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## The Lenient Sentencing of Corruptors from the Perspective of the Judicial Power

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**ABSTRACT:** The conditional sentences for corruptors are considered too lenient and not in line with the law. However, judges have the freedom to choose the type of punishment and sentencing that suits their discretion because, in the positive criminal law principles in Indonesia, there is the use of alternative criminal sanctions alongside the adoption of a minimum, maximum general, and maximum specific criminal system within each criminal offense. This study is dissected using juridical-normative analysis based on the law. Its aim is to provide criticism of the rationale in deciding a case, thereby ensuring a sense of justice is fulfilled.

**Keywords:** Light Sentences for Corruptors, Corruptor, Judicial Authority



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### INTRODUCTION

Corruption is an act that harms the state's finances, where the state's finances are regulated in the State Budget (APBN), and all financial allocations in the APBN are distributed to various Ministries, Provincial Governments, Regencies/Cities, and State-Owned Enterprises. The word "corruption" itself originates from the Latin language, "*corruptio*" or "*corruptus*," which literally means decay, depravity, moral degradation, dishonesty, susceptibility to bribery, lack of morality, and deviation from purity. In Indonesia, when people talk about corruption, they often associate it with unlawful acts related to state finances and bribery. However, the approaches to addressing corruption are diverse, including "nepotism," which involves appointing family members or friends to government positions without meeting the necessary qualifications. Such actions may not always have clear legal provisions in criminal law (Bohn, 2014; Ostolski, 2023; Rahayu et al., 2020).

Amien Rais mentioned that there are at least four types of corruption, including: (1) Extortive Corruption: This involves bribery or bribes given by businesses to authorities, such as to obtain forest ownership rights or specific facilities. Someone uses money to influence officials with authority (Asiana & Purwadi, 2020; Hill, 2009; Sunaryo & Al-Fatih, 2022). (2) Manipulative Corruption: In this type, individuals with economic interests request the executive or legislative branch to create regulations or laws that benefit their businesses, even if they have a negative

impact on the broader society. (3) Nepotism Corruption: This occurs due to family ties, where individuals prioritize their spouses, children, in-laws, or nieces and nephews to gain excessive and unreasonable privileges. (4) Subversive Corruption: This involves the unlawful appropriation of a nation's wealth, often diverted to foreign entities. This is usually done for personal gain, as seen in cases like the Freeport mining scandal, where collusion between certain officials and foreign parties led to an unfair distribution of resources (Alam et al., 2022; Asa'ari et al., 2023; Damaitu, 2019).

From a legal perspective, corruption is considered an extraordinary crime. This view is based on the exceptionally damaging negative consequences it has on the stability of Indonesia's society, including the deprivation of economic and social rights of the Indonesian people. Therefore, it is necessary to impose penalties that can deter corrupt individuals and serve as a warning to society at large.

The function of punishment in Indonesia is to maintain a balance between individuals and the interests of society in achieving collective welfare. All regulations related to substantive criminal law, procedural criminal law, and criminal law enforcement can be seen as a unified system of punishment. Some experts argue that punishment serves the purpose of deterring people from committing crimes, both by deterring the general public (general preventive) and by intimidating specific individuals who have committed crimes to prevent them from reoffending (special preventive). Additionally, punishment aims to educate or reform individuals who have displayed a propensity for criminal behavior, transforming them into law-abiding citizens who contribute positively to society (Rama et al., 2019; Tran et al., 2013).

The state, as the authority responsible for enforcing the law, holds the exclusive right to impose criminal sanctions and is the sole subject of the right to punish (*Ius Punindi*). The state's authority to impose criminal sanctions is delegated to law enforcement agencies that work within an integrated criminal justice system. In this system, the resolution of criminal cases goes through various stages, each overseen by different officials or officers. However, each of these stages supports the overall process of resolving criminal cases.

