NOTES FROM THE MONITORING OF CORRUPTION VERDICTS BY COURTS IN 2017

COURT VERDICTS ON THE SIDE OF CORRUPTORS

- The majority of corruption convicts are leniently sentenced, with an average sentence of 2 years and 2 months in prison -

A. Introduction

Corruption eradication must be done with various efforts, both prevention and repression. Community organizing advocacy, issue, and socialization of anti-corruption policies are indispensable to such efforts, including in law enforcement. The judiciary is one of the spearheads of the corruption eradication, especially in the effort of deterring further corruption.

From 2005 to the present day, Indonesia Corruption Watch (ICW) routinely monitors and collects corruption verdicts, from the Corruption Courts (previously the General Courts), the High Courts, Military Courts, to the Supreme Court, including appeals and appeals to the supreme court. Through this monitoring, we can identify the frequent actors, the most severe court ruling for corruptors, the average court ruling for corruptors, and the potential state losses of corruption cases that have been successfully monitored. The results of this monitoring also provide a basis in providing recommendations for the Supreme Court and the Judicial Commission to make improvements in the performance of the implementation of supervisory functions towards their subordinates, including the respective judges.

The methodology used by ICW to monitor court decisions for corruption cases in 2017 is to collect data on corruption cases examined and decided by the court of first instance in the Corruption Courts, appeals in the High Courts, cassation and reviews at the Supreme Court. The sources of reference in the data collection are court verdicts from the official website of Directory of Supreme Court Decisions, while data from the District Courts and High Courts are collected from the Court Cases Information Searching System (SIPP), as well as the news coverage from national and local mass media. The data collection in this report is limited to court decisions uploaded and issued on January 1, 2017 through December 31, 2017.

From the results of tabulation of data conducted, not a little data remain unidentified. This is because there are still decisions that are not found or there is no information in the Directory of Supreme Court Decisions or SIPP in each court, as well as from news sources in the media.

ICW divides the level of decision into 3 categories. First, a lenient sentence, ranging from less than 1 year to 4 years. Second, a moderate sentence between 4 years and 10 years. And third, a severe sentence with more than 10 years imprisonment. The lenient category is based on the consideration that the minimum imprisonment according to Article 3 of the Anti-Corruption Law is 4 years in prison, including a life sentence of imprisonment.

B. Results of Monitoring and Analysis

Throughout 2017, ICW monitored 1,249 rulling cases with 1,381 defendants,[1] **with a total fine of Rp110,688,750,000 and total additional fine (restitution) of Rp1,446,836,885,499**. There has been an increase in the number of cases and defendants from earlier times, since in 2017 data were obtained not only from the Directory of Supreme Court Decisions, but also from the SIPP of respective District Courts. Based on the overall monitoring result, **the average jail sentence imposed on the corruption defendants at each court level is only 2 years and 2 months of imprisonment.**

Of all the cases monitored, the first level Corruption Court at the District Court had the highest number of cases and defendants among the courts, with 1092 defendants (79.07%). The Court of Appeals at the High Court adjudicated 255 corruption defendants (18.46%), and the Supreme Court 34 defendants (2.46%). **The amount of state financial loss amounted to Rp29,419,317,602,972, with total bribe amounting to Rp715,077,754,582; SGD 814,887; USD 1,363,000; MYR 63,500; EUR 30,000, and total illegal levies amounting to Rp155,874,000.**

Court Verdicts against Corruption

As mentioned above, the average sentence in all courts is 2 years and 2 months. In more detail, each court level has a relatively similar average. Here are the details of the average length of prison sentence imposed in each court level:

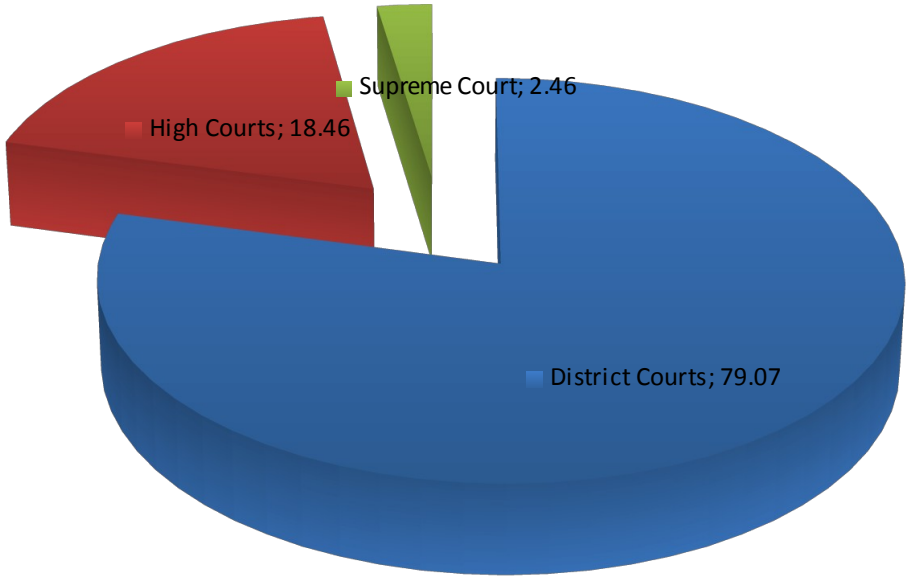
Table 1. Average length of prison sentence in each court level

No	Court Level	Average length of prison sentence
1.	Corruption Court at the District Court	2 years 1month
2.	Corruption Court at the High Court	2years 2 months
3.	Supreme Court	5 years
Total average length of prison sentence		**2 years 2 months**

The data above show that each court level tends to give lenient sentences. This is highly deplorable as the crime of corruption is a serious crime that has to be fought with all means, including through court sentences to corruption defendants.

Diagram 1. Distribution of Court Decisions on the Crime of Corruption in 2017 (Percentage)

1 In several sections, there are minor differences in the number of defendants (1-4) from the total mentioned in this section. The differences occur due to lack of synchronization of the data during processing.



In general, the following is the distribution of the severity of the punishment given by the Corruption Courts of the First Instance, Appeal and Supreme Court levels in 2017:

Table II. Distribution of the Category of Punishments in Corruption Cases in 2017

Category of Punishment	Number of Defendants	Percentage
Lenient (>1-4 years)	1127	81.61%
Moderate (>4-10 years)	169	12.24%
Severe (>10 years)	4	0.29%
Acquitted	35	2.53%
Unidentified	45	3.26%

N.O	1	0.07%
Total	1381	100%

For the record, throughout 2017, there is a new trend of lenient punishment with a criminal sanction of less than one-year imprisonment, or in the range of months. Based on the ICW monitoring, cases with less than one year prison sanctions are cases of illegal levies with amounts ranging from Rp 250,000 to Rp 47,000,000, with prison sentences between 3-8 months imprisonment. The *Niet Ontvankelijke Verklaard* (N.O.) decision is acquittal due to a formal defect in the prosecutor's indictment.

