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Sentencing System and Criminal Liability in Corruption Act

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Abstract
Indonesia should become an economically strong country and prosperous country in advancing their national economy due to the luxurious natural resources. Corruption has systematically happened and is spreading out to the point that it harms the state finances and also violates the socio-economic rights of the people generally. This research is a normative-legal research. The types and source of data in this research are primary and secondary data. The research's results show that the sentencing system is governed by the Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Revision of Law No.31 of 1999 concerning the Eradication of Corruption and the Indonesia Penal Code. Those laws only regulate sentence in jail and fine for the corruptors; Criminal liability should fulfill an objective and a subjective element. In terms of the elements of criminal liability in corruption**,** it must have the element of responsibility, the element of fault, and the element of non-existing pardon.
Keywords: Sentencing system, Criminal liability, Corruption act.

1. Introduction

Indonesia is one of luxurious natural resources countries. The natural resources include forest products, marine product, petroleum, tin, and minerals. These resources are the gift of the Almighty God that must be kept and preserved for the sake of sustainability and prosperity of the people of Indonesia. Ideally, Indonesia should become an economically strong country and prosperous country in advancing their national economy due to the luxurious natural resources. However, Indonesia is a very low rank of Gross Domestic Product (GDP) in comparison to the other neighboring country that does not have any natural resources. This condition is caused by the high rate of corruption that happens in Indonesia. Corruption has systematically happened and is spreading out to the point that it harms the state finances and also violates the socio-economic rights of the people generally. Indonesia is even said to be in its third stadium of corruption cancer.[1]

Corruption is one of the crimes that is hated by the people due to its broad impact on the economic sector of the nation and in somehow it is slowing down the development. Economic factor is an important factor for the people. Any obstruction to economic development will give impact to the raise of goods and services or any other public services, including the raise of unemployment and even poverty. The growth of corruption has made the entire country of Indonesia worrying persistently. Not to mention the fact that currently corruption has spread to various sectors, including the executive, legislative, and judicial body, even the private sector.[2] The history proves that almost every country encounters the issue of corruption.[3] Therefore, one of the primary focus of Indonesian government for the time being is to eradicate corruption optimally, both in the level of central government and regional government.

The commitment and seriousness of the government to eradicate corruption can be seen in its decision to enact Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Revision of Law No.31 of 1999 concerning the Eradication of Corruption (Indonesian abbreviation: *UUPTPK*). Even though UUPTPK still has several weaknesses, it does not to be debated. As of this moment, the most important things that it is needed is the support of all parties particular the law enforcer in the context of Indonesian Criminal Justice System. Therefore, all layers of society to collectively help the intention and attempt of the government in eradicating the corruption upon the country.

UUPTPK consists of a detailed formulation of crimes as defined by Adami Chazawi.[4] According to him, (a) there are 44 forms of corruption distinguished into pure and impure corruption act related with formal corruption criminal law; (b) sentencing System; (c) possibility to criminalize corporate legal subject and the criminal liability burden; (d) burden of criminal liability in the context of attempted and participation in corruption; and (e) delimitation of legal subject both individuals and corporation, and extension of definitions of civil servant. Therefore, by including a heavier penal threat towards corruption act and the possibility of a reversed-burden of proof mechanism in the process of corruption investigation (Art.2 and 3 of UUPTPK), it shows the form of determination and real manifestation of Indonesian government to give deterrence upon corruption perpetrators in Indonesia.

[1] J.E. Sahetapy, *Racing with the Corruption (*Berpacu Dengan Korupsi), a Paper, Surabaya, 2002, p. 3.
[2] Bambang Waluyo, Law Enforcement in Indonesia (Penegakan Hukum Di Indonesia), Sinar Grafika, Jakarta, 2016, p.54.
[3] A. Rahmah dan Amiruddin Prabu, Collection of Criminal Law Issues (Kapita Selekta Hukum Pidana), Mitra Wacana Media, Jakarta, 2015, p.87.
[4] Adami Chazawi, *Corruption Criminal Law in Indonesia* (Hukum Pidana Korupsi Di Indonesia), ed.rev. PT. RajaGrafindo Persada, Jakarta, 2016, pp.12-13.

The penalty in UUPTPK has actually already heavy (penalty) previously as the minimum sentence period is 1 year, and for specific minimum context is 4 years, whilst the highest penalty of sentence is 20 years or a lifetime imprisonment as stipulated under Art.12 of UUPTPK. Even though UUPTPK has provided such heavy penalty, corruption still happens persistently. The more surprising of the corruption is that it involves several public officials or government officials either in the ministerial level, regional government level, (governor, regent, or mayor), member of the house of representatives, or bank officials. It is sometimes involving law enforcers such as police, district attorney, judge, prison officer, and lawyers.