One of the important components that plays a crucial role in upholding the law, especially in the implementation of the criminal justice system, is the judiciary. The judiciary serves as the last line of defense in seeking justice, and within it, judges are given authority by the law to adjudicate. Adjudication itself is a human process aimed at achieving justice. Therefore, adjudicating without establishing a humane relationship between the judge and the defendant is often perceived as unjust treatment (Abbing, 2010; Askew et al., 2013; Chaisse & Dimitropoulos, 2023; Foote, 2018; Vel et al., 2017).

Judges have the freedom to choose the type of punishment and sentencing that aligns with their discretion because, based on the principles of positive law, Indonesia employs a system of alternative criminal sanctions. Additionally, it adheres to a minimum and maximum general criminal system, as well as a maximum special criminal system for each specific offense. Ultimately, judges determine the verdict in a case based on their integrity, intellect, and moral commitment to the values of justice. Article 1, item 8 of the Indonesian Criminal Procedure Code (KUHAP) defines a judge as "a state judicial official authorized by the law to adjudicate."

Judges are also granted independent authority, as explained in Article 24 and 25 of the 1945 Constitution of the Republic of Indonesia, which states that "the judicial power is an independent power to administer justice in order to uphold the law and justice, the requirements to become a judge are stipulated by law."

The term "judicial independence" is not elaborated on in more detail and in a more technical manner by legislation, but it implies that judicial independence should be within the framework of the principle of autonomy. Judges are a substantive part of the judiciary as officials who exercise judicial power, as stated in Article 3 of Law No. 48 of 2009, which states that judges must uphold the independence of the judiciary in carrying out their duties and functions (Borowicz, 2022; Hasbullah, n.d.; Khan, 2019; von Benda-Beckmann & von Benda-Beckmann, 2012).

According to Oemar Seno Adji, "an independent court that is not influenced is an indispensable condition for a legal state; freedom means no interference or involvement from the executive and legislative powers in performing the judicial function."

Article 24 paragraph 1 of the 1945 Constitution states, "Judicial power is an independent judicial power to administer justice and uphold the law." Meanwhile, the Judicial Power Law requires judges to explore the values that exist in society. Article 27 paragraph (1) of Law No. 14 of 1970 states, "Judges, as enforcers of law and justice, are obliged to explore, follow, and understand the legal values that exist in society." This formulation has not changed in Law No. 35 of 1999, which was amended by Law No. 48 of 2009, where Article 5 paragraph 1 of the law asserts, "Judges and Constitutional Judges are obliged to explore, follow, and understand the legal values and sense of justice within society." As for the functions of the judicial power, it is regulated in Article 1 of Law No. 48 of 2009, which reads, "Judicial power is the state's independent power to administer justice and uphold the law based on Pancasila, aiming for the realization of the rule of law in the Republic of Indonesia."

After a judge has the authority to decide a case or issue a verdict, it is not uncommon for the judge's decision to fall short of reflecting justice for the perpetrators of crimes and failing to create a deterrent effect in society. For example, in cases of corruption, we often hear of individuals who have been proven guilty of corruption but do not have to serve their sentences in prison. This is more commonly known in positive law as a suspended sentence (*voorwaardelijke veroordeling*).

The imposition of a suspended sentence in cases of corruption is considered to undermine and contradict the government's efforts to combat corruption. One of the sources for this writing is Decision No. 675. K/Pid.Sus./2010. According to the verdict of the Supreme Court Judge in this case involving the defendant Cik Umar S.H, it was established that the defendant was legally and convincingly guilty of persuading others to engage in corruption. As a result, the defendant was sentenced to 1 (one) year in prison and fined Rp50,000,000 (fifty million Indonesian Rupiahs). It was also determined that if the fine was not paid, the defendant would be subject to an alternative penalty of 1 (one) month of imprisonment. The sentence was ordered to be carried out unless, in the future, the judge issued a different order based on the defendant's conduct during the 2-year probationary period.