Just as in previous years, the majority of the decisions were at the level of the Corruption Court at the District Court with 1,092 defendants (79.07%); the rest were at the Corruption Court of the Court of Appeals, with 255 defendants (18.46%); and at the Supreme Court, with 34 defendants (2.46%).

- **Corruption verdicts at the Corruption Court at the District Court**

Of the total distribution, 924 defendants (84.46%) were categorized as given lenient sentences; 114 defendants (10.42%) given moderate sentences; 2 defendants (0.18%) given severe sentences; 29 defendants (2.65%) were acquitted/released; 24 defendants (2.19%) had unidentified decisions; and 1 defendant (0.09%) acquitted due to a defect in the indictment (N.O.).

- **Corruption verdicts in the Corruption Court at the High Court**

As mentioned above, there were 255 defendants of corruption cases who were decided at the High Court. Of the 255 defendants, 190 (74.51%) were lightly sentenced; 36 defendants (14.12%) were moderately sentenced; 1 defendant (0.39%) severely sentenced; 7 defendants (2.75%) were acquitted/released; 21 defendants (8.24%) had unidentified decisions; and none were acquitted due to defects in the indictment.

- **Corruption verdicts in the Supreme Court**

At the Supreme Court, 34 corruption defendants had their cases decided. Unlike the two lower courts, the majority of the Supreme Court judgments are in the moderate category. The details are as follows, 13 defendants were lightly sentenced (38.24%); 20 defendants were moderately sentenced (58.82%); 1 defendant (2.94%) severely sentenced, and none were acquitted.

Based on the above data, it can be seen that the courts still have a tendency to give lenient sentences (<1-4 years), except for the Supreme Court, which has a tendency to impose a moderate sentence (>4-10 years). In addition, it can also be seen that the First Level Corruption Courts

in the District Court issued the largest number of verdicts, and also the highest occurrence of lenient sentences against those accused of corruption.

2017 Court Verdicts Trend 2017

The tendency of the majority of courts is to continue imposing lenient sentences (<1-4 years in prison), similar to previous years. The trend can be seen in the table below:

Table III. Distribution of Categories of Court Verdicts on Corruption Cases in 2015-2017

Year	Category	Defendants	Percentage
2015	Acquitted/Released	40	7.6%
	Lenient (<1 - 4 years)	392	74.5%
	Moderate (>4 - 10 years)	55	10.5%
	Severe (>10 years)	4	0.8%
	Unidentified	35	6.7%
	N.O.	0	0.0%
2016	Acquitted/Released	56	8.4%
	Lenient (<1 - 4 years)	479	72.1%
	Moderate (>4 - 10 years)	69	10.4%
	Severe (>10 years)	9	1.4%
	Unidentified	51	7.7%
	N.O.	0	0.0%
2017	Acquitted/Released	35	2.53%
	Lenient (<1 - 4 years)	1127	81.61%
	Moderate (>4 - 10 years)	169	12.24%
	Severe (>10 years)	4	0.29%
	Unidentified	45	3.26%
	N.O.	1	0.07%

The table above shows an apparent significant increase in the number of lenient sentences given to corruption cases in 2017. This is caused from the increased number of data sources in the second half of 2017, resulting in a surge in the number of cases and defendants whose data are processed. It should also be understood that information from SIPP that is publicly accessible is limited to that of the District Court, whereas for the High Courts and the Supreme Court, the information is limited to the court circles. Thus, the sources of data for cases in the High Courts and Supreme Court levels still depend to the Directory of Supreme Court Decisions, which updates decisions more slowly than the SIPP.

From the comparison of the above trends, it can be seen that the courts have not imposed maximum sentences in corruption cases. There is no definitive analysis as to why the judges did not give the maximum possible sentence for many cases that potentially deserve such a harsh sentence (e.g., based on the amount of state financial loss, the background of the perpetrator, or the amount of bribery). This can also occur because the prosecutor's charges are also not maximized, worsened with the lack of evidence during the trial; so that inevitably the judges must "compromise" by not giving severe sentences.

However, this article does not want to highlight in depth such possibilities. This document acts as complementary data to the phenomenon that needs to be studied further, including through the mechanism of decision examination, or even investigations by the law enforcement against the judges making the lenient decisions.

Acquittals/Releases

Table III shows that the number of acquittals/releases slightly decreased between 2016 and 2017. This can be interpreted as follows:

1. Although there is a significant increase in the amount of data monitored, the number of acquittals/releases is not directly proportional to the increase in the amount of data;
2. It can thus be said that in general the number of acquittals in 2017 decreased significantly.

While the cause of the decline still needs to be studied further, this should be appreciated as a positive move.For example, while in 2016 there were 56 (12%) ofcorruption defendants acquitted/released by the courts, and in 2015, 68 defendants (16.5%), in 2017, only 35 defendants (2.53%) were released, even though the number of data in the monitoring had increased significantly.

Severe Sanctions for the Crime of Corruption

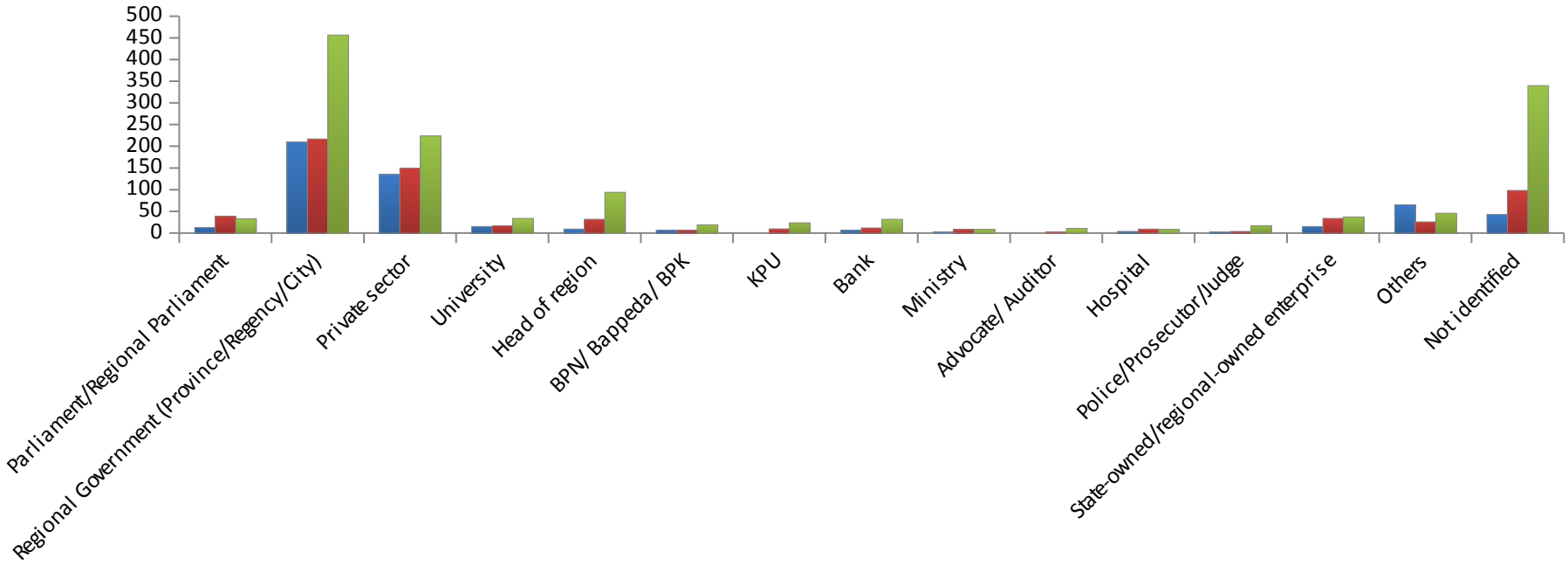
On the other hand, **Table III** also shows that severe sanctions are rarely given to corruption defendants. In 2017, there were only 4 corruption defendants sentenced to over 10 years in prison. The following are the severe verdicts handed down to the corruption defendants:

Table IV. Corruption Defendants Given Severe Sentences in 2017

No	Corruption Case Number	Defendant	Indictment (Months)	Sentence (Months)	Court	Judges	Prosecutor
1	48/Pid.Sus-TPK/2016/PT.JAP (Corruption in the construction of the West Papuan Office of the Indonesian National Sports Committee)	Albert Rombe	-	144 (12 years)	Jayapura High Court	I Made Suraatmaja, Supriyono, Josner Simanjuntak	Public Prosecutor Office
2	28/Pid.Sus-TPK/2016/PN.Bna (Corruption/embezzlement of the Bireuen Regency Income Tax and Value Added Tax)	Muslem Syamaun	102 (8 years 6 months)	180 (15 years)	Banda Aceh District Court	Badrun Zaini, Faisal Mahdi, Mardefni	Public Prosecutor Office
3	2492 K/Pid.Sus/2016 (Corruption in the sale of state assets)	Djami Rotu Lede	120 (10 years)	180 (15 years)	Supreme Court	Artidjo Alkostar, Krisna Harahap, Syamsul Rakan Chaniago	Public Prosecutor Office
4	55/Pid.Sus-TPK/2017/PN Smg (Bribery in the program of organizational and work structure arrangement of the 2016 and 2017 fiscal years in Klaten Regency)	Sri Hartini	144 (12 years)	132 (11 years)	Semarang District Court	Antonius Widijantono, Sinintha Yuliansih Sibarani, Agus Prijadi	Corruption Eradication Commission

Professional backgrounds of corruption defendants

Diagram II. Trend of Corruption Actors based on Profession 2015-2017



Of all corruption defendants, those who work as government officials at various levels (regency/city or province) still rank the highest. The professional backgrounds of the corruption defendants, from the first to the sixth highest, in 2017 are: 456 defendants (32.97%) regency/city or provincial officials; 224 defendants (16.20%) private sector, 94 defendants (6.80%) heads of regions; 37 defendants (2.68%) state owned/regional owned enterprises; 34 defendants (2.46%) university employees and 33 defendants (2.39%) legislative members (DPR/DPRD).

Although there were 340 (24.58%) of the defendants whose backgrounds were not identified, probably some of them could be included into one of the profession categories mentioned. As a result they are not included in the six largest groups. Similarly, the miscellaneous category may have 1-2 defendants from profession categories that are not mentioned, for example members of farmer groups, cooperatives, etc.

The above trend also shows that there are no significant changes related to the professional background of corruption defendants between 2015-2017. The largest group of perpetrators continues to be government officials, whileother professions in the subsequent positions have minor and insignificant changes.

The large number of civil servant and private sector actors of corruption indicates that there are serious problems in local governance, where the government officials continue to make up the greatest proportion of perpetrators of corruption. While heads of regions have declared their commitment to reform the bureaucracy as well as to prevent corruption, this is not visible in the data of the 2015-2017 verdict trends. Similarly, the private sector still holds the second position between 2015 and 2017. It is suspected that corruption that involves both parties are corruption in the procurement sector of goods and services, as well as in the context of issuance of business licenses, Only in that context there is direct contact between local government officials and the private sector.

Within the same data - without being said as a certainty - there has been a significant increase in 2017 where 94 regional heads were caught in the crime of corruption. It is still too early to identify that the corrupt acts are related to the preparation of the 2019 elections, but the above data can be an entry point to further explore whether there is a link between increased corrupt behavior at the regional level – especially by the Head of Region – with political contestations in the regions.

Comparison of Corruption Court Decisions Handled by the Law Enforcement[2]

To assess whether there are differences in decisions issued by the Corruption Court against cases prosecuted by the Corruption Eradication Commissionand those prosecuted by the public prosecutors, the answer is: yes, even though the differences are insignificant. The court decisions whose cases were prosecuted by the Corruption Eradication Commissiontend to have relatively more severe punishments than those prosecuted by the public prosecutor's office. **In this and subsequent sections, ICW only takes samples from corruption case data from the second half of 2017.**

During the second semester of 2017, the Prosecutor's Office indicted 977 defendants of corruption, while the Corruption Eradication Commission only indicted 51 corruption cases. That is, 94.67% of the decision is the work of the public prosecutor, while only about 5.25% of the decision comes from the prosecution conducted by the Corruption Eradication Commission.

2 This section forward up to and including the 'Disparities in Criminalization' section use data from the second half of 2017 as sample.

The following data show the differences in the severity of the verdicts in cases prosecuted by the two institutions:

Diagram III. Verdicts in Corruption Cases Prosecuted by the Corruption Eradication Commission

