THE AGGRAVATION OF LEGAL SANCTION CORRUPTION OVERVIEW LAW NUMBER 31 OF 1999 ON CORRUPTION ERADICATION AND TA'ZIR

Thesis

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STATEMENT OF THE AUNTENTICITY

In the name of Allah (swt),

With Consciousness and responsibility toward the development of science, the author declares that the thesis entitled:

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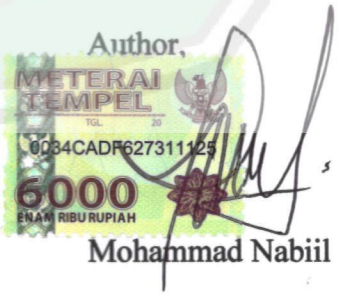

Mohammad Nabiil

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MOTTO

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالاً مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

(سورة المائدة : ٣٨)

Laki-laki yang mencuri dan perempuan yang mencuri, potonglah tangan keduanya (sebagai) pembalasan bagi apa yang mereka kerjakan dan sebagai siksaan dari Allah. Dan Allah Maha Perkasa lagi Maha Bijaksana. (al-Maidah: 38)

APPROVAL SHEET

After examining and verifying the thesis of Mohammad Nabiil, NIM 12220105, Islamic Business Law, Department of the Sharia Faculty of state Islamic University, Maulana Malik Ibrahim of Malang entitled:

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DEDICATION

My work of thesis this is my last examination to get my degree level of Sharia Law in Maulana Malik Ibrahim State Islamic University Malang, under the title:

THE AGGRAVATION OF LEGAL SANCTION CORRUPTION OVERVIEW LAW NUMBER 31 OF 1999 ON CORRUPTION ERADICATION AND TA'ZIR

Dedicated to:

For my parents, Usman Karimy and Sumarni, My uncles and aunts for everything giving for me and for much supporting until this moment. For my brothers, sisters and everyone supporting me in my life.

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Hopefully the Almighty of Allah always give us mercies and blessing. Amin.

The author is aware fully that in this thesis is not perfect. Although author has been doing the best to arrange it. So that author suppose the addition and critical to support and become motivation for author to make the other works to be better. Finally the author rise the hand and pray that this thesis will be benefit for people

Malang, 8th of June 2017
Author,

Mohammad Nabiil
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TRANSLITERATION GUIDE

A. General

The transliteration guide which is used by the Shari'a Faculty of State Islamic University, Maulana Malik Ibrahim Malang, is the EYD plus. This usage is based on the Consensus Directive (SKB) from the Religious' Ministry, Education Ministry and Culture Ministry of the Republic of Indonesia, dated 22 January 1998, No. 158/1987 and 0543. b/U/1987, which is also found in the Arabic Transliteration Guide book, INIS Fellow 1992.

B. Consonants

ا = a	ض = dl
ب = b	ط = th
ت = t	ظ = dh
ث = ts	ع =' (comma facing upwards)
ج = j	غ = gh
ح = h)	ف = f
خ = kh	ق = q
د = d	ك = k

ذ = dz	ل = l
ر = r	م = m
ز = z	ن = n
س = s	و = w
ش =sy	ه = h
ص = sh	ي = y

The hamzah (ء) which is usually represented by and *alif*, when it is at thebeginning of a word, henceforth it is transliterated following its vocal pronouncing and not represented in writing. However, when it is in the middle or end of a word, it is represented by a coma facing upwards (’), as oppose to a comma (‘) which replaces the “ ع”.

C. Long Vowel and Diftong

In every written Arabic text in the *latin* form, its vowels *fathah*is written with “a”, *kasrah* with “i”, and *dlommah* with “u”, whereas elongated vowels are written as such:

Elongated (a) vowel = â example قال becomes *qâla*

Elongated (i) vowel = î example قيلbecomes *qîla*

Elongated (u) vowel = û example دونbecomes *dûna*

Specially for the pronouncing of *ya' nisbat* (in association), it cannot represented by *"i"*, unless it is written as *"iy"* so as to represent the *ya' nisbat* at the end. The same goes for sound of a diftong, *wawu* and *ya'* after fathah it is written as *"aw"* da *"ay"*. Study the following examples:

Diftong (aw) = وexample قول becomes*qawlun*

Diftong (ay) = ي example خير becomes*khayrun*

D. Ta' Marbûthah (ة)

Ta' marbûthah is transliterated as "t" if it is in the middle of word, but if it is *Ta' marbûthah*at the end, then it is transliterated as "h". For example: الرسالة للمدرسة will be *al-risalat li al-mudarrisah,* or if it happens to be in the middle of a phrase which constitutes *mudlaf and mudlafilayh,* then the transliteration will be using "t" which is enjoined with the previous word, for example فى رحمة اللهbecomes *fi rahmatillah*.

E. Definite Article

Arabic has only one article, "al" (ال) and it written in small letters, unless at the beginning of a word, while "al" in the phrase of *lafadhja**lalah*** (speaking of God) which is in the middle of a sentence and supported by and *(idhafah),*then it is not written. Study the following:

1. Al-Imâm al-Bukhâriy said ...
2. Al-Bukhâriy explains, in the prologue of his book ...
3. *MasyâAllâhkânawamâ lam yasya' lam yakun*.
4. *Billâhi 'azzawajalla.*

TABLE OF CONTENTS

ABSTRAK

Mohammad Nabiil, 12220105, 2017, **Pemberatan Sanksi Hukum Tindak Pidana Korupsi Tinjauan Undang-Undang Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi Dan Ta'zir**. Skripsi Jurusan Hukum Bisnis Syariah Fakultas Syariah Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang. Pembimbing: Iffaty Nasyi'ah, M.H.

Kata Kunci: Pemberatan Sanksi, Tindak Pidana Korupsi, Ta'zir

Korupsi yang terus meningkat baik di tingkat pusat maupun daerah, merupakan indikasi bahwa hukuman yang dijatuhkan kurang memberikan efek jera, Salah satu faktor penyebabnya adalah masih lemahnya komitmen serta konsistensi penegakan hukum (baca: penjatuhan sanksi pidana) terhadap tindak pidana korupsi yang dilakukan oleh penyelenggara negara. Penjatuhan sanksi pidana selama ini belum mampu menghambat laju kejahatan korupsi itu sendiri.

Permasalahan yang dibahas pada penelitian ini bertujuan untuk mengetahui mengapa diperlukan pemberatan sanksi hukum tindak pidana korupsi, dan bagaimana pemberatan sanksi hukum bagi pelaku korupsi tinjauan Undang-Undang Nomor 31 tahun 1999 dan ta'zir.

Penelitian ini tergolong jenis penelitian hukum normatif. Penelitian ini disebut juga penelitian kepustakaan atau *library research*. Pendekatan yang digunakan adalah pendekatan perundang-undangan dan pendekatan konseptual. Bahan hukum yang digunakan adalah bahan hukum primer dan sekunder.

Hasil dari penelitian ini, bahwa diperlukannya pemberatan sanksi hukum tindak pidana korupsi, disebabkan meningkatnya jumlah tindak pidana korupsi setiap tahunnya dan kerugian Negara yang cukup besar. Menurut Undang-Undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi jo Undang-Undang Nomor 20 tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi, pemberatannya adalah perapasan barang yang digunakan atau diperoleh dari tindak pidana korupsi, pembayaraan uang pengganti, penutupan sebagian atau seluruh perusahaan, pencabutan seluruh atau sebagian hak-hak tertentu atau penghapusan seluruh atau sebagian keuntungan tertentu. Dan dalam ta'zir, pemberatannya berupa hukuman yang berhubungan dengan badan, hukuman yang berhubungan dengan kemerdekaan, hukuman yang berkaitan dengan harta benda, hukuman yang ditentukan oleh *ulil amri* atau hakim.

ABSTRACT

Mohammad Nabiil, 12220105, 2017, **The Aggravation of Legal Sanction Corruption Overview Law Number 31 of 1999 on Corruption Eradication And Ta'zir.** Thesis of Syaria Business Law Department, Syaria Faculty, Islamic University of Maulana Malik Ibrahim Malang, Supervisor: Iffaty Nasyi'ah, M.H.

Keywords: The Aggravation of Legal Sanction, Corruption, Ta'zir

Increasing corruption at both the central and regional levels is an indication that the punishment imposed has less deterrent effect. One of the contributing factors is the lack of commitment and the consistency of law enforcement (read: the imposition of criminal sanctions) on corruption committed by state officials. The imposition of criminal sanctions has not been able to prevent the crime of corruption.

The problems discussed in this study are to find out the reasons to need aggravation of legal sanction for corrupt, and the form of aggravation of legal sanction for corrupt regarding law number 31 of 1999 and ta'zir.

This research is classified as normative law research. This research is also called library research or library research. The approach used is the approach of legislation and conceptual approach. The legal materials used are primary and secondary legal materials.

The result of this research is that the reasons to need aggravation of legal sanction for corrupt due to the increasing number of corruption crime every year and the considerable loss of State. According to Law Number 31 of 1999 concerning the Eradication of Corruption jo Law Number 20 of 2001 About Corruption Eradication, form of aggravation of legal sanction for corrupt is the exhaustion of goods used or obtained from a criminal act of corruption, replacement money repayment, partial or entire closure of a company, the lifting of all or part of certain rights or the removal of all or part of certain profits. And in ta'zir, the imposition of punishment related to the body, the punishment related to independence, the punishment related to property, the punishment determined by ulil amri or judge.

مستخلص البحث

محمد نبيل، ١٢٢٢٠١٠٥، ٢٠١٧. **تفاقم العقوبات القانونية لفعل الفساد بشأن القانون رقم ٣١ عام ١٩٩٩ عن القضاء على الفساد و التعزير**، البحث، قسم حكم المعاملة الشرعي. شعبة الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف : عفّتي ناشئة الماجستير.

كلمة المفتاح : تفاقم، فعل الفساد، تعزير

لايزال الفساد في كلا المستويين المركزي والمحلي، مؤشرا على أن العقوبة لا تعطي تأثيرا رادعا. و من أحد العوامل المساهمة هو ضعف الالتزام والاتساق في تطبيق إنفاذ القانون (القضاء على العقوبات الجنائية) إلى فعل الفساد التي ترتكب على أيدي موظفي الدولة. لم يكن قضاء العقوبات الجنائية قادرا على إحباط جريمة الفساد نفسه.

أما الهدف لهذا البحث هو لمعرفة سبب احتياج التفاقم العقوبات القانونية لفعل الفساد و لمعرفة تفاقم العقوبات الجنائية لمرتكب الفساد بشأن القانون رقم ٣١ عام ١٩٩٩ و التعزير.

هذا البحث من نوع بحث الحكم المعياري و هو يسمى أيضا بالبحث المكتبي أو الدراسة الوثائقية. استخدم مدخلان هما مدخل القوانين و مدخل الفكرة. أما المواد القانونية هي المواد الأساسية و المواد الثانوي.

نتائج هذا البحث هي الحاجة الشديدة على تفاقم العقوبات القانونية لفعل الفساد لأن ارتفع عدد الفساد كل عام و فقدان الدولة كبيرة، وفقا للقانون رقم ٣١ عام ١٩٩٩ بشأن الفساد للقضاء على العقوبات الجنائية و القانون رقم ٢٠ عام ٢٠٠١ على العقوبات الجنائية، أما التفاقم لهذا الفعل هو حجز الأشياء المستخدم أو المكتسبة من الفساد، والدفع استبدال المال، إغلاق جزء أو جميع الشركة، إلغاء كل حقوق المعينة أو جزئها أو إزالة كل فائدة خاصة أو جزئها. وفي التعزير، التفاقم يتعلق بالعقوبات الجسمية، والعقوبات الاستقلالية، والعقوبان الأمتعتية والعقوبات التي قررها أولى الأمر أو الحاكم.

CHAPTER I

INTRODUCTION

A. Background of Research

Corruption is a phenomenon of deviation in social, cultural, civic and state life that has been studied and critically reviewed by many scientists and philosophers. One of which is Aristoteles followed by Machiavelli, from the beginning he had formulated something called moral corruption. Moral corruption refers to various forms of misconduct in the constitution, and its rulers, so that the democratic system is no longer governed by law but a service to themselves.[1]

Corruption is a crime committed by a person or corporation, which has the purpose to benefit oneself or corporation, by abusing the authority,

[1] Mansyur Semma, *Negara Dan Korupsi (Pemikiran Mochtar Lubis Atas Negara, Manusia Indonesia, Dan Perilaku Politik)*, (Jakarta: Yayasan Obor Indonesia, 2008), p. 32.

opportunity or means attached to his / her position and affecting the financial loss of the State.

According to Article 2 Paragraph (1) of Law Number 31 Year 1999 as amendment to Law Number 20 Year 2001 on Corruption Eradication (UUPTPK) mentioned:

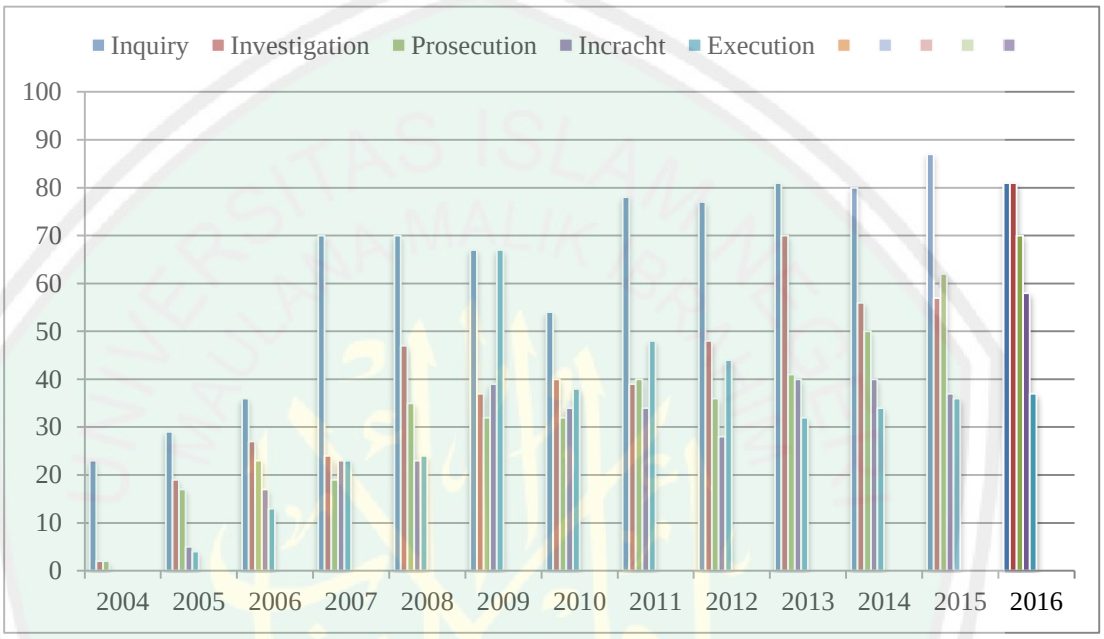
"Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp1,000,000,000,- (one billion Rupiahs). "

Corruption is mostly done by people who hold the power or state organizers ranging from central to regional level, both executive, legislative and judiciary. Today, corruption among state administrators is no longer done individually, but has been carried out communally and professionally, beginning with project determination and budgeting. This situation shows that corruption is very vulnerable to state officials by bringing blurred and embezzling large amounts of state money that is done illegally.

In the statistical reports KPK recapitulation of corruption. As of 31st October 2016, the Corruption Eradication Commission has handled corruption cases with details: inquiry of 81 cases, investigation of 81 cases, prosecution of 70 cases, incracht of 58 cases, and execution of 67 cases. And the total handling of corruption cases from 2004 to 2016 is inquiry of 833 cases,

investigation of 549 cases, prosecution of 459 cases, incracht of 387 cases, and execution of 400 cases. [2]

Table I
Data Tabulation and Overcoming These Corruption (by KPK) 2004 - 2016 (as of 31st October 2016)



Years	07	08	09	10	11	12	13	14	15	16	Amount
Inquiry	70	70	67	54	78	77	81	80	87	81	833
Investigation	24	47	37	40	39	48	70	56	57	81	547
Prosecution	19	35	32	32	40	36	41	50	62	70	459
Inkracht	23	23	39	34	34	28	40	40	37	58	378
Execution	23	24	37	36	34	32	44	48	38	67	400

Currently, corruption in Indonesia is still one of the causes of the declining state finances. Like illness, corruption in Indonesia has evolved in 3 (three) stages: elitist, endemic, and systematic: In *the elitist stage*, corruption

[2] Http://acch.kpk.go.id/rekapitulasi-penindakan-pidana-korupsi-berdasarkan-tahun. Accessed on January 24 2017, 09.00 WIB.

remains a distinct social pathology within the elite /official environment. At *the endemic stage*, corruption stretches and reaches the broader society. Then at *the critical stage*, when corruption becomes systemic, every individual in the system contracts a similar disease. Perhaps corruption in Indonesia has reached a systematic stage, it can be seen from various corruption cases broadcast by the media.[3]

Corruption is a violation of the social rights and economic rights of society at large, so that corruption can no longer be classified as ordinary crimes. So that in the fight against corruption can not use ordinary ways, but in extra-ordinary enforcement.

Many state organizers have executive, legislative and judicial powers from both central and regional levels, so easy to corrupt, because the perpetrator has expectations. *First*, the legal process of corruption does not end up in court and comes off criminal sanctions. *Secondly*, if the legal proceedings proceed to the court, the perpetrator takes up the resistance in order to obtain a judgment of the judge. *Thirdly*, if the criminal sanction is imposed, the perpetrator still hopes that the criminal sanction imposed by the judge is only minimal criminal sanction. So that after the punishment, the perpetrator can still enjoy the remaining money from his corruption (because until now there has never been the money of corruption which is returned entirely to the state

[3] Ermansjah Djaja, *Meredesain Pengadilan Tindak Pidana*, (Jakarta: Grafika rays, 2010), p. 25-26.

along with bank interest and tax). The hope of corrupt perpetrators illustrates that corruption in Indonesia seems like "crime without offender".[4]

Above, one of the contributing factors is the weakness of commitment and the consistency of law enforcement (read: the imposition of criminal sanction) on corruption crime committed by state organizer. The imposition of criminal sanctions so far has not been able to inhibit the rate of corruption, because of the phenomenon of the perpetrators are not afraid of sanctions. When criminal sanctions are no longer frightening, a review of criminal justice policy on corruption is necessary.[5]

Based on Article 2, the perpetrator of corruption can be subject to additional sentences as referred to in Article 18 of Law Number 31 Year 1999 amendment to Law Number 20 Year 2001 on Corruption Eradication, namely:

(1) In addition to the additional sentence as referred to in the Criminal Code, the additional sentences are:
   a. confiscation of mobile goods or immobile goods or immobile goods used for or obtained from the criminal act of corruption, including the company owned by the accused, in which the criminal act of corruption is committed and any goods that have replaced the initial goods.
   b. the compensation paid shall be to a maximum of twice the wealth obtained from the criminal act of corruption.
   c. whole or partial closing of the company for maximum period of 1 (one) year.
   d. revocation wholly or partially of rights or abolishment wholly or partially of profits, which have been or can be given by the government to the accused.

(2) In the event that the accused does not pay the compensation as referred to in paragraph (1) letter b in maximum period of 1 (one) month after the

[4] Yesmil Anwar, *Saat Menuai Kejahatan, Sebuah Pendekatan Sosiokultural Kriminologi, Hukum dan HAM*, (Bandung: Refika Aditama, 2009), p. 116.

[5] Ronny Rahman Nitibaskara, *Perangkap Penyimpangan dan Kejahatan, Teori Baru dalam Kriminologi*, (Jakarta: Development Foundation Police Science Studies, 2009), p. 44.

verdict of the court has obtained legal permanent power, the wealth can be confiscated by the prosecutor and auctioned to cover compensation.

(3) In the event that the accused does not have adequate wealth to pay the compensation as referred to in paragraph (1) letter b, the accused is merely sentenced to a period that does not exceed the maximum sentence the main crime, in accordance with the provision in this law, with the period of the sentence having been determined in the court verdict.

Additional sentences incidents are facultative in that this additional penalty can only be imposed together with the principal penalty. Judges are not required to impose additional penalties (judges may vote). Additional sentences can not be imposed unless after the imposition of the principal penalty, meaning that the principal penalty can stand alone while the additional criminal can not stand alone.

With Law Number 20 Year 2001 Article 2 paragraph (1) and (2) should be able to stop of corruption. But in reality, corruption still happens, resulting in legal gaps or legal obscurity. The current law should make the government free from corruption, because it is mandated in Pancasila and the Constitution 1945 in order to realize a just and prosperous society.

Islam as the majority religion in Indonesia provides a solution to eradicate corruption. Not to make Indonesia, a legal state, became an Islamic State, but it is very unpretentious to put aside a religion as a solution to awaken corrupt perpetrators and eradicate the root of corruption.

Any religion clearly forbids its people to corrupt. Even Islam developed a form of strict legislation, strict administrative and managerial control. Therefore, in giving and imposing penalties for perpetrators of corruption should not be indiscriminate, whether he is an official or other. The purpose of

the punishment is to provide a deterrent to stop the crime he has committed, thus creating a sense of peace, and harmonious in society.

In Islamic law, corruption is an act of sin called "jinayah" or "jarimah". Jarimah is an act that is prohibited by syara ', whether the act is about the soul, property, or other. So the finger is an act that is prohibited by syara 'because it can pose a danger to the soul, property, heredity, and mind. One of them seizure of property (hifdzu mal or al-ikhtilas) is a criminal act of appropriation of property rights, which is to eat human treasures in a way that is falsehood as described in Surat Al-Baqarah verse 188:[6]

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

"And let not some of you eat some of the treasures among you in a foolish way, and do not bring the affairs of the matter to the judge, so that you may eat some of the other's possessions by sin, when ye know."

Or more specifically, corruption is included in the category of *ghulul* (treason) as mentioned in Surah Al-Imron verse 161:[7]

وَمَا كَانَ لِنَبِيٍّ أَنْ يَغُلَّ ۚ وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ ۚ ثُمَّ تُوَفَّىٰ كُلُّ نَفْسٍ مَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

"There can be no prophet in treasure plunder. Whoever is betrayed in the affairs of booty, on the Day of Judgment he will bring what is denied; Then each one will be rewarded of what he did with (vengeance) worth, while they are not persecuted ".

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6 A. Djazuli, *Fiqh Jinayah, Upaya Menanggulangi Kejahatan Dalam Islam*, (Jakarta: King Grafindo Persada, 1996), p. 56.

7 Abdullah bin Abdul Muhsin al-Tariqi, *Suap Dalam Pandangan Islam* , (Jakarta: Gema Insani Press, 2001). p. 57.

As explained above, corruption is an act contrary to the principles of justice (al-adalah), accountability (al-amanah), and responsibility. Corruption with all its negative impacts can cause various distortions in the life of the state and society. Although al-quran and hadith do not explain *had* or *kafarah*-nya, but the perpetrator of corruption can be punished ta'zir of immorality. So that the act is included in the crime of ta'zir. As contained in the hadith of the prophet narrated by Ahmad and Tirmizy, that is:[8]

"Narrated Jabir RA from Prophet SAW, the Prophet said: There is no (punishment) cut off hand for traitor, robber and robber/ pickpocket. (HR Ahmad and Tirmizy)".

As a rule in the core of Islam allows execute judgments ta'zir the actions of the disobedients when required by the public interest, this means that their deeds and circumstances which can be condemned to ta'zir could not have determined the penalty previously, because it is dependent on the nature of the specific nature and when nature is not then the act is no longer forbidden and not incur the penalty. The nature of the harm the interests and public order, and when that action has been demonstrated in front of the court and judges cannot claim, but must execute judgments Ta'zir that according to him. Ta'zir penal code to the interests and public order this refers to the deeds (saas, where he had been holding a man accused of stealing the camel, after proved he did not steal, then the prophet claim.

Maximally utilised ta'zir literally acknowledged, and the overturning of Ta'zir submitted to the authority of those charged with authority (government)

[8] Nurul Irfan, *Korupsi dalam Hukum Pidana Islam,, Cet. 1*, (Jakarta: Amzah, 2012), p. 3.

because it is an additional punishment by referring to the principles to maintain the stability of societal life. Aggravation and seriousness of the punishments also must be adjusted with the types of crimes that done, adjusted with the environment in which the violations occurred and the motivation that promote a criminal act done. In addition according to save the writer there is a good thing also saw the system or the way the work of the other countries in tackling this action.

