



## Additional Criminal Penalties in Eradication of Criminal Acts of Corruption

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### Abstract

Corruption is a crime classified as having multidimensional and multi-faceted impacts. Therefore, addressing it through criminal law requires an approach that not only uses principal penalties but also requires additional penalties. The purpose of this research is to analyze corruption policy. law about arrangement criminal addition in eradication action criminal corruption moment This. The second goal is to understand and reflect on the implementation criminal addition to perpetrator action criminal corruption by law enforcement legal research. The method used in this research is normative legal research. The approaches used are conceptual approach, legislative approach, and case approach. The conclusion is that legal policy regarding arrangement criminal addition in eradication action criminal corruption which exists moment This is clearly stipulated in Article 10 of the Criminal Code and Article 18 of the Corruption Law. Additional penalties are also regulated in Supreme Court Regulation Number 5 of 2014 concerning Additional Penalties in the Form of Compensation in Corruption Crimes. Furthermore, the regulation of additional penalties is strengthened by Constitutional Court Decision Number 4/PUU-VII/2009, dated March 24, 2009, concerning the Affirmation that the penalty of revocation of political rights is constitutional and when imposed on convicts or perpetrators of corruption is based on valid legal grounds. Additional penalties have also increased in type in relation to the provisions contained in Law No. 1 of 2023, which will also likely be applied to convicts of corruption in the future. Second, the application criminal additional related actions criminal Corruption by law enforcement is quite dynamic from one case to another. The panel of judges always applies additional penalties to complement the principal penalties imposed on perpetrators involved in corruption. The judge's reasoning is generally because corruption is a serious crime that harms the state's finances and economy, so it is reasonable to impose additional penalties in the form of compensatory monetary penalties, guided by Supreme Court Regulation Number 1 of 2020. The application of additional penalties in the form of revocation of political rights has also been applied to several perpetrators of corruption committed by public officials. These public officials are generally political figures who become public officials due to the results of general elections or regional head elections. This application of law is deemed appropriate to fulfill the objectives of criminal punishment, both in terms of utility and the hope of a deterrent effect.

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### Introduction

Corruption can own wide -ranging and devastating impact for a country, either in term short and term long <sup>[1]</sup>. Corruption damage growth economy and development with distort allocation source power, blocking investment foreign, and create inefficiencies in the market. This cause error allocation of public funds, reducing source available power For infrastructure important, service

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<sup>1</sup> Impacts of corruption, <https://www.ibac.vic.gov.au/impacts-corruption>

social, and projects welfare society. Corruption also increases cost For do business, because individuals and companies must pay bribe For get contract or get agreement government. This is ultimately hinder entrepreneurship, innovation, and healthy competition, so that hinder progress economy a country in general overall <sup>[2]</sup>.

Corruption erodes public trust in government and weakens the legitimacy of political institutions. Corruption undermines the rule of law and the effectiveness of the justice system, as corrupt officials can abuse their power to influence the outcome of court cases or avoid prosecution. Corruption also leads to the diversion of public resources away from essential services, such as health and education, further exacerbating social inequalities and preventing citizens from accessing basic rights and opportunities <sup>[3]</sup>.

Corruption can corrode the moral fabric of society, as it normalizes unethical behavior and undermines the principles of meritocracy and justice. It can create a culture of cynicism and apathy, where citizens become disillusioned with the political system and lose confidence in the government's ability to serve the public interest. Corruption also contributes to widening social and economic disparities, as the benefits of development are disproportionately captured by a privileged few, rather than distributed equitably.

Corruption can also negatively impact environmental protection and sustainable development <sup>[4]</sup>. Corrupt officials may accept bribes to ignore violations of environmental regulations, thus enabling natural resource exploitation, illegal logging, and ecosystem degradation. This can have severe consequences for the long-term sustainability of a country's natural resources and the well-being of its citizens <sup>[5]</sup>. Corruption is a widespread and persistent problem in Indonesia, with detrimental impacts on productivity, economy, <sup>[6]</sup> governance, and society. According to various studies, corruption in Indonesia has caused economic losses, deterred foreign investment, and undermined public trust in government institutions. Corruption has also contributed to the diversion of public resources away from essential services, exacerbated social inequalities, and prevented citizens from accessing basic rights and opportunities. Given the devastating impact of corruption, as highlighted by various reports and studies, it is crucial for Indonesia to prioritize anti-corruption law enforcement and the implementation of effective measures to prevent and punish corrupt practices.