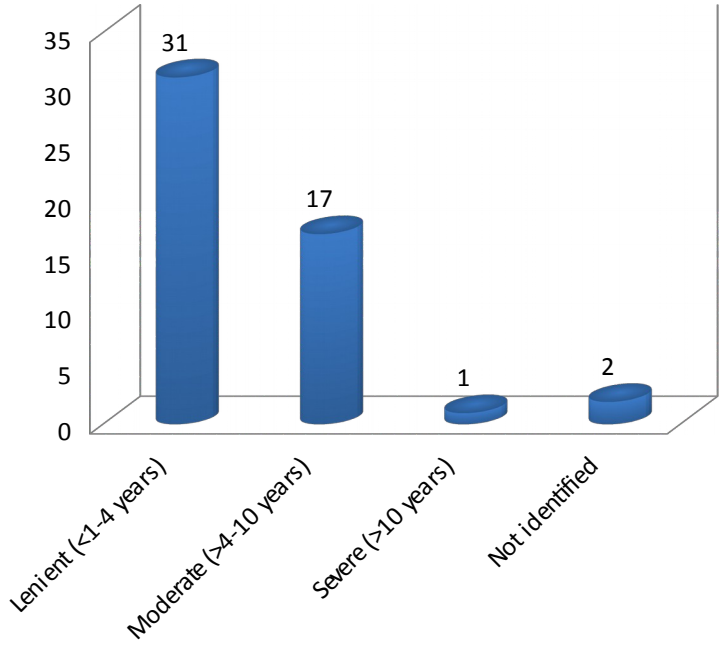
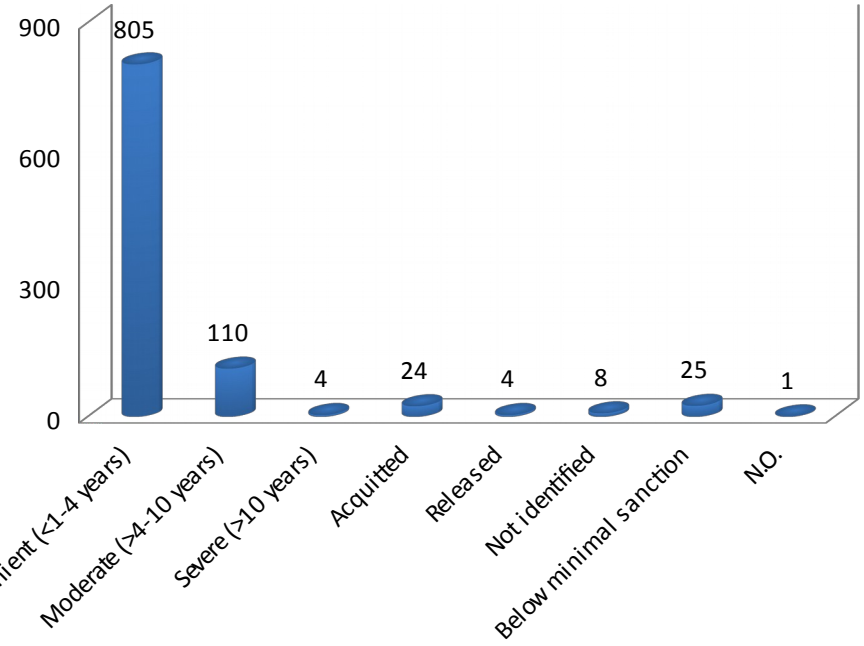


Diagram IV. Verdicts in Corruption Cases Prosecuted by the Public Prosecutor's Office



The two diagrams above show that there is a difference in the distribution of verdicts depending on the law enforcement agency doing the prosecution. While in general the majority of the verdicts in the corruption cases handled by each law enforcement agency are lenient, the proportion of the severity of the sentences in the Public Prosecutor's Office is far more distorted. The percentages of the severity of the decisions based on the law enforcement agency are as follows:

Table IV. Verdicts in Cases Handled bythe Corruption Eradication Commission

Verdict Category	Percentage
Lenient (<1-4 years)	60.78%
Moderate (>4-10 years)	33.33%
Severe (>10 years)	1.96%
Acquitted	0 %
Released	0 %
Unidentified	3.92%

Table V. Verdicts in Cases Handled by the Public Prosecutor's Office

Verdict Category	Percentage
Lenient (<1-4 years)	82.40%
Moderate (>4-10 years)	11.26%
Severe (>10 years)	2.46%
Acquitted	0.41%
Released	0.82%
Under minimum penalty	2.56%
N.O	0.10%

It can also be seen that the number of decisions in the moderate category differ by 27.45% or less than 50% between the agencies, which indicates the lack of a disparity in verdicts, although there is only 1 severe verdict against a defendant charged by the Corruption Eradication Commission. In another comparison, based on Diagram III, on the verdict of corruption cases dealt with by the prosecutor office, it can be seen that there is a very sharp difference between the number of lenient sentences handed down to corruption defendants compared to moderate sentences. Of the total cases handled, **the average length of sentencesin cases prosecuted by the Corruption Eradication Commission is 4 years.**

In comparison, the **average of length of sentences in cases prosecuted by the Public Prosecutor's Office is 2 years and 1 month.** With the high number of cases handled, it is understandable that the average sentence in each court is not higher than 2 years 2 months. However, it can still be seen that **the average decision issued in cases handled by the Corruption Eradication Commission or by the Prosecutor's Office is still categorized as lenient (<1-4 years).**

Criminal fines and additional penalty of restitution on corruption verdicts

In addition to imprisonment, fines and restitution are other forms of sentences that must be or may be imposed on defendants of corruption cases. The imposition of such penalties is inseparable from the spirit to aggravate the physical sanction as well as to restore the state losses incurred, or the amount of money that have been improperly enjoyed by the corruption defendants.

In 2017, the amount of criminal fines identified as being imposed by the courts amounted to Rp110,688,750,000 or Rp110,688 billion, with an additional amount of Rp1,446,816,885,499 or Rp1,446 trillion of restitution. The total of the amount - especially the additional sanction of

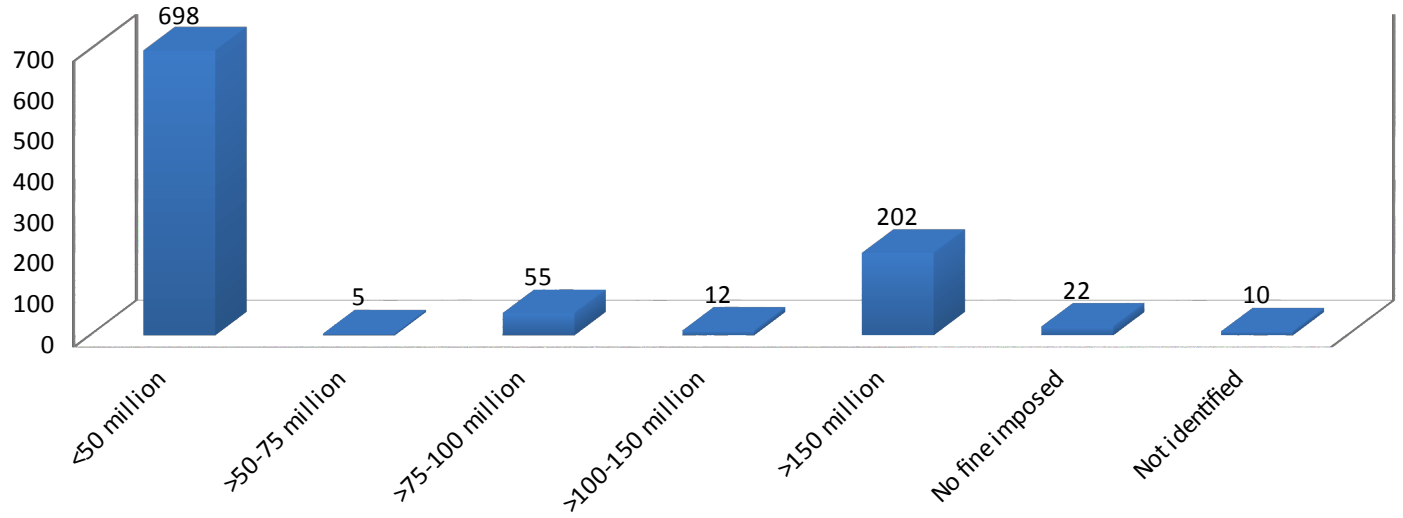
restitution - cannot be separated from the amount of the state financial losses identified from the 2017 corruption verdicts amounting to Rp 29,419,317,602,972 or Rp29,419 trillion.