Islam itself does not determine the kinds of punishment to ta'zir, but only mentioned a collection of punishment, started from the punishment that being as light as the seriousness, as the advice, threats until the punishment that bosses.

Although there are laws governing the ndang u about the crime of corruption but the question of punishment or law sanctions for perpetrators of criminal acts of corruption increasingly complex. It encourages building blocks to do research about the punishment for the criminal acts of corruption according to the positive law and Islamic Criminal Law (read: ta'zir), so that both can be made instrument for a sacred sanction. Then diambilah this research titled **"The Aggravation of Legal Sanction Corruption Overview Law Number 31 of 1999 On Corruption Eradication And Ta'zir."**

B. Statement of Problem

Base on background, some aspects become statement of problems in this research are:

1. Why is it necessary to aggravate legal sanctions for corrupt?
2. How is the aggravation of legal sanction for corrupt overview Law Number 31 Year 1999 and ta'zir?

C. Objective of Research

Base on research of problem, some aspects become objectives of this research are:

1. To know the reason to aggravate legal sanctions for corrupt.
2. To know the aggravation of legal sanction for corrupt overview Law Number 31 Year 1999 and ta'zir.

D. Significance of Research

The result of this research hoped be able to give benefit to two aspects are in teoritic aspect and practice aspect.

1. Theoretically

   Theoretically the results of this research are expected to be useful in the development of the criminal law study, especially related to the consideration of the judges in the execute a sacred criminal against the perpetrators of corruption. And can be used as material for the evaluation Law Number 20 Year 2001 about amendment to Law Number 31 Year 1999 on Corruption Eradication. In addition, also useful

as comparative material and references that are useful when required for other researchers who are interested in order to make further research.

2. Practical usability

The results of this research are expected to be useful in a positive way for the whole of law enforcement in the law enforcement efforts against the perpetrators of corruption. In addition the results of this research are expected to be useful for various other parties who will do research on the consideration of the judges in the sacred criminal against the perpetrators corruption in the future. A sacred law is intended to cause a deterrent effect and can be used as a preventive action for people not to do the crime of corruption that will minimize even eliminate corruption in Indonesia.

E. The Conceptual Definition

1. In Law Number 31/1999 on Corruption Eradication jo Law Number 20/2001, corruption is anyone with the aim of enriching oneself or another person or a corporation, abuses the authority, opportunity or facilities given to him related to his post or position, which creates losses to the state finance or state economy.
2. Ta'zir is a punishment that is educating the sin that is not explained by the limits of the (Penalty) and the expiation for (his redeemer). It can be interpreted as a punishment inflicted by the government (priests) of criminal acts or the punishment for sin has not been determined in religion or has been specified punishment for but not sufficient conditions of the enactment of the sanctions.

F. Research Method

Research Method can be said as an investigation by using methods that have been determined, begins with the search for the record, formulate and analyze to draw up a report to get a truth that could be accounted for by the researchers. So that the obtained optimal results and required a method of research in accordance with the theme of the discussion as follows.

G. Kind of Research

The kind of research used in this research is normative legal research or research library. In this kind of legal research is concepted that legal is what has been writing in the constitution (law in book). In addition legal is concepted as purpose which used humans become base to do behave appropriately. Therefore the source of secondary law only consists of primary legal materials, secondary legal materials, and tertiary legal materials.[9] In the other source shown that normative legal research is a procedure of science research to find the truth base on sciences of logical continually, in the normative legal research forming with discipline of scientifically and some ways of normative legal knowledge. The object of the normative legal research itself is the legal itself.[10]

Issues discussed in this research is about the existence of the aggravation of legal sanction for corrupt overview Law Number 31/1999 On Corruption Eradication and ta'zir in Islamic Law. The reason's researchers uses normative

[9] Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT Raja Grafindo Persada, 2006), p. 118.

[10] Johny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Malang: Bayu Media Publishing, 2007), p. 57.

legal research because in this research do not require empirical data as the main data of the research done, but only examine the ingredients of the law as the normative legsal research material.

1. Approach of Research

In the legal research there are some approaches. With the approach, researchers will get information from the various aspects of the issue that is being tested to search the answer. The various approaches used in the legal research is; (a) Statute approach; (b) Case approach; (c) historical approach; (d) the comparative approach; (e) conceptual approach.[11]

Analysis of the law that is produced in the normative research is using only two of the five approach. *First*, Statute approach is reviewing a lot of constitution and rules related with the issue of legal research, and also the compilation of act to solve legal problems, so that can make increase of the useless of law. This approach will open opportunity for researcher to find consistently and appropriately between constitution with other constitution related, or between constitution with other regulations related. And also researcher has examined the material and learned the basis of ontological birth and philosophical basis of the law.

The second, Conceptual approach begins from doctrins and opinions in the legal science, researcher will find some ideas about legal definitions, legal concepts, legal principles and legal of norms related each other and also composed of hierarchi base on the issue faced. This system is called by

[11] *Ibid.* p. 300.

systematic term.[12] In addition, in this legal research the author tries to make corruption as a concept which is then searched its equivalent in Islamic Law. The author then refers to the doctrines that developed in Islamic Law in the field of ta'zir as a consideration in granting sanctions to the perpetrators of corruption.

2. Source of Law

This normative legal research uses secondary law source means that data is gotten by proper documents, constitutions, books related with the object of research, results of research by other researchers, thesises, and dissertations.[13] In addition secondary law is called by library data.[14] Simillary the source of secondary law form usually applies in normative legal research devides to three sources consist of primary legal material, secondary legal material, and tertiary legal material.

Primary legal material is legal materials binding of constitution relating with object of research. Besides of court provisions or judge decisions has been determining and binding each party. Secondary legal material is addition materials such as books and legal scientific articles relating with object of research surely. While the tertiary legal material form is guidance or explaination about primary legal material and secondary legal material which

[12] *Ibid*, p. 302.
[13] Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2011), p. 18.
[14] Julius C. Barito, *Analisis Yuridis Pelaksanaan Privatisasi Badan Usaha Milik Negara (BUMN) di Indonesia Studi Kasus PT. Krakatau Steel (Persero)*, (Jakarta: Universitas Indonesia, 2009), p. 88.

can find in legal dictionary, encyclopedia, magazine, newspaper, etc.[15] and this research used data sources:

a. The primary legal materials that have authority (*authority*), means is binding, either legislation and jurisprudence court, among others:
   1) The Constitution Of The Republic Indonesia in 1945 (UUD 1945)
   2) Criminal Code (KUHP).
   3) Law Number 31/1999 jo Law Number 20/2001 On Corruption Eradication.
   4) Law Number 30/2002 On Corruption Eradication Commission.
   5) Al-Qur'ān and Hadist
   6) Ta'zir
b. Secondary legal materials, namely legal materials that closely linked to the primary legal materials and can help analyze, understand and explain the primary legal materials, among others: books, research results, the results of the seminar, the opinion of the experts in the law of the print and electronic media.

3. Collection Method of Source of Law

Method of source law collection in this research is collecting legal materials which consist of all constitutions related, then selected deeper base on object of research. Data collection technique that is used is collecting techniques by library to collect, arrange the data and information required, both in the form of legislation, books, scientific papers and others. The first, the

[15] Zainuddin Ali, *Op. sit*, p. 106.

author search, study, record and then apply to the object of research. In between the methods of collection of primary legal materials in the normative legal research among others by doing the determination of legal materials, inventory relevant legal materials and study of legal materials. [16]

4. Processing of Source of Law

After all legal materials collected, the next step is to do the analysis of the law. Theoritically methods of analysis this law is the process of simplifying the data into a form that is easy to read and diinterprestasikan.

Base on the characteristic of this research which uses method of research with analyziz descriptive character, data analyziz has been using qualilative approach with the secondary data source. The descriptive includes substantion and structure of positive law. Analyziz descriptive is an activity of researcher to determine and find of substantions, mean of legal norm also to become legal standing to solve legal problems of object of research.[17] The process of analysis of legal materials used by researchers are:

a. *Editing* is natural selection or re-examination legal materials that have been collected. Legal materials that have collected were selected according to the various data collection, to answer the questions contained in the focus of research. This is aimed to re-examined done based on various collection of legal materials that obtained.

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[16] Also called with the method documentation. The documentation method is meant, namely gather examine archive or library study as legislation, books, paper, article, magazines, journals, newspapers or paper experts relevant to the theme of the study, Then will be processed so as to generate the necessary data. See Soerjono Soekanto, *op. cit.* p. 34.

[17] Zainuddin Ali, *Op. sit*, p. 107.

b. *Classifying* is classifying legal materials. Initial work on the research of collected legal materials is classified based on the focus of the problems studied. The classification is done by the researchers in this research namely, group or classify the results of the collection of legal materials based on research focus.

c. Analysis of the analysing the relationship. The effort analysis is done by connecting what is found on the legal materials that obtained with the focus of the problem is examined. The analysis methods used in this research is a qualitative descriptive analysis, is how to describe, explains, describes and illustrates seesuatu is examined in a clear and concise.[18]

d. *The concluding* is the final stage in a study the return stage a conclusion from the analysis results to known the answer by researchers associated with the formulation of the problem is selected.

H. Previous Research

1. The First Study

Thesis written by Ganesa Adi Nugraha (2013), the students of the Faculty of Law of the University of Semarang. The title of **The Existence of The Bachelor Theses Additional Crimes In The Criminal Acts of Corruption (Study on The Office of The Attorney General of Semarang).** This research uses the empirical research method or nomative sociological, with the types of legal research for the real thing with a descriptive approach. In this bachelor

[18] Ernu Febru Aries S. http://WordPress.com, Weblog, Accessed on 11 May 2011.

theses discuss about the influence that caused by the existence of the execution of the additional crimes that carried out by the attorney for the criminal acts of corruption in the office of the Attorney General of Semarang, and related to the seizure of property owned by convicts on the criminal acts of corruption by the office of the Attorney General of Semarang. The thesis focuses on the effect that arises from the existence of additional criminal executions carried out by the prosecutor for the perpetrators and how the process of seizing property for the perpetrators. The author want to know how the existence of additional sentences of corruption overview Law Number 31/1999 jo Law Number 20 Year 2001 On Corruption Eradication. [19]

The difference of research Ganesha Adi Nugraha with research writer is research Ganesha Adi Nugraha emphasize on the influence that arise with the existence of extra criminal execution conducted by State Attorney Semarang, and seizing property of the convicted person. While the research of the author focuses on the sanction of corruption in terms of Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 On Corruption Eradication and Ta'zir. As for the research equation Ganesh Adi Nugraha with the authors are both investigate the legal sanctions for convicted corruption.

2. The Second Research

Thesis written by Riani Atika Nanda Lubis (2011), the students of the Faculty of Law of the University of Indonesia. Theses title: **Assets Return Results of The Criminal Act of Corruption As One of The Form of The**

[19] Http://lib.unnes.ac.id/18278/1/8111409078.pdf. Accessed on January 24 2017, at 13. 00.

Implementation of Justice Restoratif (Restorative Justice). Now the research method is a bibliographical method is comparative method or a method comparison about the concept of seizure of assets resulting from corruption in various countries. While the type of research used according to his nature is deskripstif research. In this bachelor theses talks about the efforts of asset seizure of criminal acts of corruption that results in line with the approach of justice restoratif and the things which must be prepared by the government and law enforcement agencies to asset return results of the criminal acts of corruption can be run according to the supposed. The purpose of the author himself is promoting awareness among the nations so that more sensitive that in the criminal acts of corruption caused a huge loss and very harmful to the state so that the Indonesian people more critical that punishment was not only shown to judge the weight of the weight of the convicts so that they deterrent effect, but must be noted aspects of the sacrifice and the loss of a crime which he did. Justice restoratif as one of the results of the development of the criminal law must also more often and vocal voiced to balance between the implementation of criminal law with the implementation of human rights.[20]

The difference of research Riani Atika Nanda Lubis with research writer is research Riani Atika Nanda Lubis focuses on seizing assets of corruption with the application of restorative justice (Restorative Justice) and using the comparison of the concept of seizing the assets of corruption in various countries, with the aim that the nation of Indonesia realize That punishment is

[20]Https://www.google.co.id/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=%2Flib.ui.ac.id%2Ffile%3Ffile%3Ddigital%2F20237056-S550-Riani%2520Atika%2520Nanda%2520Lubis.pdf&usg. Accessed on January 24 2017, at 13. 00

not merely to punish the convict severely, and to pay attention to the impact of the criminal act of corruption itself. While the research of the author focuses on the sanction of corruption in terms of Law Number 31 Year 1999 jo Law Number 20 Year 2001 On Corruption Eradication of and Ta'zir. And the research equation Riani Atika Nanda Lubis with the author is equally researching about the legal sanctions for convicted corruption.

3. **The Third Research**

Thesis written by Bornok Mariantha Sidauruk (2011), the students of the Faculty of Law of the University of Semarang. Theses Title: **Prospects For The Implementation of The Criminal Sanction Die For The Criminal Act of Corruption In Indonesia Research**. Now the research method is qualitative methods that according to its kind is nomative juridical research. While this research using some approach, namely: (1) statute approach that related to corruption crimes; (2) concept approach to learn some views of criminal acts of corruption, so that it can be developed a thought about setting the death penalty for the crime of corruption as one of the efforts to reduce corruption crimes; (3) analysis approach used by the author in order to see a fenomormena corruption cases that have been settled by a court with how to view the analysis done by the experts in the law that can be used by the judges in the consideration of the decision; (4) comparison approach used the author in order to see the prospect of the implementation of the death penalty against corruption pidan acts in the future will come. The comparative studies is equipped with the comparison between the laws of corruption with national

legislation that set off crimes as criminal laws, and also a comparison between the laws of the eradication of criminal acts of corruption in Indonesia with other countries; (5) history approach, done with examine the background and the development of material examined to reveal the relevance in order to answer the problem posed. In this bachelor theses discuss about setting the death penalty for the criminal acts of corruption according to the legislation governing the criminal acts of corruption in Indonesia, and the possibility of implementation of the death penalty against corruption crimes in the future. [21]

The difference of research Bornok Mariantha Sidauruk with research writer is research Bornok Mariantha Sidauruk focuses on the implementation or application of capital punishment for perpetrators of corruption in Indonesia through Law number 31 of 1999 jo Law Number 20 Year 2001 On Corruption Eradication of and possible imposition of capital punishment in the future. While the research of the author focuses on legal sanction of corruption in terms of Law Number 31 Year 1999 jo Law Number 20 Year 2001 On Corruption Eradication and Ta'zir. Not only on the legal execution of death. As for the research equation Bornok Mariantha Sidauruk with the authors are both examining the legal sanctions for convicted corruption. It's just that Bornok Mariantha's research focuses only on death penalty.

[21] Http://lib.unnes.ac.id/1467/1/7091.pdf. Accessed on January 24 2017, at 13. 00.

4. The Fourth Research

Thesis written by Ahmad Diaudin Anwar (2010), Faculty student of Syariah and Law, UIN Sunan Kalijaga Yogyakarta. Thesis title: **The Implementation of The Death Penalty For The Criminal Acts of Corruption In The Perspective of Islamic Law.** Now this research methods according to the type of library research. And according to the nature of the research including descriptive research analytically, which aims to expose and describe and analyze the question of corruption and about the implementation of the death penalty for corrupt in the perspective of Islamic law. While its approach using nomative juridical approach, which will be emphasized in terms of Islamic law both textual and contextual learning to examine the research object. In this bachelor theses discuss about the view of Islam against the evil of corruption, and the views of Islamic law about the death penalty for corrupt. The bachelor theses list that grows in Islam, terminology of corruption is not found in the khazanah classical Islamic law. But in terminology of Islamic law there is the term the works that categorized corruption, namely *risywah* and *ghulul*. Islamic law since the beginning has to know the death penalty for perpetrators of criminal penalties as for the perpetrators of the murder plan that must be in-*qishas.* So that Islamic law allows criminal in the form of the death penalty if the interest of the general public wills. By looking at the interest of the general public who threatened with very serious by the

evil of corruption today, then was sentenced to death on corruptors can be justified.[22]

The difference of Ahmad Diaudin Anwar's research with the writer's research is Ahmad Diaudin Anwar's research focuses on the Islamic law's view of corruption crimes and the Islamic legal view of the death penalty for convicted corruption. While the research of the author focuses on the sanction of corruption in terms of Law Number 31 Year 1999 jo Law Number 20 Year 2001 On Corruption Eradication and Ta'zir. Not just the death penalty. As for the research equation Ahmad Diaudin Anwar with the authors are both examining the legal sanctions for convicted corruption.

5. **The Fifth Research**

Thesis written by Febrilia Khusna Dania (2013), bachelor theses, student of Sharia Business Law Departmen, shari'a Faculty, State Islamic University of Maulana Malik Ibrahim Malang. Title bachelor theses **Relation of Bank Secrecy Principles in Constitution Number 21Year 2008 On Islamic Banking with Predicate Crime in Money Laundry**. This research is referred as normative juridical or library research with statute approach and conceptual approach. This research uses descriptive qualitative to analyze the data.

This research discusses about related to bank secrecy principle having relation with predicate crime and the form of bank secrecy principle in Constitution Number 21 Year 2008 On Islamic banking with predicate crime in crime of money laundry. So with the research can be analyzed relation

[22] Http://digilib.uin-suka.ac.id/4401/. Accessed on January 24 2017, at 13. 00.

principle of bank secrecy when dealing with the crime of origin in money laundry. The results of this research found that money laundry is a transnational crime whose jurisdiction area is not only in a country but also a wide range of countries. Predicate crime status can be known obtaining illicit money by opening secrecy principles which is actually absolute transformed into relative. Money laundry has its own law even though the status of predicate crime has not been investigated thoroughly. It is fairly "known" or "reasonably suspected" that thetransaction is suspicious.

6. The Sixth Research

Thesis written by Tazkiah Ashfia (2013), Student of Sharia Business Law Department, Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang. Title bachelor theses **Blackberry Mobile Sale and Sell "Black Market" (Study Among Students of State Islamic University of Maulana Malik Ibrahim Malang)**. This research uses empirical research method or socio legal research, with kind of legal research for real case with descriptive approach. The purpose of the research with qualitative approach is to dig deeper about the information of a major phenomenon that explores research data, research participants, and research locations, which in this study related to the practice of Blackberry mobile phone purchase transaction in black market among students of State Islamic University of Maulana Malik Ibrahim Malang. This research uses the theory of maslahah imam al-Ghazali.

The difference of Tazkiah Ashfia's research with the writer's research is the research of Tazkiah Ashfia focusing on the maslahah imam al-Ghazali's

theory of black-market merchandise transaction, which is a criminal act, which can harm the state finance, the decrease of state revenue from the sector Customs duties due to illegal goods, in which everyone is involved even the buyers of black market goods may be subject to criminal charges. While the research of the author focuses on the aggravation of legal sanction corruption as an effort to preventive action for the general public not to do the crime of corruption that will minimize even eliminate corruption in Indonesia, then the aggravation of legal sanction corruption overview law number 31 year 1999 on corruption eradication and ta'zir. And the equation of research Tazkiah Ashfia with the authors are both doing research related or have element penidanan, the result of the state financial loss.

The Table II
Comparison of Previous Research

No	Researchers	The Title	Formal Object	Material Object
1	Ganesa Adi Nugraha, bachelor theses, students of Law Faculty, University of Semarang, 2013.	The existence of the additional crimes in the Criminal Acts of Corruption (study on the office of the Attorney General of Semarang).	The object of the study related to the influence that arise with the existence of the execution of the additional crimes that carried out by the office of the Attorney General of Semarang for the criminal acts of corruption in prsoses seizure of property for the criminal acts of	• The judicial research sociological • Research approach using descriptive sociological which refers to the facts on the field.

			corruption.	
2	Riani Atika Nyou Lubis, bachelor theses, students of Law Faculty, University of Indonesia, 2011.	Asset return results of the Criminal Acts of Corruption as one of the form of the implementation of Justice Restoratif (Restorative Justice).	Attempts to appropriation of assets resulting from corruption in accordance with restorative justice and the preparation of government and law enforcement apparatus in order to return the assets resulting from corruption in accordance with the existing rule.	• The normative research • This research using descriptive method which is *comparative method*, i.e. comparison of the concept of the seizure of assets as the result of criminal acts of corruption in various countries.
3	Bornomork Mariantha Sidauruk, bachelor theses, students of Law Faculty, University of Semarang, 2011.	Prospects for the implementation of the criminal sanction die for the Criminal Acts of Corruption in Indonesia.	The object of the study related to the implementation of the death penalty against all the perpetrators of corruption in the future will come without the particularities of certain conditions.	• Nomative juridical research • Research approach using qualitative methods with statute approach, conceptual approach, analysis approach, comparison approach and historical approach.
4	Ahmad Diaudin Anwar, bachelor theses, student of Syariah and Law Faculty, UIN Sunan Kalijaga Yogyakarta,	Corruption Crimes in the perspective of Islamic law and Law Number 31 Know 1999 on the Eradication of Corruption Crimes Jo Law Number 2001 about the amendment of	The object of the study related to the crime of corruption in the view of Islam and the implementation of the giving of the law.	• Nomative juridical research • Research approach using analytically descriptive method which aims to expose and analyze the question of corruption and the implementation of

	2010.	Law Number 31/1999.		the death penalty for corrupt overview Islamic Law.
5	Febrilia Khusna Dania, bachelor theses, student of Sharia Business Law Departmen, shari'a Faculty, UIN Malang, 2013.	Relation of Bank Secrecy Principles in Constitution Number 21 Year 2008 On Islamic Banking with Predicate Crime in Money Laundry.	The object of the study related to bank secrecy principle having relation with predicate crime in crime of money laundry.	• Nomative juridical research • The research approach uses the statute approach in Law Number 8/2010 On Money Laundry Crime, Law Number 21/2008 On Islamic Banking, and public information disclosure laws. And conceptual approach derived from perspectives and doctrines about the principle of bank secrecy.
6	Tazkiah Ashfia, bachelor theses, student of Sharia Business Law Department, Shari'a Faculty, UIN Malang 2013.	Blackberry Mobile Sale and Sell "Black Market" (Study Among Students of State Islamic University of Maulana Malik Ibrahim Malang)	The object of the study related to the practice of Blackberry mobile phone purchase transaction in black market among students of State Islamic University of Maulana Malik Ibrahim Malang. And the theory used is the maslahah theory belonging to the Imam Ghazali.	• Empirical Research • This research uses empirical research method or socio legal research, with kind of legal research for real case with descriptive approach.

7	Mohammad Nabiil, bachelor theses, student of Sharia Business Law Departmen, Shari'a Faculty, UIN Malang, 2017.	The Aggravation of Legal Sanction Corruption Overview Law Number 31 Year 1999 On Corruption Eradication And Ta'zir.	The object of the study related to the aggravation of legal sanction corruption as an effort to preventive action for the general public not to do the crime of corruption that will minimize even eliminate corruption in Indonesia.	• Nomative juridical research • The research approach uses the statute approach in Law Number 20/2001 on Corruption Eradication. and conceptual approach to depart from the views and doctrines of the law in the corruption and in the field of Ta'zir.

I. Systematics of Discussion

In systematics discussion, the author describes the main representation of the discussion organized in research report systematically. This research report consists of five chapters and each chapter contains several sub chapter, among others:

Chapter One, the introductory section that discusses the background of the problem, problem formulation, research objectives, and research benefits. The research background is to describe the problems to be studied, as well as provide a basis for thinking about the importance of this research. Then the problem formulation is a series of problems to be studied. Research objectives and research benefits can contribute to science for the community in general as well as for researchers in particular. This research method includes research type, research approach, data type, data collection method, processing method

and data analysis. The conceptual definition will explain the title variables that still sound familiar and have not been widely understood by many people. And some previous research is presented in comparison with the author's research.

Chapter Two, the literature review/ the theoretical foundation which includes the study related to the subject matter and the object of the study, consists of several sub-discussions. The sub-section contains about the theory of punishment, the theory of criminal penalty, the theory of ta'zir, and the criminal act of corruption in the legal system in Indonesia. So from the sub-discussion can be used as a reference to analyze any existing data.

Chapter Three, which is the exposure of research results and discussion of data that has been ripe to be correlated with theories and concepts juridical in this study, in order to be able to answer the question on the formulation of the problems that have been determined. So the discussion will contain about two points namely; First, the background is needed for legal sanctions for corrupt perpetrators. Second, the form of legal sanction for corrupt in Law Number. 20 of 2001 and ta'zir in Islamic Law.

