

Are the Deterrent Effects Could Effective for Reduce Corruption Criminal Action in Indonesia?

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Abstract--So far the approach through punishment as a deterrent effect is considered as one of the solutions in overcoming the problem of corruption in Indonesia. However, how optimistic is the deterrent effect of criminal punishment can reduce the level of corruption in Indonesia. This research was conducted to find out the decrease in the level of corruption and how optimal the prevention of corruption through the deterrent effect of the criminal deterrent effect in overcoming the problem of corruption in Indonesia. This research uses descriptive qualitative research methods. The results of this study are in the form of an analysis of how optimistic the deterrent effect of the criminal deterrent effect on eradicating corruption in Indonesia. It is expected that through this research can provide an overview of reducing the level of corruption and how optimal the prevention of corruption from giving criminal penalties to perpetrators of corruption and also how much deterrence effect is given to others so as not to commit corruption through criminal penalties. It is also hoped that this research can provide the best solution in preventing and reducing criminal acts of corruption in Indonesia

Key words--Deterrence, Deterrent Effect, Criminal, Corruption.

I. INTRODUCTION

Corruption is a classic problem faced by Indonesia and other countries, especially in developing countries. Corruption is like a parasite that sucks up a variety of wealth owned by a country only for the benefit of a handful of people. The high level of corruption will have a negative effect on various fields such as the economy, social and culture. In the New Order era, there were a lot of corrupt practices carried out by state officials which resulted in the fall of President Soeharto's government in 1998 through the reform movement carried out by students. Entering the reform era, a lot of efforts have been made by the government in the context of eradicating criminal acts of corruption. One of the moves made is the formation of the Corruption Eradication Commission which has an independent status in handling the case of co-corruption. Although Indonesia has made an independent commission in combating corruption, the level of corruption in Indonesia is still considered quite high. According to a survey conducted by Transparency International in 2019, Indonesia's Perception Index is ranked 85th out of 180 countries in the world[1]. This shows the level of corruption in Indonesia which is still quite high when compared to our neighboring countries such as Malaysia and Singapore, which are respectively ranked 51st and ranked 4th out of 180 countries. Of course through the survey it can be seen that Indonesia is still more corrupt compared to neighboring countries.

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Table 1. Indonesian Corruption Perception Index compared to other countries

Country	Corruption Perception Index Rating from 180 countries
Singapore	4
Australia	12
Malaysia	51
China	80
Indonesia	85

Corruption in Indonesia has occurred in various sectors and also in all lines of state power both legislative, executive and judiciary. This is indicated by the large number of state officials arrested by the Corruption Eradication Commission for their involvement in corruption, ranging from members of the People's Representative Council, ministers, governors, regents, mayors and business people. Facing the many criminal acts of corruption that occurred in Indonesia, the government promotes efforts to eradicate corruption both in a preventive and repressive manner in mitigating corruption in Indonesia. Corruption is a white collar crime because it involves people with a high level of education and has authority and power[2]. Corruption is a white collar crime that is classified as an extraordinary crime (extra-ordinary crime) so that in eradicating corruption requires extraordinary steps as well.

So far, the handling of corruption in Indonesia has been carried out massively by both preventive and repressive measures aimed at reducing the level of corruption that occurs. Preventive efforts undertaken by the government are by tightening bureaucratic supervision and conducting internal and external audits of each state institution. While the repressive efforts undertaken by the government are through the establishment of an independent Corruption Eradication Commission. The government also established a law on corruption eradication stated in Law Number 20 Year 2001. The Law also regulates the imposition of criminal penalties against perpetrators of criminal acts of corruption. So far, the approach to imposing criminal penalties on perpetrators of corruption in Indonesia is considered as a solution in overcoming the problem of criminal acts of corruption in Indonesia. Criminal conviction is also considered to be able to provide deterrence effect to prevent others from committing acts of corruption as well[3]. However, the problem is whether so far the optimal imprisonment in preventing acts of corruption and also reducing the level of corruption in Indonesia given the high level of corruption in Indonesia[4]. This can be seen from the ranking of Indonesia's corruption perceptions index which ranked 85th in 2019 from 180 countries in the world.

The results of this study are expected to be a material consideration for policy makers and the government to provide advice, input and considerations for the proper handling of corruption perpetrators in Indonesia in order to reduce the level of corruption in Indonesia.