As a note, this value can be much lower than the amount of state losses, because the phrase contained in the Law is, "as much as the amount they enjoyed." That is, there can be greater state losses than the amount enjoyed by corruption defendants. That is why it is necessary to apply the Anti-Money Laundering Law so that the unidentified monies can be returned to the state.

In the context of the state financial loss recovery, there is a very high disparity between the total state losses and the additional sanction of restitution imposed on defendants. It can be seen that the total of restitution is only 4.91% of the total loss of state finances resulting from corruption in 2017. This is unfortunate, as the sentencing of corruption defendants, other than giving physical sanction in the form of imprisonment, is also expected to deter perpetrators, as there is a sanction of impoverishment imposed by the law enforcement.

The courts themselves still tend to impose relatively lenient penalties. As an example, based on the monitoring of the verdicts of the second half of 2017, the majority of criminal fines are imposed with the minimum allowed amount of Rp0-Rp50,000,000.

Diagram V. Distribution of the Amount of Fines Imposed on Corruption Defendants in the Second Half of 2017



The imposition of a fine to corruption defendants is done either leniently or severely. This can be seen in the diagram above, where the largest proportion (698 defendants, 69.52%) were given fines categorized as lenient, that is Rp 0-Rp 50,000,000, yet the second largest group was given fines categorized as severe, or exceeding Rp 150,000,000 with 202 defendants (20.12%). The third group is those given a fine between Rp 75,000,000-Rp 100,000,000 with 55 defendants (5.48%), followed by no fines (22 defendants, 2.19 %), a fine between Rp 100,000,000-Rp 150,000,000 (12 defendants, 1.20%), unidentified (10 defendants, 1%), and defendants fined between Rp 50,000,000-Rp 75,000,000.

Criminal Prosecution by the Prosecutor

The severity of a verdict is generally inseparable from the severity of the prosecutor's indictment. This section will specifically identify prosecutors' indictments both in general, as well as from individual prosecutors from both the Public Prosecutor's Office and the Corruption Eradication Commission.

To illustrate, **the average prosecutor's indictment demanded a sanction of 3 years 2 months** (in the corruption cases in the second half of 2017). This average shows a decrease when compared to the first half of 2017, where the average prosecutor's charge in corruption cases is 4 years 1 month. This one-year difference is quite significant, and also affects how the average length of sentence decreased by one month from that of the first half of 2017. As with the judges' decisions in corruption cases, the majority of prosecutor's charges in corruption case are still categorized as lenient.

Table VI. Distribution of Indictments by Severity

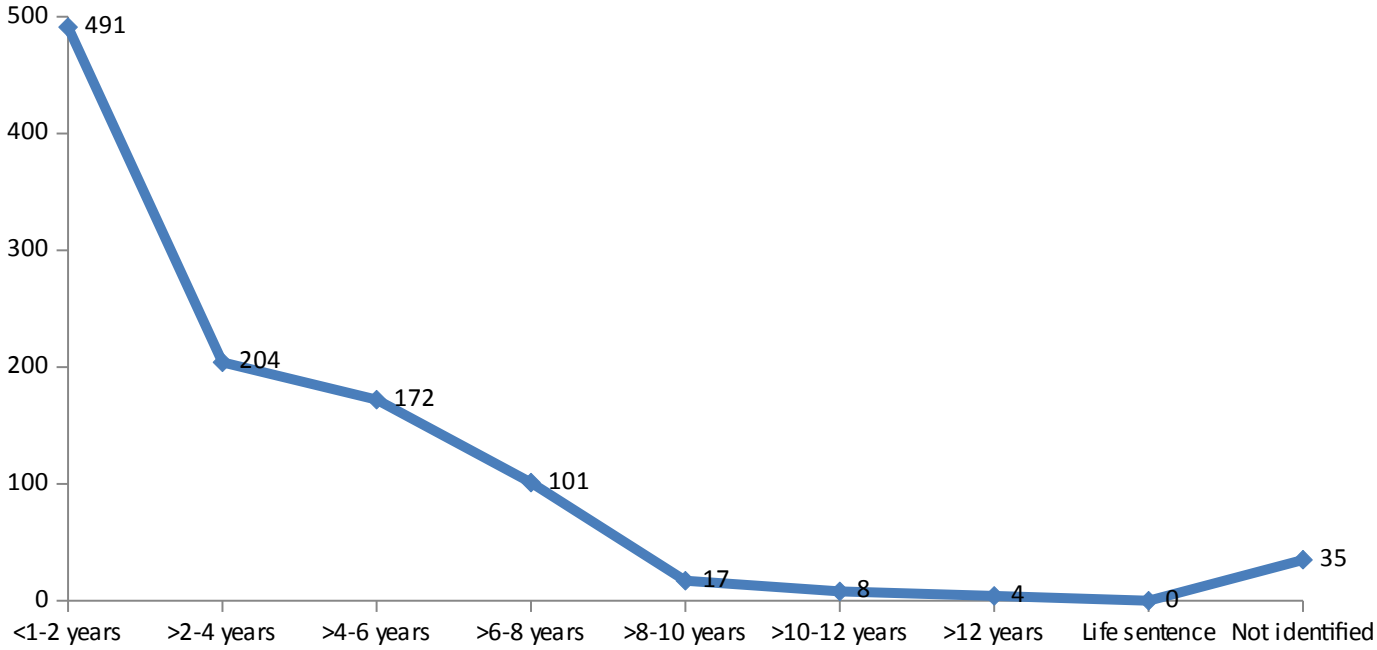
Category of Indictments	Number of Defendants	Percentage
Lenient (<1-4 years)	672	65.12%
Moderate (>4-10 years)	288	27.91%
Severe (>10 years)	12	1.16%
Acquittal	1	0.10%
Unidentified	35	3.39%
Under minimum penalty	23	2.23%
No charges	1	0.10%
Total	1032	100%

In the second semester of 2017, there was an interesting finding, where the prosecutor did not press charges to the defendant in the trial, resulting in acquittal. The case was registered with case number 113/Pid.Sus-TPK/2016/PN Smg with Supadi as the defendant. There is not enough

information to identify the reason of the lack of charges, either from the Directory of Supreme Court Decisions or SIPP of Semarang District Court.

The following is a detailed description of the distribution of prosecutors' indictments for corruption in the second semester of 2017,

DiagramVI. Distribution of the Trends of Indictments in the Second Half of 2017



From the description above, it can be deduced that the judges' decisions also reflect the prosecutors'charges. When the majority of prosecutors'charges still revolve around the lenient category, it is not surprising that the majority of court decisions still fall into the lenient category as well. This tendency is somewhat different between prosecutors from the Corruption Eradication Commission and those from the Public Prosecutor's Office. Prosecutors from the Corruption Eradication Commission tend to demand sentences categorized as moderate, while other prosecutors tend to demand sentences in the lenient category.