When we examine the above-mentioned verdict, the convict should have served a one-year prison sentence, but the judge's opinion was that the sentence did not need to be carried out unless a different order was issued based on the defendant's conduct before the two-year probationary period ended. This situation aligns with the concept of a "suspended sentence" in criminal law. However, in the Anti-Corruption Law, specific minimum penalties, higher fines, and even the death penalty are prescribed as aggravated penalties for corruption offenses.

More precisely, it is regulated in Article 2 and Article 3 of the Republic of Indonesia Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Republic of Indonesia Law No. 20 of 2001 concerning Amendments to Republic of Indonesia Law No. 31 of 1999 concerning the Eradication of Corruption Crimes. Actions classified as corruption crimes include:

Financial losses to the state, as found in: a) Article 2 of Law No. 31 of 1999 of the Republic of Indonesia states that: 1) Anyone who unlawfully enriches themselves or others or a corporation in a manner that can harm the state's finances or economy shall be punished with life imprisonment or a minimum of 4 (four) years and a maximum of 20 (twenty) years of imprisonment and a fine of at least Rp. 200,000,000.00 (two hundred million Indonesian Rupiah) and at most Rp. 1,000,000,000.00 (one billion Indonesian Rupiah). 2) In cases where corruption offenses as referred to in paragraph (1) are committed under certain circumstances, the death penalty may be imposed.

b) Article 3 of Law No. 31 of 1999 of the Republic of Indonesia states that: Anyone who, with the aim of benefiting themselves or others or a corporation, abuses their authority, opportunity, or means available to them due to their position or office, which can harm the state's finances or economy, shall be punished with life imprisonment or a minimum of 1 (one) year and a maximum of 20 (twenty) years of imprisonment and/or a fine of at least Rp. 50,000,000.00 (fifty million Indonesian Rupiah) and at most Rp. 1,000,000,000.00 (one billion Indonesian Rupiah).

The term "conditional punishment" or "suspended sentence" is a general term, but what is meant here is not about the punishment itself being conditional, but rather the execution of the punishment being suspended based on certain conditions. In other words, even if a punishment has been imposed on an offender/convict, the punishment will not be carried out as long as the convict does not violate the required conditions when the sentence is received. From a terminological perspective, it is more accurate to refer to it as the "conditional execution of punishment."

Meanwhile, Article 4 of the Anti-Corruption Law (UU Tipikor) states that the restitution of state or national economy losses does not exempt the perpetrator from criminal liability as referred to in Articles 2 and 3. The explanation for this article specifies that the restitution of state or national economy losses is just one mitigating factor among others.

Based on the background provided by the author, the main issues addressed in this article are as follows: (1) What are the considerations of judges in imposing alternative conditional sentences on corruptors? (2) Is conditional sentencing for corruptors effective in preventing corruption crimes? These questions form the core problems discussed in the article.

## METHOD

This article employs a juridical-normative method, which involves researching the criminal law norms present in Indonesian criminal regulations. It uses a descriptive analysis method and relies on primary data from Decision No. 675K/Pid.Sus/2010, as well as secondary data sources such as legal publications, academic works, articles, and the internet.

## RESULT AND DISCUSSION

### 1. Penalization and Conditional Sentencing in Indonesia

The term "penalization" comes from the word "*straf*," while the term "dihukum" comes from the word "*wordt gestraft*," which means punishment and is threatened with penalties. This term is unconventional and deviates from the usual criminal law terminology "*strafrecht*," which has become a counterpart to *civilrecht* law and the Criminal Code "*wetboek van strafrecht*," which is common among those who use the law and are subject to it.

Sudarto states that "penghukuman" comes from the basic word "hukum" or to decide its law, to establish law for an event that not only pertains to the criminal law field but also the civil law field. Furthermore, he defines it, which means "penghukuman" in criminal cases synonymous with "pemidanaan" or the giving/imposing of punishment by a judge. "Penghukuman" in this sense has the same meaning as "sentence" or "*veroldeling*," for example, in the sense of a "conditional sentence" or "*voorwaardelijke verodeel*," which means the same as being sentenced conditionally or receiving a suspended sentence.