<sup>2</sup>Nanda Risky Putra, Rosa Linda, Corruption in Indonesia: A challenge for social changes, *Integritas: Jurnal Anti-Corruption* Vol 8, No.1, 2022, p. 13-24.

<sup>3</sup>This module is a resource for lecturers, Effects of corruption, <https://www.unodc.org/e4j/en/anti-corruption/module-1/key-issues/effects-of-corruption.html>

<sup>4</sup> Impact Of Corruption on the Environment And The United Nations Convention Against Corruption As A Tool To Address IT 4th CONFERENCE OF STATES PARTIES TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION Wednesday 26 October 2011 Marrakech, Morocco, p. 1-2, [https://www.unodc.org/documents/treaties/UNCAC/COSP/session4/side-events/Programme\\_of\\_special\\_event\\_on\\_corruption\\_in\\_the\\_environment\\_-\\_19\\_October\\_2011.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session4/side-events/Programme_of_special_event_on_corruption_in_the_environment_-_19_October_2011.pdf)

<sup>5</sup> Luca Tacconi and David Aled Williams, Corruption and Anti-Corruption in Environmental and Resource Management, *Annu. Rev. Environ. Resour.* 2020.45: pp. 305–29.

<sup>6</sup> Ari Kuncoro, Corruption and Economic Growth in Indonesia, *Indonesian Economy and Finance* Volume XLX Number 1, 2002, <https://www.lpem.org/repec/lpe/efijnl/200203.pdf>

Action criminal corruption has be one of problem main because, it is detrimental state finances, and hinder development social economy <sup>[7]</sup>. In an effort prevention and control, system justice criminal law in Indonesia has provision For punishment additional outside criminal principal, which can play role important in fighting corruption. Pdiana addition this, as arranged in the Criminal Code and Laws Eradication Action Criminal Corruption, aims For increase effectiveness framework law in eradicate corruption. Use punishment criminal additional, such as foreclosure assets, prohibitions service public, and revocation rights certain, can become tool important deterrent for the candidates perpetrator corruption and help restore results corruption. In addition, Criminal addition No only aim as sanctions continuation, but also as step preventive measures that can give effect deterrent for perpetrator corruption as well as prevent recurrence actions similar in the future.

Constitution Eradication Action Criminal Corruption (Corruption Law) regulates various sanctions that can be dropped to perpetrator corruption, including criminal addition in the form of payment of replacement money, revocation rights certain, and confiscation assets. Although has arranged in a way clear, practice fall criminal addition Still face various obstacles, such as low compliance perpetrator in pay compensation and the existence of disparity in fall punishment given by the judge.

A number of studies show that enforcement law to action criminal corruption often No effective Because weakness system justice in handle cases this. As a result, many the perpetrator who gets punishment light, so that No give effect the expected deterrent. This is show the need strengthening regulation and implementation criminal more additions firm and consistent <sup>[8]</sup>.

Implementation criminal addition expected can become solution For increase effectiveness enforcement law and improve image public to system justice. With Thus, it is important For study more in about existence and implementation criminal addition to action criminal corruption, including analysis about obstacles faced in practice. Research This will discuss aspects the For give recommendation for strengthening law criminal corruption in Indonesia, so that it can provide a greater sense of justice Good to society and prevent practice corruption in the future. This matter becomes very relevant, considering the impact of corruption No only influence on aspects state finances, but

<sup>7</sup> Sanjeev Gupta and George T. Abed, Governance, Corruption, and Economic Performance, *International Monetary Fund*, Print. 1. 2002, p. 580

<sup>8</sup> For example, even though it has recognized long ago in law Indonesian criminal law, however execution compensation payment Still faltering. Referring to the Audit Board data Finance and Development (BPKP), level compensation settlement only around 31.38% of total compensation money decided court. In 2005, for example, the arrears Compensation payments throughout Indonesia reached Rp. 5 trillion. The total This the more increased in 2009, to 8.15 trillion rupiah. The stagnation execution compensation payment happen Because various because. One of them Because lack of rule about payment of replacement money. So that cause confusion and inconsistency in its implementation. As is known, Law 31/1999 in conjunction with Law 20/2001 only arrange criminal addition compensation payment in One article, namely Article 18, with bullet points rules that only includes 3 (three) things, namely: first, how count the amount of the replacement money; second, when will the replacement money be paid? at the latest paid; and third, how the consequences if the replacement money No paid. Nur Syarifah, *Unraveling Problems Criminal Addition Compensation Payment in Case Corruption*, <https://leip.or.id/mengupas-permasalahan-pidana-tambahan-pembayaran-uang-pengganti-dalam-perkara-korupsi/>

can also cause loss broad social. So, the existence of criminal addition in enforcement law corruption need strengthened to create system more laws responsive and accountable