Chapter Four, the concluding section that contains conclusions and suggestions. The conclusions presented by the researchers will contain the points that are the core of the data that has been collected. In summary, the conclusion is the core answer to the problem formulation that the researcher describes, whereas the suggestions contained the various things that were felt to be undertaken in this study, but may be done in subsequent related studies.

Hereinafter are appendices containing some data in addition to information and evidence of data validity that the researcher has actually done the research.

CHAPTER II

THEORITICAL FRAMEWORK

A. The Punishment Theory

1. Understanding

Punishment theory is directly related to the crimes in the meaning of subjective. Because these theories describe about the basics of the rights of the state in the execute and run the criminal to those who violate the prohibitions in the crimes. These Rights included the right to threaten (in legislation); the right to impose criminal; the right to conduct criminal.

In the implementation of the criminal law subjective consequences fighteth the rights and interests of personal law man who initially thus

protected by the criminal law itself. For example criminals were sentenced imprisonment/jail and running, then the rights of independence seized.[23]

The right to run the subjective criminal law is so great that can only be owned by the state. The state is the highest social organization that has an obligation to hold and maintain discipline community. In order to carry out the obligation, then it is reasonable to countries through his instruments were given the right and the authority to execute and run criminal.

About the importance of this criminal needs to be overthrown, there are various opinions. For judges who is wise, when he will attract or specify the decision or when the prosecutor will make demands it will first consider the true about the benefits of what will be achieved from the overturning of criminal type and seriousness for both the accused as well as state and society. In such a situation, pemidaan theory can possibly as the basis of sanctions.

2. The Purpose Of Punishment Theory

Simply, theory of punishment is related to the criminal penal code which constituted the reasons justification in providing the condemnation of a person according to the decision of the court which has a magnitude of the law remains (*incracht van gewijsde*), stated legally and convincingly proven to be a criminal act.

The objective of theory of punishment specifies a criminal not escape from the criminal political purpose. In the meaning of the whole is the protection of the community to achieve prosperity. Therefore to answer and see

[23] Adami Chazawi, *Pelajaran Hukum Pidana: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, Batas Berlakunya Hukum Pidana*, (Jakarta: RajaGrafindo Persada, 2007), p. 157.

the purpose and the function of the pemidanaan, regardless of the theory of the theory about the existing punishment.

Theory of punishment developed following the dynamics of the life of the community as a reaction from arising and development of evil that always colored the public social life from time to time include the absolute theory (retributif), the relative theory (deterrence/ utilitarian), and the integrative theory.[24] Three of the theory have its own purpose base in cast down punishment, namely:

a. The Absolute Theory

Formed the basis of this theory is a judgment. The state reserves the right to pass a sentence to anyone who has attacked the interests of the law (personal, society, country) that should be protected. Therefore, become mandatory that each criminal actions must be followed by the judgment. About the theory of vengeance, Andi Hamzah proposed as follows: [25]

"The Theory of vengeance stated that the criminal is not intended for the practical, such as fixing the criminals. Evil itself that contains the elements to inflicted crime, criminal absolutely no, because done a crime. It is not necessary to think about the benefits of the criminal penal code".

In this theory, criminal penal code without thinking about the existence of the benefits or the consequences of the effect of the implementation of the punishment. However, targeted is a vengeance, stuck on "criminal for criminal". The existence of this theory has two directions, namely:

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[24] Dwidja Priyanto, *Sistem Pelaksanaan Pidana Penjara Di Indonesia*, (Bandung: PT Rafika Aditama, 2009), p. 81.

[25] Andi Hamzah, *Sistem Pidana dan Pemidanaan Indonesia*, (Jakarta: Pradnya Paramita, 1993), p. 26.

1) Addressed to the perpetrators (subjective corner of vengeance);
2) Intended to meet the customer satisfaction from the feelings of resentment among the public (corners of the objective of vengeance).

There are some basis or reasons for reasoning about the existence of the necessity for the carrying out of vengeance, namely:[26]

1) Corners of The Godhead

This view was held by Thomas van Aquinomor, Stahl admits, and Rambonet. According to this view, the law is an order that comes on the rules of God revealed through the State Government as the representative of God in the world. Therefore, the state is obligated to maintain and implement the law with how to reply with according to each outlaws. Justice Godhead that are listed in the earthly law must be respected absolutely, and whoever who transgress, must be sued by a representative of the Lord in the world, the State Government.

2) Ethika Views

This view is derived from Emmanuel is known as the theory of "*de ethische vergeldings theorie*". Based on this view, according to ratio, each crime must be followed by a criminal prosecution. Dropping the criminal is a required by the justice ethis, which is a requirement ethics. The state government has the right to execute and run the criminal in order to meet the demands of ethics. Vengeance through the criminal penal code must be

[26] Dwidja Priyanto. *Op. cit*. p. 77.

done on every pelanggarhukum even though there is no benefit to the society and the corresponding.

3) The View Of The Minds Of The Dialectic

This view is derived from Hegel's. He said that the absolute criminal must exist because as a reaction from every evil. The law and justice is a reality. If a person doing evil or attacks on justice, means he denied the fact of the existence of the law. It is for this reason that must be followed by a criminal form of injustice against the perpetrators to return it to a justice or the enforcing law.

4) Aesthetica View

This view is derived from the Herbart, known with the theory "*de aesthetica theorie*". According to this theory, when evil no reply then will cause their dissatisfaction on the community. To customer satisfaction can be achieved, then from aesthetica corner must be rewarded with the overturning of crimes deserve on the perpetrators. According this means that the criminal must be perceived as the same suffering weight or size with the suffering of/society caused by the evil.

5) The View From The Heymans

Heymans this view is based on the intention perpetrators. He stated that "every intention that do not conflict with morality can and worthy given satisfaction, but the intentions contrary with morality does not need to be given the customer satisfaction". Not Given this satisfaction in the form of the suffering of the just. All things which are contrary to the

morality cannot be achieved and on the basis of this is the Heymans describe the elements of the judgment in the criminal by giving the suffering to the malefactor. But, according to Leo Polak, this Heymans view is not reply on what had happened, but this suffering is preventive measures, so that this theory is not a theory of vengeance completely.

b. The Purpose Theory (Relative)

The theory is relatively also called utilitarian theory, was born as a reaction to the absolute theory. In broad outline the purpose of criminal is not just judgment, but to realize the order in the community. Quoted from the opinion of Muladi and Barda Nawawi Arief about this theory that:[27]

"Criminal not just to take revenge or pengimbalan to those who have committed a crime, but has a purpose is useful. Therefore this theory is often also called the theory of purpose (*utilitarian theory*). So the basis of justification of criminal according to this theory is located on the purpose. Criminal inflicted not "*quia peccatum est*" (because people make evil) but "*nepeccetur*" (so that people do not do evil)".

Crime is a tool to enforce the discipline of the law in the community as well as the prevention of evil. To achieve the goal of the order of the society, then the criminal has three kinds of nature, namely; (1) is to daunt; (2) is improve; (3) is destroyed. In the criminal law, the theory relative is indistinguishable from the two, namely:[28]

1) General Prevention

The theory pemidanaan intended to bullying all people not to do evil with the way the implementation of crime which were exhibited. According

[27] Dwidja Priyanto. *Op. cit*. p. 54.
[28] Adami Chazawi. *Op. cit.* p. 162.

To Von Feuerbach with his theory of "psychologische zwang", stated that the nature of bullying from the criminal was not on the overturning of the criminal violation but on the rules of the threat of the criminal violation is known by the general public. The criminal threats can cause pressure or the influence of the psyche for everyone to be afraid to do evil. This theory is restored on the principle of the legality, because Von that issued the phrase "nullum delictum, nulla poena sine praevia lege poenali", but this theory has some weakness, namely:[29]

(a) Against the perpetrators who once or several times to do evil and sued and exerting, then the feeling afraid of criminal threats has become a little or even disappear.

(b) Initial criminal threats established may be inconsistent with the crime committed, since it is so difficult to first determine the limits of the threatened criminal severity to be in accordance with the criminalized act;

(c) Against the people or the criminals who parochial (fool) or who did not know the subject of criminal threats, then the nature of vex become weak or not at all.

The existence of the weakness of the theory raises the general prevention theory which emphasizes the nature of bullying on the criminal penal code in the concrete by the judge on the perpetrators. With the purpose of giving fear actors, then judges allowed to execute the criminal

[29] Adami Chazawi. *Op. cit.* p. 164.

who weighs more than the weight of the threat of the criminal violation. The meaning that the other players be surprised then became aware that his actions can be meted more serious crimes.

2) Special Prevention

This theory aims to prevent the perpetrators of bad intentions do repetition works or prevent violators carry out the evil deeds that devised. Supporters of this theory is the Van Hamel (1842-1917), who was of the opinion that the general prevention and judgment cannot be made and the reasons for the purpose of criminal penal code, but vengeance shall arise with itself as a result of the criminal and not because of the existence of criminal. Van Hamel makes a picture of special prevention punishment, namely:[30]

"Criminal always done for special prevention, i.e. to bullying people who just can be prevented by vex through the criminal penal code so that it does not do evil intentions;When can no longer intimidated the fear with the criminal penal code, then the criminal penal code must be able to repair themselves (reclasering); when it can no longer be repaired, then the criminal penal code must be destroyed or made powerless; the purpose of the only one of the criminal is to maintain discipline of the law in society".[31]

c. Integrative Theory

Objections to the theory of vengeance and the theory of purpose, gave birth to the theory of the third base on the way the mind that criminal should be based on the purpose of the elements of vengeance and maintain order in

[30] Dwidja Priyanto. *Op. cit.* p. 80.
[31] Andi Hamzah. *Op. cit*. p. 32.

society is applied in combination with focusing on one element without removing the other elements, and on all the elements are there.

Focus on judgment and focus on the discipline of the law contains the sense that both can be vengeance on the perpetrators also to maintain the discipline of the law, so that the public interest can be saved and guaranteed from evil. In addition, criminal useful restore and maintain obedience to the law. A criminal judgment and can be justified when useful for the defense discipline (law) in society.[32]

Therefore, both is vengeance and discipline of the law can be combined with the reason for the purpose of criminal with the theory of these composite includes all aspects that developed in it, that a criminal must satisfy the community so that should be arranged in such a way as a fair criminal law with the idea of point that cannot be ignored either negatively or positively, and not forget the nature of the crime which function to bullying repair and destroy.

In Indonesia, the purpose of punishment never explicitly regulated in the Criminal Code, but in the design of the Criminal Code can be found, namely:[33] (1) prevent doing criminal acts to enforce the law by community values; (2) make corrections against convicts and thus makes it a good and useful and able to live heterogenic; (3) resolve conflicts caused by the criminal act, restore the balance and bring a sense of peace in community; (4) liberate guilt on convicts.

[32] Adami Chazawi. *Op. cit.* p. 167-168.
[33] Andi Hamzah. *Op. cit.* p. 38.

B. The Aggravation Theory

The aggravation theory is part of punishment theory. According to Barda N. Arief, punishment pattern is a guideline making or criminal arrangement for the legislator, That differentiated with punishment guidelines which is a guideline for the judges in undermining criminal. The punishment pattern (including the aggravation theory) is basically a symptom that implied from the criminal threats that there is in the formulation of criminal acts in legislation, which can be known to the will of the legislator regarding the number and types of crimes would be brought down to a maker of criminal acts.[34]

Thus the aggravation pattern is criminal guideline for the legislator in determining the sacred criminal. This requires that must first put forward a aggravation pattern criminal threats in the Criminal Code. Patterns of sacred distinguish between the foundations of the sacred general crimes and the foundations of the sacred special crimes. Basis of a sacred common crimes are the foundations of aggravation crime which applies to all kinds of criminal acts, whether in the codification or criminal acts outside of the Criminal Code. Basis of sacred special crimes formulated and apply on certain crimes only and does not apply to the other crimes

1. Aggravation Basis of General Crimes

The law regulates the three grounds that led to the imposition of general criminal, namely:

[34] Barda N. Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Citra Adtya Bhakti, Bandung, 1996), p. 167-168.

a. Aggravation basis because the positon[35]

Aggravation basis because the positon is determined in Article 52 of the Criminal Code:

"When an official[36] of a criminal act breaking a special obligation of incumbency, or at the time of committing wear power, the opportunity and the means that was given to him because of his position, criminal violation plus a third."

Aggravation basis located on the state of the quality positon of placeman in the 4 things, namely in a criminal act with: [37]

1) Violating a special obligation from his position

   In this case, being violated by employees in the conduct of the criminal not is a special obligation of the kingship, not general obligations the kingship. A special obligation is an obligation that is closely related to the particular job assignment of a position.

2) Using the power of incumbency

   A power of office is attached and arised from the position held by someone.

3) Using the opportunity because of his position

   The employee in performing his job duties on the right and obligation of his position shall have an appropriate time to commit acts in violation of the law, if this opportunity is misused to commit the offense, he shall be

[35] Adami Chazawi, *Pelajaran Hukum Pidana; Penafsiran Hukum Pidana, Dasar Pemidanaan, Pemberatan & Peringanan, Kejahatan Aduan, Perbarengan & Ajaran Kausalitas*, (Jakarta: King Grafindo Persada, 2002), p. 73.

[36] According to the Hoge Raad, understanding of civil servants contains three basic elements, namely: (1) he was appointed by general rule; (2) for the position of public works; and (3) implement some governmental duties/appliance attachments.

[37] Adami Chazawi, *Penafsiran Hukum Pidana.... op. cit.* p. 77.

punished with a third of the maximum penalty determined in the crime he committed earlier.

4) Using the means given because of his position

An officer in running the obligation and tasks given specific tools, then these means by a person is used to perform criminal acts, so it can be hardened criminal penjarayang inflicted with plus one third of the 15 years (Article 338) or until a maximum of 20 years.

b. Aggravation basis because using the national flag

Perform a criminal acts using the national flag means formulated in article 52 (a) of the Criminal Code which reads:

"When at the time of doing evil used the flag National Anthem of the Republic of Indonesia, criminal for the crime plus a third".

Article 52 (a) mentioned explicitly the use of the national flag is the time to do evil, and does not apply to violations, but applies to any crimes, including evil according to the legislation outside of the Criminal Code. The reason for a sacred criminal was placed on the use of this national flag, from the point of objective can deceive the people that cause the impression as though what the creators is something official works, thus can facilitate or make it easier to do evil.

c. Aggravation basis because the repetition (recidive)

There are two meaning about *recidive*, namely one according to the community and in the meaning of the criminal law. According to the community that everyone who after sued and exerting, then a criminal act again, then occur repetition, regardless of other conditions. But, according to

the criminal law, which is the basis of this weight is not enough to just see berulangnya a criminal act, but associated on certain conditions specified laws.

Barda Nawawi Arief share a sacred system based on the existence of recidive crimes into two, namely:[38]

1) General Raecidive

According to this system, each repetition of the type of any efforts and done at the time when it was the reason for the sacred criminal. So not specified types of criminal acts done or delay time pengulangannya. With not defined delay time for raecidive, then in this system no expired recidive.

2) Special Recidive

According to this system not all types of repetition is the reason for the criminal weight. Criminal bearers imposed on only the repetition of the types of specific crimes and that was done in the period. The Criminal Code does not explain the repetition of the criminal acts in general in the "General Rules" Books I, but set specifically for a group of specific crimes both in the form of evil in the book of II and a breach in Book III. In addition to the Criminal Code also requires the repetition of the particular. Thus the Criminal Code adheres to the system of special recidive. About the repetition in the Criminal Code set as follows:[39]

[38] Adami Chazawi, *Penafsiran Hukum Pidana, Op. cit.* p. 80-81.
[39] Soedarto. *Hukum Pidana 1*, (Semarang: Yayasan Soedarto, 1987), p. 66.

(a) List by grouping certain crimes with certain conditions that can occur pengulangannya, like Article 486, 487, 488 the Criminal Code,;

(b) Outside of a group of evil in Article 386, 387 and 388, the Criminal Code also determine some certain special crimes that can occur repetition, for example Article 216 paragraph (3), 489 paragraph (2), 495 paragraph (2), 501 paragraph (2), 512 verse (3).

Now the ratio of the base of a sacred criminal on the repetition is located on the 3 factors namely:

(a) More than one factor times a criminal act;

(b) The factors have been brought against criminal the creators by the state because the first crimes;

(c) The crimes have been run by the corresponding

In the case of repetition of the manufacturer must be sued because a criminal act the first time. The understanding of the implementation of the crime which had been brought there are several possible, namely: (a) conducted entirely; (b) conducted some; (c) implementation of negated; (d) cannot be performed regarding something obstacle cannot be avoided, for example before the decision *in krachtvan gewijsde* or the decision was executed, suspect fled.

In the points (b), prison inmates do not need to undertake some of the criminal sentence imposed judges caused the secretion of the conditional. According to the Article 15, the secretion of the conditional can be given (the implementation of criminal stopped) if have

undergone a third of criminal criminal ever inflicted with certain conditions (general condition or special condition). While on the points (c), prison inmates do not need to undertake all the criminal sentence imposed because of the judges execute criminal by specifying the conditions (Article 14 a) or because they were given the forgiveness (grace) by the head of state. On points (d) is specifically against crime which could not be executed because of something for which could not be avoided, for example on the day down the sentence, convict fled. Points (d) related with points (b) about ever delay recidive expired is calculated not on when he leads a criminal because of the criminal cannot run), but based on the authority of the State in running for the corresponding criminal, and not the five years since undergoing a crime, then the calculations started since the next day after the decision of the judges can run (Article 85 verse 1).

In the Article 84 about the period of the removal of the State's authority in running the criminal there are several categories: (a) about all violations ever was after two years; (b) about the crimes committed by means of the printing press ever after five years; (c) about other crimes (equal to the expiry of the removal of criminal prosecution authority).

2. Aggravation Basis of Special Crimes

Aggravation basis of special crimes formulated and apply on certain crimes only and does not apply to the other crimes. In the sacred special crime, the creators can be sued beyond or above the maximum threat from

the corresponding crimes. The reason for a sacred lies from 2 (two) sense, namely:[40]

(a) The objective aspect is located on various kinds of for, among others: *(1)* on the consequence of, for example as a result of serious injury or death on verse (2 and 3) article 170; on theft with violence (365 verse 3, on the persecution of the usual (351 verse 3), on the winepress (368 verse 2); *(2)* on how to do the works, for example: with writings contain pollution (310 verse 2), by providing material harmful to life; *(3)* on the repetition of an act, for example the habit of (282 verse 3; 299 verse 2); *(4)* on the object of criminal, for example: the deed of the deed authentic, debt letter and Certificate of debt of a country (264 verse 1); *(5)* on the subject of criminal (the creators), for example: The doctor/physician, midwives or baker Drugs (349);

(b) Subjective sense, for example by making the first plan (340, 353 verse 1).

C. Criminal act of corruption in the legal system in Indonesia

1. Understanding

Black's Law Dictionary gives understanding of corruption as:

"A deed done with the intent to provide an advantage that is not in accordance with the official obligations and the rights of the other parties, incorrectly use the office or his character to get an advantage for himself or for others, together with the rights and obligations of the other party."

[40] Adami Chazawi, *Penafsiran Hukum Pidana. Op. cit.*. 89-95.

The understanding of corruption in terms of the rule of law that is the normative, based on Law Number 20/2001 About Eradication of Corruption Crimes Article 2 paragraph (1):

"Everyone who is against the law to enrich themselves or another person or a corporation, which can be harmful to the state finances or economy countries."

Article 3:
"Everyone with a purpose to benefit himself or another person or a corporation, abusing the authority, the opportunity or the means that is it because of the title or position which can be harmful to the state finances or economy Country".

In another sense, corruption can also be seen as the behavior of disobeying principles, meaning in decision making in the field of economics, better done by individuals in the private sector as well as public officials, turn aside from the rules apply the abuse of authority/ power for personal interests and the interests of the general public.

There are 3 (three) aspects that used Indonesia as a law enforcement efforts corruption (*law enforcement*):[41]

1) This aspect of the legislation (the substance of the law);

Indonesia has been doing several times arrangement and enhancements to the legislation related to the problem of corruption and ratified various international conventions relating to the crime of corruption. Regulation among the : (a) UUD 1945 Article 5 paragraph (1) and Article 20 paragraph (1); (b) KUHP; (c) KUHAP; (d) Rules The Military Authorities Number Of Domestic Workers/PM/06/1957; (e) Law Number. 3/1971 On Corruption Eradication amenment to Law Number 31/1999 jo. Law

[41] Dwidja Priyanto. *Op. cit*. p. 80.

Number 20/200; (f) MPR Decree Number XI/ MPR/ 1998 On State Officials that are clean and free of corruption, collusion and nepotism; (g) Law Number 28/1999 On The Conduct Of The State that is free from corruption, collusion and nepotism; (j) Law Number 30/2002 On Corruption Eradication Commission;

While the international convention has been ratified is among others: (a) *Anti Corruption Action Plan for Asia and the Pacific Action Plan* (Tokyo Conference 2001); (b) *MoU on Cooperation for preventing and Combating Corruption 2004* (Singapore, Indonesia, Brunei, Malaysia); (c) *The United Nations Convention Against Corruption (UNCAC)*, which formed on 9 December 2003 in Merida (Mexico); (d) *The United Nations Convention against Officiate Organized Crime (UNTOC).*

2) Aspects of the law enforcement agencies (the structure of the law);

Before the KPK formed, Indonesia has several times formed a special team to eradicate corruption in order that in the process of law enforcement clean from the intervention of any party and speed up the enforcement of the law of corruption crimes in them; (a) Corruption Eradication Team; formed based on the Presidential Decree Number 228/1967 on 2 December 1967 and Law Number 24/1960. The task of this team is to help the government to eradicate corruption with preventive action and repressive;[42] (b) The Commission Four; formed based on the Presidential Decree Number 12/1970 on 31 January 1970. The task of this commission is contacting

[42] Evi Hartanti, *Tindak Pidana Korupsi*, (Jakarta: Grafika rays, 2008), p. 99.

public officials or civil private institutions or military, check the document the government administration and the private sector, requested assistance apparatus of the central government and regional; (c) OPSTIB (Operations Enforcement); formed based on Instruction Number 9/1977. The task is to (initially) cleaning illegal tolls in the streets (then extended from the highway to the forces of the ministry and the government), enforcement invisible money in the port, both the decision of the official and unofficial but not valid according to the law; (d) KPKPN (Commission Audit the wealth of State Officials); formed based on Law 28/1999 and Decree Number 27/1998. The task is checking the wealth of state officials; (e) TGPTPK (Joint Team for Eradication of Corruption Crimes); the basis of its establishment is the article 27 of Law Number 31/1999 and Government Regulation Number 19 Year 2000. The task is to express the cases of corruption that is difficult to handle the office of the Attorney General; and that low is the Corruption Eradication Commission.

3) The community aspect of the culture of the law); aspects of the community in law enforcement also has very important role. People who are aware of the law will create order and justice, will support and monitor the implementation of the judicial process and reported to the institution authorized if know of corruption crimes. The people (represented by non-governmental organizations) concern with the eradication of criminal acts of corruption can also organized socialization anti corruption to the community. The eradication of corruption in Indonesia today there needs to

be a strong pressure from the wider community with the effectiveness of the organization of the people of the anti-corruption.

2. The type of Criminal Acts of Corruption

Systematically as regulated in Law Number 31/1999, types of Corruption (District Electoral Team) differentiated into:[43]

a. Corruption Crimes outside of the Criminal Code,

1) The criminal act of corruption public, the meaning of criminal acts of corruption is not done by people who have the kingship and authority. This is regulated in Article 2 of Law Number 31/1999, which reads:

"Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp1,000,000,000,- (one billion Rupiahs). In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the person concerned can be sentenced to life imprisonment."

2) The abuse of power by the meaning of benefit themselves, others or corporation by abusing the authority or the opportunity or the means that is it because of the title or position that resulted in state losses.

3) Give gifts with considering the power, giving something to expect a reward of the destination that you want to achieve.

[43] Adami Chazawi, *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*, (Malang: Bayumedia Publishing, 2011), p. 19.

4) The experiment, assistance, pemufakatan evil in the criminal acts of corruption as regulated in Article 15 of Law Number 31/1999, which reads:

"Anyone attempting, assisting or consulting for criminal act of corruption is sentenced with the sentences as referred to in Articles 2.3, 4. 5 up to 14."

