International Journal of Law
ISSN: 2455-2194
Impact Factor: RJIF 5.12
www.lawjournals.org
Volume 3; Issue 6; November 2017; Page No. 82-91

Specific minimum criminal and prevention of disparity of sentencing: Legislative policy analysis in the law of the republic of Indonesia on corruption

Antonius Sudirman
Faculty of Law of Atma Jaya University of Makassar, Kota Makassar, Sulawesi Selatan, Indonesia

Abstract
The focus of the discussion in this article is, what is the specific minimum criminal stipulation in law of Republic of Indonesia on Corruption Eradication can be an effective means to prevent disparity? The data is analyzed descriptively qulaitative. Discussion results show that based on formulative policies, specific minimum criminal provisions in the Corruption Act are deemed ineffective in preventing criminal disparity, on the contrary as the cause of criminal disparity. Because the minimum criminal threat is too light compared to the maximum criminal threat. In addition, the Corruption Act is not regulated on criminal guidelines as the basis for judges in decision-making. Therefore, in the future there should be an effort to revise the minimum criminal provisions in the law so that the minimum criminal threat is proportional to the maximum threat. In addition, it needs to be regulated on the guidelines of punishment.

Keywords: specific minimum criminal; disparity; corruption; corruption act; analysis; guidelines

1. Introduction

Based on Transparency International Indonesia (TII) [1], in 2016 Indonesian Corruption Perceptions Index (Corruption Perceptions Index /CPI) about 37 points from 100 points of the highest, its globally Indonesia's position (with Colombia, Liberia, Morocco and The FYR of Macedonia)) is still in 90th place from 176 countries. Among Asian countries, Indonesia's score is still below from Malaysia (49 points), Brunei (58 points) and Singapore (85 points), but still above the Philippines (35 points) Thailand (35 points), Vietnam (33 points), Myanmar (28 points) and Cambodia (21 points).

The information is directly proportional to the reality in Indonesia today, that corruption is one of the most rapidly evolving types of crime. Community polling results conducted by Kompas Daily [2] concluded that by 2016 corruption in Indonesia is deteriorating; as many as 66.4 percent of respondents said the number of corruption cases increased compared to the previous two years.

It is undeniable that the rate of development of corruption in Indonesia is very difficult to mitigate because corruption is systematic, widespread and involves the structure of state power [3]. Based on data from the Commission For The Eradication Of Criminal Acts Of Corruption (KPK) of the Republic of Indonesia [4], that since the KPK was born until now, there are 79 Heads of Regions and 139 Indonesian legislators who were charged with corruption.

The development of corruption in Indonesia is getting worse and worried because some law enforcement officers are entangled in judicial corruption or judicial mafia, in the form of bribes and gratuities related to the handling of corruption cases. It is said that the judicial corruption involves the judges at every level of the judiciary, ranging from the district court to the Supreme Court of the Republic of Indonesia (MA).

Based on data that published by Kompas Daily, there are currently 17 judges under the MA which have been processed by the Corruption Eradication Commission since the institution was established since 2003 [5]. In the last two years there are three judges and 5 court clerks involved in court mafia cases [6].

If corruption has "entrenched" among the elite of state power then corruption will rampant and destroy the existence of the Unitary State of the Republic of Indonesia (NKRI). In this regard, it is necessary to quote the opinion of Australian criminologist Athol Moffit in Baharuddin Lopa [7] as follows.

Corruption once established, particularly at a higher level, breeds corruption. Officials once corrupted to not limit their operations to organized crime. There can not be a greater weakness in nation than corruption which seeps in to all levels of public office. Its paralysing effect, weakens the home front in peace and in a war.

That is why corruption becomes the common enemy of the Indonesian nation that must be immediately eradicated; and because corruption is classified as extraordinary crime [8], then

[1] https://www.transparency.org/news/feature/corruptionperceptions_index_2016, accessed 9 November 2017.
[2] Harian Kompas, 27 July 2016.
[3] Harian Kompas, tanggal 22 September 2017, menegaskan para tersangka korupsi di Indonesia senantiasa berupaya mendapatkan dukungan politik dari kekuasaan.
[4] Harian Kompas, "Perlu Politik Berintegritas: KPK Sudah Mengusut 79 Kepala Daerah," 29 September 2017, hal. 2.
[5] Harian Kompas, "Hakim Korupsi Karena Tamak: Remunerasi Sudah Cukup", 11 Oktober 2017, hal 1.
[6] Harian Kompas, "Sejumlah Kasus Mafia Peradilan", 10 Oktober 2017, hal 1.
[7] Baharuddin Lopa (2001), Kejahatan Korupsi dan Penegakan Hukum, Penerbit Buku Kompas, Jakarta, hal. 126.
[8] Vide Konsiderans Undang-undang Republik Indonesia No. 31 Tahun 1999 jo UU No. 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi.

its eradication efforts need to be done with a remarkable (law) approach. One form of extraordinary law approach is, in the Law of the Republic of Indonesia No. 31 of 1999 juncto Law No. 20 of 2001 on the Eradication of Corruption (UU PTPK) stipulated a minimum criminal threat (*strafminima*) special.

The significance of a specific minimum criminal threat is that the law has its own set of minimum and maximum limits of criminal sanctions in a crime. In this case, the judge shall not impose a penalty under the terms of the minimum criminal sanctions set out in the formulation of the offense.

In practice these minimum criminal provisions can not be properly implemented by lawmakers. This is evident from the legislation policy to the provision of minimum criminal sanctions (*strafminima*) specifically in UU PTPK. There is the impression that the minimum criminal threat is too far away with maximum penal sanctions. For example the formulation of specific minimum criminal sanctions in Article 3, namely the threat of imprisonment minimum jail in the form of imprisonment of 1 year while maximal in the form of imprisonment for life / 20 years.

Thus normatively the existence of minimum criminal provisions in UU PTPK can cause a criminal disparity. This has implications for the lack of respect of people, especially the corruptors against criminal law. Further impact that the minimum criminal provisions in UU PTPK can not be an effective tool in the prevention of criminal disparity.

The stipulation of minimum criminal can not be implemented properly by the legislator who make laws. That is evidently from the legislation policy to the provision of minimum criminal sanctions (*strafminima*) specifically in UU PTPK. There is the impression that the minimum criminal threat is too far away with maximum penal code sanctions. This fact raises doubts among the public about the existence of specific minimum criminal provisions in UU PTPK as an effective means of preventing criminal disparity.

Based on that background so problem which is important discussion in this paper that is: what is the specific minimum criminal stipulation in the law of Republic of Indonesia on Corruption Eradication can be an effective means to prevent disparity?

This method of discussion uses study of the library (library research). Data collection techniques by reading and reviewing books, journals and related documents. Data processing is done by way of data grouping according to its type, and then the data is analyzed descriptively qualitative.