Regarding such condition as discussed, a more effective solution is needed to eradicate corruption, either in terms of pre-emptive, preventive, or repressive with the involvement of clean criminal judicial bodies. This attempt is done through prioritizing a strict and consistent of enforcement of law and providing legal certainty for those who seeks justice. The primary focus of this paper is elaborate the sentencing system related with corruption and the criminal legal liability of corruption perpetrator.

2. Research Method

The type of research is a normative-legal research. It is a legal research process to evaluate some regulations and relevant expert opinions. The types and source of data in this research are primary and secondary data. The primary data are resulted from field-conduct research and the secondary data are obtained from evaluating the regulations. The data are collected through observation to see several phenomenon's that occurred and through documentation study to find out various literature and other relevant documents. The data then are analyzed through studying and discussing Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Revision of Law No.31 of 1999 concerning the Eradication of Corruption Act, in correlation with theoretical basis.

3. Findings and Discussion

3.1 Sentencing System in Corruption Act

Various literature has discussed the term corruption derived from Latin *corruptio* (taken from the term *corrumpere*) and pursuant to *Webster Student Dictionary* is *corruptus*. The term *corrumpere* is then referred to many language, in English for instance, it is translated to corruption, corrupt. In French, it is translated as corruption while in Dutch, it is translated *coruptie* (*korruptie*).[1] Indonesia absorbed the term used by the Dutch which was then translated into *"korupsi"* which means a corrupt act, bribery, which literally means every action that is not good in nature, filth, wrongful, immoral, and deviation.[2]

In the social context of society, corruption is defined as embezzlement (state funding or institutional funding) and accepting a bribe relevant to their rank or position in the government. According to Robert Klitgard, corruption happens when there is a monopoly of power and authority without the existence of accountability.[3] This means that whenever someone holds a monopoly upon a certain goods or services and has the authority to decide who deserves to get goods or services and how many should they get, but does not have any accountability upon their action, then most likely corruption can be found there.

In Law No. 31 of 1999 concerning the Eradication of Corruption amended with Law No. 20 of 2001 concerning the revision of Law No. 31 of 1999 concerning the Eradication of Corruption, a corruption is formulated as followings:

1. Corruption Act is an act that directly correlates with an act of doing or supporting the occurring of corruption act (stipulated under Art.2-26 of UUPTPK);
2. Corruption Act is an act that correlates with the process of investigation, charge, and examination of evidences during a trial i.e. preventing, obstructing, or sabotaging directly or indirectly, all of the processes above (stipulated under Art.21-24 UUPTPK);
3. Corruption Act is everything that comes in the form of money laundering, including investing corrupt money abroad, granting corrupt money, and gratification (stipulated under Art.5-12B of UUPTPK).[4]

Based on the formulation as stipulated above, it can be seen that generally speaking, an act of corruption is the act of "everyone" (including legal corporate) that contravenes the law relevant with the usage of authority, chances or facilities that they have or due to their position that might result into the loss of state's funding and the economy of the country, costs the public interests as those money is originally intended to bring good to a particular collective interest.

[1] Dani Krisnawati and Eddy O.S. Hiariej, et.al. *Collection of Certain Criminal law* (Bunga Rampai Hukum Pidana Khusus), Pena Pundi Aksara, Jakarta, 2006, p.35.
[2] Darwan Prinst, *Eradication of Corruption (*Pemberantasan Tindak Pidana Korupsi), PT. Citra Aditya Bakti, Bandung, 2002, p. 1.
[3] Robert Klitgaard, Ronald Mac Lean-Abaroa, and H. Lindsey Parris, *The Guidance of Corruption Eradication in the Regional Government* (Penuntun Pemberantasan Korupsi Dalam Pemerintahan Daerah*)*, Yayasan Obor Indonesia, Jakarta, 2002, p. 29.
[4] Darwan Prinst, Op.cit., p. 143.

In relation to the sentencing system, according to Syamsul Fatoni,[1] quoting the opinion of L.H.C. Hulsman in Barda Nawawi Arief book that the sentencing system is a set of statutory rules relating to penal sanctions and punishment. This penal sanction can be defined in a wide perspective, from how it works and its process. It then can be defined as: (a) the entire statutory provisions to functionalize sanctions; (b) the entire statutory provision regulating how a criminal law should be enforced or operated in a concrete way to the point of sentencing. Therefore, the sentencing system can be said as an identical process with enforcing criminal law. In the system of enforcing criminal law, it is founded based on the sub-system of material and formal criminal law, sub-system of formal criminal law, and sub-system criminal law conduct.