In the Criminal Code (KUHP), the provisions about criminal addition arranged in Article 10, which states that criminal addition can charged to offender law as part from sanctions criminal penalties imposed. Criminal addition This covers various form sanctions, such as revocation rights certain, confiscation goods, and payment of replacement money. In the context of action criminal corruption, implementation criminal addition this is very important For increase effect deterrent and prevent recurrence action corruption.

In its implementation, there are challenges that must be faced. One of the problem main is disparity in implementation criminal additional by the judge, which can cause injustice. In many case, although there is provision For apply criminal additionally, the judge did not always drop sanctions said, or sanctions imposed No consistent with level severity action crimes committed.

The Criminal Code provides flexibility to the judge to consider implementation criminal addition based on facts and conditions every case. This is important, because every action criminal corruption own different contexts and impacts. Therefore that, deep understanding about factors that influence fall criminal additional is very necessary For create certainty law.

On the other hand, there are criticism that provision in the Criminal Code not Enough firm and not give clear guidance about when and how criminal addition must implemented in cases certain, including corruption. Some academics and practitioners law have an opinion that revision to provision criminal addition in the Criminal Code it is necessary done For ensure that its implementation more effective and consistent, and capable give effect real deterrent for perpetrator corruption.

With Thus, existence criminal addition in context eradication action criminal corruption to be very relevant, no only as instrument law For uphold justice, but also as step strategic in prevention action criminal corruption in Indonesia. Therefore that, research about implementation criminal additions to the Criminal Code and their implications to enforcement law corruption is very important and necessary things done in a way comprehensive

Criminal addition This can play role important in fighting corruption. Punishment addition this, as arranged in the Criminal Code and Laws Eradication Action Criminal Corruption, aims For increase effectiveness framework law in a way overall in eradicate corruption and recovery losses experienced by the country.

So that research This directed and limited scope so formulated a number of formulation problem among them How legal policies regarding arrangement criminal addition in eradication action criminal corruption which exists moment This and how implementation criminal additional related actions criminal corruption by law enforcement.

## Research Methods

Type of research used in study This is study law normative (normative legal research), namely research conducted with method study regulation applicable legislation (*law in books*)

or implemented something problem law certain. Research law normative often called with study doctrinal, namely research object his study is document regulation legislation and materials library.

## Discussion

### A. Additional Criminal Penalty Formulation Policy In Current Corruption Eradication

In choosing the punishment, the drafters of the WvS Criminal Code limited themselves as much as possible. They chose a very simple punishment system and considered this to be a great advantage. In the MvT (*Memories of Toechlichting*) it is explained: "fewer punishments make it easier to make comparisons of the punishments, and without such comparisons it is impossible to impose a punishment that corresponds to the severity of the crime committed." <sup>9</sup>The punishments that can be imposed consist of principal and additional punishments. For the purposes of writing this thesis, the focus is on the type criminal addition which is regulated in Article 10 of the Criminal Code consists of from revocation rights certain; confiscation goods certain, and; announcement judge's decision.

- 1) Criminal revocation rights certain
- 2) Criminal robbery goods certain
- 3) Criminal announcement judge's decision

Announcement the judge's decision only can dropped simultaneously with criminal main to action criminal certain that is:

1. Article 128 Paragraph 3: Criminalization to crime in Article 127 of the Criminal Code: operate deception trick in handover goods Navy or Army requirements
2. Article 206 paragraph 2: against one crime in Articles 204 and 205 of the Criminal Code: sales, offers, transfers, share dangerous goods soul or health with on purpose or Because absent;
3. Article 361: Criminalization to crimes that exist in Chapter XXI causes dead or wounds Because negligence as well as done in operate something position or livelihood (Article 359 and Article 360 of the Criminal Code)
4. Article 377: Criminal penalties to crime in Articles 372, 374, and 375 of the Criminal Code (Embezzlement)
5. Article 395: All action regulated criminal law in Chapter XXV deeds about Cheating
6. Article 405 paragraph (2) action harm creditor announcement this judge's decision different with the meaning of Article 1 number 11 of the Criminal Procedure Code and Article 195 of the Criminal Procedure Code where in general the judge's decision must spoken in open trial For general when No decision null and void in accordance the written provisions of Article 195 of the Criminal Procedure Code that " All decision court only valid and have strength law if spoken in court open For general.