II. METHOD

This research uses descriptive qualitative research methods. By using literature studies from various data sources. According to John W. Creswell qualitative research with the characteristics of inductive and deductive data analysis[5]. Data collection techniques, interviews, and documentation studies[6]. Observation techniques are used to determine the true state of the field. Interview techniques are used to obtain in-depth data from informants and literature study techniques are used to obtain documents related to corruption[7]. The data analysis technique uses Miles and Huberman's theories, namely data reduction, data presentation and draw conclusions[8].

III. RESULTS AND DISCUSSIONS

Current Corruption Conditions in Indonesia

Corruption arises from habits that are considered normal and reasonable by the general public. These habits are like giving gifts to government officials / employees or their families as compensation for a service. The habit is considered normal to be done as part of eastern culture. Historically, the practice of corruption in Indonesia has been going on for a very long time, in the era of the kingdoms in the archipelago giving tribute to the authorities and the king was considered normal. After the entry of the VOC (Venerigde Oost Indische Compagnie) at the beginning of the 18th century, the practice of corruption became increasingly rampant and had implications for the destruction of the Dutch trading joint venture after two centuries of being entrenched in the archipelago[9]. So far the word corruption has been popular in Indonesia. The word corruption does have an increasing trend. Even the symptoms, not only occur in Indonesia but also throughout the world. Corruption in Indonesia does not only occur at the central level but also at the regional level[10]. According to the Corruption Eradication commission, around thirty percent of the Indonesian state budget is lost due to corruption every year. A lack of understanding of procurement regulations and tender procedures results in a large number of state losses resulting in inappropriate budget implementation[11]. Through improved regulations and increased supervision will minimize the emergence of criminal acts of corruption and increase the absorption of the implementation of the state budget and the existence of a budget efficiency of 30 to 40 percent[12].

In Law Number 20 Year 2001 Concerning Eradication of Corruption, there are thirty forms of corruption that are regulated in thirteen articles in the Act. The thirty forms of corruption can basically be grouped into seven groups, namely state financial losses, bribery, misuse in office, extortion, fraud, conflict of interest in procurement, and gratification[13]. The phenomenon of corruption certainly does not arise by itself, there are several factors that can lead to corrupt practices. According to Tanzi, the factors causing corruption are divided into two, namely direct and indirect factors. The direct causes of corruption include (1) regulation and authorization, (2) taxation systems, (3) budget policies, (4) supply of goods and services below market prices, (5) other discretionary policies; and (6) financing of political parties. Meanwhile, indirect factors of corruption consist of at least six factors, namely (1) the quality of the bureaucracy, (2) the amount of salary in the public sector, (3) the criminal system, (4) institutional oversight, (5) transparency of rules, laws and processes, and (6) the example of the leader [14]. In measuring the level of corruption in a country to measuring the level of corruption in a country, Transparency International publishes a corruption perception

index. Transparency International itself is a non-governmental organization that actively engages in corrupt practices throughout the world. The corruption perception index issued by Transparency International has an interval score of 0-100, a value of 0 indicates a very corrupt level of corruption and a score of 100 indicates a very clean level of corruption.



Figure 1. Indonesian Corruption Perception Index 2012-2019

Based on these data it is known that the Indonesian Corruption Perception Index from 2012 to 2019 has increased scores. This increase in score signifies a decrease in the level of corruption in Indonesia. The positive trend of increase in the CPI score can be seen in 2012 and 2013 getting a score of 32 and increasing in 2014 getting a score of 34, continuing to increase in 2016 by getting a score of 36, then in 2016 and 2017 there was a stagnation in which the Corruption Perception Index score in Indonesia obtained a value of 37 and again increased in 2018 to 38 and finally in 2019 got a score of 39. The increase in the corruption perception index over the past 8 years indicates the level of corruption in Indonesia has decreased even though it happened slowly. The same thing can also be seen from the ranking of Indonesia's corruption perception index, which has also continued to increase over the past eight years.

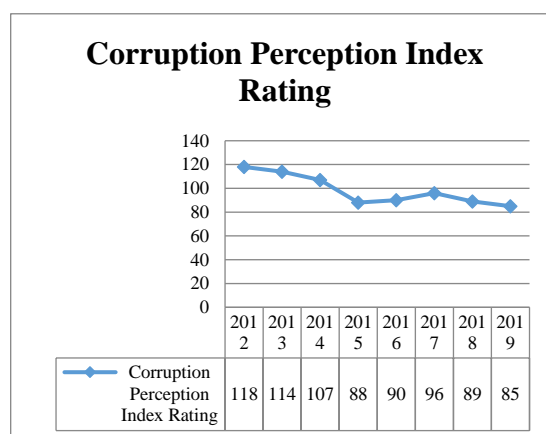


Figure 2. Ranking of Corruption Perception Indexes

From the above data it can be seen that the Corruption Perception Index Ranking in the world in 2012 Indonesia ranked 118 out of 180 countries. And this ranking continues to increase in the following years despite slight fluctuations in 2015-2017. But Indonesia's ranking has improved again in 2018-2019. This ranking increase in the perception of corruption indicates a better condition in dealing with corruption. Despite the positive trend of decreasing the level of corruption according to Transparency International, Indonesia is

