CRIMINAL SANCTIONS FOR THE ABUSE OF AUTHORITY IN CORRUPTION CASES BASED ON THE VALUES OF JUSTICE AND DIGNITY: A COMPARATIVE STUDY OF THE FIGHT AGAINST CORRUPTION IN INDONESIA AND JAPAN

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ABSTRACT

The existence of corruption in Indonesia dates as far back as during colonial as the community was accustomed to giving tributes to the colonial authorities. This is a descriptive normative research drawing on a statutory approach in relation with the provisions of the Corruption Eradication Act in both Indonesia and Japan. The study related to corruption in Japan, is not just about juridical rules that can be seen in the Japanese Criminal Code in Act No. 45 of April 24, 1907, but also ethics and norms. In Japan, there is no special law that regulates corruption, in contrast to Indonesia, which has a special law that regulates corruption, but even so it turns out that Japan is one of the corruption-low countries in Asia. This study reveals that the reconstruction of criminal sanctions for abuse of authority in corruption cases based on values of justice and dignity is that mediation efforts should be made first through an administrative or civil law approach, if all available legal remedies are unsuccessful, then a repressive criminal law attempt is made as a last resort (ultimum remidium) as well as criminal sanctions against perpetrators of corruption based on justice in Article 3 of Law Number 31/1999 on the Eradication of Corruption, namely: Every person who has the purpose of benefiting himself or another person or a corporation, abuses his authority, opportunity or means existing because of a position that can harm the country's finance, is sentenced to life imprisonment or a minimum of five years imprisonment and a maximum of 20 years and or a minimum fine of Rp. 50,000,000 and a maximum of Rp. 1,000,000,000.

Keywords: Reconstruction of Criminal Sanctions, Abuse of Authority, Corruption, Comparison of Indonesian Criminal Law, Japanese Criminal Law, Values of Justice and Dignity.

INTRODUCTION

Corruption is generally a crime by the middle class or above. It is often referred to as white collar crime, a crime committed by people with excessive wealth or privileged position (Sudarto, 1997). Corruption usually occurs when public officials misuse their authority, opportunity or means available to them (Harkrisnowo, 2002). Corruption is a violation of public office for personal gain by bribery or an illegal commission. The problem of corruption is related to the complexity of the problem, including moral issues/mental attitude, lifestyle needs and cultural and social environment, economic needs/demands and socio-economic welfare,

economic structure/system, political system/culture, development mechanisms and weak bureaucracy / administrative procedures (supervision system) in the fields of finance and public services (Hans, 2003; Soerjono, 1981; Prasetyo, 2013).

Recognizing the complexity of the problem of corruption in the midst of a multidimensional crisis and the real threat, namely the impact of this crime. As an extra ordinary crime, the eradication of corruption requires the seriousness of the government. In eradicating corruption, the seriousness of the Indonesian government can be seen from the issuance of policies that are directly related to tackling corruption. Various policies in the form of legislation in the form of: TAP MPR No. XI / MPR / 1998 on the Implementation of a Clean, Corruption, Collusion and Nepotism State; Law Number 28 Year 1999 on Administration of a Clean, Corruption-Free, Collusion and Nepotism State; Law Number 31 of 1999 Jo Law No. 20 of 2001 on Eradication of Corruption; Law No. 30/2002 on the Corruption Eradication Commission; Law Number 7 of 2006 on the Ratification of the United Nations Convention Againts Corruption 2003; Presidential Decree No. 11/2005 on the Formation of the Corruption Eradication Coordination Team (Tastipikor Team); Presidential Instruction No. 5/2004 on the Acceleration of Corruption Eradication. In addition, regulations which are not directly issued but remain in the context of eradicating criminal acts of corruption, such as: Law Number 15 of 2002 on Money Laundering as amended by Law Number 25 of 2003 on Amendments to Law No. 15 of 2002; and the Reciprocal Assistance Act (Arsyad, 2013).