The following tables show the comparison:

TableVII. Corruption Case Indictments by the Corruption Eradication Commission

Category of Indictments	Number of Defendants	Percentage
Lenient (1-4 years)	16	29.63%
Moderate (4-10 years)	29	53.70%
Severe (>10 years)	6	11.11%
Unidentified	3	5.56%
Total	54	100%

Table VIII. Corruption Case Indictments by the Public Prosecutor's Office

Category of Indictments	Number of Defendants	Percentage
Lenient (1-4 years)	656	65.12%
Moderate (4-10 years)	259	27.91%
Severe (>10 years)	6	1.16%
Unidentified	32	3.39%
Under minimum penalty	23	2.23%
No charges	1	0.10%
Total	977	100%

From the above comparison it can be seen that the category of prosecution under the minimum penalty is limited to cases of illegal levies. The public prosecutor's office, as the sole prosecutor in charge of illegal levies, processed 23 defendants charged under the minimum penalty. The handling of illegal levies is indeed interesting, since it began to emerge when *Tim Saber Pungli* (Counter Illegal Levy Team) was formed by President Joko Widodo on October 20, 2016. In the first half of 2017 alone, there were Rp 60,000,000 of illegal levies, and in the second half of 2017, the number increased to Rp 95,874,000.

In addition to the above comparison, there is a significant difference between the average indictments made by each law enforcement agency. **The Corruption Eradication Commission prosecutor on average charged5 years and 3 months, while the prosecutor from the Public Prosecutor'sOffice charged3 years and 1 month on average.** The cause of this difference needs to be studied further, although there are several factors related to the authority of each institution, which may affect the average length of sentence charged.

The Corruption Eradication Commission, for example, handles limited criminal acts of corruption committed by the State Administration, Law Enforcement Agencies or others related to both, receiving public attention, and resulting in state losses of Rp1,000,000,000 or greater. With this profile, it can be understood that the Corruption Eradication Commission's prosecution standards against figures who are considered as "big fish" are stricter than that of the Public Prosecutor's Office.

However, it does not mean that the length of sentence charged by the Public Prosecutor's Office becomes understandable. This situation is very unfortunate, given that several corruption cases processed by the Public Prosecutor's Office have become legal breakthroughs such as the first criminalization of a corporation in a case of corruption, as well as the corruption case involving Gayus Tambunan, who was convicted for up to 30 years due to the crime of corruption and tax crime.

Table IX. Severe Indictments for Corruption Defendants

Corruption Case	Name of Defendant	Indictment (months)	Verdict (months)	Court	Judges	Prosecutor
31/PID.SUS-TPK / 2017/PN.KPG	Lewi Tandi Rura	216	72	Kupang District Court	Edy Pramono, Jemmy Tanjung Utama, Ibnu Kholik	Public Prosecutor's Office
32/Pid.Sus-TPK/2017/PN Kpg	Nicodemus Rehabeam Tari	216	72	Kupang District Court	Edy Pramono, Jemmy Tanjung Utama, Ibnu Kholik	Public Prosecutor's Office
35/Pid.Sus-TPK/2017/PT.DKI	Ng Fenny	126	72	Jakarta High Court	Ester Siregar, Elnawisah, I Nyoman Sutama, Hening Tyastanto, Rusydi	Corruption Eradication Commission
55/Pid.Sus-TPK/2017/PN Pn.Jkt.Pst	Handang Soekarno	180	120	Central Jakarta District Court	Frangki Tambuwun, Emilia Djajasubagia, Jhom Halasan Butar Butar, Anwar, Ansyori	Corruption Eradication Commission

74/Pid.Sus-TPK/2017/PN Jkt.Pst	Basuki Hariman	132	84	Central Jakarta District Court	Nawawi Pomolango, Mas'ud, Hariono, Ugo, Titi Samsiwi	Corruption Eradication Commission
81/Pid.Sus-TPK/2017/PN Jkt.Pst	Patrialis Akbar	150	96	Central Jakarta District Court	Nawawi Pomolango, Mas'ud, Hariono, Ugo, Titi Samsiwi	Corruption Eradication Commission
55/Pid.Sus-TPK/2017/PN Smg	Sri Hartini	144	132	Semarang District Court	Antonius Widijantono, Sinintha Yuliansih Sibarani, Agus Prijadi	Corruption Eradication Commission
47/PID.SUS/TPK/2017/PN SBY	Marthen Luther Dira Tome a.k.a. Marthen Dira Tome	144	36	Surabaya District Court	Tahsin, Lufsiana, Adriano	Public Prosecutor's Office

Use of Articles in Corruption Cases

The articles used in corruption case charges affect the criminal sanction imposed on the defendants. This is because every article in the Anti-Corruption Law has a minimum and maximum formal criminal sanction. Article 2 paragraph (1) of the Anti-Corruption Law, for example, stated that the length of imprisonment that can be imposed on perpetrators of corruption is a minimum of 4 (four) years and a maximum of 20 years. In practice, both the prosecutor and the judge will judge on the findings and evidence obtained in the process of investigation and construction of the indictment, and set the length of imprisonment to be prosecuted or imposed on the defendants.

From about 13 articles governing 30 forms of corruption and 3 articles regulating 6 other forms of criminal acts related to corruption, in the Anti-Corruption Law, only about 16 articles are often used in corruption cases. The articles can be seen in the table below,

Table X. Articles mentioned in the indictment

No	Article of the Anti-Corruption Law	Frequency
1	Article 2	257
2	Article 3	536
3	Article 5	37
4	Article 6	3
5	Article 7	70
6	Article 8	8
7	Article 9	8
8	Article 10	4
9	Article 11	83
10	Article 12 paragraph a	13
11	Article 12 paragraph b	28
12	Article 12 paragraph c	2
13	Article 12 paragraph d	17
14	Article 12 paragraph e	3
15	Article 12 paragraph i	2
16	Article 12 section (2)	19
17	Not identified	35
18	Article 21	1
19	Not identified	38

Table XI. Articles used in the verdict[3]

No	Article of the Anti-Corruption Law	Frequency
1	Article 2	257
2	Article 3	536
3	Article 5	37
4	Article 6	3
5	Article 7	70
6	Article 8	8
7	Article 9	8
8	Article 10	4
9	Article 11	83
10	Article 12 paragraph a	13
11	Article 12 paragraph b	28
12	Article 12 paragraph c	2
13	Article 12 paragraph d	17
14	Article 12 paragraph e	3
15	Article 12 paragraph i	2
16	Article 12 section (2)	19
17	Not identified	35
18	Article 21	1
19	Not identified	38

As mentioned above, of the 30 articles that accommodate various types of corruption, only 13.34% of articles are used for prosecution or are proven in verdicts. Of the 1032 defendants prosecuted in court, the "favorite" article used in prosecution, as well as the article most often proven in court, is Article 3 of the Anti-Corruption Law. There are several factors that may affect the lack of interest in using other articles than those listed in the above table:

1. Law enforcement is reluctant to use certain articles because of difficulty in obtaining proof beyond any reasonable doubts;
2. There are articles that are more general and can be used against several acts whose construction of the case is relatively similar;
3. The article is fact never used for prosecution purposes.