2. Review of Related Literature

2.1 Understanding and kind of Corruption

According to Fochema Andreae in Andi Hamzah [9] the word corruption comes from the Latin: "corruptio" or "corruptus". Furthermore it is mentioned that the "corruptio" is derived from the origin of "corrumpere", an older Latin word. From Latin it uses to many European languages such as, in English that is corruption, corrupt; France, namely "corruption"; and in Dutch, "corruptive" (*korruptie*); and we can venture that from Dutch this word used to the Indonesian language, which is "corruption".

Furthermore, in The Lexicon Webster Dictionary as cited by Andi Hamzah [10], literally translation corruption is defined as follows.

Corruption [L. corruptio (n)]. The act of corrupting, or the state of being corrupt; putrefactive decomposition, putrid matter; moral perversión; depravity, perversión of integrity; corrupt or dishonest proceedings, bribery; perversión from a state of purity; debasement, as of a languege; a debased form of a world.

While Robert Klitgaard in Rohim [11] to explained the word of corruption in a mathematical proposition that is, C = M + D-A, namely of Corruption = Monopoly Power + Discretion by Official - Accountability. Thus, according to Klitgaard, corruption occurs because of a monopoly over power and is accompanied by discretion by the authorities, but in the absence of accountability.

In the Black's Law Dictionary [12], the definition of corruption is formulated as follows:

An act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully an wrongfully use his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.

While in the Law of the Republic of Indonesia No. 31 of 1999 juncto Law No. 20 Year 2001 on the Eradication of Corruption, the definition of corruption is mentioned in Articles 2 paragraph (1) and Articles 3, as follows.

1. any person who unlawfully commits an act of enrichment of himself or another person or a corporation that may harm the state's finances or the State's reconstruction.
2. any person who, for the purpose of profiting himself or others or a corporation, misuses the authority, opportunity or means available to him because of a position or position which could be detrimental to the state's finances or the economy of the State [13].

As for the types of corruption that is, material corruption, time corruption, political corruption, and scientific corruption, art and literature [14]. First, material or money corruption; which is corrupted is in the form of money / material (material corruption). Second, scientific, literary and art corruption (intellectual corruption). Examples: hijacking or using someone else's copyright (such as bribery, bribery and embezzlement). Third, political corruption. A person abuses a position with a view to the political (party) interests. Fourth, Corruption time. For example, a Civil Servant (PNS) every day enter the office but effectively work only 5 hours a day (should be 6 hours), the remaining 1 hour is used for personal purposes such as taking care of family business [15].

[9] Andi Hamzah, Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional, Jakarta, Rajawali Pers, 2008, hal.4.

[10] Ibid. Hal. 5.

[11] Rohim, Modus Operandi Tindak Pidana Korupsi, Pena Multi Media, 2008, hal. 3

[12] Henry Campbelll Black, Black's Law Dictionary With Pronounciation, (St Paul, Minn: West Publishing Co), 1983, p.182.

[13] Rohim, Loc.Cit.

[14] Andi Hamzah, Delik-delik Tersebar di Luar KUHP, Jakarta, Pradnya Paramita, 1988, hal. 135-136.

[15] Antonius Sudirman, "Eksistensi Pidana Minimum Khusus Sebagai Sarana Penanggulangan Tindak Pidana Korupsi", Jurnal Masalah-Masalah Hukum, Undip Semarang, 2015, Vol 44, No. 3, Hal.317.

Relating to the type of time corruption can be illustrated by the author as follows [16]. For example, a civil servant every day enter the office but effectively work only 5 hours a day (should be 6 hours), 1 hour the rest is used for personal purposes. According to the people's sense of justice the person has actually committed an act against the law, corruption time every day 1 hour. Estimated time corruption, for a period of one month, with 26 effective working days, total corruption time of as much as 26 hours. Within a year the amount of time is corrupted, 12 months multiplied by 26 hours to 312 hours. If calculated in to effective working days (26 working days a month with 6 hours of work a day), the concerned has committed corruption within 52 working days or 2 full months of the year.

2.2 Causes and Impact of Corruption in Indonesia

It can not be denied that corruption in Indonesia is growing rapidly because it is influenced by several things, among others: *First*, weak function of law official enforcement in enforcing corruption cases. *Secondly*, the weak function of internal oversight bodies from government agencies. *Third*, the weakness of the role of the legislative officer in supervising the implementation of government performance. *Fourth*, lack of public awareness in eradicating corruption. The eradication of corruption seems to be only the responsibility of the government [17].

Maria Martini in Marie Chêne asserted as follows.

In the case of Indonesia, a more in-depth analysis of he main causes of corruption migtht be required to understand why corruption remains such a large problem in spite of several reforms (e.g. decentralisation, establishment of an anti-corruption agency, etc) and recent efforts to curb it. Several factors, ranging from structural factors, such as income levels, and inequality, to a weak judiciary seem to have a strong correlation with corruption [18].

While according to Andi Hamzah [19] that factors causing corruption can be grouped into 4 types namely: (1) lack of salary or income of civil servants compared with needs; (2) The background of Indonesian culture or culture supports the growth of corruption; (3) poor management and less effective and efficient controls; (4) rapidly growing social and economic modernization.

In addition, corruption flourishes due to weak legislation. For example the criminal threat is too low. In Article 3 UU PTPK, the threat of imprisonment is a minimum of 1 year imprisonment while the maximum is a life imprisonment of 20 years. In practice, judges often impose minimum criminal sanctions against corruptors so that they (corruptors) are not deterred from corruption.

While the various social impacts caused by corruption, among others as follows [20]. (1) The decay of the character of the law enforcers so as to nullify hope for justice; (2) gave birth to the greedy politician's character; (3) thwart the purpose of government programs in improving people's welfare; (4) endangering the stability or security of the state and society, destroying all important joints within the state; (5) result in a very violent riot and tend to make some people barbaric; (6) undermines the morality of citizens and influences the mindset of the young generation that corruption is perceived as a "new culture" in Indonesia.

In essence the word culture is always a positive meaning that concerns the human work that includes creativity, taste and initiative for the happiness and welfare of mankind, and for the glory of God. However, the word "culture" in the expression of corruption is considered a kind of "new culture [21]" in Indonesia, it is intended that corruption is rooted in a person (law enforcement officer), as if it is a good habit to be maintained and because it is difficult to change again, it is necessary to quote a proverb from the Bugis tribe, Indonesia, " Lele bulu' tellele abiasang" (ie, the mountain can move but the habit does not, or in other words change the habit is more difficult than moving a mountain).

The various impacts of corruption will lead to one point, namely corruption can hinder the realization of the ideals of the Indonesian nation to promote the public welfare (*bonum commune*) for all people. If the condition is going on continuously without any end point then the consequences that arise the creation of disintegration of the nation. Because some people will sue, "really for whether we live in the nation and state under the umbrella of NKRI, if only certain people who live luxurious life because of corruption while others live in the edge of edge?"