The types of criminal offenses according to Article 10 of the Indonesian Penal Code (KUHP) are distinguished into five main criminal offenses and three additional criminal offenses, which are: (1) The main criminal offenses consist of: a) Death penalty; b) Imprisonment; c) Detention; d) Fine; e) Supervision penalty (based on Law of the Republic of Indonesia No. 20 of 1946). (2) Additional penalties consist of: a) Revocation of certain rights; b) Confiscation of specific assets; and c) Announcement of the judge's decision.

Meanwhile, punishment in Indonesia, according to L.H.C. Hullsman, is the statutory rules relating to penal sanctions and punishment. From the above opinion, punishment encompasses the entirety of legal provisions that govern how criminal law is concretely enforced or operationalized, resulting in someone receiving a sanction (criminal punishment). This means that all legal provisions regarding Substantive Criminal Law, Formal Criminal Law, and Criminal Enforcement Law can be seen as one system of punishment.

If the criminal provisions specified in all Special Laws outside the Indonesian Criminal Code (KUHP) are a specific part (subsystem) of the overall system of punishment, then the system of punishment in Special Laws outside the KUHP must be integrated within (consistent with) the

general rules. However, in Special Laws outside the KUHP, specific rules that deviate or differ from the general rules may be established.

In broad terms, the concept of punishment covers three main issues: Types of punishment (*strafsoort*), the length of the punishment threat (*strafmaat*), and the execution of the punishment (*strafmodus*) with explanations as follows:

a) Types of punishment (*strafsoort*): The types of punishment can be seen in Article 10 of the Indonesian Criminal Code (KUHP), consisting of:

1) Primary penalties, which include: (a) Death penalty; (b) Imprisonment; (c) Detention; (d) Fine; (e) Banishment.

2) Additional penalties, which include: (1) Revocation of certain rights; (2) Confiscation of specific property; (3) Public announcement of the court's decision. Thus, according to Article 10 of the KUHP, Indonesia only recognizes primary penalties and additional penalties.

b) Length of the punishment threat (*strafmaat*): Several primary penalties are often alternatively threatened for the same criminal act. The judge can only impose one of the threatened penalties, and the choice depends on the aggravating or mitigating circumstances, as stipulated in Article 53 paragraph (2) and Article 57 of the KUHP.

c) Execution of the punishment (*strafmodus*): The current Indonesian Criminal Code (KUHP) does not include guidelines for sentencing. Therefore, judges in deciding a case have the freedom to choose the type of punishment (*strafsoort*) they prefer. Given the alternative system of penalties in this law, as it only sets the maximum and minimum limits of punishment, this may lead to what is known as "disparity of sentences."

## 2. Conditional Sentence Alternatives for Corruptors Contradict the Anti-Corruption Law

The conditional sentence is an order from the judge that the sentence imposed will not be executed unless the judge later orders it to be executed due to the convict's actions: a). Before the probation period expires, they commit a criminal offense or b). During the probation period, they violate a specific condition (if any) or, in a shorter period than the probation period, fail to fulfill a more specific condition, such as the obligation to compensate the victim for the losses caused by their criminal act. (Article 14c of the Indonesian Criminal Code)

The imposition of conditional sentences in corruption cases has sparked controversy in society because some people believe that conditional sentences or probation are equivalent to the release of corrupt individuals who are not serving their sentences in correctional facilities. This perception is seen as contradictory to the Anti-Corruption Law (UUPTPK), which has its own provisions regarding the penalties prescribed for corrupt individuals.

