonesia, Jakarta, 1985, page 27.*