These three sub-systems are a unity in sentencing system. It means that the criminal law is not going to be operated or enforced in a concrete manner with only of those sub-system. The sentencing system of corruption act can be operated or enforced if the provisions stipulated under UUPTPK is truly applied upon the perpetrators of corruption act through a fair trial system and towards those who are sentenced guilty according to a judge's verdict. The perpetrators should then be placed in a penitentiary. UUPTPK has formulated the lists of actions that is categorized as an act of corruption within Article 2, 3,5-12, Article 12B, Article 13, Article 15, Article 16, Article 21-24 of UUPTK.

Adami Chazawi[2] classifies the object of corruption act into 5 types, as followings:

1. Based on the substantive of corruption act. It is separated into (2) two types:
   a. The substantive object of the act is related with legal protection of legal interest of the state's funding, the economy of the country, and the executions of workers/civil servant in a public work. This is formulated in Article 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12B, 13, 15, 16, and 23.
   b. The substantive of the object is related with legal protection of public interest for the sake of law enforcer duty execution in attempt to eradicate corruption. This is formulated in Article 21, 22, and 24.
2. Based on the legal subject of corruption act. It is divided into two (2) groups:
   a. General corruption act. The form of corruption acts is intended upon every individual, civil servant, and corporations. This is formulated within Article 2, 3, 5, 6, 7, 13, 21, 22, 24, and Article 220 and 231 of Indonesian Penal Code *jo* Article 23 of UUPTPK
   b. Civil servant and/or government official act. A corruption is especially intended for those who have the capacity as a civil servant or government officials. This is formulated in Article 8, 9, 10, 11, 12 (a), (b), (f), (g), (h), (i) Article 12B, and Article 23 of UUPTPK (adopting on Article 421, 422, 429, and 430 of Indonesian Penal Code)
3. Based on its source. It is divided into 2 (two) groups:
   a. Indonesian Penal Code. *Firstly*, a corruption act is formulated independently in Law No. 31 Year 1999 *jo*. Law No. 20 of 2001. However, its substantive points are similar with Indonesian Penal Code that is formulated under Article 10, 11, and 12. *Secondly*, a corruption act refers to a specific article within Indonesian Penal Code by changing the threat and sentencing system such as the formulation in Article 23 which is originated from Article 220, 231, 421, 422, 429, and 430 of Indonesian Penal Code.
   b. Special Corruption Act. It is the Law No. 31 of 1999 as amended by Law No. 20 of 2001. This corruption act is a real criminal act formed by Law No. 31 of 1999 *jo*. Law No. 20 of 2001. The corruption act is formulated within the article 2, 3, 12B, 13, 15, 16, 21, 22, and 24.
4. Based on the behavior/actions within Criminal Act Formula. It is divided into 2 (two) different kinds:
   a. Active or positive corruption act. A corruption act within its formulation includes active element/physical action as a key element required. It is formulated within Article 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, sub a, b, c, d, e, f, g, h, i, Article 12B, Article 13, 15, 16 21, 22; Article 220, 231 (1), (2), (3), 421, 422, 429, 430 of Indonesian Penal Code.
   b. Passive or negative corruption act. The elements of corruption act are formulated passively or by inaction. This is formulated within Article 7 section (1) sub b, d, and section (2), Article 10 sub b, Article 23 *jo* Article 231 of Indonesian Penal Code and Article 24 of UUPTPK
5. Based on the probability of impacting harm to the country and/or the country's economy. It is distinguished into 2 (two) different groups: *first*, a corruption act might create costs harm to the economy. It is formulated within article 2, 3, 15, and 16. *Second,* a criminal act does not require the element of creating harms to the loss of state's economy. It is formulated within Article 5, 6, 7, 8, 9, 10, 11, 12, 12B, 13, 21, 22, and 23.

Based on the classifications of corruption act as explained above, if it is further concerned the delict of crime, especially those relevant with sentencing system, it can be seen that there is difference in the provisions made within Indonesian Penal Code. In relation to this, Lilik Mulyadi[3] states that there are several systems of