5) Deliberately prevent, impede, frustrates the handling of criminal acts of corruption that does not deal with judgment.

b. Corruption Crimes in the Criminal Code

1) A bribe (Article 419)
2) A wiping (Article 415)
3) The greed of the crimes (Article 418)
4) Related crimes with pemborongan/partners (Article until 417)
5) Crimes related to the judiciary (Article 420)
6) Beyond the boundaries of the crimes of power (Article 209)
7) A sacred sanction (Article 210)

In the *Tool Kit* Anti Corruption that developed by the United Nations under the auspices of the Center of International Crime Prevention (CICP) from UN Office Drug Control And Crime Prevention (UN-ODCCP), published 10 forms of corruption, namely:[44] (1) a bribe; (2) embezzlement; (3) fraud; (4) extortion ; (5) the misuse of the kingship/authority (for abuse of discretion); (6) conflicts of interest/have their own businesses (internal trading); (7) Select love

[44] Artidjo Alkostar, *Korupsi Politik Di Negara Politiks*, (Yogyakarta: UII Press, 2008), p. 45.

(favoritisme); (8) received the commission; (9) nepotism; (10) contribution or illegal contribution.

Now about the types of criminal acts of corruption according to the Law Number 20/2001, namely:

1) Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy (Article 2 paragraph (1).
2) Anyone with the aim of enriching oneself or another person or a corporation, abuses the authority, opportunity or facilities given to him related to his post or position, which creates losses to the state finance or state economy (Article 3).
3) Anyone offering gifts/payments or promises to a civil servant with a view to abuse the power or authority vested in the post or position, or by the provision of gifts or promises is considered to have vested interests in the post or position (Article 13).
4) Anyone attempting, assisting or consulting for criminal act of corruption is sentenced with the sentences as referred to in Articles 2.3, 4. 5 up to 14 (Article 15).
5) Anyone outside the territory of the Republic of Indonesia who provides assistance, opportUnity, facilities, or information leading to a corrupt act is sentenced as referred to in Articles 2, 3, 5 up to 14 (Article 16).

3. Sanction of Corruption Crimes

In the Law Number 31/1999 jo Law Number 20/2001 also there are provisions regarding criminal principle and additional crimes, among others:

1. Dead Sanction

   Can be sued to death every man that is against the law do enrich themselves or another person or a corporation that can harm the state finances or economy countries as specified in Article 2 paragraph (1) of Law Number 31/1999 jo. Law Number 20/2001 On Corruption Eradication of that is done in certain circumstances.

2. Imprisonment

   a. Sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp1,000,000,000,- (one billion Rupiahs) (Article 2 verse 1).

   b. Sentenced to life imprisonment or minimum sentence of 1 (one) year and maximum sentence of 20 (twenty) years or the minimum fine of Rp 50,000,000.(fifty million Rupiahs) and maximum fine of Rp, 1,000,000,000 one billion Rupiahs) (Article 3).

   c. Sentenced to a minimum of 3 (three) years and to a maximum of 12 (twelve) years or fined to a minimum of Rp.150,000,000 (one hundred fifty million Rupiahs) and to a maximum of Rp 600,000,000,- (six hundred million Rupiahs) (Article 21).

3. Additional sanction

a. The seizure of goods move that manifests itself or that does not exist or goods does not move that used to or obtained from the criminal acts of corruption, including companies owned by convicts where the criminal acts of corruption done, as well as from the goods which replaces the goods.

b. The payment of the money replacement for the amount of which is as much the same with the wealth obtained from the criminal acts of corruption.

c. The closure of all or part of the company to the time most long 1 (one year).

d. Taking all or part of the rights of certain rights or deletion of all or some specific benefits that have been or can be given by the government to convict.

e. If convicts do not pay compensation most long in 1 (a) months after the decision of the court which has acquired the force of law remains so his possessions be seized by prosecutors and auctioned to cover the replacement money.

f. In the case of convicts do not have a property is sufficient to pay compensation and convicts with imprisonment who ever does not meet the maximum threat from the criminal acts of the point in accordance with the provisions of Law Number 31/1999 jo Law Number 20/2001

On corruption eradication of and ever the crimes are defined in the decision of the court.

D. Ta'zir

1. Corruption In The View of Islam

Islam sees corruption into the great sin (*jinayaat al-may) because it can* damage the order of life. In addition, corruption also broke the shari'a, that initially the shari'a trying to realize the common good for mankind or also called *maqashidus shari'a*. In between the common good to adopt is the nurturing of wealth (*hifdzul maal*) from various forms of violations and fraud. Islam gives guidance in order to obtain their wealth is done in ways that immoral behavior and in accordance with the law of Islam. As in Surah al-Baqara verse 188:[45]

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

"And do not part you eat wealth some others among you with the way confound and (not) you bring the matter of wealth to the judges, so that you may be able to take part of the wealth of other people with (way do) sin, when ye know."

Also in Surah an-Nisa verse 29;

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّاللَّهَ كَانَ بِكُمْ رَحِيمًا

"Hay who believe, ye shall not eat one another treasure thy neighbor with wrongfully, except by way of commerce that occurs with the same love of love among you. And do not kill yourselves; for Allah is Most Merciful to you."

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[45] Sabri cover Samin district, *Pidana Islam dalam Politik Hukum Indonesia Islami*, (Jakarta: Kholam, 2008), p. 77.

The law of corruption according to the opinion of the ulama fiqh, unanimously approved and consensus (*Ijma'*) is unlawful because contrary to the principle of *sharia maqashidus*. Corruption is a deceitful deeds and fraud potentially harmful to the state finances and public interest that has been criticized by Allah SWT with properly punished in the hereafter, as in Surah al-Imran verse 161: [46]

وَمَا كَانَ لِنَبِيٍّ أَنْ يَغُلَّ وَمَنْ يَغْلُلْ يَأْتِ بِمَا غَلَّ يَوْمَ الْقِيَامَةِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَا كَسَبَتْ وَهُمْ لا يُظْلَمُونَ

"May not a prophet in the matter of the booty of war. He who dealt treacherously in the matter of the spoils of war, then on the day of judgment he will come bringing what misappropriated, then every soul will be given judgment about what he did with unjustly persecuted."

The verse down when the messenger was accused of taking a cloth of wool obtained from the spoils of war and there is no record of their inventory. In order for the accusations do not generate unrest among the people of Islam and clean the image he came down the verse. Even the Prophet threatens anyone who corrupted the possessions of the country will be coals of fire for him in hell and so also in deed that comes from the results of his corruption will not be acceptable to God the Almighty. The example she serves as an example by the Caliph Umar bin Abdul Aziz (63-102 H) who commanded her daughter to restore the gold chain which granted by the

[46] Setiawan Budi Utomo, *Fiqih Aktual Jawaban Tuntas Masalah Kontemporer*, (Jakarta: Resonance PressInsani, 2003), p. 20.

Supervisor State Treasury (baitul mal) as a sign of service and respect to his father.[47]

The word corruption in lafadh is not found in the glossary of Islam, but the substance and sparing can search and traced in Islam. Al-Naim in his book, as quoted Abu Hapsin, provides general understanding regarding Corruption as an act of breaking the law with the intent to enrich themselves, other people or corporations that can cause harm to the state finance or state economy.[48] Forms of corruption when observed from the side of the Islamic law can be classified with the name of *ar-risywah, al-maksu, grants, and al-ghulul.*

2. Ta'zir as an instrument of sanctions for Corruptors

a. The sense of Ta'zir

In the etymology of Ta'zir is a form of masdar or verbal from the verb عزر يعزر which means "الرد و المنع" which means help and prevent. The verb also has the meaning of help or strengthens.

The terminomorlogis termination of ta'zir is an educational punishment for sins not explained by sanction and kafarat, so that the government (Imam) can impose punishment on a crime or sin that sanction has not been determined in religion, or has been set sanction but not sufficient The requirements of the imposition of such sanctions.[49] Thus ta'zir is different from qishash and hudud, the form of punishment ta'zir is not mentioned explicitly in al-Quran and as-

[47] Sabri Samin. *Op. cit.* p. 83.
[48] Setiawan Budi Utomo. *Op. cit*. p. 16.
[49] Muhammad Nurul Irfan, *Tindak Pidana Korupsi di Indonesia Dalam Perspektif Fiqih Jinayah*, (Jakarta: Badan Litbang dan Diklat Dapertement Agama, 2009), p. 150.

Sunnah. To determine the type and size to be the authority of a local judge or ruler. Of course in deciding the type and size ta'zir must still pay attention nash-nash carefully, good and deep because it involves general benefit.

The prophet never do Ta'zir by holding a person accused to as preventive action that needs to be done until the truth is clear[50] so Umar bin Khathtab also run ta'zir which does not have the *expiation* and does not have the sanction determined by *shari'a* with shaver hair is irregular, isolation, beatings burn shops selling *khamar*, burn the palace Sa'ad bin Abi Waqash in Kufah because of the sins of the disobedients done there is hidden from the public. Umar also has made *dirrah* (the appliance at) for those who qualify beaten, build a prison and beat women who love to mourn for the body to appear her hair.

b. The enactment of the Ta'zir Competency

Syariah does not determine the kinds of law in every jarimahta'zir, but only mentioned a collection of punishment from the[51] mild to the machine. So that the judges were given the freedom to choose the punishment in accordance with the kinds of jarimah ta'zir and the perpetrators. Thus the penalty jarimah Ta'zir does not have a specific limit.

Ta'zir apply over all people. Every intelligent person, when doing evil or interfere with any other party with the reason that is not allowed in the form of deeds/words/signals, well done by both men and women, adult and children, unbelievers or Muslims are punished Ta'zir as education. The imposition of

[50] Related by Abu Dawud, Al-Tirmidzi, Al-Nasa'I dan Al-Baihaqi. Lihat Nurul Irfan, *Hukum Pidana Islam*, (Jakarta: Imprint Bumi Aksara, 2016), p. 93.

[51] Jarimah according to some scholars such as Abdul Qadir Audah, Wahbah Al-Zuhaili, and AbdullahAl-Bustani with the word "Jinayah", i.e. works do or do not do that threatened by law with certain crimes. See *Ibid*. h. 10.

punishment Ta'zir had a purpose as follows:[52] (1) preventive measures; prevent others not to perform jarimah; (2) repressive; make the perpetrators of the deterrent effect so that it does not repeat the; (3) curative; brought improvement attitude for the perpetrators; (4) educational; Give instruction and education so hope can improve the pattern of life perpetrators.

In addition to the rulers or judges, there are other parties are entitled to give ta'zir punishment to the perpetrators of sharia law, noted the parents to educate his son, the husband to educate his wife, or teachers to educate students. But, in addition to the rulers or judges, bound guarantees the salvation of persecuted people. This means that they could not ignore the salvation of the soul in specify the sanction Ta'zir.

According to Imam Syafi'i and Abu Hanifah, provide ta'zir by other than the ruler or judges must be bound with the assurance of salvation because educate and give warning cannot be the same with what is done by the authorities or judges who was commissioned by the shari'a. In the hadith narrated from Abu Hurairah that the Prophet narrated;[53]

"From Abu Hurairah, from the Prophet, Thereupon he said, "priests (government) rulers is a shield (for his people). From behind her enemies fought. If the priests rule with one to God and acting justly, his reward; and if he ordered with other than one, for him the sins of his reign." (HR. Muslims in the book Al-Imarah)

The purpose of the enactment of the ta'zir is that perpetrators willing to stop the evil and the law of God is no longer broken. The implementation of the ta'zir punishment for the rulers or judges with the implementation of the

[52] *Ibid.* H. 94.
[53] *Ibid.* p. 95.

law prescribed penalties. Now in addition to the rulers or judges is limited to the law of ta'zir, not until the law prescribed penalties.

c. Kinds of Ta'zir Sanctions

Based on the right is broken, there are two kinds of jarimah ta'zir, namely:[54] (1) related to the rights of God, even all the works that are related to the interests and the common good general, like; make mischief in the earth, a buildup of materials subject, and smuggling. (2) related to individual rights, i.e. every act mengkibatkan losses to certain people not the many, like; libel, contempt, fraud and beatings. Now the forms of sanctions Ta'zir is:

1) Ta'zir sanctions related to the body

In this sanction there are two types of punishment, namely the death penalty and punishment whips. Following his speech:

(a) The Dead

The death penalty as ta'zir sanction supreme. The four madzhab allow sanctions Ta'zir with the death penalty, conditions with the deed is done repeatedly, or have an impact on the damage in the face of the earth is continuously and there is no other way to stop unless the death penalty. As hadith Imam Ahmad Al-Dailami Al-Hamiri history.[55] He said;

"I said unto the messenger, 'O Messenger, we never located in a region to deliver a task that beratdan we make the drink from the citrus wheat for our strength in the conduct of such a work.' The Messenger asked, 'What Is drink the wine?' I answered, 'right'. The prophet replied, 'If so shun.' I

[54] Taufiq, *Law Dimensi Filosofis Hukum Pidana Islam*, (Jakarta: Al Hikmah, 1999), p. 16-17.
[55] *Ibid*. p. 19.

said, 'The people did not forsake him.' Messenger again said, 'When will not leave, fight them."

Thus the application of the death penalty as the highest ta'zir is permitted, although in practice there are strict requirements, namely; (1) if the offender is a recidivist whose previous penalties have no effect on him; (2) based on careful consideration for the benefit of society and prevent the spread of destruction on earth.

(b) The Whips

The punishment is quite effective in providing a deterrent effect for the perpetrators ta'zir. Warriors or judges specifies the number of lashes in ta'zir, which is adjusted with the form of conditions, jarimah perpetrators, effects for the community. However, ulama different opinion regarding a limit for the number of lashes in ta'zir, namely:[56]

a. According to the Hanafi Sect, may not exceed the limits of the penalty. They beragumen in early Hadithic follows;

"Whoever exceeds the punishment in this case in addition to the prescribed penalties, he including transgressors. (HR. Al-Baihaqi from Nu'am son of Basyir and Al-Dhahak)

b. Abu Hanifah holds that the number of lashes in jarimah ta'zir should not be more than thirty-nine times because the punishment whip for a drunkard khamar four puluk times.

[56] Nurul Irfan. *op. cit.* p. 98.

c. Abu Yusuf holds that the number of lashes in ta'zir should not be more than seventy-nine times because the punishment whips for the accuser of adultery is eighty times.

d. Malikiyah scholars argue that sanctions ta'zir exceed limits during contains maslahat. The reason they are Umar bin Khattab who had scourged You'an the son of Zaidah that forged stamps baitul mal with thousand times lashes.

e. Ali never scourge who drank wine on the day of the month of Ramadan with eighty times and plus twenty times as ta'zir.

About the number of lashes maximum, of course must be seen first case. Furthermore, the following is the opinion of the scholars about the number of lashes at least in ta'zir; (1) according to the majority of the ulama, one time lashes; (2) according to Hanafiyah scholars, a minimum in ta'zir must be able to give the impact of preventive and repressive; (3) according to Ibn Qudamah, a minimum cannot be determined. This is handed over to ijtihad judges according to the crime, actors, time, and implementation. So required a statute from the government as the handgrip all judges. When there is a statute of judges, not blown there will be no difference of opinion. This is in accordance with the following rules; "the Decision of the judge eliminates the difference of opinion."

Regarding the implementation of caning law, the clerics mentioned that the whip used was of medium size. In the hadith it is narrated that on one day the Prophet would scour someone. He was given a small whip,

but he asked for a rather large whip. He was then given another large whip, but he called it too large and stated that the whip used was the middle, between the two whips. On this basis Ibn Taimiyyah argued that to whip using medium-sized whips and the best of cases is the mid.

Now the nature of the punishment from the whip in jarimah ta'zir is to provide lessons and should not cause a defect. When persecuted people are men, his outer garment must be opened and while when persecuted people is the women who were his jacket could not be opened because of her nakedness will open. The punishment whips cannot be directed to the face of the head and the testicles; usually directed to the backbone.[57]

2) *Ta'zir sanction related to the independence of a person*

(a) Imprisonment

In Arabic there are two terms to imprisonment, namely:[58]*Al-hasbu and Al-sijnu* which means al-man'u (peceghan or detention). According to Ibn Qayyim, both mean secures a person not to do the works of the law, both the prisoners were detained in the house in the mosque as well as in other places.

It is said that the Messenger of Allah never secures a person accused in order to wait for the process of the trial, fearing that the accused fled, removes evidence, and repeat to do evil.

Imprisonment can become the main punishment and can also be an additional sentence. The punishment of the prison to become an

[57] Taufiq. *Op. cit.* p. 25.
[58] Nurul Irfan. *Op. cit.* p. 101.

additional sentence, when the punishment subject that is in the form of punishment whips did not bring the impact for the persecuted people. In prison sentence syariahat Islam is divided into two, namely:[59]

- Limited prison sentence, namely prison sentences that time is limited explicitly.

  As for the minimum limit of length of prison sentence there is no agreement among scholars. As for the maximum limit, some scholars, as stated by Imam Al-Zaila'i quoted by Abdul Aziz Amir, argue that the duration of imprisonment can be two months or three months; Even more or less. According to Imam Al-Mawardi, the prison sentence in ta'zir is different because it depends on the perpetrator and the type of his finger. According to some Shafi'iyah, the maximum limit is one year, with the exile to the punishment of exile in the adultery and punishment ta'zir should not exceed the punishment had. And the opinion quoted from Abdullah Al-Zubairi that the term of imprisonment applied for two or three months, even more than that. And according to Imam Ibn Al-Majasyun of the Maliki cleric set the duration of punishment for half, two or four months, depending on the level of property he took. Thus, there is no definite maximum limit and is used as a general guideline for imprisonment as ta'zir. Therefore, it is submitted to the judge by considering the type of finger, actor, place, situation, and conditions.

[59] Taufiq. *Op. cit.* p. 26.

- Imprisonment not limited

The prison sentence is not limited time. In other words, continued until the persecuted people had died or repent. Another term for this punishment is imprisonment for life and has been applied in the positive law in Indonesia. Life sentences in Islamic Criminal Law apply to the criminals who is dangerous as stolen for the second time or next, insulting repeatedly.

The prison sentence is restricted to persecuted people repent aims to educate. This is almost the same with Correctional Institution currently implementing the remission for persecuted people when shows signs of repentance. According to the scholars, someone considered repent when showed signs of improvement in his behavior, while the repentance in the heart cannot be observed.

(b) The punishment separation

The separation of the punishment is the punishment limits, in practice, the punishment is applied also as punishment ta'zir. This isolation punishment inflicted to the perpetrators jarimah who feared to bring bad influence to others so that the perpetrators must be set aside. Handles as that has been done by the Prophet that alienate people who behaves *mukhannats* (waria) to outside of Medina. Different scholars about the separation of the opinion of them:[60]

[60] Nurul Irfan. *Op. cit.* p. 105-106.

- According to Imam Malik bin Anas, isolation means menjahukan (cast) perpetrators from the land of Islam to the land is not Islam.
- According to Umar bin Abdul Aziz and Said the son of Jubayyir, separation that is removed from one city to the other. Imam Syafi'i said that the distance between the origin and the city is the travel distance qashar disposal. The meaning of the exile is to menjahukannya from the family and their dwelling places.
- According to Imam Abu Hanifah and one opinion from the Priest Malik, separation means imprisoned.

But history has proven that the distance of this disposal further than travel distance qashar and still in Muslim countries such as Umar cast a person to set aside from Medina to Sham, Utsman also cast a person to set aside from Medina to Egypt and Ali cast a person to set aside from Medina to Bashrah.

In this case, as punishment cast prison inmates to the Island of Nusa Kambangan already qualify and the meaning of the given the state of Indonesia is a archipelago country that has thousands of small islands so that it is very effective if the punishment is to take advantage of the island.

While the related ever time separation also no agreement among the *Fuqahaâ*. Here are some of their opinions:[61]

[61] Nurul Irfan. *Op. cit.* p. 106.

- According to Shafi'iyah and Hanbilah, the period of exile should not be more than one year in order not to exceed the period of exile in the adulterous finger which is a punishment. If the exile in ta'zir more than a year, is contrary to the hadith of the Prophet SAW:

  "Whoever exceeds the punishment in this case in addition to the prescribed penalties, he including bounds." (HR. Al-Baihaqi from Nu'am son of Basyir and Al-Dhahak).

- According to Imam Abu Hanifah, period of separation can be more than one year for exile in here was a punishment of Ta'zir, not punishment limits. This opinion is also expressed by the High Priest Malik. But they do not argue the time limit and submit to the consideration of the rulers or judges.

3) Ta'zir sanctions related to wealth

Fuqaha different opinion about the allowance of ta'zir penalty by taking the treasure. According to Imam Abu Hanifa and followed by his disciple, Muhammad bin Hasan that punishment ta'zir by way of taking property is not allowed. However, Imam Malik, Imam Shafi'i, Imam Ahmad ibn Hanbal, and Imam Abu Yusuf allow him when viewed as bringing maslahat[62]

The punishment ta'zir by taking the treasure does not mean taking the perpetrator's property for the judge or the state treasury, but only holding it for a while. If the offender can not be expected to repent, the judge may utilize the property for the benefit of the benefit.

[62] Taufiq. *Op. cit.* p. 31.

Ibn Taymiyyah divides this ta'zir's punishment into three parts by paying attention to his influence on property, namely;[63]

(a) Smashed it (*Al-Itlaf*)

The destruction of property applies to mere things. Here are some examples; (1) the destruction of a statue belonging to a Muslim; (2) destruction of musical instruments or games containing immorality; (3) the destruction of khamar equipment and kiosks, as the Caliph Omar and Ali did; (4) the shedding of milk that has been mixed with water as has been done Caliph Umar who spilled merchandise in the form of milk that has been mixed with water, because it is difficult to know the milk content that has been mixed with water.

Destruction is not always a duty, but in certain conditions may be given. On the basis of this idea a group of scholars, such as Imam Malik in the narration of Ibn Al-Qasim allow food or beverages to be sold for the purpose of disedakahkan to the poor. Thus, two interests-namely destruction as punishment ta'zir and benefits for the poor-can be achieved at once.

(d) Changing (*Al-Taghyir*)

Examples of punishment ta'zir in the form of changing the property of the perpetrators, among others, change the statue worshiped by Muslims by cutting its head so that it resembles a tree or vase.

[63] Taufiq. *Op. cit.* p. 32.

(e) Multiply

The punishment of ta'zir in this form is also called by the penalty of punishment, namely the punishment of ta'zir in the possession of the perpetrator's property, such as the decision of Rasulullah SAW doubled the fines for someone who stole the fruits beside the caning. Similarly, the Caliph Umar's decision doubled the fines for the one who embezzed the findings.

Penalties of fines can be stand-alone basic punishment, or it could be a fine penalty coupled with other basic punishments, such as a fine penalty coupled with caning. In addition, the lowest or highest limit of the penalty penalty is not specified.

In addition to fines, punishment relating to property is foreclosure or seizure. However, this punishment is disputed by the Fuqaha. Jumhur Ulama allow it if it meets the following requirements; (1) the property shall be obtained in a lawful manner; (2) the property is used in accordance with its function; (3) the use of property does not interfere with the rights of others.

4) Ta'zir punishment in other form

In addition to the above mentioned ta'zir punishment, there are several other forms of sanctions ta'zir, namely: (a) a harsh warning; (b) presented to the hearing; (c) counsel; (d) reproach; (e) excommunication; (f) dismissal; And (g) publicly announcing errors, as reported in print and electronic media.

CHAPTER III

RESULT AND ANALYZE

A. The Reasons To Aggravate Legal Sanctions Corrupt

The case of corruption in Indonesia is a big problem that causes a huge loss of state and affects the decline in the life quality of the community and disrupt economic stability. Cases of corruption in Indonesia have occurred, and the number is not small. In the statistical data report KPK recapitulation of the criminal acts of corruption. Per-31 October 2016, KPK do the handling of criminal acts of corruption with details: investigation 81 things, investigations 81 things, the prosecution of 70 things, inkracht 58 things, and the execution of 67 things. And the total handling of cases of criminal acts of corruption from 2004 - 2016 is an investigation 833 things, investigations 1372 things, the

prosecution of 459 things, inkracht 387 things, and the execution of 400 cases.[64] It proves the high level of corruption every year in Indonesia.

The hope of eradicating corruption in the law is to rely on the Lord handed consistently the law on the eradication of corruption on the side of the terms related to a preventive measures. The focus on the eradication of corruption must also put the loss of the state as a form of social rights violations and widely economy. The premise to prevent the emergence of state financial losses, with itself has been encouraged in order to cultivate with both the return of state financial loss is quick and the maximum effect by corruption practices. The basic idea is to give the contents and the meaning of the articles in law of corruption eradication crimes. The loss of the country or state economy become main elements of corruption crimes.