From presentation on implementation criminal announcement the judge's decision in this Criminal Code is something publication extra from something decision criminalization somebody from court criminal outside the

<sup>9</sup>JM Van Bemmelen, Criminal Law 2 Penitentiary Law, Bandung: Binacipta, 1986, p. 7.

obligated parties get copy judge's decision such as convict, counselor law and prosecutor general. Announcement decision This can in the form of amar in designated media.

According to Article 17 of the Eradication Law Corruption, besides can sentenced criminal as intended in Article 2, Article 3, Article 5 to with Article 14, the defendant can sentenced criminal addition as intended in Article 18. Criminal additional information contained in Article 18 paragraph (1) of the Eradication Law Corruption: "Besides criminal addition as intended in the Criminal Code, as criminal addition is:

- Confiscation goods tangible movement or not tangible or goods No moves used For or obtained from action criminal corruption, including company owned by convict in which act criminal corruption done, as well as from substitute goods goods the;
- Payment of replacement money in the amount of as much as possible The same with treasure objects obtained from action criminal corruption;
- Closing all over or part company For maximum period of 1 (one) year;
- Revocation all over or part rights certain or deletion all over or part profit certain, which has been or can provided by the Government to convict."

Related with provisions of Article 18 of the Law Eradication of Criminal Acts of Corruption, Criminal addition own a number of difference with criminal main point. Difference the is:

- A. The fall of one of the type criminal main is something must or imperative. While fall criminal addition nature optional. If in something trial proven that defendant proven guilty in a way valid and convincing, then the judge must drop one criminal main in accordance types and maximum limits from formulation action crimes committed the imperative nature can seen in the formulation action criminal, where there are two possibilities that is threatened one of criminal main so that the judge wants No Want to must drop criminal in accordance formulation the or can also act criminal offenses that are threatened by two or more type criminal main so that the judge can choose one just. For example, in Article 2 paragraph (2) of the Law Eradication Corruption choose type criminal lifetime life or during time certain between four year up to twenty year.
- B. In criminal additional judges may be drop or No criminal threatened additional to si offender. For example, a judge can drop one criminal addition to Article 18 of the Law Eradication Corruption in matter proven violates Article 3 of the Law Eradication Corruption.

Although the principle fall criminal addition is optional but there is exception for example Article 250 bis of the Criminal Code;

1. Drop type criminal the main thing must simultaneously with criminal additional (stand alone) Alone) whereas fall criminal addition must simultaneously with criminal main.
2. Types of crimes the principal that is dropped, if has have

strength law still required implementation (*executie*) while criminal addition no. In criminal main required execution to achievement criminal the except criminal main with conditional (Article 14 a of the Criminal Code) and the conditions specified That No violated. In criminal addition for example criminal judge's decision.

3. Criminal main No can dropped cumulative whereas criminal addition can. However can deviated from in several laws including Constitution Eradication Corruption <sup>[10]</sup>.

On January 2, 2023, it was promulgated Constitution Number 1 of 2023 concerning the Criminal Code (KUHP). Apart from debate and pros and cons about part material in the Criminal Code, this law is a "masterpiece" of product legislation in Indonesia, because after Indonesia's independence for 77 years new moment This We succeed form a Criminal Code to replace the product Criminal Code colonial (*wetboek van strafrecht*) whose ratification done through *State Gazette* 1915 number 732 and started valid since January 1, 1918. The Criminal Code has also customized with political laws, circumstances, and developments life society, nation and state with a purpose respect and uphold tall right basic humans, based on Pancasila (Provisions) weigh letter b of the Criminal Code <sup>[11]</sup>. In relation to the discussion of this thesis, it is necessary to highlight additional penalties also regulated in the National Criminal Code. This is justified because the National Criminal Code is the primary system of criminal punishment that will soon come into effect. As is known, the punishment of perpetrators of corruption is inseparable from the general criminal policy framework contained in the National Criminal Code. The National Criminal Code also regulates several provisions governing corruption as part of efforts to recodify and consolidate national criminal law along with the validity of the National Criminal Code, there is notes important thing that is will become focus in this thesis, namely How implications the ratification of the National Criminal Code regarding additional criminal penalties contained in the provisions of criminal legislation as stipulated in Article 613 of the Criminal Code which reads as follows:

1. When Constitution This start applies, every Regional Laws and Regulations containing provision criminal must adapt with provision Book First Constitution This.
2. Provision about adjustment provision criminal as referred to in paragraph (1) is regulated with Constitution.