2.3 Strategy of Eradication of Corruption

Realizing the impact of corruption, it is the main enemy of all the people of Indonesia which must be immediately eradicated. But it will be realized if there is a common movement is synergistic from all components, especially between the community and law enforcement officers.

According to Andi Hamzah [22], the best way to combat corruption must start with the effort to look for the causes of corruption. Then the cause is linked with prevention followed by education (legal awareness raising) society accompanied by repressive action (punishment).

There are many factors that causes corruption can be grouped into 4 types namely: (1) lack of salaries or civil servants income compared to the needs; (2) The background of Indonesian culture or culture supports the growth of corruption; (3) The management is bad and less effective and efficient controls; (4) rapidly growing social and economic modernization [23].

In relation to the strategy of the eradication of criminal acts of

[16] Antonius Sudirman, Eksistensi Hukum dan Hukum Pidana dalam Dinamika Sosial: Suatu KajianTeori dan Praktik di Indonesia, Semarang, BP UNDIP, 2009, hal.139-140.

[17] Benny K. Harman dan Antonius Sudirman, Langkah-Langkah Strategis Memberantas Korupsi di Indonesia, "Jurnal Masalah-Masalah Hukum", UNDIP Semarang, 2011, Jilid 40 No. 4, hal. 434.

[18] Maira Martini, Transparency International, mmartini@hotmail.com; Marie Chêne, Transparency International, mchene@transparency.org; and https://issuu.com/cmi-norway/docs/338l, diakses 20 November 2017.

[19] Andi Hamzah, Op.Cit, hal. 13-21.

[20] Antonius Sudirman, Op.Cit. Hal. 317-318.

[21] Antonius Sudirman, Hati Nurani Hakim dan Putusannya: Suatu Pendekatan dari Perspektif Ilmu Hukum Perilaku (Behavioral Jurisprudence), Kasus Hakim Bismar Siregar, Bandung, Citra Aditya Bakti, 2007, hal. 4.

[22] Andi Hamzah, Pemberantasan Korupsi melalui Hukum Pidana Nasional dan Internasional, Pen Raja Grafindo Persada, Jakarta, 2005, hal 261.

[23] Andi Hamzah, Ibid, hal. 13-21.

corruption, Gunar Myrdal [24] asserted that the roads used to combat corruption in developing countries are: (1) raising the salaries of low (and medium) employees; raising morale of high officials; (3) legalization of illegal levies into legal or legal opinions. It is also interesting to follow the strategy of eradicating of corruption in Southern Africa, in the form of pyramidal eradication strategy which at its peak is prevention, while on both sides are public education and punihsment respectively. That case can read to the fig 1 as follows [25]:

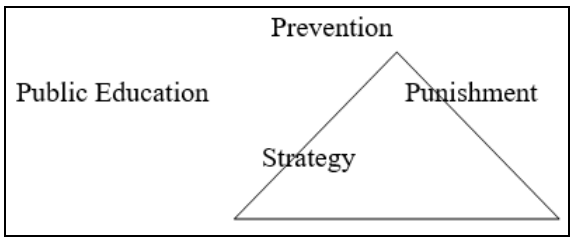

Fig 1: Corruption of eradication strategy

Considering that corruption belongs to an extraordinary crime, the eradication effort needs to be done in an extraordinary way. Romli Atmasasmita [26] emphasized that the eradication strategy against corruption in Indonesia should use four approaches: law approach, moralistic approach and faith, educative approach and socio-cultural approach. The law approach takes a very strategic role, but the conventional law approach is inadequate in the face of a systematic and widespread modus operating of corruption and is an "extraordinary crime". Therefore a new law approach is needed that places the interests of the nation and the state or the people's economic and social rights above the interests and rights of the individual suspect or defendant.

In relation to that, the perspective put forward by the author in this discussion is the effort to eradicate corruption with a remarkable law approach. One form of extraordinary law approach that is the inclusion of specific minimum criminal threats in UU PTPK. This is in line with international trends regarding the application of specific minimum criminal threats to serious crimes [27].

2.4 Ratio Legis Special Minimum Criminal in Corruption Act

Professor Barda Nawawi Arief [28], asserted, in principle a specific minimum penalty is an exception, namely for certain offenses that are very harmful, harmful or disturbing the society and the offenses are qualified or aggravated by the consequences (*erfolgsqualifizierte delikte*). Further Barda Nawawi Arief asserted that the use of minimum criminal threats specifically for UU PTPK, as in other laws (among others Narcotics Act, Psychotropic, Banking and the Environment) is quite reasonable [29]. Given the corruption that has been categorized as an extraordinary crime can bring harm to the community and the unity of the NKRI [30].

Thus, it is clear that one of the goals or intent (*ratio legis*) of specific minimum penalty in UU PTPK is to prevent the occurrence of disparity of penalties (disparity of sentencing) is very conspicuous, both to the same case in the context of equity (*deelneming*), as well as cases different but the type of offense violated by principals is the same or essentially no different in quality [31].

In Black's Law Dictionary [32], "disparity is inequality or a difference in quantity or quality between two things or among many things." John Hagan and Kristien Bumiller, In Alfred Blumstein *et al.* [33] said:

> *Sentencing disparity is defined as "a form of unequal treatment that is often of unexplained cause and is at least incongruous, unfair and disadvantaging in consequence.*

While Molly Cheang in Muladi and Barda Nawawi Arief [34] asserted, the disparity of sentencing is unequal criminal application to the same offense or to offenses of comparable seriousness without clear justification grounds. Then Jackson added that criminal disparities can also occur in different criminal cases against two or more defendants who commit a co-defendant.

In many countries, the issue of criminal disparity is identified as a factor that can reduce the rewards of both criminal offenders and the public against the courts. Especially for the perpetrators of criminal acts, they will consider themselves as victims of judicial caprice and for the criminal prosecutor apparatus this will be one of the constraints of the re-establishment process of the convicted persons [35].

3. Result and Discussion

3.1 The Specific Minimum Criminal in Corruption Act Of Indonesia

It has been described that in the Corruption Act introduced minimum criminal threat, either in the form of fine and imprisonment. It has been described that in the Corruption Act introduced minimum criminal provisions, either in the form of fine and imprisonment. The provisions are not regulated in the Criminal Code of Indonesia (KUHP), which is a product of the Dutch East Indies government, which is still in positive force in Indonesia. Accordingly, the following will be cited in some articles in UU PTPK related to a specific minimum criminal threat (see Table 1).