One example of an article in the Anti-Corruption Law that is rarely or even almost never used in prosecuting corruption cases is Article 12 paragraph h of the Anti-Corruption Law, on cheating. This indicates that it is time to evaluate the application of articles in the Anti-Corruption Law to evaluate their effectiveness and utilization. On the other hand, over time, there may already be new forms of corruption that should be accommodated in the Anti-Corruption Law, but as yet cannot be criminalized because there is no existing legal norm in the Anti-Corruption Law.

Disparities in Criminalization

An issue that always arises in each year's Verdict Trends is disparities in the verdicts. Disparity of verdicts becomes a serious problem because it involves the value of justice to be achieved from a punishment. Unfortunately, it is precisely the existence of criminal disparity that implies the existence of injustice in the judgment of the judges handed down to the defendants. Although disparitiesare not possible to be eliminated, the gap that comes from punishment can be reduced or minimized.

Any difference in imposition of sanctions or disparity of criminalization is commonplace. This is because every case has its own characteristics, or differences between one another. Problems arise when conspicuous gaps occur between similar cases, for example cases with similar amounts of

3Not including acquittals/releases/N.O.

state loss, or when the actors involved have the same position, and so on. Eliminating the disparity of punishment is impossible, but suppressing the disparity is also important to achieve a sense of justice for the perpetrators and victims of corruption itself.

Table XII. Disparity of Criminalization

No	Case Number	Defendant	Occupation	State Loss	Indictment (months)	Verdict (months)	Prosecutor
1.	24/Pid.Sus/TPK/PN.Bna	Mukhtaruddin	Staff of Aceh General Treasurer 2010-2011	Rp22,000,000,000	120	84	Public Prosecutor's Office
2.	23Pid.Sus/TPK/PN.Bna	Hidayat	Aceh General Treasurer 2010-2011	Rp 22,000,000,000	144	96	Public Prosecutor's Office
3.	27/Pid.Sus-TPK/2017/PN Mtr	Mashuri	Secretary of Bukit Damai Village, West Sumbawa Regency	Rp 100,000,000	60	48	Public Prosecutor's Office
4.	32/Pid.Sus-TPK/2017/PT.Pbr	Jafar Sidik	Temporary employee of Education Office of Rokan Hilir Regency	Rp 1,810,000,000	60	18	Public Prosecutor's Office
5.	65/Pid.Sus-TPK/2017/PN Smg	Muhamad Arief Triasmono	Owner of CV Bernief	Rp 422,000,000	78	72	Public Prosecutor's Office
6.	53/Pid.Sus/Tpk/2017/PN.Sby	Bambang Irianto	Mayor of Madiun 2009-2014	Rp59,787,042,412	108	72	Corruption Eradication Commission
7.	13/Pid.Sus.TPK/2017/PT.BNA	T. Sufri Munawar	Village Head (Keuchik) of Gampong Kaude	Rp 173,024,083	72	60	Public Prosecutor's Office
8.	16/Pid.Sus-TPK/2017/PT.KALBAR	Ang Aan Suwarman	Private sector	Rp 3,745,488,002	72	60	Public Prosecutor's Office

The sample snapshot of the verdict trend data shown in the list above shows that there is no clear basis on the length of sentence demanded in the indictment and the verdict. Looking at the magnitude of the state financial losses, the inequality of indictments and judgments can be seen at a

glance at the cases in number 7 and 8, where the case 13/Pid.Sus.TPK/2017/PT.BNA, with a financial loss of only Rp 173,024,083 and carried out by a village head, T. Surfri Munawar, was indicted and decided with the same sentence as a corruption case resulting in a state financial loss of Rp 3,745,488,002 in case 16/Pid.Sus-TPK/2017/PT.KALBAR carried out by Ang Aan Suwarman, from the private sector.

On the other hand, in numbers 1 and 2, the state financial losses are similar, but the indictments and judgments imposed also differ from one another. In another example, in numbers 3 and 4 it is also seen that the similar magnitude of indictments does not reflect a similar amount of state financial losses, as well as in numbers 5 and 6, indicating that the same verdict does not consider the financial losses of the state between the cases, which have a huge difference.

C. Conclusions

First, the courtdecisions in corruption cases in 2017 are still highly disappointing. The average length of sentence in 2017 is only 2 years 2 months imprisonment, or belonging to the lenient category. This is similar to the corruption case verdicts in previous years, i.e.392 defendants leniently sentenced in 2015 and 479 defendants in 2016. This could also be influenced by the use of articles by the prosecutors namely, Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, where the minimum criminal sanction contained in both articles is 4 years and 1 year.

The lenient sentence is highly unfortunate, because it means the convicted corruptor will not suffer from the expected deterrent effect. In addition, the fines and restitution are also not optimal. This is exacerbated by the lack of impoverishment efforts against corruptors through the use of money laundering articles to maximize the return of assets from corruption. Of 1381 defendants, only 4 were prosecuted using the Anti-Money Laundering Law, namely, Joresmin Nuryadin on the corruption case of hot mix road construction of Seluma Regency in 2011 (8/Pid.Sus-TPK/2017/PT BGL), M. Rozali Djafri (6 /Pid.Sus-TPK/2017/PT BGL) on the case of MAN 2 Bengkulu Land Acquisition Corruption, Christopher O. Dewabrata (10/Pid.Sus-TPK/2017/PN.Bgl) on the case of Teluk Radang levee corruption, and Sunoto in the corruption of Bhayangkara Hospital funds (8/Pid.Sus/TPK/2017/PN.Bgl). No other cases, even those prosecuted by the Corruption Eradication Commission, used the Anti-Money Laundering Law.

The lenient sentence will even be lighter when the corruption convicts easily receive remission and parole from the Ministry of Justice and Human Rights. In the end, deterrence of corruption actors remains only as a discourse among law enforcement officers.

Second, the lack of additional penalty of restitution charged against corruptors. In 2017, the amount of the state financial losses that were identified from the defendants was Rp 29,419,317,602,971 or Rp 29.419 trillion. Of the total state financial loss of Rp 29.419 trillion, the amount of restitution charged to the defendants was only Rp 1,446,836,885,499 or Rp1.446 trillion or 4.91%.

The inequality of this amount is unfortunate, because in addition to imprisonment, restitution in cases related to state financial losses is expected to maximize efforts to return state assets. However, this is not reflected in the total of additional penalty of restitution in corruption cases in 2017.

Another additional form of criminal penalty that should also be imposed, especially for corrupt perpetrators whose backgroundsare politicians, is the revocation of political rights. However, both the revocation of political rights and utilization of the Anti-Money Laundering Law are still minimally applied.