The imposition of probationary sentences on corruption convicts may diminish the seriousness of corruption crimes, leading people to no longer perceive the penalties in the Anti-Corruption Law as something daunting. In this context, the anti-corruption function of penalization has

been compromised. The specific deterrent effect that was expected to arise from the punishment of corruption is also at risk of disappearing along with the application of probation. This is because Article 4 of the Anti-Corruption Law explicitly states that the return of state losses does not eliminate a person's criminal liability, only reducing the punishment, and it does not imply probation.

Article 11 states that a civil servant or state official who accepts gifts or promises, knowing that they are reasonably suspected to have been given because of their authority or powers related to their position, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a minimum fine of Rp50,000,000.00 (fifty million rupiah) and a maximum of Rp250,000,000.00 (two hundred and fifty million rupiah).

Meanwhile, Article 18 paragraph (2) only regulates the procedure for restitution if it is not paid, which is different from paragraph (3) that mandates imprisonment as a substitute for the unpaid money based on the judge's decision, with the phrase "shall be punished with imprisonment for a term not exceeding the maximum penalty for the principal offense." Furthermore, if a sentence under an article contains elements of state losses, Article 18 paragraph (3) must be added, as stipulated in Articles 2 and 3 of the UUPJK. For other articles, Article 18 paragraph (2) cannot be added because there is no element of state losses at all.

The combination of the principal penalty (imprisonment) and another principal penalty (fine) closely related to the substitute detention penalty (Article 30 paragraph 2 of the Criminal Code), as well as the Anti-Corruption Law, has also set these limits by determining minimum and maximum rules. Therefore, if a judge imposes a conditional sentence on a corruptor, it cannot be justified, even though the judge has the authority to render a verdict for corruptors.

The presence of minimum and maximum penalties of imprisonment and fines in the Anti-Corruption Law does not limit the freedom of a judge in imposing penalties on perpetrators of criminal acts. This is because the minimum limits set by the legislation, especially for corruption offenses, still provide judges with the freedom to determine imprisonment based on aggravating or mitigating circumstances of the committed criminal act. In other words, judges can still consider factors that may increase or decrease the severity of the punishment within the maximum penalty prescribed by the law.

Andi Hamzah states that although there are minimum requirements in the anti-corruption law, the law does not prohibit judges from imposing conditional sentences on corruption defendants. The provisions regarding conditional sentences in Article 14 of the Criminal Code (KUHP) are considered general laws. Since the Anti-Corruption Law does not specifically address conditional sentences, the general provisions in Article 14 of the KUHP can be applied in specific cases where the minimum penalty prescribed by the law is 1 year. Chief Justice Bagir Manan even once advised the judiciary that for cases with a value below Rp. 5,000,000 (five million rupiahs), where the defendant did not benefit from the corruption and has returned the ill-gotten gains, and the corrupt act did not harm the public, the Anti-Corruption Law should not be applied too strictly.

Meanwhile, legal experts unanimously agree that probation plays a crucial role as a non-institutional alternative for penalization, especially as a substitute for incarceration, which is the

most common form of punishment. Probation is considered more effective in reducing criminal behavior, as it provides offenders with the opportunity to rehabilitate themselves within the community without institutionalization. The rehabilitation aspect of probation becomes a focal point in this form of penalization.

### 3. Analysis of Verdict No. 675/K/Pid.Sus./2010

Accusation and demand: Defendant Cik Umar Agus, SH. Together with Solahudin Bin Ahmad Najamudin, charged and facing penalties based on the Primary Accusation: Article 12 e of the Republic of Indonesia Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Corruption Eradication, in conjunction with Article 55 paragraph (1) point 2 of the Criminal Code, which stipulates that intentionally providing an opportunity, means, or information, encouraging another person to commit corrupt criminal acts, as a public official or state official, with the intention of benefiting oneself or others unlawfully, or by abusing their authority, coercing someone to provide something, receiving payment with deductions, or performing something for their own benefit. Subsidiary Accusation: Article 11 of the Republic of Indonesia Law No. 31 of 1999 concerning the Eradication of Corruption Crimes as amended and supplemented by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Corruption Eradication, which stipulates that intentionally providing an opportunity, means, or information, encouraging another person to commit corrupt criminal acts, as a public official or state official who receives gifts or promises, although it is known or reasonably suspected that the gifts or promises are given because of their authority or position or, in the opinion of the person providing the gifts or promises, are related to their position.