Corruption is a national problem that must be dealt with seriously through clear and firm balance of steps involving all forces in society, especially government and law enforcement (Hartanti, 2008). Corruption, which is often related to the abuse of authority by officials, then becomes the legal material that underlies the laws and regulations related to the eradication of corruption (Mertokusumo, 2012). Taking into account the Law on the eradication of corruption, in fact the actions of state and private officials relating to abuse of authority and positions in an unlawful manner or the actions of state and private officials that harm state finances have been qualified as acts of corruption as regulated in Article 2 paragraph (1) and Article (3) of Law Number 20 Year 2001 on Eradication of Corruption Crimes. Article 2 of Law Number 20 Year 2001 reads:

1. Any person who unlawfully commits acts of enriching himself or another person or a corporation that can harm the state finances or the economy of the country, shall be liable to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).
2. In the event that the criminal act of corruption as referred to in paragraph (1) is carried out in certain circumstances the death penalty may be imposed.

Furthermore, the crime is contained in Article 3 which says that any person who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him because of his position or position that can harm the country's finances or the country's economy, is convicted with life imprisonment or with a prison sentence of at least 1 (one) year and a maximum of 20 (twenty) years and or a minimum fine of Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah). In practice, the law enforcement process Article 2 and Article 3 of the Corruption Eradication Act still causes several legal problems, because in its application by judges at the judicial level there are often interpretations and dissenting opinions about elements against the

law and abuse of authority or position resulting in the difference between criminal and criminal acts against those who are suspected of violating Article 2 and Article 3 (Adji, 2009).

Basically the concept of abusing authority lies in the gray area. There is an intersection between criminal legal norms and administrative legal norms (Hadjon, 2004). In the state administrative legal framework, parameters that limit the free movement of the authority of the state apparatus (discretionary power) are detournement de pouvouir (abuse of authority) and willekeur (arbitrary acts), whereas in the area of criminal law also have criteria that limit the free movement of the authority of the state apparatus in the form of the element wederrechtelijkheid (Simorangkir, 2000). The problem is when the state apparatus performs acts which are considered to abuse the authority and are against the law, meaning which ones will be used as a test for irregularities in the state apparatus, state administration law or criminal law, especially in corruption cases. It is this understanding relating to the determination of jurisdiction that is still very limited in the life of judicial practice. Keep in mind, every action must be seen from the inner attitude (mens rea). This is related to the existence of an element of error or accountability of people, the relationship between intentions and actions (dolus / culpa) and also the absence of forgiving reasons. This is because in the Indonesian Penal Code the element of error is a mental element of a crime, so that if the policy making is carried out without malicious intent, then actually someone is not worthy of conviction because there is no criminal without error (gee straf zonder schuld) (Maramis, 1992). Based on the description above, the researcher is interested in conducting a research on the Reconstruction of the Abuse of Authority in Criminal Acts Based on Dignified Justice, so it is hoped that the implementation of the state of legal justice owned by the Indonesian people is justice that humanizes humanity. Justice is based on the second principle of Pancasila as dignified justice (Nasution, 2000). Dignified justice, even though someone is legally guilty, must still be required as a human being. Likewise, dignified justice is justice that balances rights and obligations. Justice that is not only materially but also spiritually, then the material that follows it automatically places humans as God's creatures whose rights are guaranteed (Friedman, 1996).

RESEARCH MATERIALS AND METHODS

This type of research is normative. The nature of this research is descriptive and prescriptive. The method of approach is carried out through a statutory approach (statute approach). In addition to describing as well as analyzing it through an approach to the provisions in the Corruption Eradication Act in Indonesia and Japan.

RESULTS AND DISCUSSION

Comparative Study of the Fight against Corruption in both Indonesia and Japan

The Fight against Corruption in Indonesia

Government efforts in dealing with corruption cases are carried out through various policies in the form of laws and regulations from the highest, namely the 1945 Constitution to the Law on the Corruption Eradication Commission. In addition, the government also formed commissions that deal directly with the prevention and eradication of criminal acts of corruption

such as the State Administering Wealth Investigation Commission (KPKPN) and the Corruption Eradication Commission (KPK). In addition, there are also the Republic of Indonesia Attorney and Police institutions (Hartanti, 2009). One of the discourses that are considered to fulfill a sense of community justice is to impoverish corruptors. The impoverishment of corruptors is very possible with the Republic of Indonesia Law No. 8 of 2010 on Prevention and Eradication of Money Laundering Criminal Acts as imposed on Djoko Susilo and Fuad Amin (Chair of the DPRD Bangkalah, Maduran) and Law No. 20 of 2001. Penalties for impoverishment of corruptors are included in the scope of financial penalties. Financial penalties are the combined value of fines, substitute penalties, and confiscation of evidence or assets. Non-monetary assets are not included because there is no estimated value of these values in the court decision (Kartini, 2003).