Third, prosecutors'charges from both the Corruption Eradication Commission and the Public Prosecutor's Office are still in the lenient category. While the average sentence in corruption cases is 2 years 2 months imprisonment, the average indictment from prosecutors is only 3 years and 2 months in prison. However, there is a difference in the averages from the Public Prosecutors and from the Corruption Eradication Commission, where the average from the Corruption Eradication Commission is 5 years and 3 months in prison, while that of the Public Prosecutor's Office is 3 years and one month in prison.

As a result of the large number of cases processed by the Public Prosecutor's Office, the Corruption Eradication Commission's prosecution, despite their relative severity, does not significantlyaffect the average indictment in corruption cases in general in the second half of 2017. The lenient charges of the prosecutor are also to be criticized, because at any rate the judge must consider the prosecutor's charges before making a decision.

If the prosecutor did charge the defendant for corruption with a lenient jail sentence, then of course the judge would consider the length of sentence based on the prosecutor's indictment for the verdict. This is what has been confirmed in several of the graphs above, about the tendency of the similar length of punishment demanded in the charge and the verdict, namely in the lenient category.

Fourth, law enforcement tends to use only the same articles in corruption cases. Article 2 Paragraph (1) and Article 3 of the Anti-Corruption Law can even be regarded as a 'jack of all trades', being used in the largest number of corruption cases in 2017. From about 13 articles governing 30 forms of corruption and 3 articles regulating 6 other forms of criminal acts related to corruption, in the Anti-Corruption Law, only about 16 articles are often used in corruption cases.

There are several factors that may affect the lack of interest in using other articles than those listed in the above table:

1. Law enforcement is reluctant to use certain articles because of the difficulty in obtaining proof beyond any reasonable doubts;
2. There are articles that are more general and can be used against criminal acts whose construction of the case is relatively similar;
3. The article is fact never used for prosecution purposes.

Fifth, disparity of verdicts still happens in the verdicts in the corruption case. When the effort to punish extraordinary crime with the greatest extent is being encouraged, the judiciary creates the issue of disparity. There are at least two main reasons why disparity in decisions is important to be given serious attention. First, disparity of decisions will ultimately harm the public sense of justice. Disparities make court decisions doubted by the public. This is because similar cases are sentenced differently. In the context of corruption, disparity opens the opportunity to make decisions on corruption cases with large state losses with more lenient sentences than cases with relatively smaller state losses. Second, in extreme conditions, the disparity of decisions can occur because of transactions in verdicts. This is because judges who have the independence can make decisions in corruption cases at will, without any consideration that has to be accounted for.

Sixth, the professional backgrounds of corruption perpetrators indicate that there are serious problems in local governance, where the civil apparatus of the State or the officials of the regional governments (regency/city and province) still hold the leading position as the perpetrators of corruption. While heads of regions have declared their commitment to reform the bureaucracy as well as to prevent corruption, this is not visible in the data of the 2015-2017 verdict trends. Similarly, the private sector still holds the second position between 2015 and 2017. It is suspected that corruption that involves both parties are corruption in the procurement sector of goods and services, as well as in the context of issuance of business licenses, Only in that context there is direct contact between local government officials and the private sector.

D. Recommendations

1. The whole range of courts (from the first level, appeal to the cassation) must have the same view that the punishment for corruption must be extraordinary (deterring, shaming, revoking rights) because corruption is an extraordinary crime. This should be realized in the form of the issuance of a Supreme Court Circular or an instruction of the Chief Justice of the Supreme Court that judges impose the maximum possible sentence against perpetrators of corruption, and similarly, that prosecutors also charge the maximum sentences for the perpetrators of corruption.

2. On the other hand, the government through the Minister of Law and Human Rights also has a big role in determining whether or not a corruption convict deserves remission or parole. Government Regulation No. 99 of 2012 should be applied maximally and strictly. Remission and parole should only be granted as a right for inmates who are cooperative from the beginning of the legal process (justice collaborators).

3. The Public Prosecutor's Office and the Corruption Eradication Commissionshould maximize the additional criminal sanction of restitution that has to be paid by the defendant. If not all the financial losses of the state are enjoyed by the defendant, there should be a clear account of the flow of funds, and thus making greater use of the Anti-Money Laundering Law, so that no state money is lost, either through the restitution or the Anti-Money Laundering Law.

4. The Public Prosecutor's Office needs to prosecute for the revocation of the political rights of the defendant, especially those with the background of politicians, in order to create deterrence, as there are many defendants with backgrounds as legislative members. That is, there is a need to formulate another form of deterrence that will affect the "interest" of politicians to engage in corruption, namely by depriving their political rights.

5. Judges should always consider the use of Anti-Money Laundering Law and revocation of the political rights of corruption defendants - as charged by prosecutors - in making decisions in corruption cases.

6. The public prosecutor tends to use the same articles for prosecution. Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law are regarded as the most commonly used articles in prosecution. On the other hand, there are many articles that are not only rarely used, but are even never used at all. Given the growth of the modes of corruption, and as it is increasingly seen that the existing Anti-Corruption Law can no longer accommodate the development, it is time for the Government and the House of Representatives to consider revising the Anti-Corruption Law. This effort will be more useful than forcing the inclusion of the offense of corruption into the draft Criminal Code (RKUHP).

7. Disparities in criminal prosecution and the tendency of lenient verdicts do not reflect the urgent condition of efforts to deter and eradicate corruption. The emergence of disparities and inconsistencies of prosecution and criminal sanctions must be anticipated. The Public Prosecutor's Office, for example, already has Circular Letter Number: SE-003/A/JA/0210 on the Guidance of Criminal Charges in Corruption Cases. Theguidelines apply exclusively to Article 2 and Article 3 of the Anti-Corruption Law, with a scheme assuming a restitution of state losses, which is not always done before the verdict is pronounced. Thus, the argument about restitution of the state's financial loss not only does not appear in the prosecution, but also not made as a consideration in the decision.

   Unfortunately, the guidelines have not been fully implemented by all prosecutors, nor have there been any prosecution guidelines for other Articles on the crime of corruption. On the other hand, judges do not yet have a similar mechanism, whether in the form of Circular, or Supreme Court Regulations. The Supreme Court should consider seriously the formation of a guideline for the criminalization of corruption cases.

8. The President should encourage the Public Prosecutor's Office to undertake a thorough reform in the agency. This is important because such a reform will also solve the problem of professionalism among the prosecutors, in order to improve the prosecutor's ability to do their job.

9. The President and his staff must optimize the internal control function related to the number of perpetrators of corruption from the civil servants. External regulatory agencies (e.g. the functions of audit institutions) need to be strengthened in order to strengthen the oversight function. In addition, it is necessary to encourage the Public Prosecutor's Office and the Corruption Eradication Commission to apply

corporate crime in prosecuting corruption cases because the evaluation of the first half of 2017 mentions two corporations being sentenced for corruption.

In addition, mechanisms for procurement of goods and services as well as licensing, which are alleged to be the causes of corruption perpetrated by the private sector and regional-level civil servants, must be improved to minimize face-to-face meetings between the two parties, and to identify potential fraud in the system.

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Indonesia Corruption Watch