[24] Andi hamzah, Ibid, hal. 259.
[25] Ibid, hal 261.
[26] Ermasjah Djaja, Memberantas Korupsi Bersama Komisi Pemberantasan Korupsi, Sinar Grafika, Jakarta, 2010, Hal. 10.
[27] Muladi, "Ambiguitas dalam Penerapan Doktrin Hukum Pidana: Antara Doktrin Ultimum Remedium dan Doktrin Primum Remedium", Simposium Hukum Pidana Nasional, yang diselenggarakan MAHUPIKI, di Makasar, 18 Maret 2013, hal. 7.
[28] Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Bandung, Citra Aditya Bakti, 1996, hal. 141.
[29] Barda Nawawi Arief, Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan, Jakarta, Kencana, 2008, hal. 149.
[30] H. Elwi Danil (2012), Korupsi: Konsep, Tindak Pidana dan Pemberantasannya, Jakarta, Rajawali Pers, hal. 76
[31] Mohammad Amari, Ibid.
[32] A. Bryan Garner, Balack's Law Dictionary, St. Paul Minn, 1999, p. 472.
[33] Blumstein, Alfred et al., National Research Council. Research on Sentencing: The Search for Reform, Volume II. Washington, DC: The National Academies Press, 1983, p.9.https://doi.org/10.17226/101.
[34] Muladi dan Barda Nawawi Arief, Teori-teori dan Kebijakan Pidana, Bandung, Alumni, 1984, hal. 52- 53
[35] Muladi, Kapita Selekta Sistem Peradilan Pidana, Semarang, BP Undip, 1995, hal. 26.

Tabel 1: Threat of the Specific Minimal Crime in UU PTPK

No.	*Article*	*Formulation of Criminal Threat*	
		Minimal	***Maksimal***
1.	2 Verse (1)	4 years in prison and a fine Rp. 200.000.000,-	life imprisonment / 20 years and a fine of 1 billion rupiah.
2.	3	1 year in prison and / or a fine Rp.50.000.000,-	life imprisonment / 20 years and / or a fine of 1 billion rupiah.
3.	5	1 year in prison and / or a fine Rp.50.000.000,-	imprisonment of 5 years and / or a fine Rp.250.000.000,-
4.	6	3 year in prison and a fine Rp.150.000.000,-	prison 15 years and fine Rp.750.000.000,-
5.	7	2 years in prison and / or a fine Rp.100.000.000,-	imprisonment of 7 years and / or a fine Rp.350.000.000,-
6.	8	2 years in prison and a fine Rp.100.000.000,-.	prison 15 years and fine Rp.750.000.000,-
7.	9	1 year in prison and a fine Rp.50.000.000,-	jail 5 years and fine Rp.250.000.000,-
8.	10	1 year in prison a fine Rp.100.000.000,-	7 years imprisonment and fine Rp.350.000.000,-
9.	11	1 year in prison a fine Rp.50.000.000,-	penjara 5 tahun dan/atau denda Rp.250.000.000,-
10.	12	4 year in prison a fine Rp.200.000,-.	life imprisonment / 20 years and a fine of 1 billion rupiah.
11.	13	----	3 years in prison and a fine Rp.150.000.000,-
12	12B verse (2)	4 year in prison a fine Rp. 200.000.000,-	life imprisonment / 20 years and a fine of 1 billion rupiah
13	21	3 year in prison a fine Rp.150.000.000,-	imprisonment of 12 years and / or a fine Rp.600.000.000,-
14	22	3 years in prison and a fine Rp.150.000.000,-	imprisonment of 12 years and / or a fine Rp.600.000.000,-
15	23	1 year in prison and / or a fine Rp.50.000.000,-	imprisonment of 6 years and / or a fine RP 300.000.000,-
16	24	----	3 years in prison and a fine Rp.150.000.000,-

Source: Data processed from UU RI No. 31 Year 1999 jo UU RI No. Year 2001 About Eradication Of The Criminal Act Of Corruption

Based on the data in Table 1, we get an overview of the following points. *First*, there are 14 articles in UU PTPK which contain specific minimum criminal threats, while the other 2 articles do not include minimum criminal sanctions. The duration of specific minimum criminal threat is at least 1 year and 4 years at the most.

Secondly, if the fine is compared with the imprisonment, then the image of UU PTPK maker will be judged that a 1-year imprisonment is equivalent to a fine of 50 million rupiah, whether the penalty is minimal or maximum. If the penalty is one year, the fine is 100 million rupiah and if the penalty is 4 years, the fine is 200 million rupiah and so on [36]; while maximum life penalty / 20 years imprisonment is considered equivalent to a fine of 1 billion rupiah.

Thirdly, a specific minimum criminal threat is formulated in the form of absolute cumulation and the relative cumulation of prison sentences with a fine penalty. The absolute cumulative criminal threats are listed in Articles 2, 6, 8, 9, 10, 12, 12B, 21 and 22 of UU PTPK, while the relative cumulative threats are listed in Articles 3, 5, 7, 11, 23 UU PTPK.

Fourth, Article 3 and Article 24 are not stipulated on the minimum criminal provisions, both imprisonment and fines; which is set to a maximum of imprisonment and / or a fine.

3.2 Analysis about the Stipulation of Specific Minimal Criminal in Corruption Act of Indonesia

Based on the data, it can be seen that the minimum criminal provisions in Corruption Act of Indonesia seem to be arranged haphazardly or without a clear concept in the prevention of criminal disparity. It can be seen from two perspectives namely: (1) the issue of the substance of a specific minimum criminal provisions in Corruption Act; (2) the problem of guidelines in the application of specific minimum criminal provisions in corruptioan act [37].

3.2.1 Analysis about substancy specific minimal criminal provisions in Corruption Act of Indonesia

Briefly it can be argued that the substance of the minimum criminal provisions in UU PTPK contains some fundamental weaknesses, namely as follows [38]. *Firstly*, the imprisonment sanction is at least too far away with maximum imprisonment. For example a specific minimum criminal provision in Article 3 paragraph (1) of UU PTPK; the maximum penalty is a life imprisonment or 20 years in prison, while the maximum imprisonment is 1 year. Likewise with the criminal provisions set forth in Article 2 paragraph (1), which is threatened with life imprisonment or 20 years in prison and a minimum of 4 years.

Secondly, UU PTPK producers appear inconsistent in formulating minimum criminal threats between articles with each other [39]. For example the provisions of Articles 2 and 3, 12 and 12B are both threatened with imprisonment while a maximum of 20 years in prison and a fine of 1 billion, but the threat of criminal is minimum different. In Articles 2, 12 and 12B are punishable by a minimum of 4 years imprisonment and a fine of 200 million rupiah, while Article 3, 12 and 12B are punishable by a minimum of 1 year imprisonment and a fine of 50 million rupiah.

Third, the threat of imprisonment of at least 1 year imprisonment and / or a fine of 50 million rupiah juxtaposed with the threat of maximum criminal sanction is relatively mild ie 5-6 years in prison and / or a fine of 250-300 million rupiah, and the maximum criminal threat that is classified as very severe criminal life imprisonment / 20 years.