The Judge's Consideration in Imposing Conditional Sentence: That the panel of judges at the Lahat District Court made an error in applying the law, as they have violated Article 11 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, in conjunction with Law No. 20 of 2001, and Article 55 paragraph (1) point 2 of the Indonesian Penal Code (KUHP). In the facts presented during the trial, the individual who committed the corruption offense was not the defendant Cik Umar Agus but Solahudin. Therefore, it is unclear whether the defendant is the one who committed the corruption offense or the one who incited others to commit it. In legal doctrine, these are distinct criminal acts, and thus, in the application of criminal sanctions, they should be treated differently as perpetrators.

That the Palembang High Court made an error in applying the law by not adhering to the provisions of Article 11 of Law No. 31 of 1999, where the minimum criminal penalty is 1 (one) year and a maximum of 5 (five) years of imprisonment, along with a minimum fine of Rp 50,000,000,- (fifty million rupiahs) and a maximum of Rp 250,000,000,- (two hundred and fifty million rupiahs). Therefore, the panel of judges imposing a 6-month prison sentence and a fine of Rp 10,000,000,- (ten million rupiahs) is in contradiction to the principles and norms established in the said law, which do not adequately reflect the sense of justice.

The verdict reads: In this case, the Supreme Court panel of judges sentenced the defendant, Cik Umar Agus SH, to a prison term of only 1 (one) year and a fine of Rp 50,000,000 (fifty million Rupiah), with the provision that if the fine is not paid, the defendant will be subject to a



substitute punishment in the form of imprisonment for 1 (one) year. It was also ordered that the sentence need not be served unless, in the future, the judge issues a different order based on the defendant's misconduct before the probation period of 2 (two) years has expired.

### CONCLUSION

First, the judge's consideration in imposing a suspended sentence is that the panel of judges at the Lahat District Court made an error in applying the law. They violated Article 11 of Law No. 31 of 1999 concerning the Eradication of Corruption Crimes, in conjunction with Law No. 20 of 2001, and Article 55(1)(2) of the Criminal Code (KUHP). In the facts presented during the trial, the person who committed the corruption crime was not the defendant Cik Umar Agus but Solahudin. In criminal law doctrine, each criminal act constitutes a separate offense, so in terms of criminal sanctions, they should be considered distinct perpetrators.

Second, Article 11 of Law No. 31 of 1999 prescribes a minimum prison term of 1 (one) year and a maximum of 5 (five) years, along with a fine ranging from at least Rp 50,000,000 (fifty million Rupiah) to a maximum of Rp 250,000,000 (two hundred fifty million Rupiah). However, the panel of judges imposed a sentence of 6 months in prison and a fine of Rp 10,000,000 (ten million Rupiah), which is contrary to the principles and norms established in the said law and does not reflect a sense of justice.

Recommendations: *First*, based on Article 179 paragraph (1) letter C of the Criminal Procedure Code (KUHP), the indictment, as presented in the charge letter, should be thoroughly examined. If a judgment is based on an article that was not included in the indictment, the judgment can be considered legally invalid, as seen in the Supreme Court Decision No. 402K/Pid./1987. *Second*, considering the Supreme Court decision as legal precedent, it is advisable not to impose suspended sentences on corruption cases. This is because such sentences contradict the minimum criminal sanctions specified in the anti-corruption law, which can weaken the deterrent effect.

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**Legislation:**

Criminal Code (KUHP)

Law No. 31 of 1999 on the Eradication of Corruption Crimes

Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on the Eradication of Corruption Crimes

Law No. 30 of 2002 on the Corruption Eradication Commission

Law No. 48 of 2009 on Judicial Power