Thus the law on the eradication of criminal acts of corruption is not merely as a tool of law enforcement, but also social justice and economy enforcement agencies. This means not merely give the punishment for those found guilty of the punishment that bosses, but also to the state losses caused by his actions can return all in the not too long.

The Law Number. 31/1999 jo Law Number 20/2001 ON the Eradication of Corruption Crimes, especially Article 2 and Article 3 made the elements of the state financial loss as one of the elements of the corruption. The term state finance in this law are listed in Article 2 which reads:

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[64] Http://acch.kpk.go.id/rekapitulasi-penindakan-pidana-korupsi-berdasarkan-tahun. Accessed on January 24 2017, 09.00 WIB.

(Verse 1) "Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp1,000,000,000,- (one billion Rupiahs)".

And article 3 which reads:
"Everyone with a purpose to benefit himself or another person or a corporation, abusing the authority, the opportunity or the means that is it because of the title or position that can harm the state finances or economy countries, sued with imprisonment for life or imprisonment brief 1 (one year and most long 20 (twenty years and a fine of at least Rp.50.000.000,00 (fifty million rupiah and most Rp1.000.000.000,00 (one billion rupiah "

In the above verse can be borne more information that there are 3 the understanding that the activities of criminal acts of corruption, understanding the state finances and economy countries. More information understanding the state finances mentioned in the General explanation of the act of corruption that:

"State finance is all the wealth of the state in the form of anything that separated or not separated including therein all the wealth of the state and all the rights and obligations that arise because:

a) Located in control, pengurusan, and accountability of state institutions officials both the central level and in the regions;
b) Located in the warriors, pengurusan and accountability of State Owned Enterprises/Enterprises Area, Yayasan, body of law and the company that includes the state capital, or the company that includes the third party capital based on the agreement with the country."

The sense of the state finances are also mentioned in the Law Number 17/2003 stipulated in Chapter I General Provisions Article 1 number (1):

"State finance is all rights and obligations of countries that can be evaluated with money and all cases good in the form of money or goods that can be made of state-owned in relation to the implementation of rights and obligation"

On the part of the same general description of Law Number 31/1999 mentioned that:

"Economy state is life economy compiled as a joint effort based on the basis of family or business community independently based on the wisdom of the government at central level and in the regions in accordance with the terms of the regulation that aims to provide the benefits, prosperity and welfare of the whole community life".

The last sense is the criminal act of corruption where conveyed that the criminal acts of corruption is:

a) Everyone who is against the law do enrich themselves or another person or a corporation that can harm the state finances or economy countries.
b) Every person with a purpose to benefit himself or another person or a corporation, abusing the authority, the opportunity or the means that is it because of the title or position which can be harmful to the state finances or economy countries.

Between the state finances and economy state are related. The state finances in a narrow sense only covers the state finances sourced on the state budget as sub system state finance in the narrow meaning. If based on the formulation of the state finances are all aspects that are covered in the state budget proposed by the government to the Parliament every year. In other words, the State Budget is a description of the state finances in the narrow meaning, so that the oversight of the State Budget is also the oversight of the state finances.[65]

[65] W. Riawan Tjandra, *Hukum Keungan Negara*, (Jakarta: PT Grasindo, 2006), p. 25.

Meanwhile, State finance in the broad sense that includes the state finances comes from APBN, APBD, BUMN, BUMD, and in fact all the wealth of the state as a state financial system. While the BUMN and BUMD is a form of corporate business that was established with the main purpose of running the function of the government for the development of economy agent. BUMN is one of the actors in the country economy economy activities. BUMN have an important role in organising the economy countries to realize the welfare of the community. So the state finances and economy countries contain the understanding that all cases the activity or activity that is closely related with the money received or formed based on the prerogative of the state to public interests.

The state finance in economics of government has a very important role in building the nation. The role is divided into two groups, namely the role of finance in the medium and long term. The role of the State's finances in the medium term is related to public expenditures in which public spending is necessary to build a more prosperous and prosperous society, while the State's long-term role is to increase the State's revenue from the tax and non-oil sectors.[66]

The scope of State finances in accordance with the definition of State finances in Article 1 paragraph (1) Article 2 of Law Number 17/2003 includes:

(a) the right of States to levy taxes, to issue and circulate money, and to make loans;

[66] Ahmad Yani, *Hubungan Keuangan Antara Pemerintah Pusat Dan Daerah Di Indonesia*, Cetakan II, (Jakarta: PT King Grafindo Persada, 2004), p. 38

(b) the obligation of States to administer the public service task of the State administration and to pay a third party bill;
(c) State revenues;
(d) State expenditures
(e) Regional revenue;
(f) Regional expenditure;
(g) The property of a self-administered State or Regional Property or other party in the form of money, securities, accounts receivable, goods and other rights which may be valued by money, including property disposed of in State or local enterprises;
(h) Wealth of other parties controlled by the government in the context of the implementation of governmental duties and/or public interest;
(i) Wealth of other parties obtained by using facilities provided by the government.

When we talk about public expenditures, it is certainly related to state expenditure that has been budgeted in the state budget. Public expenditure which is one of the elements in the finances of the State itself. With regard to the state's financial role in the medium term, we can take two examples of the objectives of public spending in the health and education sectors.[67]

(a) Increasing life expectancy

The high quality of human resources in a country, one of which can be measured by the good and bad the level of health of the population, which implies the life expectancy of a person. In retrospect, an increase in the life expectancy of a community within a country may depend on the forms of health services provided by the government to the community. In addition, the health service budget in Indoenseia is regulated in Law Number 36/2009 On Health shows us that there is a central government health budget allocated at least 5% of APBN outside of salary, and local

[67] *Ibid*. p. 40.

government health budget allocated at least 10% of APBD outside of salary.

Health expenditure budget referred to in Law Number 36/2009 aimed at improving the health of the people. The central government expenditure budget allocated through the health function consists of various functions, namely: (1) drug and health supplies sub-function; (2) individual health service subfunctions; (3) subfunctions of public health services; (4) population and family planning subfunctions; (5) R&D sub-function (Research and Development) health; (6) other health subfunctions.

(b) Increasing the community educated and highly skilled[68]

The education sector development policy directed mainly to: (1) to improve the quality of basic education compulsory nine years evenly; (2) increase access, quality and relevance of the universal secondary education; (3) to improve the quality and relevance of higher education competitiveness; (4) increase professionalism and equitable distribution of teachers and educators; (5) strengthen the implementation of the national education system; (6) increase the efficiency and effectiveness of management of education services; and (7) strengthen education governance to support efforts to improve the quality of education services that have an impact on the performance improvement of national education. This is one of the role of the state finances itself to realize the educated and highly skilled community.

[68] *Ibid*. p. 41.

In principle the role of the state finances covers not only the role of the state finances in the medium term but also in the long term. Different from the role of the state finances in the medium term, the role of the state finances in the long term preferring the aspects of acceptance or state revenue that where in this more stressed to the improvement of the state revenue from the tax sector and nomorn of oil and gas. [69]

a) Improvement of the state revenue from the tax sector

Tax is one of the most essential components in the income of the country where until this time taxs still become the largest contributor to the state coffers. The existence of taxs as the largest contributor to the state coffers is the efforts of the government to improve the independence in the financing of the national development. Increased revenue from the tax sector is one of the cases that want to be achieved by the government because basically the needs of the nation can be adequately fulfilled from the tax paid by the people but unfortunately until this time there are still many persons who are not responsible for running its obligation to the state to pay taxs.

b) Improvement of the state revenue from the oil and gas sector nomorn

The role of State finances in the long term besides increasing State revenues from the tax sector is also needed in other sectors such as non oil and gas. This can have a positive impact on the State's revenue from the tax sector to be offset by state revenues from the non-oil sector where the

[69] *Ibid*. h. 44.

revenues in this sector are more potential in the long term than the state revenue in the oil and gas sector. Increased state revenues from non-oil and gas sector are expected to grow rapidly later, it is also accompanied by efforts that have been done by the government such as administrative control and collection of receipts received by departments or institutions of non departmental state in connection with services provided to the community, and To do the utility in the operation of state owned enterprises (BUMN).

The above explanation can be understood that this Corruption Law intends to anticipate the financial irregularities of the state or the economics of the country that felt more sophisticated and complicated. Therefore, the criminal act of corruption regulated is formulated to the extent that it covers the actions of enriching themselves or others or a corporation unlawfully.

Based on the record of the Study and Advocacy for judicial Indepedensi (LeIP) on the year 2013-3016, although only two article, but the terms most often used by law enforcement agencies (Police, Attorney General and the Corruption Eradication Commission) to catch the perpetrators of corruption. [70]

The spirit is contained in the second article this may be intended to provide a deterrent effect against the perpetrators and forced the money corruption and has been enjoyed by corruptors are returned to the state. The state money it must be used for the welfare of the people and not for the welfare of the corruptors. As in Articles 17 and 18 that, in addition to the main

[70] Http://www.antikorupsi.org/sites/antikorupsi.org/files/doc/Kajian/policypaperkeuangannegara.pdf. Accessed on 01 May 2017, at 10. 00

sanctions on Article 2 and 3, players can also incur additional crimes in the form of the payment of the money amount of replacement as much the same with the wealth obtained from the criminal acts of corruption.

But efforts to catch corruptors using Article 2 and Article 3 of Corruption Law is not an easy thing. In practice still many law enforcement agencies that meet obstacles or problems in the implementation of Article 2 and Article 3 of the act of corruption especially to prove the elements of the state financial losses in the formulation of corruption crimes.

In Indonesia corruption in the form of financial losses many countries have occurred. Review Division investigations and publications ICW, in 2014, countries have lost as much as 5, 29 trillion, then up with very drastically in 2015 as much as 31, 077 trillion, and on 2016 as much as 32, 560 trillion.[71]

The sense of loss to the state according to Article 1 paragraph 22 Law Number. 1 of 2004 On State Treasury is the lack of money, bonds and the real goods and certain amount as a result of action against the law whether intentionally or neglect.

While in terms of corruption what is meant by "can harm the state finances or economy country" said in the explanation of article is that the word "can" before the phrase "harm finance or state economy" indicates that the crime of corruption is a formal requirement, namely the existence of corruption crimes enough with the fulfillment of the elements of the works which has been formulated not with the emergence of result.

[71] Http://nasional.harianterbit.com/nasional/2016/02/24/57464/44/25/ICW-Tahun-2015-Kerugian-NegaraAkibat-Korupsi-Rp31077-Triliun. Accessed Accessed on 01 May 2017, at 14. 00.

Prof. Romli Atmasasmita argued that the panel of judges should interpret the elements of the "can harm the state finances" in the context of a formal requirement. Therefore the loss of a real state is not required for supported by the evidence that lead a potential state losses.[72] With uses the act on state treasury, means the panel of judges has eliminated the meaning of the word "can" in the elements of the "can harm the state finances". The problem is that the Act on State Treasury adheres to the concept of the loss of the state in the sense of a judicial review, while Law 31/1999 adhered to the concept of the loss of the state in the sense of a formal requirement.

From the opinion, the authors tend to agree with the experts who stated that the elements of the "harm state finance" was interpreted in the context of a formal requirement according to the Law On 31/1999, and not a judicial review as expressed by the Act on State Treasury. This is because the existence of corruption crimes enough with the fulfillment of the elements of the works which has been formulated not with the emergence of result. All preparation actions that can harm the state finances later was included in the criminal acts of corruption. Even though there are no real state financial losses happen, but have been there is the potential for loss of countries that will arise. So when the act of corruption is already "potential" loss to the state finances, then it was considered to cause financial loss to the state.

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[72] Arifin P. Soeria Atmadja, *Public Finance in the legal perspective: theory, practice and criticism*, (Jakarta: PT King Grafndo Persada, 2010), h. 49.

Then the state financial loss can be formulated to the formulation as follows: [73]

1) Lost or diminished the rights and obligations of countries that can be evaluated with money as a result of deliberate against the law in the form:
   a) The rights of the state to collect taxs, produce and distribute the money and make loans;
   b) The obligation of the state to carry out the task of public service the state government and pay tax bill three;
   c) The state revenue and expenditure state;
   d) The acceptance of local and regional spending;
   e) The wealth of the state/ wealth areas managed by itself or by other parties in the form of money, bonds, receivables, goods, and other rights that can be evaluated with money, including the wealth that separated in state companies/ regional company;
2) Lost or diminished something good in the form of money or goods that can be made of state owned in relation to the implementation of the rights and obligations as a result of deliberate against the law in the form:
   a) The wealth of other parties that are controlled by the government in order to hold the governmental duties and/or common interests;
   b) The wealth of other parties that obtained using the facility given by the government.

[73] *Ibid*. h. 55

Seen from some of the definition of the loss of the state according to the existing act, loss of state not only regarding the reduction of money or state assets but also related to the appearance of the obligation of the state that should not be found. In practice, the determination of the loss of the state more stressed to real losses (*tangible)* and not deal with the loss of his nature as a potential loss in the future.

About elements of "*harm state finance*" law enforcement agencies are working together with related institutions namely BPK or BPKP that help the investigators count state losses. The authority of the BPK or BPKP in audit is in the *zone of accounting*, while to search for the existence of action against the law or not, because it is the authority of the investigators and prosecutors in terms of the elements of the*state financial loss*.

After the invalidity of the above it really is very needed a sacred criminal in elements of the "state financial loss and economy country" arising from the criminal acts of corruption. State financial Yangmana also includes regional financing or a body/body of law with the use of capital or are concessions from the state or the public with the funds obtained from the community for social interests, humanity, and other. So that it will have an impact on the program in the social welfare of the community and the growth of economy.

B. The Aggravation of Legal Sanction Corrupt Overview Law Number 31 on 1999 And Ta'zir

1. The Aggravation of Legal Sanction Corrupt Overview Law Number 31 Year 1999

The concept of punishment has three theories on which punishment is based, the absolute theory, the sanction is the absolute consequence that must exist as a retaliation to the person committing the crime, whereas according to relative theory, says that sanctions are emphasized on the purpose, so that the order of society is preserved , And the gabugan theory which focuses on retaliation and emphasizes the rule of law, implying that both can be retaliatory to the perpetrator also to maintain the rule of law, so that the public interest can be saved and guaranteed from crime.[74]

In Law Number. 31/1999 jo Law Number 20/2001 mentioned in the explanation that the purpose of granting sanctions to prevent and combat corruption. Which criminal sanction is the best tool or tool available, which we have to face the crime and to face the threats of the danger. In addition to the use of criminal sanctions as a means to combat criminal acts and maintain public order, the purpose of punishment is also not less important to find justification grounds of criminal use so that criminal becomes more functional.

Therefore, the policy of determining the types of sanctions in criminal law can not be separated from the problem of goal setting to be achieved in the crime. In other words, the formulation of the purpose of punishment is directed

[74] Adami Chazawi, *Stelsel Pidana*..... *Op. cit.* p. 167-168.

to be able to differentiate as well as measure the extent to which types of sanctions, both in the form of "criminal" and "action" that have been applied at the stage of legislative policy that can achieve the goal effectively.

The implementation of criminal sanctions in corruption has several aspects or interests that must be paid attention, firstly take into account the aspect of the perpetrator, secondly consider the aspect of the victim, and third is the aspect of society, that the public interest is not fulfilled due to corruption crime.

In the case of corruption, Indonesia has conducted criminal law enforcement efforts with 3 (three) aspects, namely:

1. Legal aspects (legal substance);[75]

   Indonesia has made several drafting and refinement of legislation related to corruption issues, and ratified various international conventions related to corruption. These laws include: (a) UUD 1945 Article 5 paragraph (1) and Article 20 paragraph (1); (b) the Criminal Code; (c) of the Criminal Procedure Code; (d) Regulation of Military Rulers Number Prt/PM/06/1957; (e) Law Number 3/1971 On Corruption Eradication Amendment to Law Number 31/1999 jo. Law Number 20/2001 On Corruption Eradication; (f) Stipulation of MPR Number XI/MPR/1998 On the Implementation of a Clean and Corrupt-Free Country State, Collusion and Nepotism; (g) Law Number 28/1999 On the Implementation of a State Free of Corruption,

[75] Dwidja Priyanto. *Op. cit.* p. 80.

Collusion and Nepotism; (h) Law Number 30/2002 On the Corruption Eradication Commission;

While the international conventions that have been ratified are among others: (a) Anti Corruption Action Plan for Asia and the Pacific Action Plan (Tokyo Conference 2001); (b) MoU on Cooperation for Preventing and Combating Corruption 2004 (Singapore, Indonesia, Brunei, Malaysia); (c) The United Nations Convention against Corruption (UNCAC), formed on December 9, 2003 in Merida (Mexico); (d) The United Nations Convention against Transnational Organized Crime (UNTOC).

2. Law enforcement aspects (legal structure);[76]

Before the KPK was established, Indonesia has formed several special teams to eradicate corruption in order to ensure that its law enforcement process is clean from any party intervention and accelerate law enforcement of corruption, among others; (a) the Corruption Eradication Team; Formed based on Presidential Decree Number 228 Year 1967 dated December 2, 1967 and Law Number 24 Year 1960. The task of this team is to help the government to combat corruption by preventive and repressive measures; (b) Commission Four; Formed based on Presidential Decree Number 12 Year 1970 dated January 31, 1970. The task of this commission is to contact civilian or military private officials or agencies, to examine government and private administration documents, to request assistance from central and local government apparatuses; (c) OPSTIB (Operation of Control); Formed

[76] Dwidja Priyanto. *Op. cit.* p. 81.

according to Presidential Instruction Number. Law Number 9/1977. Its task is to (at first) clear up illegal levies on the streets (later expanded from highways to state and government departments), ordering stealth money at ports, whether unofficial or official but illegitimate; (d) KPKPN (State Official Wealth Check Commission); Formed under the Law of Nomormor 28 Year 1999 and Presidential Decree Number 27 Year 1998. Its duty is to check the wealth of state officials; (e) TGPTPK (Joint Team for Combating Corruption); The basis of its formation is article 27 of Law Number 31 Year 1999 and Government Regulation Number 19 Year 2000. His job is to reveal cases of corruption difficult to be handled by the AGO; And the last is the Corruption Eradication Commission.

3. Society aspect (legal culture);[77]

The aspect of society in law enforcement also plays a very important role. The law conscious society will create order and justice, support and supervise the implementation of the judicial process, and report to the competent authorities if they know of the criminal act of corruption. The community (represented by non governmental organizations) concerned about eradicating corruption can also provide anti corruption socialization to the community. The eradication of corruption in Indonesia now requires strong pressure from the public by effectively making anti corruption people's organizations.

[77] Dwidja Priyanto. *Op. cit.* h. 83.

The criminal act of corruption can no longer be classified as ordinary crime. In its eradication efforts it can no longer be done "normally", but it is demanded by extra ordinary enforcement. The existence of legislation that regulates corruption does not make the actors feel deterrent. Like disease, corruption in Indonesia has evolved in 3 (three) stages: elitist, endemic, and systematic: in the elitist stage, corruption is still a typical social pathology within the elite/ officials. At the endemic stage, corruption plagues and reaches the broader society. Then at a critical stage, when corruption becomes systemic, every individual in the system contracts a similar disease. Perhaps corruption in Indonesia has reached a systematic stage, it can be seen from various corruption cases broadcast by the media[78]

If it has to be compared among the three stages or the way that Indonesia has done as an effort to enforce the criminal law of corruption, the policy made by the legislator (formulative policy) is a strategic step. The strategic location is because the criminal and criminal system policy lines formulated by the legislative apparatus are the basis of legality for the criminal enforcement apparatus (judicial apparatus) and the criminal implementing officers (executive/ administrative apparatus). This also means that if this policy stage (formulative) has weaknesses in the formulation of its punishment system, then it will affect the next steps (application stage and execution phase). In other words, the weakness of criminal law enforcement "in abstacto" will have an

[78] Ermansjah Djaja, *op. cit* p. 25-26.

impact on the weakness of law enforcement "in concreto".[79] It can be seen how urgent is the legislative policy (formulative policy) on criminal law in the whole of criminal law enforcement.

In the imposition of sanctions, Corruption Law contains principal penalty up to additional criminal, namely:

1. **Dead**

The sanctions in the highest Corruption Law are capital punishment. But in reality, it has been eighteen years since the release of Law Number 31 Year 1999 until now there has not been a corruptor who was sentenced to death. Unlike the case with the perpetrators of criminal narcotics that have been many (tens) are sentenced to death.

According to the author's opinion, the main cause of the absence of corrupt executed is due to juridical weakness in the formulation of capital punishment for corruptors. Therefore, the reformulation of the death penalty for corruptors should be done so that the threat of capital punishment is operationalized. In the "General Elucidation" of Law Number 31/1999 stated that the threat of capital punishment was held in order to achieve more effective goals to prevent and combat corruption.

Reformulation of capital punishment for corruptors is not necessarily applied when the state is not in a disaster or economic crisis. As mentioned in Article 2;

"Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is

[79] Dwidja Priyanto. *Op. cit*. p. 81.

sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp1,000,000,000,- (one billion Rupiahs).
In the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the person concerned can be sentenced to life imprisonment".

What is meant by "certain circumstances" in this provision is the circumstances which can be used as a reason for criminal liability for the perpetrators of corruption, ie if the crime is committed against funds intended for the prevention of hazard, national natural disaster, the prevention of widespread social unrest , The prevention of economic and monetary crises, and the repetition of corruption. The application of the death penalty may be enacted whenever a country is in a state of emergency or an economic crisis. However, such conditions can not be sought. So, its only certain.

In China, the application of capital punishment to criminal cases of corruption has been widely practiced. Among the cases in Chinese court sentenced to death in 2012 with 2 years probation to Beijing Taxation Bureau Chief Wang Jiping, who was charged with taking more than 4 million yuan (Rp 6.16 billion) in bribes and embezzling state money 10 Million Yuan (Rp 15.42 billion) since 2002-2009. In addition to China, among other countries that have applied the death penalty are Singapore, North Korea, Vietnam, and Taiwan.[80]

[80] Https://saripedia.wordpress.com/tag/daftar-koruptor-yang-dihukum-mati/. Accessed on 02 May 2017, at 09. 00

The death penalty is a longstanding issue of pro-contra, both in national and international forums. The choice of capital punishment as one of the means of criminal policy (crime prevention policy), especially in tackling corruption in Indonesia through Corruption Law, is a natural thing, the reasons that can be stated include:[81]

1) Viewed from the perspective of the criminal law policy (*penal policy*)
   a) Used and choosed a type of criminal sanction (including criminal dead) in criminal law policy, basically is part of the criminal policy (*criminal policy*) and social policy (*social policy*) is the policy to achieve the welfare and protection of the people.
   b) Considering the condition and development of different crimes and can be changed for each community. Then the policy of the determination of the type of crime and length can only change.
2) Used from comparison and consistency legislative policy (positive law) in Indonesia, and viewed from the perspective of real crimes and as a result of the danger of corruption, also quite unfounded.
3) Many of the crimes that lighter than corruption threatened criminal dead (such as theft with a sacred, extortion with a sacred and bring guns), especially corruption with the quality/ weight is seen as more and more serious negative consequences that very wide in public life. Moreover fenomormena corruption in Indonesia has been rooted and groups.

[81] Http://ejournal.undip.ac.id/index.php/mmh/article/viewFile/5857/9892. Accessed on 02 May 2017, at 10. 00

4) The death penalty in the Corruption Law indicated the severity of the government and parliament at the time of the creation of the laws of the time. But in fact not there corruptors who put to death until today.

The existence of certain conditions in the Article 2 "particular" which is conditional/ situational answer to be inflicted criminal die hard or rare, especially the terms "Countries in times of danger", the "economy and monetary crisis". The circumstances may be new happened in the span of time around 30-60 years such as the emergence of the earthquake and tsunami krismon.

Certain conditions that may occur is the judicial reasons in the form of "repetition of criminal (recidive)". But in the act of corruption, both Law Number 31/1999 or Law Number 20/2001 does not contain the rules and understanding/ limitations recidive, whereas repetition is a juridical technical matter.

It is necessary if the death penalty policy will still be used to deal with corruption, it is necessary to amend or reformulate the provision of capital punishment in the legislation. Reformulation to die for the crime of corruption related to: [82]

1) The position/ status/ existence of capital punishment in the current criminal law system;

The death penalty in positive law has been one of the principal penalties. However, in the formulation policy so far, capital punishment has

[82] Http://ejournal.undip.ac.id/index.php/mmh/article/viewFile/5857/9892. Accessed on 02 May 2017, at 10. 00.

never been formulated solely (which contains imperative/ absolute character), but it is always formulated alternatively with other types of criminal and only threatened for certain offenses. Thus, although capital punishment is a principal punishment, it is essentially a special and always threatened alternative criminal. With the formulation of such alternatives, capital punishment is seen as the last alternative or last resort in protecting the community.