Fourth, minimum criminal sanction in Article 3 (ie 1 year imprisonment and / or a fine of 50 million rupiah) is considered lighter than the minimum criminal threat in Article 2 paragraph (1), 12 and 12B paragraph (2) (ie 4 years in prison/ and a fine of 400 million rupiah); the maximum threat threats in those 4 articles are the same: life imprisonment/20 years and/or fine of 1 billion rupiah.

Fifth, the criminal provisions are at least strange and unfair because the threat of imprisonment of at least 1 year

[36] Andi Hamzah, Op.Cit. Hal. 116.

[37] Compare with Barda Nawawi Arief, 2008, Op.Cit. hal. 149-150.

[38] Antonius Sudirman, "Eksistensi Pidana Minimum Khusus Sebagai Sarana Penanggulangan Tindak Pidana Korupsi", Jurnal Masalah-Masalah Hukum, Undip Semarang, 2015, Vol 44, No 3, Hal.319-321.

[39] Barda Nawawi Arief, 2008, Op.cit. hlm 150.

imprisonment and a fine of 50 million rupiah applied to the offense whose maximum penalty is a life imprisonment of 20 years and a fine of 1 billion, and also applied to criminal offenses maximum lighter ie, 5 years in prison and a fine of 250 million rupiah.

Based on this matter, it can be stated, in terms of formulative policy (criminal sanction formulation), the existence of minimum criminal in UU PTPK is considered inadequate and effective to prevent the occurrence of criminal disparity, instead it becomes the cause of the criminal disparity. The criminal range between minimum and maximum criminal threats is too far away. It may result in, two or more cases of corruption of equal weight, but the penalties imposed by judges vary; some are sentenced to very light crimes, 1 year in prison and another 15 years or 15 years in prison. It is not in accordance with the nature (*ratio legis*) of the existence of minimum criminal provisions to prevent the occurrence of criminal disparity.

In this context interesting quoted opinion Muladi and Barda Nawawi Arief [40] as follows.

Disparity itself begins with the law itself; because in the positive Law of Indonesia judges have the greatest freedom to choose the desired type of crime (*strafsoort*), in connection with the use of alternative systems in criminal penalties within the law. In addition, judges also have the freedom to choose the severity of the criminal (*strafmaat*) that will be imposed, because that is determined by the law is only maximum and minimum.

Meanwhile, Tama S. Langkun *et al.* [41], stated that the factors causing the occurrence of criminal disparity in Indonesia are as follows.

1. The Law system. Most Indonesian law systems still adhere to the Continental European System (civil law system); so that the disparity of the verdict must occur, because the civil law system emphasizes the rules of the act.
2. Factor of Law. Undang-undang Pemberantasan Tindak Pidana Korupsi is actually considered as a trigger for the disparity of punishment in corruption cases. For example the difference in minimum criminal threats on Article 2 and Article 3, namely to regulate criminal at least 4 years, while Article 3 regulate criminal at least 1 year.
3. Factors sourced from judges. In this case the judge has the greatest freedom to choose the desired criminal type (*strafsoort*), in connection with the use of an alternative system of criminal penalties within the act.
4. There is no common guide (sentencing standard). The lack of common guidance can lead to disparity, because on the one hand there is a "judicial discretion" while on the other hand the absence of a "sentencing standard" can limit judicial freedom.

3.2.2 Analysis about guidelines in the application of specific minimum criminal provisions in Corruption Act of Indonesia

Sentencing guidelines are defined, "The standards for determining the punishment that a person convicted of a crime should receive, based on the nature of the crime and the offender's criminal history. In short it is the set of rules and principles a trial court judge follows to decide about the sentence to be given to a defendant who is found guilty [42]".

The problem, the Corruption Act of Indonesia not set about guidance of punishment; while on the other hand, the provision of this penal code is important for judges to operationalize minimum criminal sanctions so as to create justice in the judicial process. In other words, these criminal guidelines can assist judges in solving their confusion in complex decision-making processes [43]. This is in accordance with the Draft Indonesian Criminal Code that in certain cases minimum criminal threats can be reduced / mitigated if there are matters that ease the crime [44]. In this case the criminal guidelines is the basis for the judge in applying the minimum punishment in the case of corruption in order to create justice and legal certainty.

Lilik Mulyadi [45] asserted that punishment guidelines gives and serves as a catalyst to become a safety valve for judges in the imposition of a criminal to the defendant. The judge can judge fairly, wisely, humane and relatively inadequate to the defendant's wrong doing. Therefore, with the guidelines of punishment, it is hoped that in addition to finding justice that can be accepted by all parties, it is also reflected on the value of legal certainty (*rechts zekerheids*) which the judge handed down in his decision.

Andrew Ashworth on www.hukumonline.com [46] affirmed that the disparity of the decision cannot be released from the judge's discretion impose penalties in a criminal case. However, judge discretion is very likely to be misused, so punishment guidelines is considered the best way to limit judicial freedom. Therefore, according to Asworth, the punishment guidelines should be 'a strong and restrictive guideline' [47]. In addition, the process of formulating legislation contributes to the disparity of punishment due to the absence of standard formulating criminal sanctions. The disparity of the decision from the beginning is possible because the legal rules drawn up by the government and the Indonesian Legislative Assembly (DPR) open space for it [48].

According to author, the various weaknesses in the formulation of specific minimum criminal sanctions in the UU PTPK Law can be caused by the following two things:

First, the legislators do not understand the nature of the specific minimum criminal provisions listed in UU PTPK. *Secondly*, it is possible that the specific minimum criminal

[40] Muladi and Barda Nawawi Arief, Op.cit. Hal. 56-57.

[41] Tama S. Langkun dkk, "Disparitas Putusan Pemidanaan Perkara Tindak Pidana Korupsi", Policy Paper, Indonesia Corruption Watch, 2014, Hal. 39-42.

[42] https://definitions.uslegal.com/s/sentencing-guidelines/ accessed 09/10/2017.

[43] https://definitions.uslegal.com/s/sentencing-guidelines/ accessed 09/10/2017.

[44] Barda Nawawi Arief, Ibid. hlm. 139.

[45] Lilik Mulyadi, "Sebuah Polarisasi Pemikiran terhadap Filsafat Pemidanaan yang DiterapkanHakim Indonesia, Dikaji dari Perspektif Teoritis dan Praktik Peradilan Indonesia," Malang 12 July 2009.

[46] http://www.hukumonline.com/berita/baca/lt524a2ce258cb5/disparitas-putusan-dan-pemidanaan-yang-tidak-proporsional, accessed 01 October 2013; Andrew Ashworth, Sentencing and Criminal Justice, Cambridge University Press, 2005, p.72.

[47] http://www.hukumonline.com. Ibid. accessed 09/10/2017; Andrew Ashworth, Sentencing and Criminal Justice, Ibid.p.101.