Based on the analysis of the corruption database version V released by the Laboratory of Economics, Faculty of Economics and Business (FEB) UGM in April 2016, stated that the state losses caused by corruption during the 2001-2015 period reached Rp203.9 trillion. On the other hand, financial penalties based on court decisions are only Rp21.3 trillion. This raises the question why is there a gap between state losses and financial penalties imposed on corruptors? One of the reasons is because the prosecutors' demands related to financial penalties are below the value of state losses, so that the judge's decision to impose a penalty payment of replacement money is far from the value of the corrupt money (Ermansyah, 2008). An example is corruption committed by civil servants (PNS) during 2001-2015 which caused 1,115 defendants. The state loss due to corruption reached Rp21.27 trillion. In this case the prosecutor's claim was only Rp1.04 trillion, and then the financial sentence was only Rp 844 billion. Another example is corruption involving 480 legislators. The state loss is estimated at Rp1.63 trillion. However, prosecutors' demands were only in the range of Rp. 537 billion, and then the financial penalty imposed by the judge in court was only Rp. 402 billion (Nashriana, 2011).

The two examples above show that financial penalties for convicted corruption tend to be suboptimal or lower than the state losses caused. Likewise, it can be seen in the trail of corruption cases in the KPK that the imposition of the lightest financial penalty is Rp. 50 million. The biggest fine of Rp10 Billion was imposed on Akil Mochtar. In the case of Djoko Susilo, a fine of Rp. 1 billion was imposed and a replacement payment to the state was Rp. 32 billion. Likewise, Anas Urbaningrum had to pay a fine of Rp. 5 billion, pay a replacement money of Rp. 57,592,330,580.00 and USD5,261,070. Government efforts in dealing with corruption cases are carried out through various policies in the form of laws and regulations from the highest, namely the 1945 Constitution to the Law on the Corruption Eradication Commission (Hamzah, 2005). In addition, the government also formed commissions that deal directly with the prevention and eradication of criminal acts of corruption such as the State Administering Wealth Investigation Commission (KPKPN) and the Corruption Eradication Commission (KPK). In addition, there are also the Republic of Indonesia Attorney and Police institutions (Andrisman, 2007). At present in Indonesia there are several law enforcement officers who have the authority to eradicate corruption (Pope, 2003).

The Indonesian National Police, the Attorney General's Office, and the Corruption Eradication Commission play a role as the front guard in eradicating corruption. Seeing the KPK draft law that has been agreed by the DPR and the government, the supervisory board is regulated in regulated in Chapter VA. Provisions regarding the members of the supervisory board, related to duties, who can serve, until the election procedures are contained in Articles

37A to 37G (Parry, 1976). This supervisory board also replaces the presence of the KPK advisors. One of the tasks of the supervisory board that received the spotlight was the matter of granting permission to conduct wiretapping, search and seizure. It is stated in Article 37 B paragraph (1) letter b. Other duties of the supervisory board as outlined in the draft amendment include supervising the work of the KPK, establishing a code of ethics, evaluating the duties of the leadership and members of the KPK once a year, to submitting an evaluation report to the president and the DPR. The supervisory board consists of five members, with one concurrently the chairman. They are appointed and determined by the president through selection by the committee. The president also forms the selection committee for the board members. Unlike the procedures for the election of KPK leaders. The president does not need to send the names of candidates for the supervisory board to be elected by the DPR, but only in consultation. Plus, in the new KPK Law, the authority of KPK commissioners as investigators and public prosecutors is revoked. That can make the KPK become weak because the commissioner's authority is increasingly limited (Satjipto, 2006). The number of corruption cases processed in Indonesia from the year 2004 to 2019 is provided in the table below:

Table 1
CORRUPTION CASES PROCESSED

YEAR	TOTAL	NOTE
2004	6	-
2005	6	-
2006	8	-
2008	10	-
2009	1	-
2010	2	-
2011	13	-
2018	1	-
2019	5	-

Source: *https://id.wikipedia.org/wiki/Komisi_Pemberantasan_Korupsi_Republik_Indonesia#Penanganan_Kasus_Korupsi_oleh_KPK.*

The Fight against Corruption in Japan

The culture that drives success in fighting corruption in Japan is a culture of shame and honesty. Because with enormous shame, public officials are reluctant to commit acts of corruption, once the acts of corruption are revealed, the perpetrators usually resign. Japan does not have a law that specifically regulates corruption eradication, because corruption is classified as an ordinary crime, not an extraordinary crime like in Indonesia. Japanese law in which regulates criminal offenses related to corruption include:

1. The Unfair Competition Prevention Act (Act no. 47 of 1993);
2. The Penal Code (Act no. 45 of 1907);
3. National Public Service Ethics Act (Act No. 129 of 1999) (Ethics Act);
4. National Public Service Ethics Code (Gov. Ordinance No. 101 of 2000);
5. The Act on Prevention of Transfer of Criminal Proceeds (Act no. 22of 2007);
6. The Whistleblowing Legislation Act (Act no. 122 of 2004).

Laws and regulations related to criminal acts of corruption in Japan As mentioned earlier that Japan does not have laws specifically regulating corruption eradication. The laws and regulations in Japan that regulate criminal offenses related to corruption include:

1. The Unfair Competition Prevention Act (Act no. 47 of 1993) on criminal acts of bribery of foreign civil servants;
2. The Penal Code (Act no 45 of 1907) on the criminal acts of bribery of regional civil servants;
3. The National Public Service Ethics Act (Act No. 129 of 1999) (Ethics Act) is a basic regulation for the service of Japanese civil servants. One of the contents is the obligation of civil servants to report any gifts or compensation they receive, one of the prohibitions is that government employees are prohibited from accepting bribes from officials in their area;
4. The National Public Service Ethics Code (Gov.Ordinance No. 101 of 2000) is a derivative regulation of the Ethics Act, this regulation regulates the prohibition of accepting gifts or entertainment from parties related to the duties of civil servants;
5. The Act of Prohibiting Acceptance of Profits for Intermediation by those Engaged in Public Service (Act No. 130 of 2000) (Profits for Intermediation Act), regulates the offer made by the Diet or Kokkai or the Japanese Parliament;
6. The Act on Prevention of Transfer of Criminal Proceeds (Act no 22 of 2007) regarding money laundering crimes;
7. The Whistleblowing Legislation Act (Act no. 122 of 2004) protects someone who is a whistleblower.

Corruption in the private sector is not subject to the above law, but is regulated through the Companies Act and penalties and demands are applied according to the law. According to the law above, bribery is committed by a person who gives offers or promises to give bribes to either the government or public officials or to third parties connected to public officials in connection with their performance and duties. Thus it can be interpreted that trying to give gifts or hospitality can be interpreted as bribery. Bribe actors are the giver or offering and the bribe recipient apparatus, both of which can be sentenced. In addition, if a supervisor or other employee is found to have conspired in the bribery then criminal penalties may also be imposed. In addition, the Unfair Competition Prevention Act (UCPA) also regulates the prohibition of Japanese citizens from bribery of foreign civil servants other than the Japanese government. This includes Japanese public officials who are abroad. Corruption eradication institutions in Japan have the authority to arrest, search, confiscate, and prosecute in handling corruption cases equated with other criminal acts, namely handled by the Japanese Police (National Police Agency) or the Japanese Public Prosecutor's Office. In addition to the police and prosecutors, there are other institutions related to the prevention and eradication of corruption in Japan, namely:

The Japan Financial Intelligence Center (JAFIC)

JAFIC is the agency responsible for preventing money laundering and terrorist financing in Japan. All bodies or institutions, both public and private, are requested to send a report to JAFIC. If JAFIC discovers any suspicious activity, then JAFIC must report it to relevant law enforcement officials, such as the Police, the Public Prosecutor's Office or the Securities and Exchange Surveillance Commission, which can then impose administrative sanctions or even criminal investigations.