2) The terms of the imposition of the death penalty;

The death penalty is threatened as a criminal penalty for certain corruption deliberations which are considered highly reprehensible and very harmful and damaging to the welfare of the public (nation). The criterion is very disgraceful and very disadvantage can be based on: the quality of the weight offense (maximum penalty threatened); The manner and condition of the act is committed or there is a factor of the criminal weight; The seriousness of the consequences, the value of the losses incurred; And objects or targets of offenses such as development funds or public interest funds; Criterion of status of subject/perpetrator such as officer/ employee,

3) The types of criminal alternative dead;

The types of this type must also explained, whether in the form of shoot dead, injecting death or exile to criminal for life without the possibility of obtaining conditional release.

2. Imprisonment

a. Sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp1,000,000,000,- (one billion Rupiahs) (Article 2 verse 1).

b. Sentenced to life imprisonment or minimum sentence of 1 (one) year and maximum sentence of 20 (twenty) years or the minimum fine of Rp 50,000,000 (fifty million Rupiahs) and maximum fine of Rp, 1,000,000,000 one billion Rupiahs) (Article 3).

c. Sentenced to a minimum of 3 (three) years and to a maximum of 12 (twelve) years or fined to a minimum of Rp.150,000,000 (one hundred fifty million Rupiahs) and to a maximum of Rp 600,000,000,- (six hundred million Rupiahs) (Article 21).

d. The imprisonment is a minimum of 3 (three) years and most long 12 (twelve years and/or a fine of at least Rp 150.000.000,00 (one hundred fifty million rupiah and most Rp 600.000.000,00 (six hundred million Rupiah for each person referred to in Article 28, Article 29, Article 35, Article 36.

The punishment imposed on corruptors has been far from the sense of justice.Ia exemplifies a 3-year prison term for the perpetrators who have scooped state money up to Rp 30 billion. This is inversely proportional to other criminals who can be more severe penalties. Many court decisions in the imposition of criminal sanctions are still far from the sense of justice. Judging from the magnitude of the sentence handed down by the court, generally the

sentence imposed on the defendant under 4 years imprisonment is 76.8% (546 Defendants), of which 39% (231) defendants are sentenced to 1 year imprisonment. Meanwhile, for cases imposed with imprisonment of 4 years or more, only 23.3% (138 defendants), of which 138 of the defendants were 91 of whom were sentenced to four years. If seen in general, the average value of sentences handed down by courts is about 2 years and 3 months in jail. While the average value of the claim of the Public Prosecutor, which is 3 years 2 months.[83]

3. Additional crimes

a. The seizure of goods move that manifests itself or that does not exist or goods does not move that used to or obtained from the criminal acts of corruption, including companies owned by convicts where the criminal acts of corruption done, as well as from the goods which replaces the goods.
b. The payment of the money replacement for the amount of which is as much the same with the wealth obtained from the criminal acts of corruption.
c. The closure of all or part of the company to the time most long 1 (one year).
d. Taking all or part of the rights of certain rights or deletion of all or some specific benefits that have been or can be given by the government to convict.
e. If convicts do not pay compensation most long in 1 (a) months after the decision of the court which has acquired the force of law remains so his

[83] Http://ejournal.undip.ac.id/index.php/mmh/article/viewFile/5857/9892. Accessed on 02 May 2017, at 10. 00

possessions be seized by prosecutors and auctioned to cover the replacement money.

f. In the case of convicts do not have a property is sufficient to pay compensation and convicts with imprisonment who ever does not meet the maximum threat from the criminal acts of the point in accordance with the provisions of Law Number 31/1999 jo Law Number 20/2001 On Corruption Eradication and ever the crimes are defined in the decision of the court.

The three forms of sanctions contained in the Corruption Law have not been able to create a deterrent effect or make other societies not to fall into it. Based on the idea that the criminal is essentially a means to achieve the objectives, in the form of prevention, coaching, resolving conflicts and freeing the guilty of the convict and preventing recidivis by not telling the criminal as an effort to degrade human dignity but to repair or rehabilitation.

Nevertheless, its punishment (penalty) where the punishment is given is not severe and does not match the actions of corrupt perpetrators that harm the State's finances and the economics of the State. However, in a criminal imposition, a judge has an action and discretion in deciding the case of course by considering and considering the parts relating to the case.

This study aims to provide input in the sanction of criminal sanctions of corruption, one of them to the judges, because even if the formulation of the law is a strategic stage, in which there are criminal code and punishment policy lines formulated by the legislative apparatus and is the basis of legality for the

apparatus Criminal enforcers (judicial apparatus) and criminal implementers (executive/ administrative apparatus) In addition to the formulation of law, which guarantees the good of the implementation of criminal procedure law is if its implementation is handled by good law enforcement officers.

The law enforcement is also a milestone in law enforcement. In this case the judge must be able to provide an appropriate verdict so as not to injure the value of justice itself. So a simple solution to overcome it requires the replacement of legal apparatus that does not take sides with certain elements.

Criminal actually has three kinds of properties, namely; (1) is frightening; (2) improving; (3) destructive. Death penalty can also be a special preventive tool (preventie special), aimed at preventing bad intentions of perpetrators to repeat their actions.[84]

Penalties against criminal counts can also be made by adding a special maximum amount. In this case the deduction is done because of the special element (which can be the behavior or effect) of strafbaar a criminal act. The most interesting example of this is in the persecution, which, if detailed, will be described as follows:[85]

1) maltreatment, threatened with 2 (two) years imprisonment;
2) ill-treatment resulting in serious injury, threatened with imprisonment of 5 (five) years;
3) maltreatment resulting in death, threatened with imprisonment of 7 (seven) years;

[84] Adami Chazawi. *Criminal Stelsel. Op. cit.* p. 162.
[85] Dwidja Priyanto. *Op. cit*. p. 21.

4) maltreatment of the plan, threatened with imprisonment of 4 (four) years;
5) maltreatment with a plan that resulted in severe injury, threatened with imprisonment of 7 (seven) years;
6) maltreatment with plans resulting in death, threatened with imprisonment of 9 (nine) years;
7) seriously injures, is punishable by imprisonment of 8 (eight) years;
8) serious injury resulting in death, threatened with imprisonment of 10 (ten) years;
9) severe premeditated torture, subject to imprisonment of 12 (twelve) years;
10) severe maltreatment resulting in death, threatened with imprisonment of 15 (fifteen) years.

From the illustration above, it is seen a pattern that the weighting due to an additional element, which may be the behavior (planning) or events arising from certain behavior or consequences (serious injury or death), by adding a criminal punishment to 2 (two) to 3 (three) years more severe when compared with the formulation of the offense that has more general properties. It is the same with corruption and other special crimes. This can be interpreted that in the view of the legislator, even though still in the level of trial of corruption is seen as dangerous with the offense is completed.

2. The Aggravation of Legal Sanction Corrupt Overview Ta'zir

In the treasury of Islamic Law, corrupt behavior has not received sufficient portion of the discussion, when the fuqaha 'talked about the evil of eating human property incorrectly as prohibited in al-Qur'ân, but When

referring to the original word of corruption, it can mean damaging (in the form of cheating) or bribing. In the broader context of Islamic teachings, corruption is an act contrary to the principles of justice (al-'adalah), accountability (al-amanah), and responsibility. Corruption with all the negative impacts that cause various distortions to the life of the state and society can be categorized including the deeds of the facade, damage on earth, which is also deeply condemned by Allah SWT.

Corruption in Indonesia in the perspective of Islamic law can be classified into categories of *khiyānah* or *ghulūl* (betrayal), *al-ghasy* (deception), and *risywah* (bribe) *syariqah* (theft). In this case the author tends to use the term corruption with ghulul, because if you see the definition comes from the word غل- يغل which means غان فى المغنم وغيره which means betrayed in the distribution of spoils of war or in other treasures. And corruption is a betrayal of the State's finances. [86]

Before explaining the instrument punishment ta'zir author slightly pointed out the legal basis of the enactment of ta'zir, among others; [87]

أَنَّ النَّبِيَّ صلى الله وسلم حَبَسَ فِي التُّهمةِ

"That the Prophet s.a.w ever arrested a person for allegedly committing a crime." (H.R Abu David, Turmudzi, Nasa'i, and Imam Baihaqi)

لا تجلدوا فوق عشرة أسواط, إلا في حد من حدود الله تعالى

"It shall not be bound in ten whips except in performing the punishment of hudud which Allah Almighty has decreed." (Muttafaq Alaih)

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[86] Setiawan Budi Utomo. *Op. cit*. p. 16.
[87] Ahmad Wardi Muslich, *Hukum Pidana Islam*, (Jakarta: Grafika rays, 2005), p. 253.

أقيلوا ذوي الهيئات عثراتهم إلا الحدود

"Hurry and the punishment for those who have not committed a crime on their works, except in jarimah and hudud." (H.R Ahmad, Abu David, Nasa'i, and Imam Baihaqi).

In general, the argument above implies the existence of ta'zir in Islamic Sharia, the first hadith explains about the actions of the Prophet who detained a person who allegedly committed a crime with the aim of facilitating the investigation. The second hadith about the limit of punishment ta'zir that can not be more than ten times the whip, to distinguish hudud jarimah. While the third hadith governs the technical implementation of punishment ta'zir which may differ from one actor to another, depending on their status and other conditions that accompany it.

With the arguments above then it is obvious that the instrument ta'zir can be done in the case of solving the problems of corruption, then ta'zir can be made the law a sacred except that there is within the act of corruption or Criminal Code, or it can be said as an alternative to the law.

Many articles in the law of criminal acts of corruption and Criminal Code should be able to reduce the level of corrupt practices, which means that the law succeeds in preventing others from doing the same or corruption, in fact, corruption Up from year to year, as evidenced by the statistical data released by the KPK statistical agency as of 31 October.

The above facts indicate the current law, according to the author has not fully able to overcome the problem of corruption, for that writer views the need

for sanctioning law to overcome the problem of corruption, by using sanctions ta'zir as a sanction penalty. To obtain the objective of the law itself, ie to provide deterrent sanctions for the perpetrators, and provide prevention for those who have not done so. Ta'zir instrument used for the outline can be grouped into four sections, namely as follows:

1) Ta'zir punishment is related to the body

a) The death penalty[88]

The death penalty as a sanction ta'zir supreme. The four madzhab allow sanctions ta'zir with the death penalty, conditions with the deed is done repeatedly, or have an impact on the damage in the face of the earth is continuously and there is no other way to stop unless the death penalty. As the history of hadith Imam Ahmad al-Dailami al-Hamiri.

He said; "I said unto the messenger, 'O Messenger, we never located in a region to deliver a heavy duty and we make the drink from the citrus wheat for our strength in carrying out the hard work.' The Messenger asked, 'What Is drink the wine? 'I answered, 'right'.The prophet replied, 'If so shun. 'I said, 'The people did not forsake him. 'The Messenger again said, 'When will not leave, fight them."

Thus the application of the death penalty as the highest ta'zir is permitted, although in practice there are strict requirements, namely;[89] (1) if the offender is a recidivist whose previous penalties have no effect on him; (2) based on careful consideration for the benefit of society and prevent the spread of destruction on earth.

[88] Taufiq. *Op. cit.* p. 16-17.
[89] Nurul Irfan. *Op. cit.* p. 97.

As for its relation to the legal sanction of corruption, the death sentence is entirely based on the judge's ijtihad, because there is no fixed basis or limitation when this ta'zir of death penalty can be applied.

b) The punishment whips

This punishment is quite effective in providing a deterrent effect for the ta'zir. Penguasan or judge is authorized to determine the number of lashes in ta'zir, which is adjusted to the shape of the finger, the condition of the perpetrator, the effect for the community. However, ulama different opinion regarding a limit for the number of lashes in ta'zir, namely:[90]

(1) According to the Hanafi Sect, it must not exceed the limits of punishment. They argue in the following hadith;

"Whosoever exceeds the punishment in regard to other than hudud, he includes beyond the limit. (Narrated by Al-Baihaqi from Nu'am bin Basyir and Al-Dhahak)

(2) Abu Hanifah holds that the number of lashes in jarimah ta'zir should not be more than thirty-nine times because the punishment whip for a drunkard *khamar* fourty times.

(3) Abu Yusuf holds that the number of lashes in jarimah ta'zir should not be more than seventy-nine times because the punishment whips for the accuser of adultery is eighty times.

(4) Malikiyah scholars argue that sanctions ta'zir exceed limits during contains maslahat. Their reason is Umar bin Khattab who once whipped Mu'an bin Zaidah who forged the baitul mal seal with searatus lashes.

[90] Nurul Irfan. *Op. cit.* p. 98.

(5) Ali had whipped a man who drank khamar during the day of Ramadan by eighty times and added twenty times as ta'zir.

About the number of lashes maximum, of course must be seen first case. Furthermore, the following is the opinion of the scholars about the number of lashes at least in ta'zir; (1) according to the majority of the ulama, one time lashes; (2) according to Hanafiyah scholars, a minimum in ta'zir must be able to give the impact of preventive and repressive; (3) according to Ibn Qudamah, a minimum cannot be determined. This is handed over to ijtihad judges according to the crime, actors, time, and implementation.

2) Ta'zir punishment associated with the independence of a person

1. Imprisonment[91]

In Arabic there are two terms to imprisonment, namely: *Al-hasbu and Al-sijnu* which means *al-man'u* (pecegahan or detention). According to Ibn Qayyim, both mean secures a person not to do the works of the law, both the prisoners were detained in the house in the mosque as well as in other places.

The Prophet once arrested an accused person in order to wait for the trial, for fear the accused fled, eliminated the evidence, and repeated the crime. Imprisonment can become the main punishment and can also be an additional sentence. prison sentence become additional sentence, when the punishment subject that is in the form of punishment whips did not bring the

[91] Taufiq. *Op. cit.* p. 20.

impact for the persecuted people. In prison sentence in Islamic Law is divided into two, namely:

(a) Limited prison sentence, namely prison sentences that time is limited explicitly.

Now related to the minimum prison sentence for no agreement among scholars. While for the maximum limit, some scholars such as suggested by the High Priest Al-Zaila'i quoted by Abdul Aziz Amir, holds that ever prison can be two months or three months; even can also less or more than that. According to the High Priest Al-Mawardi, imprisonment in ta'zir vary because depending on the perpetrators and types of jarimahnya. According to some Syafi'iyah, its maximum limit is one year with the death penalty menqiaskannya separation within the limits of adultery and ta'zir does not exceed the limits of the penalty.

And the opinion quoted from Abdullah Al-Zubairi that the term of imprisonment applied for two or three months, even more than that. And according to the High Priest Ibnu Al-Majasyun from ulama Malikiyah specify long punishment for half, two or four months, depending on the level of wealth that took. Thus there is no definite maximum limits and made general guidelines to imprisonment as Ta'zir. Therefore it is submitted to the judges with attention to the type of jarimah, actors, place the situation and condition.

(b) Imprisonment not limited

The prison sentence is not limited time. In other words, continued until the persecuted people had died or repent. Another term for this punishment is imprisonment for life and has been applied in the positive law in Indonesia. Life sentences in Islamic Criminal Law apply to the criminals who is dangerous as stolen for the second time or next, insulting repeatedly.

(c) The prison sentence is restricted to persecuted people repent aims to educate.

This is almost the same with correctional institutions currently implementing the remission for persecuted people when shows signs of repentance. According to the ulama, someone considered repent when showed signs of improvement in his behavior, while the repentance in the heart cannot be observed.

(a) The punishment separation

The separation of the punishment is the punishment limits, in practice, the punishment is applied also as punishment Ta'zir. This isolation punishment inflicted to the perpetrators jarimah who feared to bring bad influence to others so that the perpetrators must be set aside. Handles as that has been done by the Prophet that alienate people who behaves *mukhannats* (waria) to outside of Medina.Ulama different opinion regarding the exclusion of them:[92]

[92] Nurul Irfan. *Op. cit.* H. 105-106.

- According to Imam Malik bin Anas, isolation means menjahukan (cast) perpetrators from the land of Islam to the land is not Islam.
- According to Umar bin Abdul Aziz and Said the son of Jubair, separation that is removed from one city to the other. Imam Syafi'i said that the distance between the origin and the city is the travel distance qashar disposal. The meaning of the exile is to menjahukannya from the family and their dwelling places.
- According to Imam Abu Hanifah and one opinion from the Priest Malik, separation means imprisoned.

But history has proven that the distance of this disposal further than travel distance qashar and still in Muslim countries such as Umar cast a person to set aside from Medina to Sham, 'Utsman also cast a person to set aside from Medina to Egypt and Ali cast a person to set aside from Medina to Bashrah.

In this case, as punishment cast prison inmates to the Island of Nusa Kambangan already qualify and the meaning of the given the state of Indonesia is a archipelago country that has thousands of small islands so that it is very effective if the punishment is to take advantage of the island.

While the related ever time separation also no agreement among the *fuqahaâ*. Here are some of their opinions:[93]

[93] Nurul Irfan. *Op. cit.* H. 106.

- According to Syafi'iyah and Hanbilah, period of separation cannot be more than one year so that it does not exceed the period of separation in jarimah adultery which is the punishment limits. When the separation in Ta'zir more than one year, means contrary to the hadith the Prophet:

  "Whoever exceeds the punishment in this case in addition to the prescribed penalties, he including bounds." (HR. Al-Baihaqi from Nu'am son of Basyir and Al-Dhahak).

- According to Imam Abu Hanifah, period of separation can be more than one year for exile in here was a punishment of ta'zir, not punishment limits. This opinion is also expressed by the High Priest Malik. But they are not proposed bataswaktunya and submit to the consideration of the rulers or judges.

3) Ta'zir punishment related to wealth[94]

Fuqahaâ . different opinion about allowed ta'zir with how to take their wealth. According to Imam Abu Hanifah and followed by the disciples, Muhammad bin Hasan that ta'zir with how to take their wealth is not allowed. But the priest Malik, Imam Syafi'i, Imam Ahmad bin Hanbal and Gray Priest Joseph order when viewed bring *maslahat.*

Ta'zir punishment by taking wealth does not mean taking wealth perpetrators to themselves judges or financial state, but hold only for a

[94] Taufiq. *Op. cit.* h. 22.

while. When the perpetrators cannot be expected to repent, Judges can take advantage of interests that contain *maslahat.*

Ibn Taimiyyah share ta'zir is divided into three parts with attention to the influence of wealth, namely;[95]

(1) Smashed it (*Al-Itlaf*)

The destruction of property apply to the cases that are unjust. Here are some example; (1) the destruction of the statue of possession of the Islam; (2) the destruction of the instruments or games which contain the disobedients; (3) the destruction of the equipment and *khamar* store, as never done the Caliph Omar and Ali; (4) the shedding of milk that has been mixed with water as never done Caliph Umar who shed tradable goods in the form of milk that has been mixed with water, because it is difficult to know the level of milk that has been mixed with water.

This Destruction not forever is an obligation, but in certain conditions may be wherewithal. On the basis of this idea of a group of scholars such as Imam Malik in the history of Ibnu Al-Qasim allow food or drink to be sold to the meaning of alms to needy people. Thus the two interests -namely the destruction as ta'zir and benefits for the poor- can be reached at once.

[95] Taufiq. *Op. cit.* H. 32.

(2) Change it (*Al-Taghyir*)

An example of the ta'zir either change the wealth perpetrators, among others change the statue that worshipped by Muslims with how to cut off his head so that similar tree or flower vase.

(3) Enlarge

The punishment of takzir in this form is also called by the penalty of punishment, namely the punishment of takzir in the possession of the perpetrator's property, such as the Prophet's decision to double the fine for someone who stole the fruit beside the caning. Similarly, the Caliph Umar's decision doubled the fines for those who embezzled his findings.

The penalty fines can be a punishment subject that is stand alone or can be combined with the confiscation of punishment other trees such as the penalty fines combined with the punishment whips.besides, lowest limit or punishment from the highest fines is not specified.

In addition to the fine, punishment Ta'zir related to wealth are foreclosures or seizure. But the penalty is legitimately contested by fuqahaâ. Jumhur ulemas him iodine when meet the following requirements; (1) wealth obtained by the way of the lawful; (2) wealth used in accordance with the function; (3) the use of wealth is not to sabotage the rights of others.

Then in the execution of the judges that most determine ta'zir given to the perpetrators of criminal acts of corruption, thus causing a deterrent effect and as a preventive action in the community.

4) Other penalties determined by those charged with authority for the common good

In addition to ta'zir that has been mentioned above, there is some form of sanctions of ta' zir, namely:[96] (a) Hard warning; (b) presented before the council; (c) counsel; (d) reproach; (e) exclusion; (f) dismissal; and (g) error announcement openly, as reported in the print and electronic media.

Forms of sanctions Ta'zir above is an example, now later in its application judges can provide other sanctions that can be inflicted according to the level of a crime which done convicts, because in imposed sanctions of ta'zir needed analysis and the understanding that in by the Judge before decided to produce a fair decision and fulfill the purpose of the punishment it self.

[96] Taufiq. *Op. cit*. H. 34.

CHAPTER IV

CLOSING

A. Conclusion

1. The increasing number of criminal acts of corruption every year, as mentioned in the statistics data KPK Per 31 October 2016, in 2016 KPK do the handling of criminal acts of corruption with details: investigation 81 cases, investigations 81 cases, the prosecution of 70 cases, inkracht 58 cases, and the execution of 67 cases. And the total handling of cases of criminal acts of corruption from 2004 - 2016 is an investigation 833 cases, investigations 549 cases, the prosecution of 459 cases, inkracht 387 cases, and the execution of 400 cases. If refers to the existing law on Law Number 31 of 1999 On the Corruption Eradication jo Law Number 20 Year 2001 On the Corruption Eradication, the sanctions imposed in this law, should be able to stop the

practice of corruption at least to reduce the practice, plus again much research regarding corruption good reviewed through the act on the eradication of criminal acts of corruption and Islamic law should provide a great effect for the eradication of corruption at least can be reduced. But in fact quite the contrary.

Second, State financial loss or economy country that caused large enough as data released by the ICW in 2015 state losses of as much as 31, 077 trillion, and on 2016 as much as 32, 560 trillion. state financial loss or economy countries will impact and makes it difficult for the community especially the people that economy weak (poor), and the impact of any variety, ranging from difficult to find a job to generate discounted rates economy the weak and weary, health services that are less maximum government service/ bureaucracy that much detail, the cost of education is high, so that makes it difficult to finance the needs of the community during the day. Because the state finances should be transmitted to the interest of the general public and promote economy people, avoid distraction to a few certain people.

2. A sacred law sanction given in Law Number 31 1999 jo Law Number 20 Year 2001 On Corruption Eradication and the Criminal Code, including: (a) main crimes (Criminal Die, Imprisonment); (b) additional crimes (seizure of goods that exist or does not exist or goods which do not move that used to or obtained from the criminal acts of corruption, the payment of the money replacement, closing all or part of the companies, revocation of all or part of certain rights or the deletion of all or part of a particular profit; (c) additional

criminal in the Criminal Code (taking the rights of certain rights, seizure of selected goods, and the announcement of the verdict law).

Now the sacred law sanctions corruption crimes using ta'zir is as follows: (a) ta'zir is related to the agency (the death penalty and punishment whips); (b) ta'zir punishment related to the independence of a person (imprisonment and punishment separation); (c) ta'zir punishment relating to the property (wealth convicts suspended the government for a while, destroyed if contains elements prohibited, in spends to fakir-poor, and fines that are doubled their); and (d) ta'zir is determined by those charged with authority in this matter is the land court judges such as: Hard warning, presented before the council, advice, reproof, exclusion, dismissal and announcements error openly, as reported in the print and electronic media.

B. Suggestions

After conducting research on the aggravation of legal sanction, the author sees that there are still many important things to examine, to close the gaps and opportunities of corruption can grow and develop in Indonesia much longer. So according to the authors need to do further research:

1) For academics, research can be done related to the effectiveness/ professionalism/ objective of KPK institution to eradicate corruption crime. And research on the effort or procedure of forming or incorporating Islamic criminal law in criminal Indonesia as an effort to eradicate criminal acts or criminal acts, especially eradication of corruption.