[1] Syamsul Fatoni, *The New Criminal Justice System in Theory and Pragmatic Perspective for Justice (*Pembaharuan Sistem Pemidanaan Perspektif Teoritis dan Pragmatis Untuk Keadilan), Setara Press, Malang, 2016, p.14.
[2] Adami Chazawi, op.cit, pp.16-23.
[3] Lilik Mulyadi, *Collection of General and Specific of Criminal Law* (Bunga Rampai Hukum Pidana Umum dan Khusus), PT

criminal formulation, namely the system of *strafsort* (imperative, alternative, cumulative, and cumulative-alternative). Based on the opinion, it can be said that the sentencing system of UUPTPK tends to use cumulative formulation system by including the financial sentence system and fine. The cumulative formulation system (the fusion of two kinds of crimes) is not within the stipulations of Indonesian Penal Code, both in the Second Chapter concerning Crimes and Third Chapter concerning Violations. The cumulative formulation system can be seen on the articles that includes weight and qualification of its offense. For instance, in Article 2 (1), Article 6, Article 8, Article 9, Article 10, Article 12, Article 12A, Article 12B, and Article 13 UUPTPK. The cumulative criminal sentencing formulation is imperative in nature. It means that a judge is not given a chance to pick one among the existing criminal sentence that is available and is considered as most suitable for the action committed by the perpetrator.

Aside from the cumulative formulation, UUPTPK also includes an alternative criminal sentencing formulation, alternative-cumulative criminal sentencing formulation, and singular crime sentencing formulation. The alternative formulation system for instance can be seen in Article 2 (1) of UUPTPK which stipulates that a life sentence or minimum sentence is 4 years. Article 3 of UUPTPK stipulates a life-sentence or a 1-year minimum sentence. While the alternative-cumulative crime sentencing requires the existence of specific element of "and/or" that allows the fusion of primary crime to add the alternative of choices to combine or not to combine the crimes. For instance, Article 3 formulates a minimum 1-year sentence and maximum of 20 years' sentence and/or a minimum fine of Rp. 50.000.000 (fifty million rupiah) and maximum of Rp. 1.000.000.000,- (one billion rupiah). Article 5 of UUPTPK formulates a minimum of 1 year sentence and maximum of 5 years' sentence and/or a minimum mulct of Rp.50.000.000.,- (fifty million rupiah) and maximum of Rp. 250.000.000,- (two hundred and fifty million rupiah). It is similar to the formulation of criminal sentence on Article 7 and 11 of UUPTPK.

The singular formulation system is only formulated for one type of crime of a relevant offense. It can be found on Article 2 (2) of UUPTPK and it can only be given to major sanction of crime. This looks as if a death sentence is a frightening criminal sentence to people in general. However, this death sentence could not be applied arbitrarily and it must only be given under a very special circumstance as stipulated under Article 2 (2) of UUPTPK. This special circumstance mentioned is a form of additional heavy punishment for corruptors if the crime is conducted in a circumstance of danger as stipulated by the prevailing regulations such as during the occurrence of natural disaster, corruptor recidivist, or during a country-wide economic or monetary crisis.

The existence of death sentence up until now is an unrealistic sentence. It is because until today there are no single corruptors that have been punished and fulfilled the requirements of Article 2 (2) of UUPTK. This resulted into a condition where the death sentence can never be applied to corruptors in Indonesia, even though the perpetrator has repeatedly conduct corruption act with billions or even trillions of rupiah. It is very unfortunate, if compared with the spirit that lives within UUPTPK is to eradicate corruption and gives deterrence to the corruptors. It gives the impression that criminal sentences given towards corruptors are still very light and sometimes they can still even get a special facility in comparison with other convict that are not corruptors.

The formulation of criminal sentencing in UUPTPK stipulates several primary sentences including death sentence, sentence in jail, and fine. There is a difference in the context of major sanction of the crime as governed in Article 10 of Indonesian Penal Code and UUPTPK. UUPTPK does not mention any sentence in jail and closed crime. Regarding to sentence in jail, UUPTPK mentions the specific maximum sentence for 20 years, the general maximum sentence of 15 years and even a long-life in prison. In relation to the criminal sentence of fine, the minimum requirement of fine is Rp.1.000.000.000, - (one billion rupiah), however it might be variations in accordance with the qualifications of the legal subject and the criminal law qualifications that has been conducted.

It needs to be admitted that the provision within UUPTPK is a stipulation that is exclusive in nature and is not purely based on the stipulations of Chapter 1 of Indonesian Penal Code, especially Article 12 (2) of Indonesian Penal Code. It states that a temporary sentence in jail is at least 1 day and at most should not exceed 15 days consecutively. This means that Indonesian Penal Code has stipulated the duration of punishment that can be given towards a convict has been set, whereas the minimum duration is generally 1 day and the general maximum duration is 15 years, which can only be exceeded until 20 years in the instance where there is a combination of crime or if it is done by a civil servant that violated one of their positional obligation (Article 12 (3) of Indonesian Penal Code). Such circumstances do not apply in UUPTPK which has independently stipulated a sentencing system towards corruptors.