The Japan Fair Trade Commission (JFTC)

JFTC enforces the Japan's Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Anti-Monopoly Law) with a view to maintaining fair and free competition in the market. The latest amendment to the Antitrust Act provides criminal investigation powers with JFTC. If the investigation begins, JFTC may submit criminal proceedings with the Prosecutor's Office under the Antimonopoly Law. Penalties for interrupting investigations are administrative sanctions including a maximum imprisonment of one year or a maximum fine of JPY 3 million.

The National Public Service Ethics Board

This board has the duty to ensure that the National Public Service Ethics Act ("Ethics Act") is properly implemented by the government. This council can investigate jointly with people appointed by public officials or act on its own if it feels its findings are material related to official duties, conducting on-site investigations to clarify suspected violations. In addition, this council can summon witnesses and witnesses are asked to submit necessary reports or relevant material and are deemed necessary to maintain public confidence. Non-compliance with an investigation (such as a false report or concealment of facts) will result in disciplinary sanctions such as suspension from the office, reduction of salary or reprimand.
The authority and responsibilities of the National Public Service Ethics Board include:

1. Submission of opinions to the Cabinet regarding the entry into force, amendment and revocation of the National Public Service Ethics Act;
2. Preparation and revision of the standard disciplinary action applied for violations of the National Public Service Ethics Law;
3. Research, study and planning on ethical issues of public officials;
4. Comprehensive planning and coordination of training programs on ethics for public officials;
5. Guidance and advice to ministries and agencies to carry out the National Public Service Ethics Act;
6. Examination of prize reports, stock transactions and earnings;
7. Asking questions to any public official suspected of violating the National Public Service Ethics Act;
8. Conduct an on-site investigation to clarify the alleged violation, summon witnesses, and ask witnesses to submit the necessary reports or relevant material;
9. Conduct an investigation, if necessary, ask each head of ministry or agency to take the necessary action to supervise his officials, and
10. Conduct an investigation; if necessary take disciplinary action against any public official who has violated.

National Public Service Ethics Law, the Board of Audit of Japan (The Board of Audit), The Board of Audit has the task of conducting an audit of the state accounts and accounts of a company if the Japanese government owns 50% or more of the company's shares. If any indication of corruption is found during this audit, the Board of Audit is required to report to the Prosecutor's Office for further investigation. Corruption Eradication in the Private Sector. Bribery in the private sector is not a criminal offense in the Penal Code (KUHP). However, the Companies Act punishes:

1. Bribing, or receipt of bribes by directors, or auditors, and others;
2. Giving or receiving bribes as a shareholder etc.;

Provision of profits to directors or auditors, and others for the costs of the company or its subsidiaries in connection with the exercise of shareholder rights. Cultural Factors as Supporting the Success of Corruption Eradication in Japan. Japanese society has a culture of shame that is very large if it is known not to carry out their duties properly. They would rather commit suicide than live in shame. Thus, even though Japan does not have a specific law on corruption eradication and the maximum punishment for corruptors is only 7 (seven) years in prison, the punishment of being ashamed has been considered the most severe punishment (Prasetyo & Absul, 2012). This is supported by the media which is active in reporting an act of corruption. Giving rise to a great shame for corruptors. Some officials even committed suicide after they were found to be corrupt, including Matsuoka Agriculture, Forestry and Fisheries Minister Toshikatsi) committed suicide when he could not explain the use of funds of $ 240,000 which was said to be "a type of oxidized water" when water was provided free so indicated corruption, Yoichi Otsuki and Shokei Arai and several other politicians. In addition to suicide, officials who are still indicated to have committed a crime generally generally resign from their positions, even if they are not asked by the community (especially if they have been demanded to withdraw by their community).