2) For legislative councils, in the context of eradication of corruption in Indonesia, hopefully can be taken into consideration in the formation of corruption law in the future, in addition there is hope to seek the entry of Islamic criminal law in Indonesian criminal law. Because Islamic criminal law has a law with high levels of illness and prevention in the face of criminal acts. If it can be done at least Indonesia can save money, because no longer need Corruption Eradication Commission (KPK).

BIBLIOGRAPHY

The source of legislation

UUD RI Tahun 1945.

KUHP.

UU Nomor 31 Tahun 1999 Tentang Pemberantasan Tindak Pidana Korupsi jo UU Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi.

UU Nomor 30 Tahun 2002 Tentang Komisi Pemberantasan Tindak Pidana Korupsi.

Al-Qur'ān dan As-Sunnah

Ta'zir

The source of the Book

Abdullah. 2001. *Suap Dalam Pandangan Islam*. Gema Insani Press. Jakarta.

Al Faruk, Asadulloh. 2009. *Hukum Pidana Dalam Sistem Hukum Islam*. Ghalia Indonesia. Bogor.

Alkostar, Artidjo. 2008. *Korupsi Politik Di Negara Politik*. UII Press. Yogyakarta.

Anwar, Yesmil. 2009. *Saat Menuai Kejahatan, Sebuah Pendekatan Sosiokultural Kriminomorlogi, Hukum dan HAM*. Refika Aditama. Bandung.

Budi Utomo, Setiawan. 2003. *Fiqih Aktual Jawaban Tuntas Masalah Kontemporer*. Gema PressInsani. Jakarta.

Chazawi, Adami. 2002. *Pelajaran Hukum Pidana; Penafsiran Hukum Pidana, Dasar Pemidanaan, Pemberatan & Peringanan, Kejahatan Aduan, Perbarengan & Ajaran Kausalitas*. RajaGrafindo Persada. Jakarta.

Chazawi, Adami. 2007. *Pelajaran Hukum Pidana: Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, Batas Berlakunya Hukum Pidana*. RajaGrafindo Persada. Jakarta.

Chazawi, Adami. 2011. *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*. Bayumedia Publishing. Malang.

Djaja, Ermansjah. 2010. *Meredesain Pengadilan Tindak Pidana Korupsi*. Sinar Grafika. Jakarta.

Djazuli, 1996. *Fiqh Jinayah (Upaya Menanggulangi Kejahatan Dalam Islam)*. Raja Grafindo Persada Jakarta.

Hamzah, Andi. 1993. *Sistem Pidana dan Pemidanaan Indonesia*. Pradnya Paramita. Jakarta.

Hartanti, Evi. 2008. *Tindak Pidana Korupsi*. Sinar Grafika. Jakarta.

Irfan, Nurul. 2016. *Hukum Pidana Islam*. Imprint Bumi Aksara. Jakarta

Mahmud Marzuki, Peter. 2011. *Penelitian Hukum, Cet 7*. Kencana Prenada Media Group. Jakarta.

N. Arief, Barda. 1996. *Bunga Rampai Kebijakan Hukum Pidana*. Citra Adtya Bhakti. Bandung.

Nurul Irfan, 2009. Muhammad *Tindak Pidana Korupsi di Indonesia Dalam Perspektif Fiqih Jinayah*. Badan Litbang dan Diklat Dapertement Agama. Jakarta.

Priyanto, Dwidja. 2009. *Sistem Pelaksanaan Pidana Penjara Di Indonesia*. PT. Rafika Aditama. Bandung.

P. Soeria Atmadja, Arifin. 2010. *Keuangan Publik Dalam Perspektif Hukum: Teori, Praktik dan Kritik*. PT Raja Grafndo Persada. Jakarta.

Rahman Nitibaskara, Ronny. 2009. *Perangkap Penyimpangan dan Kejahatan, Teori Baru dalam Kriminomorlogi*. Yayasan Pengembangan Kajian Ilmu Kepolisian. Jakarta.

Samin, Sabri. 2008. *Pidana Islam dalam Politik Hukum Indonesia*. Kholam. Jakarta.

Semma, Mansyur. 2008. *Negara Dan Korupsi (Pemikiran Mochtar Lubis Atas Negara, Manusia Indonesia, Dan Perilaku Politik)*. Yayasan Obor Indonesia. Jakarta.

Soedarto. 1987. *Hukum Pidana 1*. Yayasan Soedarto. Semarang.

Soekanto, Soerjonomor. 2012. *Pengantar Penelitian Hukum*. UI Press. Jakarta.

Sunggonomor, Bambang. 2007. *Metodologi Penelitian Hukum*. Rajawali Pers. Jakarta.

Taufiq. 1999. *Dimensi Filosofis Hukum Pidana Islam*. Al Hikmah. Jakarta.

W. Riawan Tjandra, Hukum Keungan Negara, (Jakarta: PT Grasindo, 2006), h. 25.

Yani, Ahmad. 2004. *Hubungan Keuangan Antara Pemerintah Pusat Dan Daerah Di Indonesia*, Cetakan kedua. PT Raja Grafindo Persada. Jakarta.

Source Journal/Scientific Paper

Http://lib.unnes.ac.id/18278/1/8111409078.pdf.

http://lib.ui.ac.id/file?file=digital/20237056-S550-Riani%20Atika%20Nanda%20Lubis.pdf

Http://lib.unnes.ac.id/1467/1/7091.pdf.

Http://ejournal.undip.ac.id/index.php/mmh/article/viewFile/5857/9892.

The source of the Website

Http://acch.kpk.go.id/rekapitulasi-penindakan-pidana-korupsi-berdasarkan-tahun.

Http://www.antikorupsi.org/sites/antikorupsi.org/files/doc/Kajian/policypaperkeuangannegara.pdf.

Http://nasional.harianterbit.com/nasional/2016/02/24/57464/44/25/ICW-Tahun-2015-Kerugian-NegaraAkibat-Korupsi-Rp31077-Triliun.

Https://www.merdeka.com/jakarta/ekstasi-di-belanda-rp-3000-di-indonesia-rp-300-ribu.html.

APPENDIXES

LAW OF REPUBLIC OF INDONESIA NUMBER 31/1999
ON ERADICATION OF THE CRIMINAL ACT OF CORRUPTION

WITH THE BLESSINGS OF THE ONE GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considers:

a. That criminal acts of corruption create huge losses for state finance and state economy and does hinder national development, so it must be eradicated in order to realize a just and prosperous society based on Pancasila and the 1945 Constitution.
b. That criminal acts of corruption as well as creating losses to state fmance and economy, can also hinder the growth of national development, which demands a high level of efficiency.
c. That Law Number 3 of 1971 (SN No. 2080 paqes 78-1 1 8 etc) on Eradication of Criminal Act Corruption is not in line any longer with the legal needs of society. For that reason, it is deemed necessary to replace it with the Law on Eradication of Criminal Act of Corruption, which is expected to be more effective in preventing and eradicating the criminal act of corruption.
d. That based on the above considerations as referred to in letters a, b, and c, it is deemed necessary to set up a new law on Eradication of Criminal Act of Corruption.

Recalls:

1. Article 5 paragraph (1) and Article 20 paragraph (1) of the 1945 Constitution;
2. Decree of MPR of the Republic of lndonesia Number XI/MPR/1998 Public Administration which is clean, Free from Corruption, Collution and Nepotism.

Under the Approval of the

Parliament of the Republic of Indonesia

And the

President of the Republic of Indonesia

A Decision has been made on:

The implementation of:

ERADICATION OF THE CRIMINAL ACT OF CORRUPTION

CHAPTER I
GENERAL PROVISIONS
Article 1

In this Law:

1. Corporation constitutes an organized collection of people and/or wealth. It can be in the form legal bodies and non legal bodies.
2. Civil servants include :
   a. civil servants as referred to in Law on Manpower
   b. civil servants as referred to in the Criminal Code
   c. people receiving salaries or wages from the state finance or regional finance;
   d. people receiving salaries from a corporation that receives assistance from state finance or regional finance, or
   e. people receiving salaries or wages from other corporations which use capital or facilities from the state or from the public,
3. "Anyone" includes individuals and corporations.

CHAPTER II
CRIMINAL ACT OF CORRUPTION
Article 2

Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp 200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp 1,000,000,000,- (one billion Rupiahs). In the event

that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the person concerned can be sentenced to life imprisonment.

Article 3

Anyone with the aim of enriching oneself or another person or a corporation, abuses the authority, opportunity or facilities given to him related to his post or position, which creates losses to the state finance or state economy, is sentenced to life imprisonment or minimum sentence of 1 (one) year and maximum sentence of 20 (twenty) years or the minimum fine of Rp 50,000,000,- (fifty million Rupiahs) and maximum fine of Rp 1,000,000,000,- (one billion Rupiahs).

Article 4

The return of the losses suffered by state finance or economy does not abolish the Imprisonment of the criminal actor as referred to in Articles 2 and 3.

Article 5

Anyone committing the criminal act as referred to in Article 209 of the Criminal Code is sentenced to a minimum of 1 (one) year and maximum of 5 (five) years, or fined to a minimum of Rp 50,000,000,- (fifty million Rupiahs) or to a maximum of Rp 250,000,000,- (two hundred fifty thousand Rupiahs).

Article 6

Anyone committing the criminal act as referred to in Article 210 of the Criminal Code is sentenced to a minimum of 1 (one) year, to a maximum of 15 (fifteen) years or fined to a minimum of Rp 150,000,000,- (one hundred fifty million Rupiahs) or to a maximum of Rp 750,000,000,- (seventy hundred fifty million Rupiahs).

Article 7

Anyone committing the criminal act as referred to in Article 387 or 388 of the Criminal Code is sentenced to a minimum of 2 (two) years and to a maximum of 7 (seven) years or fined to a minimum of Rp 100,000,000,- (one hundred million Rupiahs) or to a maximum of Rp 350,000,000 (three hundred million Rupiahs).

Article 8

Anyone committing the criminal act as referred to Article 415 of the Criminal Code is sentenced to a minimum of 3 (three) years and to a maximum of 15 (fifteen) years, or fined to a minimum of Rp 150,000,000,- (one hundred fifty million Rupiahs) and to a maximum of Rp 750,000,000,- (seven hundred fifty million Rupiahs).

Article 9

Anyone committing the criminal act as referred to in Article 416 of the Criminal Code is sentenced to a minimum of 1 (one) year and to a maximum of 5 (five) years or fined to a minimum of Rp 50,000,000,- (fifty million Rupiahs) and fined to a maximum of Rp 250,000,000,- (two hundred fifty million Rupiahs),

Article 10

Anyone committing the criminal act as referred to in Article 417 of the Criminal Code is sentenced to a minimum of 2 (two) years, to a maximum of 7 (seven) years and fined to a minimum of Rp 100.000,000,- (one hundred million Rupiahs) and to a maximum of Rp 350,000,000,- (three hundred fifty million Rupiahs).

Article 11

Anyone committing the criminal act as referred to in Article 418 of the Criminal Code is sentenced to a minimum of 1 (one) year, to a maximum of 5 (five) years, or fined to a minimum of Rp 50,000.000,- (fifty million Rupiahs) and fined to a maximum of Rp 250,000,000,- (two hundred fifty million Rupiahs).

Article 12

Anyone committing the criminal act as referred to in Articles 419, 420, 423, 425 or 435 of the Criminal Code is sentenced to life imprisonment or minimum sentence of 4 (four) years and maximum sentenced of 20 (twenty) years and fined to a minimum of Rp 200,000,000,- (two hundred million Rupiahs) and to a maximum of Rp 1,000,000,000,- (one billion Rupiahs).

Article 13

Anyone offering gifts/payments or promises to a civil servant with a view to abuse the power or authority vested in the post or position, or by the provision of gifts or promises

is considered to have vested interests in the post or position shall be fined to a maximum of sentenced 3 (three) years and/or fined to a maximum of Rp. 150,000,000.- (one hundred fifty million Rupiahs).

Article 14

Anyone violating the provision in Law which strictly states that the violation of the provision in the law as a criminal act of corruption is subjected to the provision governed in this law.

Article 15

Anyone attempting, assisting or consulting for criminal act of corruption is sentenced with the sentences as referred to in Articles 2.3, 4. 5 up to 14.

Article 16

Anyone outside the territory of the Republic of Indonesia who provides assistance, opportUnity, facilities, or information leading to a corrupt act is sentenced as referred to in Articles 2, 3, 5 up to 14.

Article 17

In addition to being sentenced as referred to in Articles 2. 3, 5 up to 14, the accused can be sentenced with additional sentences as referred to in Article 18.

Article 18

(1) In addition to the additional sentence as referred to in the Criminal Code, the additional sentences are:
   a. confiscation of mobile goods or immobile goods or immobile goods used for or obtained from the criminal act of corruption, including the company owned by the accused, in which the criminal act of corruption is committed and any goods that have replaced the initial goods.
   b. the compensation paid shall be to a maximum of twice the wealth obtained from the criminal act of corruption.
   c. whole or partial closing of the company for maximum period of 1 (one) year.
   d. revocation wholly or partially of rights or abolishment wholly or partially of profits, which have been or can be given by the government to the accused.

(2) In the event that the accused does not pay the compensation as referred to in paragraph (1) letter b in maximum period of 1 (one) month after the verdict of the court has obtained legal permanent power, the wealth can be confiscated by the prosecutor and auctioned to cover compensation.

(3) In the event that the accused does not have adequate wealth to pay the compensation as referred to in paragraph (1) letter b, the accused is merely sentenced to a period that does not exceed the maximum sentence the main crime, in accordance with the provision in this law, with the period of the sentence having been determined in the court verdict.

Article 19

(1) The court verdict on the confiscation of goods not belonging to the accused shall not be commuted in the event that the rights of the third party with ownership of those goods are harmed.

(2) In the event that the court verdict as referred to in paragraph 1 (one) also includes the goods of a third party having good will, the third party can then submit a letter of objection to the relevant court, within a maximum period of 2 (two) months following the verdict has been commuted in a trial which is open to the public.

(3) The submission of the objection letter as referred to in paragraph (2) does not delay or stop the implementation of the court verdict.

(4) Under the circumstances as referred to in paragraph (2) the judge seeks information of the public prosecutor and the concerned party.

(5) The applicant or the public prosecutor can request appeal to the Supreme Court for the determination of the judge on the letter of objection under the circumstances as referred to in paragraph (2).

Article 20

(1) In the event that the criminal act of corruption is committed by or on behalf of a corporation, the lawsuit and the sentence can be instituted against and imposed on the corporation or its board of directors.

(2) The criminal act of corruption is taken to be committed by a corporation in the event that people who are, based on work commit the act and other relations, act in the corporate environment, both personally and collectively.

(3) In the event that the lawsuit is imposed on the corporation, the board represents the corporation.

(4) The board representing the corporation as referred to in paragraph (3) can be represented by another person.

(5) The judge can order that the board of the corporation should be summoned to the court and he can also order that the board be brought to the court.

(6) In the event that the lawsuit is imposed on the corporation, the court then submits the letter of summons to the residence of the board or the office of the board.

(7) The main sentence, which can be commuted to a corporation, is only the fine, with the understanding that the maximum sentence is increased by one-thirds.

CHAPTER III
OTHER CRIMINAL ACTS RELATING TO CORRUPTION

Article 21

Anyone purposely preventing, barring or foiling directly or indirectly the investigation, lawsuit and investigation in the court of the suspect, accused, and witnesses in the case of corruption, shall be sentenced to a minimum of 3 (three) years and to a maximum of 12 (twelve) years or fined to a minimum of Rp 150,000,000,- (one hundred fifty million Rupiahs) and to a maximum of Rp 600,000,000,- (six hundred million Rupiahs).

Article 22

Anyone as referred to in Articles 28, 29, 35 or 36 who purposely rejects to provide information or who provides incorrect information shall be sentenced to a minimum of 3 (three) years, to a maximum of 12 *(twelve)* years, or fined to a minimum of Rp 150,000,000,- (one hundred fifty million Rupiahs) and to a maximum of fined Rp 600,000,000,- (six hundred million Rupiahs).

Article 23

In the case of corruption, the violation to this provision as referred to in Articles *220*, 231, 421, 422, 429 or 430 of the Criminal Code shall be sentenced to a minimum of 1 (one) year, sentenced to a maximum of 6 (six) years, fined to a minimum of Rp 50,000,000,- (fifty million Rupiahs) and sentenced to a maximum of Rp 300,000,000,- (three hundred million Rupiahs).

Article 24

Witnesses not meeting the provrsron as referred to in Article 32, shall be sentenced to a maximum of 3 (three) years or fined to a maximum of Rp 150,000,000(one hundred fifty million Rupiahs).

CHAPTER IV
INDICTMENT, PROSECUTION, AND INTERROGATION IN COURT SESSION

Article 25

The indictment, prosecution and interrogation processes within a court session of a corruption case shall be prioritized for prompt settlement.

Article 26

Indictment, prosecution and interrogation within a court session of a corrupt act shall be conducted on the basis of the existing criminal law procedures, unless otherwise stipulated.

Article 27

In the *event* a corrupt act is detected that is very hard to prove, a joint team shall be set up under the coordination of the Attorney General.

Article 28

In the interest of the indictment, the suspect shall provide infonnation on all of his assets, and the assets of his wife or her husband, children, and the assets of anyone who are alleged to be related to the criminal act committed by the suspect. .

Article 29

(1) In the interest of the indictment, prosecutions or interrogations within court sessions; the indictor, the public prosecutor, and the judge each has the authority to request information from banks on the financial standing of the suspect or the accused.
(2) The request for information from banks as referred to in paragraph (1) shall be submitted to the Governor of Bank Indonesia in accordance with existing legislation.

(3) The Governor of Bank Indonesia shall meet the request as referred to in paragraph (2) within a maximum period of 3 (three) work days, as of the date on which the request documents have been duly received.

(4) The indictor, public prosecutor, or the judge can request the bank to block the deposit account owned by the suspect or the accused, provided it was alleged to have been acquired through corruption.

(5) In the event that the interrogation on the suspect or the accused does not produce adequate evidences, at the request of the indictor, public prosecutor, or the judge, on that very day the bank also revokes the blockage.

Article 30

The indictor shall reserve the right to open, examine and confiscate letters and dispatches through mail, telecommunications, or other instruments, which are suspected to be related to the corrupt act under examination.

Article 31

(1) During the indictment and interrogation processes in court proceedings, the witness and other people relating to the corrupt act shall not mention the name or address of the whistleblower, or other matters, which may uncover the identity of the whistleblower.

(2) Prior to the interrogation, the prohibition as referred to in paragraph (1) is notified to the witness and other relevant individuals.

Article 32

(1) In the event that the indictor detects and is of the opinion that one element or more of a corrupt act is not supported by adequate evidence, while loss of state finance has been concretely established, the indictor shall immediately present the result of the indictment to the Prosecutor's Office or to the agency which shouldered the financial burden for filing the lawsuit.

(2) The acquittal verdict in a corrupt act does not abolish the right to claim the loss inflicted to state finance.

Article 33

In the event that the suspect dies at the time of ind.ictment while loss has been concretely established for state finance, the indictor shall submit the dossier of the case

resulting from the indictment to the Prosecutor's Office or submitted to the agency, which shoulders the financial burden in order to file the lawsuit against the heir.

Article 34

In the event that the accused dies at the time of the indictment during a court session, while loss has been concretely established for state finance, the public prosecutor immediately submits the copy of the official report all the session to the Prosecutors Office or to the agency which shoulders the financial burden in order to file the lawsuit to the heir.

Article 35

(1) Anyone may provide information as a witness or expert, except the father, mother, grandfather, grandmother, natural brother/sister, children and grandchildren of the accused.
(2) Persons acquitted from becoming a witness as referred to in paragraph (1) can be asked to perform as a witness, in the event that they request to perform this duty and their decision to do so is sternly approved by the accused.
(3) With the approval as referred to paragraph (2), they may provide information as witness without taking an oath.

Article 36

The obligation to give testimony as referred to in Article 35 is also applied to those who are limited by their profession, dignity, or post, to keep secrets, except religious officers who usually keep secrets in accordance to their religions.

Article 37

(1) The accused shall reserve the right to prove that he did not commit the corrupt act;
(2) In the event that the accused can prove that he did not commit the corrupt act the information is used as material that is beneficial to him;
(3) The accused shall provide information on all of his assets and the assets of his wife, her husband, children and the assets of anyone or any corporation that are alleged to have been related with the corrupt act;

(4) In the event that the accused cannot sufficiently answer any imbalance between his wealth and his source of wealth, then any information gleaned in (1) may be included to strengthen the case against him;

(5) Rules described in paragraphs (3) and (4) are relevant to criminal acts or central cases as described in articles 2,3,4,13,14,15, and 16 of Law Number 31 of 1999 as well as Articles 5 to 12 of this Law, which stresses that the public prosecutor is obliged to provide evidence to his accusations.

Article 38

(1) In the event that the accused has been legally summoned, but he is not present in the court session without valid reasons, the case can be examined and verdict can be uttered without his presence.

(2) In the event that he is present in the subsequent court session before the utterance of the verdict, the accused is obliged to be examined and all information from the witness and documents read out in the previous session are considered as being read out in the present session

(3) The verdict, which is uttered without the existence of the accused, is announced by the public prosecutor on the announcement board of the court, office of Provincial Government, or notified to the proxy.

(4) The accused or proxy can submit the appeal on the verdict as referred to in paragraph (1)\

(5) In the event that the accused dies before the utterance of the verdict, and adequate strong evidences exist that the relevant person has committed corrupt act, the judge according to the prosecutor's decisions stipulates the seizure of the confiscated goods.

(6) The stipulation as referred to in paragraph (5) cannot be used as a request for appeal.

(7) Anyone with an interest may submit objections to the court that has made the stipulations referred to in paragraph (5), within a maximum period of 30 (thirty) days as of the date of announcement as referred to in paragraph (5).

Article 39

The Attorney General coordinates and controls the indictment, interrogation and prosecution of the corrupt act, which are conducted jointly with other persons, who abide by the Public Justice and Military Justice.

Article 40

In the event that adequate reasons exist to submit the corruption case within the circles of Military Justice, the provision as referred to in Article 123 paragraph (1) letter a of Law No. 31 of 1997 on Military Justice cannot be applied.

CHAPTER V
PUBLIC PARTICIPATION

Article 41

(1) The public can play a role and assist with the efforts to avoid and eradicate corrupt acts.

(2) Public participation as referred to in paragraph (1) is realized in the folloWing forms:

a. the right to seek, obtain and provide information on the allegation that a corrupt act has taken place.
b. the right to obtain services in viewing, obtaining and providing information on the allegation that a corrupt act has taken place, to the law enforcers who handles the corruption case.
c. the right to convey recommendations and opinions responsibly to law enforcers who handle the corruption case.
d. the right to obtain replies to their questions to law enforcers within a maximum period of 30 (thirty) days.
e. the right to obtain legal protection in the following matters:
    1) exercising the rights as referred to in letters a, band c.
    2) asked to be present in the processes of indictment and interrogation in the court session as whistleblowers, witnesses, or expert witnesses in accordance with me existinq legislations.

(3) The public as referred to in paragraph (1) has the right and responsibility in the efforts to prevent and eradicate corrupt acts.

(4) The right and responsibility as referred to in paragraphs 2 and 3 are exercised by adhering to the principles or provisions governed in the existing legislations and by abiding to the norms of society.

(5) The provision on the procedure for the public participation in preventing and eradicating corrupt acts as referred to in this Article, is further governed by a Governmental Regulation.

Article 42

(1) The government gives tokens of appreciations to members of the community who has assisted the efforts to prevent and eradicate corrupt acts.

(2) The provision on the appreciation as. referred to in paragraph (1) is further governed in the Government Regulation.

CHAPTER VI
OTHERPROVISIONS

Article 43

(1) Within a maximum period oF2 (two) years since this Law takes effect, a Corruption Eradication Commission is set up.

(2) The commission as referred to in paragraph (1) has the duties and authority to establish coordination and 'supervision activities, including conducting indictments, interrogations and prosecutions against corrupt acts in accordance to existinq legislations.

(3) The members of the Commission as referred to in paragraph (1) comprise elements of the government and the public.

(4) The provision on its establishment, organization structure, management, accountability, duties and authority as well as the membership of the Commission as referred to paragraphs 1, 2 and 3 shall be governed by law.

CHAPTER VII
CONCLUDING PROVISION

Article 44

At the time this Law starts to take effect, Law No 3 of 1971 on Eradication of Corrupt act (Statute Book No. 19 of 1971, Supplement to Statute Book Number 2958) shall be declared void.