The exclusiveness within UUPTPK is the inclusion of a 1year minimum sentence in jail (Article 3, 5, 9, 11), 2 years specific corruption sentencing (Article 7 and 10), 3 years of specific minimum sentence (Article 6 and 8), 4 years specific minimum sentence (Article 2, 12, and 12B of UUPTPK) whilst Article 13 only includes a minimum 3 years' sentence in jail and it does not have a specific-type minimum sentence. Also, the possibility

Alumni, Bandung, 2012, pp.239-247.

of charging criminal verdict against a corporate entity and its board, and a major sentence of crime can be dropped only with a maximum fine of an additional 1/3 from the maximum fine sentence (Article 20 UUPTPK).

The category of fine regulated in UUPTPK is highly variable between cumulative and alternative aspects. *Firstly*, the minimum amount of fine is Rp. 50.000.000, -(fifty million rupiah) which is stipulated under Article 3, 5, 9, and 11. *Secondly*, the minimum amount of fine that is cumulative in nature is Rp. 100.000.000, - (one hundred million rupiah), stipulated by Article 7 and 10 of UUPTPK. *Thirdly*, the minimum amount of fine of Rp. 150.000.000, - (one hundred and fifty million rupiah) stipulated under Article 6, 8, and 13 (alternative fine). *Finally*, the least minimum amount of fine is Rp.200.000.000,- (two hundred million rupiah) and is cumulative in nature (Article 2, 12 and 12 B of UUPTPK)

The other crime categories relating to corruption are: *firstly,* a 1 year minimum of sentence in jail (Article 23). *Secondly*, a 3-year minimum sentence in jail (Article 21 and Article 22). The other type of crimes relating to the fine, *firstly*, a minimum amount of Rp.50.000.000 (fifty million rupiah) which was included within Article 23 (alternative), *secondly*, an alternative mulct sentence with a minimum amount of Rp.150.000.000 (one hundred and fifty million rupiah) which is included within Article 21, 22, and 24 of UUPTPK.

The other exclusiveness within UUPTPK is on Article 12A (1) that is related with sentence in jail and fine as mentioned in Article 5, 6, 7, 8, 9, 10, 11, and article 12 does not apply towards a corruption act that amounts less than Rp.50.000.000 (fifty million rupiah). Article 12 A (2) applies towards corruptors with a Rp.5.000.000 (five million rupiah) as stipulated within article 12A (1) is sentenced with 3 years maximum sentence in jail and fine around Rp.50.000.000 (fifty million rupiah). Article 12B UUPTPK specifically includes the regulation concerning gratification related case with civil servant or government officials. They are considered to be involved with gratification or bribery if the act has a connection with their position and is done through a contravention of their job/duty, with the provision of: (a) the amount is at least Rp.10.000.000 (ten million rupiah) or more. The burden of proof that the money is not a gratification falls under the receiver's hand; (b) the amount is less than Rp.10.000.000 (ten million rupiah), then the burden of proof that the money is not a gratification money falls under the obligation of the prosecutor. Article 12B (2) of UUPTPK states that sentence for civil servant or government officials mentioned under (1) is a life sentence or a 4-year minimum sentence in jail and maximum of 20 years' sentence in jail with the least amount of Rp.200.000.000 (two hundred million rupiah) fine, and a maximum of Rp.1.000.000.000 (one billion rupiah) fine. The form of exclusiveness of Article 38 (1) of UUPTPK can happen if the defendant's presence has been legally requested by the court and the defendant fails to fulfill the calling, then the case can be investigated and adjudged without their presence.

The type of sentence towards corruptors aside from death penalty, sentence in jail, fine, and additional sentences as stipulated under Article 18 (1) of UUPTPK that mentions: (a) the expropriation of any movable object, whether tangible or non-tangible, or immovable object that is used to or is obtained from the corruption act, including company owned by the defendant where the corruption is done; (b) maximum amount of compensation payment equals the amount of wealth procured from the corruption act; (c) a complete or partial forfeiture of the company for 1 year; (d) the revocation of all or parts of rights or a complete/partial eradication of a certain profit, that has been or may be given by the government to the defendant. Article 18 (2) of UUPTPK regulates that if the convict does not pay a compensation money until one month has passed after the final verdict made by a court, then all of their wealth may be expropriated by the prosecutor for later sale at an auction to cover for the compensation money. Article 18 (3) of UUPTPK regulates that in the instance where the convict does not have any wealth that could cover the entire compensation fee, then the sentence turns into a near maximum incarceration sentence stipulated under the prevailing regulations.