An example is the case of Governor Tokushima who was charged with bribery from a Japanese tycoon, and in another case also arrested the Mayor of Shimozuma, Ibaraki. The two officials voluntarily resigned from their positions as governors and mayors. However, the culture of shame also has a negative impact, because it makes the whistleblower system ineffective. Because reporting coworkers or superiors can embarrass the institution. In fact, the reporter can be ostracized. Therefore, the Whistleblowing Legislation Act (Act No. 122 of 2004) was established which provides confidentiality and protection to someone who becomes a whistleblower. In addition to the culture of shame, there is also a value of honesty that is still inherent in the culture of Japanese society. Lawyers in Japan are rarely found who distort facts and turn wrong to right, even if it is known that the client is indeed guilty, they will encourage his client to admit his crime and return the results of corruption. In law practice in Japan, a suspect who does not confess will definitely be arrested. On the other hand, a suspect who admits his guilt is not detained, unless his case is classified as a "*high-class*" case with a crime value of 300 million Yen or more. Examples of Corruption Cases in Japan. Despite having a good rating in the Corruption Perception Index, Japan is not separated from corruption scandal. Even among the corruption scandal there are very famous, for example:

1. Lockheed Scandal was revealed when its executives revealed that there were bribes to 16 Japanese politicians to expedite the sale of Lockheed Aircraft to Japan. Prime Minister Kakuei Tanaka was forced to resign in 1974 after the case was revealed.
2. Recruits Scandal begins when Recruit Cosmos Co. giving shares to be listed on the Tokyo Stock Market to lawmakers so that later these legislators help Recruit Cosmos Co. develop their business by utilizing the authority of these legislators. As a result Prime Minister Noboru Takeshita was also forced to resign because his LDP party was caught in the Recruit case.

Kyubin Scandal, conducted by Sagawa Kyubin as a parcel service, provides large amounts of money to LDP party politicians in charge of the transportation sector so that the "*assistance*" from these politicians helps companies to become large companies because they get national-level licenses for parcel services. The study related to criminal acts of corruption in Japan, is not just about juridical rules, but also ethics and norms. The following is a juridical

arrangement relating to corruption in Japan based on Criminal Law (Act No. 45 of April 24, 1907) (Saragih et al., 2018):

Types of Corruption under Japanese Law

Abuse of authority by public officials

Article 193: When a public official abuses his authority and causes another person to take an action that person has no obligation to commit, or prevents another person from exercising that person's right, imprisonment or imprisonment without working for no more than 2 years.

Abuse of authority by special public officers

Article 194: When a person performs or assists in judicial, prosecuting or police duties, abuses his authority and illegally arrests or incarcerates another person, imprisonment or imprisonment without work for not less than 6 months but not more than 10 years.

Abuse of authority causing death or injury

Article 196: A person who commits a crime specified under the two previous Articles and thus causes the death or injury of another person must be dealt with with the penalty specified for the crime of injury or the previous two Articles which are greater.

Bribery or/and Graft

Article 197 (1) says that a public official who accepts, requests or promises to accept bribes in connection with his duties will be sentenced to imprisonment for no more than 5 years; and when officials agree to take action in response to requests, the prison sentence is not more than 7 years.

Article 2, on the other hand, states that when a person is appointed as a public official to receive, ask for or promise to accept bribes in connection with duties that must be assumed with an agreement to take action in response to a request, that person will be sentenced to prison for not more than 5 years in the case of appointment. Article 198 stipulates that anyone offers or promises to offer bribes provided for in Articles 197 to 197-4 will be sentenced to imprisonment of not more than 3 years or a fine of not more than 2,500,000.- Yen.

Bribery to a Third Party

Article 197-2 When a public official agrees to take an action in response to a request, causes a bribe in connection with the official's duty to be given to a third party or requests or promises the bribe to be given to a third party, jail for no more than 5 years.

Receiving Bribes after Resignation from Office

Article 197-3 (1) says that when a public official commits a crime determined under the two previous Articles and consequently acts illegally or refrains from acting in his duties, a

prison term for a specified period of not less than 1 year. Section 2 says that the same applies when a public official accepts, requests or promises to accept bribes, or causes a bribe to be given to a third party or requests or bribes a bribe to give to a third party, in connection with having acted illegally or refrained from does not act in carrying out the official's duties. Section 3 states that when a person who resigns from a public official position accepts, requests or promises to accept bribes in connection with acting illegally or refrains from acting in carrying out his duties with his approval in response to a request, the person will be sentenced to prison no more than 5 years.

Acceptance of the Use of Influence

Article 197-4: A public official who accepts, requests or promises to accept bribes as a consideration for the influence given by an official or to give, in response to a request, to another public official that causes others to act illegally or refrain from acting in carrying out official duties will be sentenced to prison for no more than 5 years.