[48] http://www.hukumonline. com. Ibid.

formula in UU PTPK is part of the "grand design" of legislators. In the sense that there is a systematic effort by lawmakers to protect their interests from the law because they (the members of Legislative Assembly) have the potential to violate criminal provisions in UU PTPK, including those threatened with minimum criminal sanction. It is impossible for them to make rules that harm themselves [49].

This is in accordance with the document data that has been traced by author, whether data obtained from the Secretariat General of the Indonesian Legislative Assembly (DPR RI) as well as from other written sources. *First*, some members of the legislature do not know and understand the nature of the specific minimum criminal provisions. Based on the data contained in the minutes of the meeting of members of the House of Representatives during the discussion of UU PTPK, included on the views of members of the House of Representatives who thought the minimum criminal calculated from the length of the criminal who had been imposed by the judge [50]. Whereas in fact that is meant that minimum criminal threats are listed in the formulation of offense in the law.

Secondly, there are efforts by members of the House of Representatives to hamper the performance of the Commission For The Eradication of Criminal Acts of Corruption of the Republic of Indonesia (KPK) through the formation of the committee of the right of inquiry to the KPK; even there has been a systematic effort of some people including members of the House of Representatives to delegitimize or castrate the KPK's authority. In connection with that, it is necessary to quote the opinion of Imam Anshori Saleh as follows.

Long before, we see the efforts of some members of the Indonesian Legislative Assembly of the 2009-2014 period to regulate the regulations concerning the KPK so that the institution does not continue to be a superbody with too much authority. The indication is seen from the spirit of the Indonesian Legislative Assembly to revise the Law on Corruption, the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) [51].

Based on that opinion it can be argued, that the fundamental weaknesses in the formulation of specific minimum criminal provisions in UU PTPK is part of a systematic effort and well planned by lawmakers to fortify themselves to avoid severe penalty. If this is allowed then efforts to eradicate corruption in Indonesia (including the prevention of criminal disparity) will be useless.

3.3 Comparative Study of Minimum Criminal Provisions in Some Countries

It has been described above that the minimum criminal provisions in corruption law in Indonesia have weaknesses, so it can not be used as an effective means to prevent the occurrence of criminal disparity. To overcome these problems, lawmakers need to conduct comparative studies on specific minimum criminal requirements in some countries, especially those that belong to the continental European family families. In principle, positive things in criminal formulation in other countries can be used to update specific minimum criminal provisions in Indonesia, especially the Corruption Act.

Based on the literature study, there are two models of minimum criminal formulation adopted in several countries in the world, namely: (1) fixed sentence: mandatory minimum sentence (MMS), absolute or imperative; (2) unfixed sentence, is relative or elastic [52].

The mandatory minimum sentence model still generates a lot of pros and cons among lawyers. The trial at United State of America in United States v Michael P.Madkour, commented as follows.

This type of statute …. does not render justice. This type of statute denies the judges of this court, and of all courts, the right to bring their conscience, experience, discretion, and sense of what is just into the sentencing procedure, and it, in effect, makes a judge a computer, automatically imposing sentences without regard to what is right and just. It violates the rights of the judiciary and of the defendants, and jeopardizes the judicial system. In effect, what itdoes is it gives not only Congress, but also the prosecutor, the right to do thesentencing, which I believe is unconstitutional. Unfortunately, the higher courts haveruled it to be constitutional. This case graphically illustrates the failure of the justice system. But for the mandatory sentence, I would have sentenceddefendant to the [guideline] minimum of 15 month [53].

While Prof. Michael Tonry, in Prof. Barda Nawawi Arief [54], asserted as follows.

Basic new insights concerning application of mandatory penalties are unlikely to emerge.... We now know what we are likely to know, and what our predecessors knew, about mandatory penalties. As instruments of public policy, they do little good and much harm.

That is why then used as a reference in this discussion is the formulation of minimum criminal sanctions that are unfixed model. The model is widely applied in some countries that adhere to Continental European legal family. As a comparison material it is necessary to quote the minimum criminal concept in the countries of Bulgaria, Yugoslavia, Portugal, and India.

3.3.1 Bulgaria

In Bulgaria the Criminal Code is regulated on special matters or due to various mitigating factors, the courts may enforce the criminal under minimum penalty stipulated by law. In Article 55 Bulgarian Criminal Code is affirmed as follows.

1. In case of exceptional or of a great number of attenuating circumstances, where even the mildest punishment provided by law proves disproportionately severe, the court: 1. shall fix a punishment under the lowest limit; 2.

[49] Compare with Antonius Sudirman, Op.Cit. Hal. 321.

[50] Risalah Rapat DPR tentang Proses Pembahasan Rancagan Undang-Undang Pemberantasan Tindak Pidana Korupsi Tahun 1999.

[51] Imam Anshori Saleh, Korupsi, Terorisme dan Narkoba: Upaya Melawan Kejahatan Luar Biasa, Setara Presss, Malang, 2017, hal. 102.

[52] Barda Nawawi Arief, Kebijakan Formulasi Ketentuan Pidana dalam Peraturan Perundang-undangan, Penerbit Pustaka Magister, Semarang, 2016, hal. 98.

[53] https://www.scribd.com/document/320364412/United-States-v-Michael-P-Madkour-930-F-2d-234-2d-Cir-1991. accessed 09/10/2017.

[54] Barda Nawawi Arief, Kebijakan Formulasi....Ibid. hal. 99; Michael Tonry, Mandatory Penalties, in 16 Crime & Justice: A Review of Research, at 243–44 (Michael Tonry ed., 1990).

shall substitute ….ect.
2. In the cases of sub-paragraph 1 of the preceding paragraph where the punishment is a fine, the court may specify punishment under the lowest limit by one half at most;
3. In such cases the court may not impose the lesser punishment provided by law along with punishment by deprivation of liberty.

3.3.2 Portugal

In article 72 Portugal Code Penal is set about "Special mitigation of penalty" and article 73 is regulated on "Special mitigation of terms". The essence provided for in Article 72, namely, on criminal reduction / mitigation guidelines, among others judges shall be granted criminal sanction in the event of the unlawfulness of the act, the guilt of the agent and the necessity of a crime imposed of the penalty). For that purpose, considerable circumstances are:

a. that the agent had acted under the influence of a serious threat, under the influence of someone he depends on, or to whom he owes obedience;
b. that the agent's conduct had been determined by honourable motive, by strong solicitation or temptation from the victim himself, or unjust provocation or undeserved offence;
c. that there had been demonstrative acts of the agent's sincere repentance, namely reparation of the damages up to where it had been possible for him;
d. That a long time had elapsed over the perpetration of the crime, the agent maintaining good conduct.