In terms of handling with corruptors, Indonesia acts quite differently with other countries. In China, all corruptors are sentenced to death shall when they corrupt more than 100.000 Yuan (equal amount of Rp.215.000.000). In Vietnam, death sentence for corruptors is also applied towards the government officials or a state-owned enterprise that has been proved to conduct an act of corruption. The death sentence does not apply to pregnant woman and women who is currently taking care of a child under the age of 36 years when the verdict is given, and that it is generally replaced with a life sentence punishment. Singapore is known to be one of the country with a low rate of corruption and it is primarily because the law in Singapore has been proven to be strict towards all criminal perpetrators ranging from murder, drug smuggling, and corruption. In Taiwan, death sentence is given towards a murderer, restricted drug smuggler, and corruption of first-aid natural disaster money and funding to aid economic crisis.[1]

The existence of a sentence within a statutory provision should not only give a sense of fear/deterrence towards criminals. It should also be an effective preventive measure of a crime itself. In criminal law, there are 3 known sentencing system:

a) Absolute theory (absolute/*vergeldingtheorie*). According to this theory, the basic of a sentence must be

[1] https://www.google.co.id/amp/s/m.liputan6.com/amp/3582463/ beda-dengan-indonesia-4-negara-ini-berlakukan-hukuman-mati-bagi-koruptor. Accessed 26 September 2018, 15.42 WIT.

examined from the crime itself. Due to the crime has caused suffering and harms for others, as a consequence, the perpetrators must be given an equal amount of suffering/harm. This theory is also known as retributive theory, whereas the retribution is viewed as a direct emotional reaction, and therefore is irrational in nature.[1] In this theory, Hegel teaches that "law is a reality of independence". Therefore, a crime is a challenge against law and rights. Sentencing is viewed from the perspective of rewards and therefore sentences is a dialectical reprisal.[2]

b) Purpose theory/relative theory. This theory is also known as relative sentencing theory, purpose theory, and preventive theory. Based on this theory, a sentence is given to execute the purpose or goal of that sentence that is to fix the satisfaction of the people as a consequence of crime. A purpose of sentence must be viewed ideally and to prevent crime.[3] In relations with the element of prevention, Gennaro F. Vito and Ronald M. Holmes, as quoted by Widodo[4] states that element of deterrence theory:
   a) The primary assumption behind deterrence theory is that individual have free will and are rational.
   b) In order for punishment to have the maximum deterrent effect, they should guarantee that the anticipated benefit from a criminal act will not be enjoyed.
   c) Certainly, punishment (especially of apprehension) is more important than severity of punishment. The level of punishment should reflect the severity of the crime.
   d) Punishment should be uniform: all person, regardless of their position, status, or power, convicted of the same crime punishment.
   e) All penalties should be known in order to prevent the rational individual from committing crime.

   Therefore, according to this theory, the purpose of sentencing is not retribution, but to prevent the event of recidivism. Therefore, a convict that undergone a sentence must not be deprived of their basic rights.

c) Combination theory. This theory is a combination between *vergeldingtheorie* and *doeltheorie*. The combination of these theories suggest that a sentencing is done to maintain legal order within the people and to fix the perpetrator's personality.[5]

Based on this theory, then it is quite interesting to study and examine the existence of a sentence either sentence in jail or fine as regulated under UUPTPK. It should be strictly applied to corruptors that has been proven guilty so it can give deterrence and fix the personality of the corruptors. Currently, sentence in jail or fine is the applicable sentence towards a corruptor. While other forms of sentence, i.e. expropriation of assets, humiliating the corruptors publicly, and revoking political rights is just a mere dream. These ideas or attempts appear among the society as they have felt desperate to seek the most appropriate and effective way to eradicate corruption in Indonesia.

3.2 Criminal Liability in Corruption Act

Criminal liability has 3 elements, namely responsibility, mistakes, and the absence of pardon.[6] To drop a criminal sentence towards corruptors, the most important element to be fulfilled is the responsibility of the perpetrator to be based on a person's mental stage; the element of mistake done by the person either intentionally or by negligence in violation of penal (delict) within UUPTPK; and the absence of pardon.

Van Hamel mentions that criminal liability is a normal condition and mental well-being that brings together three types of ability to: (a) understand the meaning and consequences of their actions; (b) realize that their actions is in contravention with the law and the people; and (c) determine ability of the action.[7] According to Simons, the basis of criminal liability is the existence of a fault within the perpetrator's mentality in its relation with the fault and the action that can be sentenced. Therefore, the mentality of the perpetrators can be mocked. To reach the conclusion, several things needs to be determined, as followings:[8]

(1) Ability to take responsibility;
(2) Mentally relationship between the perpetrators and the consequences arise from the action (including the behavior that is not in contravention with the law on their daily basis); and
(3) Dolus and culpa. A fault is subjective element in criminal act. This is a consequence from its opinion that relates *straafbaarfeit* with fault.