Article 45

This Law takes effect as of the date on which it is promulqated. In order to allow all interested parties to observe it, the promulgation of this Law shall be placed in the Statute Book of the Republic of Indonesia.

Promulgated in Jakarta	**Ratified in Jakarta**
on August 16, 1999	**on Augusl16, 1999**
THE MINISTER/STATE SECRETARY	**THE PRESIDENT OF THE REPUBLIC OF INDONESIA**
sgd.	**sgd.**
MULADI	**BACHRUDDIN JUSUF HABBIBIE**

APPENDIXES

AMENDMENT TO LAW NUMBER 31/1999
ON CORRUPTION ERADICATION
(Law Number 20/2001 dated November 21, 2001)
WITH THE MERCY OF GOD ALMIGHTY
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

a. That the widespread corruption cases have not only inflicted losses on the state but also violated the social and economic rights of the general public so that corruption needs to be categorized as a crime that must be eradicated in an extraordinary way;
b. That to ensure legal certainty, avoid various legal interpretations, protect the social and economic rights of the public, and give fair treatment in eradicating corruption, it is necessary to amend Law Number 31/1999 on Corruption Eradication;
c. That based on the considerations in letters a and b, it is necessary to enact Law on the Amendment to Law Number 31/1999 on Corruption Eradication.

In view of:

1. Article 5 paragraph (1) and Article 20 paragraphs (2) and (4) of the 1945 Constitution;
2. Law Number 8/1981 on Law of Criminal Procedure (Statute Book of 1981 Number 76, Supplement to Statute Book Number 3209);
3. Law Number 28/1999 on Good Governance, free of Corruption, Collusion and Nepotism (Statute Book of 1999 Number 75, Supplement to Statute Book Number 3851);
4. Law Number 31/1999 on Corruption Eradication (Statute Book of 1999 Number 140, Supplement to Statute Book Number 3874).

With the joint approval of:
THE HOUSE OF REPRESENTATIVES
And
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

DECIDES:

To stipulate:

LAW ON THE AMENDMENT TO LAW NMBER 31/1999 ON CORRUPTION ERADICATION.

Article I

Several provisions and elucidation of articles in Law Number 31/1999 on Corruption Eradication shall be amended as follow:

1. The elucidation of Article 2 paragraph (2) shall be amended without changing its substance so that it reads as contained in the elucidation of Article by Article point 1 of this Law.
2. The wording of Articles 5, 6, 7, 8, 9, 10, 11 and 12 shall be amended without referring to articles in the Criminal Code but by directly mentioning elements contained in each article of the Criminal Code to which they refer so that they read as follow:

Article 5

(1) Anybody that
   a. gives or promises something to a civil servant or state apparatus with the aim of persuading him/ her to do something or not to do anything because of his/her position in violation of his/her obligation; or
   b. gives something to a civil servant or state apparatus because of or in relation to something in violation of his/her obligation whether or not it is done because of his/her position,

   Shall be sentenced to a minimum of 1 (one) year's imprisonment and a maximum of 5 (five) year's imprisonment and/or be fined a minimum of Rp 50,000,000,- (fifty million rupiahs) and a maximum of Rp 250,000,000,- (two hundred and fifty million rupiahs).

(2) The civil servant or state apparatus who receives the award or promise as referred to in paragraph (1) letter a or b shall be sentenced to the same jail term as that referred to in paragraph (1).

Article 6

(1) Anybody that

a. gives or promises something to a judge with the aim of influencing the decision of the case handed down to him/her for trial; or

b. gives or promises something to an individual who according to the legislation is appointed a lawyer to attend a trial session with the aim of influencing the advice or views on the case referred to the court for trial,

Shall be sentenced to a minimum of 3 (three) year's imprisonment and a maximum of 15 (fifteen) year's imprisonment and be fined a minimum of Rp 150,000,000,- (one hundred and fifty million rupiahs) and a maximum of Rp750,000,000 (seven hundred and fifty million rupiahs).

(2) The judge that receives the award or promise as referred to in paragraph (1) letter a or the lawyer that receives the award or promise as referred to in paragraph (1) letter b, shall be sentenced to the same jail term as that referred to in paragraph (1).

Article 7

(1) a. A building contractor, building consultant who at the time of constructing buildings, or a seller of building materials who at the time of delivering building materials commits a swindle that may endanger the safety of people or goods or the safety of the nation in the state of war;

b. Anybody who is assigned to supervise constitution activities or the delivery of building materials intentionally lets the swindle as referred to in letter a;

c. Anybody who at the time of delivering necessities to the National Defense Forces and/or the National Police commits a swindle that may endanger the safety of the nation in the state of war; or

d. Anybody who is assigned to supervise the delivery of necessities to the National Defense Forces and/or the National Police intentionally lets the swindle as referred to in letter c,

Shall be sentenced to a minimum of 2 (two) year's imprisonment and a maximum of 7 (seven) year's imprisonment and/or be fined a minimum of Rp 100,000,000,- (one hundred million rupiahs) and a maximum of Rp 350,000,000,- (three hundred million rupiahs).

(2) The individual who receives the delivery of building materials or the individual who receives the delivery of necessities for the National Defense Forces and/or the National Police and lets the swindle as referred to in paragraph (1) letter a or c, shall be sentenced to the same jail term as that referred to in paragraph (1).

Article 8

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily intentionally embezzles money or securities kept because of his/her position, or lets or helps other person take or embezzle the money or securities, shall be sentenced to a minimum of 3 (three) year's imprisonment and a maximum of 15 (fifteen) year's imprisonment and be fined a minimum of Rp 150,000,000,- (one hundred and fifty million rupiahs) and a maximum of Rp 750,000,000,- (seven hundred and fifty million rupiahs).

Article 9

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily intentionally falsifies books or register books specifically for administrative audit, shall be sentenced to a minimum of 1 (one) year's imprisonment and a maximum of 5 (five) year's imprisonment and be fined a minimum of Rp 50,000,000,- (fifty million rupiahs) and a maximum of Rp 250,000,000,- (two hundred and fifty million rupiahs).

Article 10

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily intentionally

a. embezzle, destroy, or damage goods, official documents, letters or registers used to convince or prove before the authorized official under his/her control because of his/her position; or
b. lets other person embezzle, destroy or damage the goods, official documents, letters or registers; or
c. helps other person embezzle, destroy or damage the goods, official documents, letters or registers, shall be sentenced to a minimum of 2 (two) year's imprisonment and a maximum of 7 (seven) year's imprisonment and be fined a

minimum of Rp 100,000,000,- (one hundred million rupiahs) and a maximum of Rp 350.000.000,- (three hundred and fifty million rupiahs).

Article 11

A civil servant or state apparatus who receives prize or promise believed to have been given because of the power or authority related to his/her position or prize or promise which according to the contributor still has something to do with his/her position, shall be sentenced to a minimum of 1 (one) year's imprisonment and a maximum of 5 (five) year's imprisonment and be fined a minimum of Rp 50,000,000,- (fifty million rupiahs) and a maximum of Rp 250,000, 000,- (two hundred and fifty million rupiahs).

Article 12

a. A civil servant or state apparatus who receives prize or promise believed to have been given to encourage him/her to do something or not to do anything because of his/her position in violation of his/her obligation;
b. A civil servant or state apparatus who receive prize believed to have been given due to the fact that he/ she has done something or has not done anything because of his/her position in violation of his/her obligation;
c. A judge that receives prize or promise believed to have been given to influence the verdict of the case handed down to him/her for trial;
d. An individual who according to the legislation is appointed a lawyer to attend a trial session, receive prize or promise believed to have been given to influence the advice or view on the case referred to the court for trial;
e. A civil servant or state apparatus who intentionally benefits himself/herself or other people in violation of law, or by abusing his/her power, forces a person to give something, pay, or receive discounted payment, or to do something for himself/herself;
f. A civil servant or state at the time of performing task, asks, receives or cuts payments from other civil servant or state apparatus or from the general treasurer as if the other civil servant or state apparatus or the general treasurer owed him/her;
g. A civil servant or state apparatus who at the time of performing task, asks or receives job or goods from other party as if the latter owed him/ her;

h. A civil servant or state apparatus who at the time of performing task, uses state land for which the right to use land has been issued, as if based on the law it has harmed the people entitled to it, while in fact the action violates the law;

i. A civil servant or state apparatus who directly or indirectly takes part in a contract work, procurement, or lease, in which at the time the activities is carried out he/ she is assigned to arrange or supervise it wholly or partially,

Shall be sentenced to life imprisonment or a minimum of 4 (four) year's imprisonment and a maximum of 20 (twenty) year's imprisonment and be fined minimum of Rp 200,000,000,- (two hundred million rupiahs) and a maximum of Rp 1,000,000,000,- (one billion rupiahs)."

3. In between Article 12 and Article 13, 3 (three) new articles, namely Article 12A, Article 12B and Article 12C shall be inserted as follow :

Article 12A

(1) The provisions on jail terms and fines as referred to in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 shall no longer apply to corruption cases of less than Rp 5,000,000,- (five million rupiahs).

(2) The perpetrator of a corruption case of less than Rp5,000,000 (five million rupiahs) as referred to in paragraph (1) shall be sentenced to a maximum of 3 (three) year's imprisonment and fined a maximum of Rp 50,000,000,- (fifty million rupiahs).

Article 12B

(1) Any gratification for a civil servant or state apparatus shall be considered as a bribe when it has something to do with his/her position and is against his/ her obligation or task, with the provision that:

a. when the gratification amounts to Rp10,000,000 (ten million rupiahs) or more, it is the recipient of the gratification who shall prove that the gratification is not a bribe;

b. when the gratification amounts to less than Rp10,000,000 (ten million rupiahs), it is the public prosecutor who shall prove that the gratification is a bribe.

(2) A civil servant or state apparatus who is found guilty of the criminal offense as referred to in paragraph (1) shall be sentenced to life imprisonment or a minimum of 4 (four) year's imprisonment and a maximum of 20 (twenty) year's imprisonment and be fined a minimum of Rp 200,000,000,- (two hundred million rupiahs) and a maximum of Rp l,000,000,000,- (one billion rupiahs).

Article 12C

(1) The provisions as referred to in Article 12B paragraph (1) shall not be valid if the recipient report the gratification to the Commission for Corruption Eradication.

(2) The recipient of gratification shall convey the report as referred to in paragraph (1) no later than 30 (thirty) working days after the gratification has been received.

(3) The Commission for Corruption Eradication within a period of 30 (thirty) working days at the latest after the receipt date of the report shall decide whether the gratification belongs to the recipient or the state.

(4) The procedures for conveying the report as referred to in paragraph (2) and for determining the status of the gratification as referred to in paragraph (3) shall be laid down in Law on the Commission for Corruption Eradication."

4. In between Article 26 and Article 27, 1 (one) new article, namely Article 26A, shall be inserted as follows :

Article 26A

The valid evidentiary material in the form of tip as referred to in Article 188 paragraph (2) of Law Number 8/1981 on Law of Criminal Procedure, especially for corruption offense may be obtained from:

a. other evidentiary material in the form of information uttered, sent received, or kept electronically by means of optical device or other similar equipment; and

b. documents, namely any recorded data or information that can be seen, read and/or heard, and issued with or without the help of equipment, either those printed on paper and physical material other than paper, or those recorded electronically in the form of writing, voice, picture, map, draft, photograph, letters, signs, figures or perforations that have meaning.

5. Article 37 shall be split into Article 37 and Article 37A with the provision that :
   a. The substance of Article 37 originates from paragraph (1) and paragraph (2) and the clause in paragraph (2) reading "the information is used as something that benefit himself/herself" is changed into "the authentication shall be used by the court as the basis to state the accusation is unfounded", so that Article 37 shall entirely read as follow :

Article 37

(1) The defendant shall have the right to prove that he/she does not commit corruption offense.

(2) In the event that the defendant can prove that he/she does not commit corruption offense, the authentication shall be used by the court as the basis to state that the accusation is unfounded.

   b. The substance of Article 37A originates from paragraph (3), paragraph (4), and paragraph (5) with the word "can" in paragraph (4) being omitted, the reference of paragraph (1) and paragraph (2) in paragraph (5) being abolished and paragraph (3), paragraph (4) and paragraph (5) being changed into paragraph (1), paragraph (2) and paragraph (3), so that Article 37A shall entirely read as follows:

Article 37A

(1) The defendant shall be required to provide information on his/her entire wealth and the wealth of his wife or her husband, and his/he children as well as the wealth of any individual or corporation believed to have linkage with the case of which the defendant is accused.

(2) In the event that the defendant can not prove that his/her wealth is proportional to the amount of his/her income or a additional income from his/her wealth, the information as referred to in paragraph (1) shall be used to strengthen the existing evidentiary material that the defendant has committed corruption offense.

(3) The provisions as referred to in paragraph (1) and paragraph (2) deal with criminal offenses or main cases as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15 and Article 16 of Law Number 31/1999 on Corruption Eradication and Article 5 up to Article 12 of this Law, so that public prosecutors are put under constant obligation to prove their accusation.

6. In between Article 38 and Article 39, 3 (three) new articles, namely Article 38A, Article 38B and Article 38C shall be inserted as follows:

Article 38A

The authentication as referred to in Article 12B paragraph (1) shall be done during the questioning in a court trial.

Article 38B

(1) Anybody that is accused of committing one of the corruption offenses as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31/1999 on Corruption Eradication and Article 5 up to Article 12 of this Law, shall in turn prove his/her wealth for which he/she has not been indicted but is believed to have originated from corruption offense.

(2) In the event that the defendant can not prove that the wealth as referred to in paragraph (1) does not originate from corruption offense, the wealth shall be considered as originating from corruption offense either and the judge shall be authorized to decide that the wealth shall be partially or entirely confiscated for the state.

(3) The public prosecutor shall file a request for the confiscation of the wealth as referred to in paragraph (2) at the time when he/she reads his/her indictment of the main case.

(4) The defendant shall file a request for authentication that the wealth as referred to in paragraph (1) does not originate from corruption offense at the time when he/she reads his defense in the main case and he/she can repeat it in the brief for an appeal and in the brief for a supreme court verdict.

(5) The judge shall open a special court session to inspect the authentication from the defendant as referred to in paragraph (4).

(6) In the event that the defendant is acquitted of all legal proceedings in the main case, the judge shall reject the request for the confiscation of the wealth as referred to in paragraph (1) and paragraph (2).

Article 38C

If after the court decision has already gained fixed legal strength the wealth of the convict believe to have originated from corruption offense has not been confiscated for the state as referred to in Article 38B paragraph (2), the state shall file a civil indictment against the convict and/or his/her beneficiary.

7. In between Chapter VI and Chapter VII, a new chapter (Chapter VIA) on transitional provisions shall be inserted and the chapter contains 1 (one) article (Article 43) inserted between Article 43 and Article 44 so that Chapter VIA entirely reads as follows :

CHAPTER VIA

TRANSITIONAL PROVISIONS

Article 43A

(1) The corruption offenses committed before the promulgation of Law Number 31/1999 on Corruption Eradication shall be investigated and decided based on Law Number 3/1971 on Corruption Eradication, with the provision that the maximum jail term beneficial to the defendant shall be based on Article 5, Article 6, Article 7, Article 8, Article 9, and Article 10 of this Law and Article 13 of Law Number 31/1999 on Corruption Eradication.

(2) The provisions on minimum jail term as referred to in Article 5, Article 6, Article 7, Article 8, Article 9 and Article 10 of the Law and Article 13 of Law Number 31/1999 on Corruption Eradication shall not apply to corruption offenses committed before the enforcement of Law Number 31/1999 on Corruption Eradication.

(3) The corruption offenses committed before the promulgation of this Law shall be investigated and decided based on Law Number 31/1999 on Corruption Eradication, with the provision that the maximum jail term imposed on anybody involved in a corruption case of less than Rp. 5,000,000,- (five million rupiahs) shall be based on Article 12A paragraph (2) of this Law.

8. A new article (Article 43B shall be added to CHAPTER VII before Article 44 as follows :

Article 43B

At the time when this Law begins to take effect, Article 209, Article 210, Article 387, Article 388, Article 415, Article 416, Article 417, Article 418, Article 419, Article 420, Article 423, Article 425 and Article 435 of Law of Criminal Procedure adj. Law Number 1/1946 on Regulation of Criminal Procedure (Statute Book of the Republic of Indonesia II No. 9), Law No. 73/1958 on Stating the Enforcement of Law Number 1/1946 on Regulation of Criminal Procedure for the Entire Territory of the Republic of Indonesia and Amending Law of Criminal Procedure (Statute Book of 1958 Number 127, Supplement to Statute Book Number 1660) as has been several times amended the latest by Law Number 27/1999 on Amendment to the Law of Criminal Procedure Regarding Crimes Against the State Security, shall be declared null and void.

Article II

This Law shall come into force as from the date of promulgation.

For public cognizance, this Law shall be promulgated by placing it in the Statute Book of the Republic of Indonesia.

Endorsed In Jakarta,

On November 21, 2001

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Sgd.

MEGAWATI SUKARNOPUTRI

Promulgated In Jakarta,

On November 21, 2001

THE STATE SECRETARY,

Sgd.

BAMBANG KESOWO

STATUTE BOOK OF THE REPUBLIC OF INDONESIA OF 2001 NUMBER 134

ELUCIDATION
OF
LAW NUMBER 20/2001 ON AMENDMENT TO LAW NUMBER 31/1999
ON
CORRUPTION ERADICATION

I. GENERAL

Since Law Number 31/1999 on Corruption Eradication (Statute Book of 1999 Number 140, Supplement to Statute Book No. 3874) was promulgated there have been various public interpretations of the application of the Law to corruption offenses committed before the promulgation of Law Number 31/1999. This is because Article 44 of the Law stipulates that Law Number 3/1971 on Corruption Eradication was declared null and void starting from the promulgation date of Law Number 31/1999, thus leading to the assumption of legal vacuum to process corruption offenses committed before Law No. 31/1999 takes effect.

What is more, the corruption cases in Indonesia which are committed systematically have been spreading so that they have not only inflicted losses on the state but also have violated the social and economic rights of the general public and accordingly, corruption eradication efforts must he made in an extraordinary way. As such, corruption eradication must be done in a specific way through among other things the application of inverted authentication system, the one charged to the defendant.

To achieve legal certainty, avoid various interpretations, and give fair treatment in eradicating corruption offenses, Law Number 31/1999 on Corruption Eradication needs to be amended.

Provisions on the expansion of sources of valid evidentiary materials in the form of tip stipulate that the tip can be obtained not only from witnesses, letters and information from the defendant but also from other evidentiary materials in the form of information uttered, sent, received or kept electronically by means of optical device or other similar equipment but not limited to electronic data interchange, e-mail, telegram, telex, facsimile, as well as from documents, namely any piece of recorded data or information that can be seen, read and/or heard and issued with or without the help of means, either those put on papers, physical materials other than

papers, or those recorded electronically in the form of writing, voice, picture, map, draft, photograph, letters, signs, figures or perforations that have meaning.

Provisions on "inverted authentication" need to be added to Law Number 31/1999 on Corruption Eradication as "premium remidium" provisions and are likewise designed to prevent civil servants as referred to in Article 1 point 2 or state officials as referred to in Article 2 of Law Number 28/1999 on the running of the government, free of corruption, collusion and nepotism, from committing corruption offenses.

This inverted authentication applies to new criminal offenses on gratification and requests for the seizure of the wealth of the defendant believed to have originated from one of the criminal offenses as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law Number 31/1999 on Corruption Eradication and Article 5 up to Article 12 of this Law.

This Law also deals with the rights of the state to file civil indictment against the convict for the wealth hidden intentionally or unintentionally and only known after the court verdict gains fixed legal strength. The intentionally or unintentionally hidden wealth is believed to have originated from corruption offenses. The civil indictment is filed against the convict and/or his beneficiary. To file the indictment, the state may appoint proxy to represent it.

This law also contains new provisions on maximum jail term and maximum fines imposed on those involved in a corruption case of less than Rp 5,000,000,- (five million rupiahs). These provisions are designed to avoid a sense of unfairness among those involved in relatively small corruption cases.

In addition, this Law also contains transitional provisions. The substance of the transitional provisions basically agrees with the principle of the criminal code as referred to in Article 1 paragraph (2) of Law of Criminal Procedure.

II. ARTICLE BY ARTICLE

Article I

Point 1

Article 2

Paragraph (2)

Referred to as "certain condition" is the condition that may serve as a reason for meting out heavier punishment to those embezzling funds earmarked for the control of emergency state, national disaster, widespread social unrest, economic and monetary crisis, and corruption offenses.

Point 2

Article 5

Paragraph (1)

Sufficiently clear.

Paragraph (2)

Referred to as "state apparatus" in this article is the state apparatus as referred to in Article 2 of Law Number 28/ 1999 on the Running of Government, free of Corruption, Collusion and Nepotism. The definition of "state apparatus" also applies to other articles in this Law.

Article 6 up to Article 11

Sufficiently clear.

Article 12

Letter a up to Letter c

Sufficiently clear.

Letter d

Referred to as a "lawyer" is the person whose profession is to provide legal aid either inside or outside the court and meets the requirements according to the existing law.

Letter e up to Letter 1

Sufficiently clear.

Point 3

Article 12A

Sufficiently clear.

Article 12B

Paragraph (1)

Referred to as "gratification' is reward in broad sense, including money, goods, discount, recompense, interest-tree loan, travel ticket, lodging, tour, free medicine, and other facilities. The gratification includes the gratification received at home or from abroad and the gratification done using electronic device or not using electronic device.

Paragraph (2)

Sufficiently clear.

Article 12C

Sufficiently clear.

Point 4

Article 26A

Letter a

Referred to as "kept electronically" is for instance data kept on micro film, Compact Disk Read Only Memory (CD-ROM) or Write Once Read Many (WORM).

Referred to as "optical device or other similar device" is not limited to electronic data interchange, e-mail, telegram, telex and facsimile.

Letter b

Sufficiently clear.

Point 5

Article 37

Paragraph (1)

This article is the proportional consequence of the application of inverted authentication of the defendant.

The defendant continues to require proportional legal protection against the violation of basic rights related to presumption of innocence and non-self incrimination.

Paragraph (2)

This rule does not recognize a negative authentication according to law (negatief wettelijk).

Article 37A

Sufficiently clear.

Point 6

Article 38A

Sufficiently clear.

Article 38B

The provisions in this article constitute inverted authentication specifically designed for the confiscation of wealth strongly believed to have originated from corruption offenses based on one of the indictments as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article16 of Law No. 31/1999 on Corruption Eradication and Article 5 up to Article 12 of this Law as main criminal offenses.

The question of whether the confiscated wealth will be wholly or partially transferred to the state is left to the judge to decide because of humanitarian consideration and life guarantee for the defendant.

The idea of stipulating the provisions in paragraph (6) is based on the logic of law in that acquitting or exonerating the defendant of all legal proceedings in the main case means that the defendant is not the perpetrator of the corruption case.

Article 38C

The idea of stipulating the provisions in this article is based on the need to meet a public sense of justice towards the perpetrators of corruption offenses who hide wealth believed to have originated from the corruption offenses.

The wealth is known after the court verdict gains fixed legal strength. In this context, the state has the right to file a civil indictment against the convict and/or his/her beneficiary for the wealth gained before the court verdict gains fixed legal strength no matter whether the verdict: is based on the law before or after Law Number 31/1999 on Corruption Eradication takes effect.

To file the indictment the state can appoint a proxy to represent it.

Point 7 and Point 8

Sufficiently clear.

Article II

Sufficiently clear.

CURRICULUM VITAE

Mohammad Nabiil was born on 27st of October 1993 in Jambi, author is third boy from four brothers of Usman Karimy and Sumarni. Could be called Nabiil or Biil. He is like to do movement from one place to another place to get his study. Begin form 2006 he decided to go outside from his village and go to across village to study in PERSIS Junior High School of Bangil.

In 2009, He continues in same school, in PERSIS Senior High School of Bangil. Three years later, he moved again to continue his study in university level. He was chosen to entered one of campus in Malang city, exactly in Islamic Business Law Department, of Sharia Faculty of Maulana Malik Ibrahim State Islamic University of Malang.

Since in Junior High School, he never lost in organization activity when he was in junior high school we was joined in Student Organization (P3P), and continue in senior high school when he to be followship of Student Organization and in the university he to be followship GENBI (A New Generation of Indonesia). Organization from Central Bank Indonesia.

In his lives, he always do his motto and his principle are *Qulil Haqqah Walau Kana Murran* dan *Do What You Can and Do The Best.*.