Confiscation and Collection of Equivalent Value

Article 197-5: Bribes received by perpetrators or third parties with knowledge will be confiscated. When all or part of a bribe cannot be confiscated, an equal amount of money will be collected. The following is the number of corruption cases processed in Japan from 1990 to 2014.

Table 2
CORRUPTION CASES IN JAPAN

YEAR	TOTAL	NOTE
1990	194	Cases Closed
1995	177	Cases Closed
2000	112	Cases Closed
2005	111	Cases Closed
2006	152	Cases Closed
2007	67	Cases Closed
2008	89	Cases Closed
2012	55	Cases Closed
2013	58	Cases Closed
2014	56	Cases Closed

Source: Japan National Police Agency

Reconstruction of Criminal Punishment for the Abuse of the Authority as an act of Corruption Based on Dignified Justice Values

Reconstruction of the regulation on the abuse of authority in acts of corruption based on values of justice with dignity is the first attempt to mediate through an administrative or civil law approach, if all available legal measures are unsuccessful, then a repressive criminal law attempt is made as a last resort (ultimum remidium). Article 3 of the Corruption Eradication Act

stipulates that any person who has the purpose of benefiting himself or another person or a corporation, misusing the authority, opportunity or means available to him because of a position or position that could be detrimental to the country's finances or the country's economy, is liable to life imprisonment or imprisonment for at least 1 (one) year and a maximum of 20 (twenty) years and / or a minimum fine of Rp. 50,000,000 and a maximum of Rp. 1,000,000,000.

In the explanation of this law, it was only stated that the words can be interpreted in the same way as the explanation in Article 2 of the Law on the Eradication of Corruption. In the explanation of Article 2 it is stated that in this provision, the word can be before the phrase detrimental to the country's finances or the state's economy shows that corruption is a formal offense, that is, the existence of a criminal act of corruption is sufficient by fulfilling the elements of the act that have been formulated, not arising from the consequences. Therefore, Article 3 is the same offense as Article 2, namely formal offense. As a result of this formal offense, if we refer to the provisions in Article 3, a legal action of a person (official) can already be classified as a criminal act of corruption if the official is still in the stage of abusing his authority even though the element of detriment to the country's finances or the country's economy has not been proven.

Basically the element of abusing authority is a form of administrative violation. The legal liability of an administrative violation is an administrative sanction, not a criminal sanction. However, in the formulation of Article 3 of the Law on the Eradication of Corruption, it is known that an official may be subject to criminal sanctions by the act of abusing authority, without any evidence of an element detrimental to state finances. From these two legal norms of opinion, it is known that administrative legal norms provide an understanding of the concept of abusing authority in the context of disciplined science (Hatta, 1990). Whereas criminal law norms provide an understanding of the concept of abusing authority in the context of the interpretation of regulations or laws. Ideally, the concept of abusing authority must be based on the context of scientific discipline in the drafting of a law. So that the interpretation of the contents of existing laws (including the Corruption Eradication Act, especially Article 3 can have a parallel understanding from various perspectives on legal norms. Theoretically, if an official commits an act based on discretion or policy that is contrary to the principle of specialism or the principle of rationality and results in state losses, the official concerned will be determined as a criminal offender. It's just that in practice this is faced with complex obstacles to be resolved. These constraints are the principle of separation or distribution of power (machtenscheiding) in a rule of law, which requires the independence of state institutions. In other words, the doctrine of separation or distribution of powers requires that state institutions not intervene with one another. The principle of machtenscheiding puts the organs of the state and government running according to their respective authorities. The discretion or policy authority is inherent in the government.

Arief, (2003) Atmadja said that a policy could not be submitted to the Court, especially because of criminal law because the legal basis of the policy that would be the legal basis for the prosecution did not exist. This is due to a policy that generally does not go hand in hand or has not been regulated in the legislation (Ridwan, 2009). A citizen or civil legal entity cannot make an issue before a state administration court because a policy regulation (beleidsregel) is not a state administration decision (stipulation). The court may not try the policy (doelmatigheid) (Ridwan, 2010). Amarullah Salim said that the authorities' policy actions did not include the court's competence to judge according to the jurisprudence of jurisprudence. Judges may not

consider the doelmatigheid of a government act, because the function and competence of the judiciary in a rule of law is limited to the rechtmatigheid aspect of government actions. In this regard, Belifante said, de rechter mag niet op de stoel van de administratie using zitten, die een eigen verantwoordelijkheid draagt (judges may not sit on administrative chairs, which carry their own responsibilities). The same thing was stated by Van der Burg; the judge may not sit on an administrative chair. That has long been a constant expression in the literature of State Administrative Law. With this statement, it is stated that the judge when he gives due consideration to the decisions and administrative actions submitted to him, must respect government policy (Lubis, 1994).