While in article 73 Portugal Code Penal is set about limits of minimum criminal reduction that is for some of the following reasons.

a. The maximum limit of the imprisonment penalty is reduced by one third;
b. The minimum limit of the imprisonment penalty is reduced to one fifth if it is equal or superior to 3 years, and to the legal minimum if it is inferior;
c. The maximum limit of the fine penalty is reduced by one third and the minimum limit to the legal minimum;
d. If the maximum limit of the imprisonment penalty is not superior to 3 years, it may be replaced by a fine, inside the general limits.

3.3.3 Yugoslavia

The Criminal Code of Yugoslavia is stipulated on guidelines for the application of minimum criminal cases, for example, as set forth in Article 42 on Reduction of Punishment and Article 43 on Mode of Reduction punishment. Article 42 is listed as follows.

The court may set the punishment below the limit prescribed by statute, or impose a milder type of punishment; 1) when provided by statute that the offender's punishment may be reduced; 2) when it finds that such extenuating circumstances exist which indicate that the aims of punishment can be attained by a lesser punishment.

3.3.4 India

In India the Penal Code is also set about a specific minimum penalty. In this case it is specified about a special clause, that is, if there are special reasons, the court may impose a criminal under minimum criminal sanction. For example, the perpetrators of rape are threatened with a minimum of 7 years compulsory crime. However, if there are special reasons, the court may impose under a minimum penalty [55]. It is mentioned in Article 376 paragraph (1) of India Code Penal as follows.

Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years (*the bottom line of the author*).

Interestingly in the Indian Penal Code is regulated, for offenses that have no minimum criminal provisions in particular or only a maximum penalty provision can be granted a special clause for minimum criminal enforcement. It is applied if the offense is done for the second or the next time. For example, for pornographic offenses set forth in Article 292 and offense of extortion using the writings / drawings provided for in Article 292A shall be punishable by a maximum of 2 years imprisonment; but there is a clause that reads, for the second and subsequent offenses, threatened a minimum of 6 months in prison [56].

Based on the specific minimum criminal provisions that applicable in some countries as described above, it can be concluded that the following matters.

1. Although there is a specific minimum penalty, there are rules / guidelines for its application that allow such a specific minimum mitigation or reduction.
2. Rules / guidelines for implementation, some are set out in "general rules" and some are in "custom rules" (corresponding offenses). Things that can alleviate / raise the minimum amount;
3. Limitations / quantities of mitigation or specific minimum weighting;
4. Implementation guidelines (exclusion clauses, and guidelines for dropping a specific minimum) [57].

It is expected that in the future, in the Corruption Act in Indonesia (including other specific laws) shall be regulated a bout guidelines for the application of minimum criminal provisions. For example the authority of a judge deviates from the minimum criminal provisions in the law. In a sense, a judge may impose a penalty, under minimum criminal sanction in the law. But it must be based on special rational considerations; for example, the role of the perpetrator is not significant in the crime (corruption) and the amount of

[55] Barda Nawawi Arief, Kebijakan Formulasi ...op.cit. hal.111; Pasal 376 ayat (1) India Code Penal.
[56] compare with Barda Nawawi Arief, Kebijakan Formulasi ...Ibid.112
[57] Barda Nawawi Arief, Kebijakan Formulasi ...Ibid. Hal. 112-113.

financial loss is very mild so it is considered not comparable with the minimum criminal threat regulated in the law.

The above mentioned in line with the sound of Article 5 verse (1) of the Law of the Republic of Indonesia Number 48/2009 on Judicial Power. "The judges and judges of the constitution are obliged to explore, follow and understand the legal values and sense of justice living in the community." This provision is intended to ensure that the judges and constitutional judges are in accordance with the law and sense of community justice [58].

Thus, the above statement affirms the position of the judge in Indonesia that is not as a mouthpiece of the law (*let'terknechten der wet*) but is the creator of the law through its decision (judge made law), including deviating from the minimum criminal provisions in the Act, especially Corruption Act. Even if the judge does not find the law in the law, he is obliged to dig up the living law in society, so that the judge's judgment is in accordance with the sense of justice living in society.

4. Conclusion and Recommendation

4.1 Conclusion

In accordance with the description of the discussion then it can be concluded several things as follows. *First*, theoretically that the inclusion of a specific minimum criminal provisions in Corruption Act has a noble intention as one of the strategic efforts in eradicating corruption in Indonesia and specifically to prevent criminal disparity.

Secondly, however, based on formulative policies, specific minimum criminal provisions in the Corruption Act are deemed ineffective in preventing criminal disparity, on the contrary as the cause of criminal disparity. Because the minimum criminal threat is too light compared to the maximum criminal threat. In addition, the Corruption Act is not regulated on the guidelines of criminal punishment in specific minimum penalty as the judge's handling in decision-making in accordance with the sense of justice in the community.

4.2 Recommendation

In accordance with these conclusions, it is necessary to recommend some thing of the following. *First*, Corruption Act needs to be reconstructed by aggravating the minimum criminal threat to be proportional to the maximum threat. It is intended that the existence of the minimum criminal provisions can be an effective means to prevent the occurrence of criminal disparity in cases of corruption and can prevent the flourishing of corruption in Indonesia.

Secondly, in the future Corruption Act, it is necessary to regulate the guidelines of criminal punishment for the judge in imposing criminal punishment on the perpetrators of criminal acts of corruption, so that their decisions are fair and accountable in an ethical, moral and professional manner.

Finally, it should be quoted from the opinion of a philosopher Taverne in Achmad Ali [59], as follows, "give me an honest and intelligent prosecutor, give me an honest and intelligent judge then with the worst law I will produce a fair verdict."

While Satjipto Rahardjo [60] asserted, human structure as the determinants that will encourage the growth of law enforcement, because if the determination of law enforcement in particular judges and prosecutors strong, in any structure the law will be upright. Conversely, if law enforcers have absolutely no determination, no matter how strong the structure will fall. So, if law enforcement officers (judges) have no determination, they will only be busy looking for reasons for failure of law enforcement.

Thus, while corruption laws have been properly drafted, but are not accompanied by the moral commitment of state operators, especially law enforcement officials (judges, prosecutors, police, advocates), enforcement of corruption will face obstacles. Conversely, although the substance of corrupt law is bad, but law enforcement officers have a high moral integrity then the enforcement of corruption can work well and optimall.