still classified as a fairly corrupt country because Indonesia's own corruption perception index score is still far below the average global corruption perception index. An effective strategy is needed in the prevention of corruption both preventive and repressive so as to reduce the level of corruption that occurs in Indonesia.

Forms of Criminal Acts of Corruption in Indonesia

One of the repressive steps taken by the Indonesian government in fighting corruption is the imprisonment. So far, imprisonment is considered as a solution in solving the problem of corruption. In Law Number 31 of 1999 Concerning Eradication of Corruption, there are several criminal mechanisms that are imposed on corruption perpetrators. The form of criminal offenses in the form of imprisonment, fines, repayment of state losses and even for certain circumstances the death penalty can be imposed on perpetrators of corruption [1]. Prison sentences handed down to perpetrators of corruption have a variety of time ranging from imprisonment to a minimum of 1 year imprisonment to life imprisonment. Most Indonesians think that the longer the imprisonment imposed on the perpetrators of corruption will be proportional to the deterrent effect, but the fact that the argument is not entirely true, there are many recidivism committed by the old perpetrators and even acts of corruption committed by new players also.

There are three schools of crimes that explain the output of criminal prosecution itself. The first flow is retributive flow, this convicting stream views criminal imposed solely because people have committed a crime or a crime or in other words, criminal impose is carried out solely as a form of retaliation from the state for crimes committed. The second stream of punishment is the utilitarian / relative theory. This stream of punishment views the imposition of criminal penalties not only solely as a state revenge to perpetrators of crime, but the conviction is carried out to protect the interests of the community. Criminal is carried out with the aim of crime prevention. In flow utilitarian punishment there are two types of prevention, the first is special prevention aimed at preventing recidivism by perpetrators of crime. The second deterrence is general deterrence to prevent the general public from committing the same crime. The third stream of punishment is a combined flow, in this stream views the essence of criminal prosecution is in addition to being a form of state retaliation for crimes that have been committed, punishment must also contain protection to the interests of the community[15]. The Penitentiary System in Indonesia as an applicable penal system contains a combined stream of penalties which in addition to retaliating for criminal purposes, aims to improve individual perpetrators of crime and also as a crime prevention tool so as not to be committed by others[16].

So far, the aim of imposing criminal penalties in Indonesia is based on correctional principles. According to Sahardjo in the Prison Service Conference in April 1964 held in Lembang near Bandung, prison penal reform through the idea of using the Penitentiary concept aims in addition to causing pain to the convicted because of the elimination of freedom of movement, correctional also guides prisoners to repent, educate them to become useful members of Indonesian society[17]. In other words, the aim of the penal concept is social reintegration. Social reintegration itself means being accepted in the community, realizing its mistakes, and not committing the crime again. The social reintegration process is certainly carried out through the stages of a training program for Corruption Prisoners. In order to be able to reintegrate with the community, of course, in the stages of the coaching program an assimilation and reintegration program is carried out in the form of granting Remission, assimilation, parole, conditional leave, free leave and on family visit rights. Especially in handling corruption cases, there have been several changes in the mechanism in

granting such rights. The amendment to this mechanism is intended to make criminal convictions more deterrent as part of general and special interventions for criminal purposes.

Table 2. Comparison of the granting of Remission, Assimilation, Parole, Conditional Leave, Free Leave and On Family Visit rights

Government Regulation Number 31 of 1999	Government Regulation Number 28 Year 2006	Government Regulation Number 99 Year 2012
<ul style="list-style-type: none"> The absence of segregation of types of crime categories so that the granting of rights to prisoners is treated equally 	<ul style="list-style-type: none"> Separation of crime categories into two categories, general criminal and special criminal such as terrorism, narcotics and psychotropic, corruption, crime against state security, crime against human rights, and organized transnational crime In special criminal cases, prisoners in obtaining the right to Remission, assimilation, parole, conditional leave, free leave and on family visit added additional conditions in the form of a minimum of serving a third of the criminal period 	<ul style="list-style-type: none"> Terms of granting Remission, assimilation, parole, conditional leave, free leave and on family visit to prisoners who are caught in a special criminal case are added, Specially convicts of corruption cases are added conditions in the form of being willing to cooperate with law enforcers in dismantling the case they are undergoing, and have paid the fine and substitute money

With the differentiation of treatment from some renewal of the rules regarding the implementation of the provision of prisoners' rights, it aims to conduct general and special prevention of corruption. Special prevention is intended to prevent recidivism from perpetrators of crimes, while general prevention is to prevent the general public from committing the same crime. However, in reality based on data, the number of corruption convicts tends to increase. Following are data on the number of corruption convicts in 2012 - 2019.