There are some type regulated criminal law in Article 64 of the National Criminal Code which regulates about criminal law. Criminal law consists of above: criminal principal; criminal additional; and criminal penalties of a criminal nature special For Action Criminal certain specified in Constitution.

The main types of crimes are then regulated in Article 65 paragraph (1) of the Criminal Code which consists of above: criminal prison; criminal cover-up; criminal supervision; criminal fines and criminal penalties Work social. Additional

<sup>10</sup>Efi Laila Kholis, Payment of Compensation in Case Corruption, Jakarta: Solusi Publishing, 2010,., pp. 14 – 15.

<sup>11</sup> Zaqiu Rahman, Following the Enactment of the New Criminal Code Law, Should Criminal Provisions in All Laws or Regional Regulations Be Revised?, <https://rechtsvinding.bphn.go.id/?page=artikel&berita=738>

criminal penalties are regulated in the provisions of Article 66 paragraph (1) of the National Criminal Code, which reads in full as follows:

1. Criminal addition consists of on:

- Revocation right certain;
- Expropriation goods certain and/ or bill;
- Announcement judge's decision;
- Payment change loss; and
- Fulfillment obligation customs local or obligation according to living law in public.

Criminal addition can dropped together with criminal principal, as standing criminal law Alone or can dropped together with criminal other additions; Criminal addition in the form of obligation customs local or obligation according to living law in public or revocation rights obtained corporation can dropped although No listed in formulation action criminal; Criminal addition For trials and assistance is The same with criminal addition For action the criminal law; besides that, the National Criminal Code, as is customary in the parent system, also formulates provisions which open up the possibility of additional criminal penalties being imposed on TNI members who commit action criminal can charged criminal addition as regulated in legislation for the TNI. Further provisions regarding the description of additional criminal penalties in the National Criminal Code are regulated in the provisions of Articles 86 to 97 of the National Criminal Code.

Additional criminal penalties are further regulated in the provisions of Article 86 which further elaborates the provisions in Article 66 paragraph (1). The provisions of Article 66 paragraph 1 letter a may be:

- the right to hold public office in general or a specific office;
- the right to become a member of the Indonesian National Army and the Republic of Indonesia National Police;
- the right to vote and be elected in elections held in accordance with the provisions of laws and regulations;
- the right to be a guardian, supervising guardian, custodian, or supervising custodian of a person who is not one's own child;
- the right to exercise paternal authority, exercise guardianship, or have custody of one's own child;
- the right to practice a certain profession; and/or
- right to parole.

These provisions are not much different from the provisions of the previous WvS Criminal Code which are contained in Article 35 paragraph (1) of the WvS Criminal Code. The only striking difference is in point (g) regarding the right to obtain conditional release.

It is also important to emphasize that the rights of convicts that can be revoked by a judge's decision are determined in a limited manner, namely limited to those listed in this article. In imposing additional penalties, it is important to pay attention to the revocation of these rights so that they do not result in civil death for a person, meaning that the person concerned completely loses his rights as a citizen who must be able to live a normal and humane life. The rights that can be revoked are always linked to the crime committed by the convict. This is intended to achieve one of the objectives of criminal punishment, specifically for the protection of

society.

Unless otherwise stipulated by law, the revocation of rights as referred to in Article 86 letters a, b, c, and f may only be carried out if the perpetrator is convicted of committing a crime that is punishable by imprisonment of 5 (five) years or more in the form of: (a). Crimes related to position or crimes that violate the special obligations of a position; (b) Crimes related to his profession; or (c) Crimes by abusing the authority, opportunities, or means given to him because of his position or profession. Other exceptions are also regulated in the provisions of Article 88 which explains that "unless otherwise stipulated by law, the revocation of rights as referred to in Article 86 letters d and e, may only be carried out if the perpetrator is convicted for: (a). intentionally committing a crime together with a child under his control; or (b). committing a crime against a child under his control. The provisions of Article 89 of the National Criminal Code also provide other exceptions to the revocation of these rights. It is worth noting the provisions of Article 89, which read as follows:

Unless otherwise determined by law, revocation of rights as referred to in Article 86 letter g may only be carried out if the perpetrator is convicted for:

- a. Committing a criminal offense or a crime that violates the special obligations of a position;
- b. Abuses the authority, opportunities or means given to him because of his position; or
- c. Committing a crime that is punishable by a maximum prison sentence of 15 (fifteen) years or more.