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[1] J. E. Sahetapy, *Criminology (*Kriminologi), Rajawali, Jakarta, 1998, p.11.
[2] Leden Marpaung, *The Principle – Theory – Practice of Criminal Law* (Asas-Teori-Praktik Hukum Pidana), Sinar Grafika, Jakarta, 2008, p.105.
[3] Ibid, p.106.
[4] Widodo, *Punishment System in Cyber Crime* (Sistem Pemidanaan Dalam Cyber Crime), Laksbang Mediatama, Yogyakarta, 2009, p. 73.
[5] Leden Marpaung, op.cit., p. 107.
[6] Amir Ilyas, *The Principle of Criminal Law to Understand the Crime and its Liability as a reuirement of Punishment* (Asas-asas Hukum Pidana Memahami Tindak Pidana dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan - Disertai Teori-teori Pengantar dan Beberapa Komentar), Rangkang Education Yogyakarta & PuKAP-Indonesia, Yogyakarta, 2012, p.75.
[7] Ibid, p. 74
[8] Oemar Seno Adji, *Professional Ethics and Legal Criminal Liability of Doctor* (Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter), Penerbit Erlangga, Jakarta, 1991, p. 34.

In a prosecution stage, all elements of delict must be proven against the defendant. If one of the element cannot be proven, then they cannot be presumed guilty and therefore they must be released of all charges. Element of offense is generally divided into two parts, as followings:

(1) An objective element (actus reus). It is an element related with actions that covers (a) an act that contravenes the law, (b) capacity of the perpetrator, and (c) causality;

(2) A subjective element (mens rea). It is the elements that is within the perpetrator, including everything within their consciousness such as (a) intention or negligence (*dolus* or *culpa*), (b) original purpose of an act (article 53 (1) of Indonesian Penal Code), (c) types of intention (*oogmerk*), and (d) prior planning.[1]

Based on theories explained above, then the elements of criminal liability in corruption will be examined and analyzed as follows:

1. The element of responsibility. This element is not regulated within Indonesian Penal Code or any other statutory provisions. The Indonesian Penal Code only regulates the inability of being responsible as stipulated under Article 44 of Indonesian Penal Code (1) which states "For those who conduct an act, that could not be held responsible for because of a certain mental state or damages or imperfection, then must not be punished by the law". The meaning of this mental imperfection is related with their ability to think, intellectual capacity of a person considered not having a normal mental state or mind. UUPTPK also refers to the stipulations under Article 44 of the Indonesian Penal Code in handling corruption cases. In practice, there are numerous instances when the corruptors suspect might suddenly claim to be sick and is unable to fulfill their obligation during the investigation process despite the fact that prior to the suspect determination they are perfectly healthy. Meanwhile, according to Article 44 (2) of the Indonesian Penal Code, if a person is truly mentally incapable of being responsible, then a judge can order him to be placed in an asylum for one year to be checked. If a judge believes that a corruptor is truly insane or mentally crippled according to mental health expert's report, then that suspect cannot be given a guilty verdict (released from all charges) and a judge might order them to be placed under an asylum for a 1-year trial period to be protected and further investigated. According to Satochid Kartanegara[2], there are 3 (three) different requirements of ability to take responsibility that must be fulfilled by someone, as followings:
   (a) The mental state of the person that allows them to understand the value of their action and therefore, to an extent, understands what they are doing;
   (b) The mental state of a person that allows him to determine his action against his/her action that he/she done; and
   (c) The person needs to be aware and conscious. His/her action is forbidden or restricted and cannot be justified legally or morally.
2. The element of fault. The fault element in corruption act is when the perpetrator in full awareness (active corruption act) undertakes actions like: enriching oneself, others, or a corporation (article 2 UUPTPK), abuse of authority, abuse of opportunity, and abuse of facilitation (article 3 UUPTPK), bribery, promising something, accepting bribery (article 5, and article 6 UUPTPK), unfair act (article 7 UUPTPK), embezzlement, negligence, negligence of embezzlement, and embezzlement complicity (article 8 UUPTPK), action of book and list fabrication for administration inspection (article 9 UUPTPK), gratification acceptance (article 12B UUPTPK), action of giving reward and promise (article 13 UUPTPK). Hereinafter this fault element can also be put into effect towards actions conducted due to negligence (passive corruption act), which are: action of unfair act negligence (article 7 (1) sub b,d, and article 2 UUPTPK), a neglecting act of allowing others to omit, destroying, damaging, or allowing others to conduct until it's not usable (article 10 sub UUPTPK). All the fault element whether conducted intentionally or negligence have the same outcome which harms state's finance and economy. Therefore, the act of corruption is categorized as formal crime and not material crime. Consequently corruption act conducted by the perpetrator is considered to be a complete corruption offense and does not have to wait until the outcome appear due to the state's loss. But it's enough to interpret that action conducted by perpetrator can be considered as an action that causes loss for the state, therefore it can be categorized as a corruption act.
3. The element of non-existing pardon. The base of pardon becomes an important part of criminal liability, and therefore it must be considered in determining the guilt of the perpetrator. The basic of a pardon erases the fault done by a perpetrator that turns an offender innocent. The basis of pardon in Indonesian Penal Code is regulated under Book I Chapter III concerning exceptions, reduction of sentences, and addition of sentences. The element of non-existing pardon, according to the writer, is a form of an exception that has been provided by the statutory provision towards circumstances that allows perpetrators to escape sentence, even though the action that they committed has been proven to be a violation of law. This means that an action conducted by a perpetrator is still an act against the law, because of the eradication of fault on the