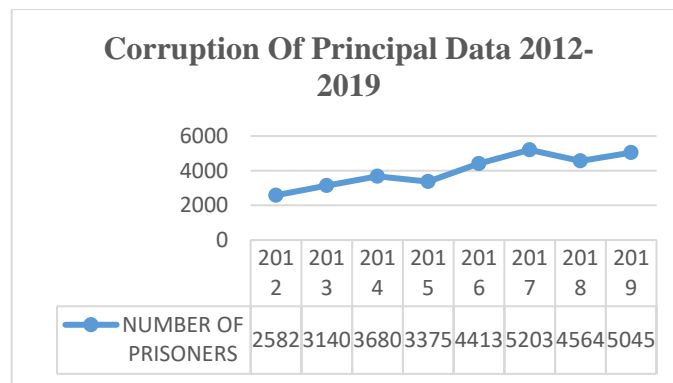


Figure 3. Corruption Inmate Data

The results of the smlap.ditjenpas.go.id data show that the data of corruption convicts in 2012-2019 has fluctuated despite the tendency to increase. With the number of convicts being held even though criminal sanctions have been imposed on the perpetrators of corruption, this does not necessarily reduce the number of convicts of corruption. From this data, we can also understand that the existence of severe criminal sanctions may not reduce the number of corruptors. Transparency International survey results show the Corruption Perception Index (CPI) of Indonesia is at level 38 from a scale of 0-100 in 2018. An index close to 0 indicates that there is still a lot of corruption, on the contrary the closer to 100 the more clean from corruption. With this score, Indonesia is ranked 89th out of 180 countries surveyed. Based on data from the Indonesia Corruption Watch (ICW), law enforcement officials as the spearhead in efforts to eradicate corruption have handled 454 cases throughout 2018. Acting on corruption cases carried out by law enforcement in four years (2015-2018) decreased. Both in the number of cases and actors determined as suspects. The average of suspected corruption cases handled by law enforcers in the 2015-2018 period was 392 cases with the number of suspects reaching 1,153 people and state losses amounting to Rp 4.17 trillion per year. The highest number of enforcement actions was recorded in 2017, reaching 576 cases with 1,298 suspects as actors. Following are data on corruption cases from 2015 - 2019 there were 454 cases of alleged acts of corruption.