If we examine the provisions of the above article, it is clear that corruption is a crime of office because corruption is a crime committed by people who have authority and are given power but abuse their authority and power for personal gain. Furthermore, the above provisions are clearly intended for corruption crimes, which are also regulated in the Criminal Code, and the characteristics of corruption are crimes that are generally threatened with severe and harsh penalties, even the death penalty. Therefore, based on the provisions above, corruption fulfills the requirements for additional punishment in the form of revocation of certain rights.

The grace period for additional penalties imposed on convicts also has a specific time limit. The formulation of this provision is fraught with efforts to uphold the fundamental moral principle of law, namely the principle of legal certainty. This provision provides a grace period for determining the duration of additional penalties, including the revocation of a convict's rights. Of course, the formulation of the norms in this article is inseparable from human rights norms for convicts, especially those who commit corruption. Article 90 reads as follows:

(1) If the penalty of revocation of rights is imposed, the duration of the revocation must be determined if:

- a. sentenced to death or life imprisonment, the revocation of rights is carried out permanently;
- b. sentenced to imprisonment, detention or supervision for a certain period, the revocation of rights is carried out for a minimum of 2 (two) years and a maximum of 5 (five) years longer than the main sentence imposed; or
- c. sentenced to a fine, revocation of rights for a minimum of 2 (two) years and a maximum of 5 (five) years.

The provisions as referred to in paragraph (1) letter b do not apply if what is revoked is the right to obtain conditional

release. The penalty for revoking rights comes into effect on the date the court decision has permanent legal force.

The National Criminal Code also provides quite clear limitations regarding the objects of goods or bills that can be confiscated; including:

- which is used to carry out or prepare for a criminal act;
- which is specifically made or intended to carry out criminal acts;
- related to the realization of criminal acts;
- property of a convict or other person obtained from a criminal act;
- from economic benefits obtained, either directly or indirectly, from criminal acts; and/or
- which is used to obstruct investigations, prosecutions and examinations in court.

The provisions above provide a clear picture of the object of goods or bills that are confiscated. It does not only cover the results, tools or objects used to commit a crime but is also extended to the results obtained from the results of the crime (*objectum sceleris*). Even what needs to be given attention also concerns those used to commit crimes that are classified as obstructing the judicial process (*obstruction of justice*). Furthermore, the provisions in Article 92 explain the issue of additional penalties in the form of confiscation of certain goods as referred to in Article 91 which can be imposed on goods that are not confiscated by determining that the goods must be handed over or replaced with an amount of money according to the judge's estimate according to the market price. In the case of goods that are not confiscated as referred to in paragraph (1) cannot be handed over, the goods are replaced with an amount of money according to the judge's estimate according to the market price. If the convict is unable to pay all or part of the market price as referred to in paragraph (21), the provisions of a substitute penalty for a fine apply.

Further provisions regarding additional penalties concerning the announcement of the judge's decision are regulated in Articles 93 and 94 of the National Criminal Code. The provisions of Article 93 state that " if in the judge's decision was ordered so that decision announced so must set method carry out announcement the with costs borne by the convict '. If the costs announcement as referred to in paragraph (1) does not paid by the convict so valid provision criminal prison replacement For criminal fine. Fill in the settings the judge's decision as criminal addition the The same with explanation in script National Criminal Code academic that is criminal addition in the form of the judge's order that decision announced, then must set method carry out announcement the with costs borne by the <sup>[12]</sup> convict.12 The different with the WvS Criminal Code previously is If cost announcement No paid by the convict, then valid provision criminal prison replacement For criminal fine.