5. References

1. Alfred Blumstein *et al*. National Research Council. Research on Sentencing: The Search for Reform, Volume II. Washington, DC: The National Academies Press, https://doi.org/10.17226/101, 1983.
2. Andi Hamzah, Delik-delik Tersebar di Luar KUHP, Jakarta, Pradnya Paramita. 1988.
3. Perbandingan Pemberantasan Korupsi di Berbagai Negara, Sinar Grafika, Jakarta, 2005.
4. Andrew Ashworth, Sentencing and Criminal Justice, Cambridge University Press, 2005**.**
5. Antonius Sudirman, Hati Nurani Hakim dan Putusannya: Suatu Pendekatan dari Perspektif Ilmu Hukum Perilaku Behavioral Jurisprudence, Kasus Hakim Bismar Siregar, Citra Aditya Bakti, Bandung, 2007.
6. Eksistensi Hukum dan Hukum Pidana dalam Dinamika Sosial: Suatu KajianTeori dan Praktik di Indonesia, BP UNDIP, Semarang, 2009.
7. Eksistensi Pidana Minimum Khusus Sebagai Sarana Penanggulangan Tindak Pidana Korupsi, Jurnal Masalah-Masalah Hukum, Undip Semarang, 2015; 44(3).
8. Barda Nawawi Arief, Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara, CV. Ananta, Semarang, 1994.
9. Bunga Rampai Kebijakan Hukum Pidana, Kencana Prenada Media Group, Jakarta, 2014.
10. Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan, Kencana, Jakarta, 2008.
11. Benny K. Harman dan Antonius Sudirman, Langkah-Langkah Strategis Memberantas Korupsi di Indonesia, Jurnal Masalah-Masalah Hukum, BP UNDIP, Semarang, 2011; 40(4).
12. David B. Mustard, Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from the U.S. Federal Courts, Journal of Law and Economics, By the University of Chicago, 2001, XLIV.
13. Dewi Triandayani, Luh Nyoman Penyunting, Budaya

[58] Penjelasan Pasal 5 ayat (1) UU Republik Indonesia No. 48 Tahun 2009 tentang Kekuasaan Kehakiman.

[59] Achmad Ali, Keterpurukan Hukum di Indonesia (Penyebab dan Solusinya), Ghalia Indonesia, 2005, hal.14.

[60] Antonius Sudirman, Hati Nurani Hakim.... Op. Cit. Hal.98.

Korupsi ala Indonesia, Penerbit: Pusat Studi Pengembangan Kawasan, Jakarta Selatan, 2002.
14. Ermansjah Djaja, Memberantas Korupsi Bersama KPK, Sinar Grafika, Jakarta, 2010.
15. Elwi Danil H, Korupsi Konsep. Tindak Pidana & Pemberantasannya, Rajawali, Jakarta, 2012.
16. Henry Campbelll Black, Black's Law Dictionary with Pronounciation, St Paul, Minn: West Publishing Co., 1983.
17. Imam Anshori Saleh, Korupsi, Terorisme dan Narkoba: Upaya Melawan Kejahatan Luar Biasa, Setara Presss, Malang, 2017.
18. Lexy J. Moleong, Metode Penelitian Kualitatif, cet. ke-7, PT. Remaja Rosda Karya, Bandung, 1996.
19. Lilik Mulyadi, Sebuah Polarisasi Pemikiran terhadap Filsafat Pemidanaan yang Diterapkan Hakim Indonesia, Dikaji dari Perspektif Teoritis dan Praktik Peradilan Indonesia, Makalah, Malang 12 Juli 2009.
20. Mansyur Semma, Negara dan Korupsi: Pemikiran Mochtar Lubis Atas Negara, Manusia Indonesia dan Prilaku Politik, Yayasan Obor Indonesia, Jakarta, 2008.
21. Maria Krambia-Kapardis, Corporate Fraud and Corruption, First Published by PALGRAVE MACMILLAN, 2016.
22. Mark AR, Kleiman. An Administrative Remedy for the Crack Mandatory Sentencing Problem, Journal of Drug Policy Analysis. 2008; 1(1):3.
23. Michael Tonry, Mandatory Penalties, In 16 Crime & Justice: A Review of Research, Michael Tonry ed., 1990.
24. Mohammad Amari, Politik Penegakan Hukum dalam Tindak Pidana Korupsi, Solusi Publishing, Jakarta, 2013.
25. Moh. Mahfud MD, Membangun Politik Hukum, Menegakkan Konstitusi, Rajawali Pers, Jakarta, 2011.
26. Molly Cheang, Disparity of Sentencing, Singapore Malaya Law Journal, PTE Ltd., 1977.
27. Muladi. Ambiguitas dalam Penerapan Doktrin Hukum Pidana: Antara Doktrin Ultimum Remedium dan Doktrin Primum Remedium, Simposium Hukum Pidana Nasional, yang diselenggarakan MAHUPIKI, di Makasar, 18 Maret 2013.
28. Kapita Selekta Sistem Peradilan Pidana. Badan Penerbit Universitas Diponegoro, Semarang, 1995.
29. Dan Barda Nawawi Arief, Teori-teori dan Kebijakan Pidana, Alumni, Bandung, 1984.
30. Nelly Caldero¤n Navarro. Fighting Corruption the Peruvian Experience, Journal of International Criminal Justice, 2006; 4:488-509.
31. NT, Feather, Jacqueline Souter. Reactions to Mandatory Sentences in Relation to the Ethnic Identity and Criminal History of the Offender, Law and Human Behavior, 2002; 26(4).
32. Rohim, Modus Operandi Tindak Pidana Korupsi, Penerbit Pena Multi Media, 2008.
33. Romli Atmasasmita. Pengantar Kejahatan Bisnis, Kencana, Bogor, 2003.
34. Shikha Mishra. Theories of Punishment - A Philosophical Aspect, Imperial Journal of Interdisciplinary Research IJIR, 2016; 2(8).
35. Tama S. Langkun dkk. Disparitas Putusan Pemidanaan Perkara Tindak Pidana Korupsi, Policy Paper, Indonesia Corruption Watch, 2014.
36. Rakernas Mahkamah Agung RI dengan Pengadilan Tingkat Banding dari 4 empat Peradilan Seluruh Indonesia, dengan tema: Meningkatkan Kualitas Pengadilan dengan kesamaan Persepsi Penerapan Hukum, di Palembang, 2009.
37. Risalah Rapat DPR tentang Proses Pembahasan Rancagan Undang-Undang Pemberantasan Tindak Pidana Korupsi Tahun, 1999.
38. http://www.hukumonline.com/berita/baca/lt524a2ce258cb5/disparitas-putusan-dan-pemidanaan-yang-tidak-proporsionalSelasa, 2013.
39. http://www.hukumonline.com/berita/baca/lt524a2ce258cb5/disparitas-putusan-dan-pemidanaan-yang-tidak-proporsional, Selasa, 2013.
40. https://www.transparency.org/news/feature/corruptionperceptions_index_2016.
41. https://definitions.uslegal.com/s/sentencing-guidelines/09/10/2017/12.48 AM.
42. https://issuu.com/cmi-norway/docs/338l, diakses 2017.
43. Harian Kompas. Perlu Politik Berintegritas: KPK Sudah Mengusut 79 Kepala Daerah, 2017.
44. Harian Kompas, Hakim Korupsi Karena Tamak: Remunerasi Sudah Cukup, 2017.
45. Harian Kompas. Sejumlah Kasus Mafia Peradilan, 2017.