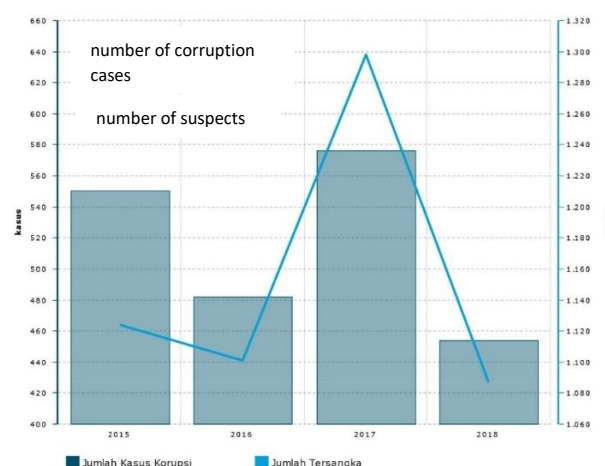


Figure 4. Number of Cases of Allegations of Alleged Corruption in 2015 – 2018

Challenges and Obstacles to Corruption Criminal Mechanisms in Indonesia

What needs to be understood in the fight against corruption crime is when new and better strategies are found in combating the plague of corruption, is that it is a matter of acknowledging that corruption is a growing force. Corruption continues to change in line with changes in culture, economy, technology, education, and community mindset. To follow the changing mindset of corruption, new strategies and innovations in preventing and eradicating corruption are also needed[18]. Based on the Research Results obtained from interviews with informants 5 Corruption Prisoners and 4 Correctional Officers found several problems that have been obstacles in conducting fostering of Corruption Prisoners. The first problem is the absence of a standard mechanism for guiding Corruption Prisoners, this causes officers to not understand how to treat and provide guidance programs for corrupt prisoners. The absence of a proper coaching program during carrying out the criminal period in prison makes these corrupt prisoners not treated anything - so they only spend time in criminal prison. So, with corrupt inmates who have not been given any treatment, the coaching program is not effective in the framework of raising corrupt inmates for their acts. The second problem in handling corrupt prisoners is about the low integrity of officers, corrupt prisoners who become informants say that they can get special treatment and more facilities by conducting bribery to officers. This certainly causes discrimination against general prisoners and corrupt prisoners. Good treatment of corrupt prisoners while in prison often becomes sentiment in the general public. The general public considers that the favorable treatment of corruptors makes them not deterrent and has the opportunity to commit corruption again.

These problems certainly pose a challenge to find the right solution regarding the mechanism of treatment of corrupt prisoners. With the existence of a standard mechanism in treating corrupt prisoners can be a reference for correctional officers in providing appropriate training programs for corrupt prisoners. In addition to making mechanisms, of course, improvements are also needed in terms of legal human resources, especially correctional officers so that they have good integrity and good competence so that they can work with professionals in fostering corruption inmates. Of course, with these improvements are expected to provide changes in the implementation of the program of guiding corruption inmates during the criminal period so that it will have an impact on decreasing the level of corruption.

Comparison of Corruption Handling in Several Countries

a. Singapore

The independent body that handles corruption in Singapore is the CPIB (The Corrupt Practices Investigation Bureau) which handles corruption not only in government agencies but also in the private sphere. Every corruptor is sentenced to prison and obliged to pay a fine amount of money that has been corrupted to the state, the state will not let a corruptor be able to enjoy the results of corruption. In addition, the injured party can submit compensation to the corruptor as much as he has corrupted. So that a corruptor can pay double the proceeds of corruption just for compensation. Singapore eradicates corruption with a strong commitment of senior officials to be able to set an example and uphold the integrity, willingness and ability to control corruption within oneself[19].

b. US and Germany

Based on the journal *I Never Thought I Would End Up In Prison: White Collar Dilemmas* (Stephen B. Castleberry, Ph.D., University of Minnesota Duluth, USA)[20] contains cases of white-collar criminals in the US and Germany. There were 10 sources in which the prisoners received the lowest prison sentence of 1 year and a maximum of 5 years in prison and paid a maximum of \$ 1,000,000. One of them is Caleb, the US feels ashamed for the humiliation of having embezzled taxes and falsified letters sentenced to 41 months in prison and compensated for a \$ 600,000 fine for getting wisdom whatever the reason - family, any medical treatment - from entering prison there was nothing commensurate with time in prison and considered a thief and a cheat for everyone. Mark (US) 97 months in prison, Gunther (Germany) 5 years in prison, GEN (US) 71 months, Wilmar (Germany) 1 year with tax fraud, Robert (US) 51 months, Theo, Dick (US) 72 months tax \$ 1,000,000, Rolph (Germany) 2 years 9 months, Larry (US) 63 months and wife 33 months. In this journal it was stated that the white-collar performers regretted what they had done on average, they experienced deep regret for being ashamed of the social environment, abandoned by their families and disappointing their parents. They give messages to students who feel business ethics. In carrying out the conviction there are a number of people who have managed to collect points while in federal law that can reduce the sentence.

IV. CONCLUSION

Corruption eradication must be carried out simultaneously with various preventive and repressive efforts that can prevent the onset of corruption and corrupt behavior in the future. Prevention of corruption should be emphasized on strengthening the mental apparatus of the state in managing bureaucracy. Through a professional management system and strengthening the supervisory function is one of the steps to prevent the potential occurrence of criminal acts of corruption. A repressive approach is also very important to be carried out by strengthening the provisions of the applicable law which acts indiscriminately for anyone who corrupts, be it officials or ordinary people who commit corruption. The repressive approach that was imposed not only emphasized the granting of a deterrent effect through the imprisonment of a long prison sentence. The imprisonment as a deterrent effect without the guidance of the perpetrators of corruption and mental strengthening and improvement of supervision management will not be effective in overcoming corruption. A new mechanism for punishment outside prison is required in eradicating corruption. Singapore, which is a neighboring country of Indonesia, has a low level of corruption by imposing a prison sentence and is obliged to pay fines to the country for the amount of state losses resulting from the acts of corruption he committed. The state must regulate strict criminal mechanisms so as to prevent a corruptor from enjoying the results of his corruption.

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