[1] Ibid.
[2] Tongat, *The Fundamental of Indonesian Criminal Law in Renewal Perspective* (Dasar-dasar Hukum Pidana Indonesia Dalam Perspektif Pembaharuan), UMM Pres, Malang, 2008, pp..228-229.

person, then the action that they committed cannot be held responsible for them. This means the pardon that is given to the perpetrator that allows them to escape punishment is based on their mental state.

The basis of pardon is the offenses has been proven however the element of responsibility is not there, and therefore the suspect is released from all charges. The basis of pardon includes:

a. Absolute Force element as regulated under Article 48 of Indonesian Penal Code, i.e.: in a corruption case, a corruptor may not be relieved of punishment because they are classified as a complicit used by other to conduct the corruption.
b. A forced defense that exceeds delimitations as regulated under article 49 (2) of Indonesian Penal Code. The exceeds delimitation of the forced defense is put inside the perpetrators, not to his/her action, and the cause of a mental shock is because of an attack upon their legal interest.
c. An illegitimate official order as regulated under Article 51 (2) of Indonesian Penal Code. it states that "An official order given by the one in charge does not precludes one from sentences, except when the employees beneath them upon their trusts viewed that order as if they have been given the authority legitimately and execute the order as it is a part of their obligation". By referring to the perspectives of Alfitra[1], then the writer agreed that pardoning a perpetrator on the execution of the order in the absence of authority require should be based on the good faith and execution of the order's content as it is a part of their job.
d. An action conducted by a person with crippled soul or is sick (Article 44 of Indonesian Penal Code). According to Article 44 of Indonesian Penal Code, then it could be examined that the perpetrator of a crime, if proven to be mentally crippled which then prevents them from being able to think normally and differentiate good and bad things, then that perpetrator cannot be sentenced criminally even if a violation has happened. However, in actual trials, a judge generally requests the opinion of a mental health expert to check a condition of the perpetrator to ensure accountability even more.

The element of non-existing pardon in corruption act is also regulated under Article 2 of UUPTPK which regulates that if a gratification towards a civil servant or a government official worth Rp.10.000.000 (ten million rupiah) or more, which is then accepted by the receiver and is reported after towards the Corruption Eradication Commission before 30 days, counted since the date of receiving the gratification, then the receiver may be relieved of punishment or sentences as regulated under Article 12B of UUPTPK. It can be understood that with guarantee of relieving a person from sentence when they cooperate and report any form of gratification will provide a sense of security towards civil servant or government officials in exercising their job and duty.

4. Conclusion

It can be concluded that the sentencing system in corruption act specifically is different with the regulations stipulated by Indonesian Penal Code. The sentencing system within UUPTPK uses a system of single crime formulation, alternative system formulation, cumulative system formulation, and alternative-cumulative system formulation. The primary criminal sentence that is not included within UUPTPK is sentence in jail and closed crime, whilst the substantive of additional sentence is broader. The criminal liability system towards corruptors is related with: (a) The element of responsibility, which refers to Article 44 of Indonesian Penal Code, which allows a perpetrator to be relieved of sentence, if they are crippled mentally or is having mental issues and a judge could order the placement of said person in an asylum for a year to be checked. (b) The element of fault, that is to say the act that was conducted intentionally (active) and an act that was done through negligence (passive). (c) The element of non-existing pardon, that is the base of relieving any sentences given to a person or the offender, making the offender unpunishable.

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[1] Alfitra, *Erasing of the Prosecution and Criminal Run'* Right (Hapusnya Hak Menuntut dan Menjalankan Pidana), Raih Asa Sukses, Jakarta, 2012, p..99.

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