Related subject law corporation so in the National Criminal Code already arranged about Criminal and Actions for Corporation that is Article 118 of the Criminal Code regulates criminal for Corporation consists of above: criminal principal; and criminal additionally. Article 119 of the

Criminal Code states criminal main is criminal fine. Article 120 paragraph (1) of the Criminal Code states criminal addition for Corporation consists of above: payment change loss; repair consequence Action Criminal; implementation obligations that have been neglected; fulfillment obligation customs; financing training work; confiscation of goods or profits earned from Action Criminal; announcement decision court; revocation permission certain; prohibition permanent do actions certain; closure all over or part place business and/ or activity Corporation; freezing all over or part activity business Corporations; and dissolution Corporation. In the National Criminal Code the provisions about announcement the judge's actual decision No different Far with the Criminal Code WvS. Most of the type criminal addition for this corporation Already spread in legislation special. Now, this type of criminal it is also included in the National Criminal Code. With use Constitution special, criminal addition the still is threats that every moment can dropped in accordance with indictment prosecutor general to corporation <sup>[13]</sup>.

### C. Application of additional criminal penalties for payment of replacement money obtained from assets confiscation

Action criminal corruption as contained in decision Supreme Court Number 1452 K/ Pid.Sus / 2014 was carried out by Budi Susanto, he is a self-employed. The defendant sentenced has proven in a way valid and convincing guilty do combination action criminal corruption in a way together. The judge sentenced criminal to defendant the with criminal prison for 14 (four) days twelve) years and criminal fine amounting to Rp. 500,000,000.00 (five hundred million rupiah) with provision if criminal fine the No paid so replaced with criminal confinement for 6 (six) months. The judge sentenced criminal addition in the form of compensation payment amounting to Rp88,446,926,695.00 (eight tens eight billion four hundred and four tens six million nine hundred and twenty six thousand six hundred and nine twenty five rupiah) with provision if defendant No pay compensation the in 1 (one) month period after decision court, then with strength law still treasure the object will confiscated by the prosecutor and auctioned For cover the replacement money said. In case defendant No have treasure sufficient objects For pay compensation said, then defendant convicted prison for 5 (five) years prison. <sup>[14]</sup>

Based on results the decision above, has been in accordance with theory reward or retaliation. Assessment to fulfillment theory criminalization based on to bullet points implied that exists in judge's consideration. One of the the judge's considerations in question that is:

Defendant Still have obligation maintenance and guarantee / warranty for 1 (one) year amounting to Rp. 17,136,912,198.00 (seven twelve billion one hundred three tens six million nine hundred and twelve thousand one hundred nine tens eight rupiah) which has not been implemented. Obligations the is money that was enjoyed by the defendant, because That defendant must charged For pay compensation amounting to Rp. 17,136,912,198.00 (seven twelve billion one hundred three tens six million nine

<sup>12</sup> Ibid

<sup>13</sup>Muhamad Yasin, <https://www.hukumonline.com/berita/baca/lt5c8efc3f93414/berhati-lah-ada-12-jen-pidana-cepatan-yang-dapat-dikenakan-terhadap-korporasi/>

<sup>14</sup>

hundred and twelve thousand one hundred nine tens eight rupiah).

The judge's considerations above in accordance with base theory reward, basis theory reward according to Leden Marpaung is " a crime committed, because crime That has cause suffering for others then perpetrator must given suffering." [8, 15] Action criminal corruption committed defendant Already as appropriate sentenced criminal as explained in amar decision above, because in fact action crimes committed by the defendant Already including into the action criminal outside normal.

The judge's considerations in drop criminal addition to the above decision there is aggravating circumstances defendant that is, the defendant No support government in eradication action criminal corruption, defendant Not yet finish work that becomes duties and responsibilities the answer as well as criminal addition in the form of compensation payment No worth it with the actions committed by the defendant which gave rise to loss state finances.

The judge's decision above about criminal additional dropped to defendant as form implementation from article 18 paragraph (1) letter b determines that replacement money as much as the defendant get from results action criminal the corruption he committed. Therefore That defendant sentenced criminal additional replacement money amounting to Rp. 88,446,926,695.00 (eight tens eight billion four hundred and four tens six million nine hundred and twenty six thousand six hundred and nine twenty five rupiah).

In amar the above decision, the defendant must pay compensation in term specified time, if defendant No Can pay so will done robbery assets. After the results from final decision law still and it turns out defendant good Santoso No Can pay compensation, then treasure object or assets owned defendant will confiscated For refund of replacement money to the state. The Corruption Eradication Commission (KPK) received asset as compensation in lieu of money from defendant Budi Susanto. Execution Prosecutor Nanang Suryadi and Irman Yudiandri in asset recovery framework action criminal corruption has carry out decision Supreme Court of the Republic of Indonesia Number 1452 K/ Pid.Sus /2014.

Confiscated assets based on decision Supreme Court of the Republic of Indonesia Number 1452 K/ Pid.Sus /2014 is as following:

- a) One unit of house (land and building) on Jalan Agung Karya V Block A Number 15 North Jakarta. Based on report results evaluation from the Service Office Assessment Team Riches State and Auction (KPKNL) Jakarta III value House the have price fair Rp. 56,745,558,000.
- b) One house unit (land and building) on the street gempol sari, sub-district Cigondewah Kaler, sub-district Bandung west, city Bandung and one house unit (land and building) on the road Cigondewah block Cibiuk, sub-district Bandung west, city Bandung. Based on report assessment results from the Bandung KPKNL Assessment Team House the;

have price fair Rp. 28,411,084,000. Payment lack of replacement money amounting to Rp. 3,113,284,695.

- c) Overall value goods loot and money handed over by the defendant amounting to Rp. 88,269,926,695, plus with results auction that has been done in the form of one car unit 2012 Kijang Innova V AT Diesel for Rp. 177,000,000 million For Then compensated as payment of compensation, and the amount overall amounting to Rp. 88,446,926,695,000 [16].

## Closing

### A. Conclusion

Legal policy regarding arrangement criminal addition in eradication action criminal corruption which exists moment This is clearly stipulated in Article 10 of the Criminal Code and Article 18 of the Corruption Law. Additional penalties are also regulated in Supreme Court Regulation Number 5 of 2014 concerning Additional Penalties in the Form of Compensation in Corruption Crimes. Furthermore, the regulation of additional penalties is strengthened by Constitutional Court Decision Number 4/PUU-VII/2009, dated March 24, 2009, concerning the Affirmation that the criminal revocation of political rights is constitutional and when imposed on convicts or perpetrators of corruption is based on valid legal grounds. Additional penalties have also increased in type in relation to the provisions in Law No. 1 of 2023, which will also likely be applied to convicts of corruption in the future. Implementation criminal additional related actions criminal Corruption by law enforcement is quite dynamic from one case to another, particularly the case analyzed by the researcher in this research report. The panel of judges always applies additional penalties to complement the principal penalties imposed on perpetrators involved in corruption. The judges' reasoning is generally based on the fact that corruption is a serious crime that harms the state's finances and economy. Therefore, it would be very appropriate if the additional penalty imposed on the defendant is to impose an additional penalty in the form of a monetary penalty. To avoid disparities in sentencing, the panel of judges always adheres to the sentencing guidelines as stipulated in Supreme Court Regulation Number 1 of 2020 concerning Guidelines Criminalization of Articles 2 and 3 of the Law Eradication Action Criminal Corruption. Additional penalties in the form of revocation of political rights are also applied to some perpetrators of corruption committed by public officials. These public officials are generally political figures who became public officials as a result of general elections or regional head elections. This application of the law is deemed appropriate to fulfill the objectives of criminal punishment, both in terms of utility and the expected deterrent effect.

### B. Suggestion

Additional penalties should be more varied and further explore new ideas and findings related to contemporary penological research, such as the idea of individualization of criminals for corruption convicts. Additional penalties should

<sup>15</sup> Look Decision Supreme Court Number 1452 K/ Pid.Sus /2014, accessed on December 7, 2022 at 20.22 WIB

<sup>8</sup> Leden Marpaung, Principles-Theory- Practice of Criminal Law, (Jakarta: Sinar Grafika, 2012), p. 105.

<sup>16</sup>Ilham Rian Pratama, KPK Receives Compensation Assets for SIM Simulator Corruption Money of Rp. 88 Billion, <https://www.tribunnews.com/nasional/2021/08/18/kpk-terima-aset-kompres-uang-pengganti-koruptor-simulator-sim-budi-susanto-rp-88-m>,

be more in line with the facts and findings regarding the profiling of perpetrators of corruption. For example, perpetrators' motives are based on greed. Additional penalties in the form of asset confiscation are often confused with the concept of confiscation of goods. In practice, judges also have difficulty distinguishing between these two types of additional penalties, and they are applied simultaneously. Judges often *double-count* when imposing additional penalties for confiscation of goods and confiscation of assets. This is suspected based on the explanation in Supreme Court Regulation No. 5 of 2014. Therefore, it is urgent that the Asset Forfeiture Law be immediately supported so that the legislative process can proceed quickly and can be enacted.

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