Judges may not reassess considerations of the interests of administrative power. The policy making is the result of a process of abuse of authority, the official concerned is still classified as an administrative violation that has administrative sanctions as well. Abuse of authority by an official is further investigated by the motives or basis underlying the acts of abuse of authority he has committed. This reason is the entry point for the birth of criminal acts of corruption. Corruption is interpreted as a form of the occurrence of two legal elements together. The two elements are self-benefit or another person or a corporation and the element is detrimental to the country's finances or the country's economy. In this regard, it is interesting to listen to Soedarto's opinion, this (an element of self-benefit or another person or a corporation) is an inner element that determines the direction of acts of abuse of authority. If the motive or reason for the abuse of authority by the official is to benefit oneself or another person or a corporation and give a loss to the state's finances or the country's economy, the official concerned has committed a criminal act of corruption resulting in criminal sanctions.

CONCLUSION

The existence of corruption in Indonesia dates as far back as during colonial as the community was accustomed to giving tributes to colonial authorities. However, in modern Indonesia, corruption usually occurs when public officials misuse their authority, opportunity or means available to them. Corruption is a national problem that must be dealt with seriously through clear and firm balance of steps involving all forces in society, especially government and law enforcement, and more importantly the public. In Japan, there are no specific laws governing corruption, unlike in Indonesia. But ironically, there are many corrupt government officials in Indonesia compared to Japan. The reconstruction of criminal sanctions in Article 3 of Law No. 31 of 1999 Jo Law No. 20 of 2001 must change from one year to 5 years with the same fine. And it also important to first seek mediation efforts through administrative or civil law approaches. If all available remedies are unsuccessful, then criminal repressive measures must be made as a last resort (ultimum remidium).

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REFERENCES

Adji, I.S. (2009). *Corruption and law enforcement*. Diadit Media, Jakarta.

Andrisman, T. (2007). *Criminal law*. Universitas Lampung, Bandar Lampung.

Arief, B.N. (2003). *Capita selecta of criminal law.* Alumni, Bandung.

Arsyad, J.H. (2013). *Corruption in the perspective of HAN (State administration law).* Sinar Grafika, Jakarta.

Ermansyah, D. (2008). *Eradicating Corruption with the KPK.* Sinar Grafika, Jakarta.

Friedman, L.W. (1996). *Theory and philosophy of law critical analysis of legal theories.* Grafindo Persada, Jakarta.

Hadjon, P.M. (2004). *General principles of good governance in relation to reasons for lawsuits at state administrative courts.* LPP-HAN, Jakarta.

Hadjon, P.M. (2004). *The normative function of administrative law in achieving clean government, inauguration speech for the acceptance of a professor in law at the airlangga faculty of law.* Surabaya.

Hamzah, A. (2005). *Eradicating corruption through national and international criminal law raja grafindo persada*, Jakarta.

Hans, O.S. (2003). *Human rights and good governance, building an order*. Departemen Hukum dan Hak Asasi Manusia, Jakarta.

Harkrisnowo, H. (2002). *Corruption, conspiracy and justice in Indonesia*, Jurnal Dictum LeIP, Lentera Hati, Jakarta.

Hartanti, E. (2008). *Corruption crime*. Sinar Grafika, Jakarta.

Hartanti, E. (2009). *Second edition of corruption crime.* Sinar Grafika, Jakarta.

Hatta, M. (1990). *Introduction to the path of science.* Mutiara, Jakarta.

Kartini, K. (2003). *Social pathology*. Raja Grafindo Persada, Jakarta.

Lubis, M.S. (1994). *Philosophy of science and research.* Mandar Maju, Bandung.

Maramis, W.P. (1992). *Mental medicine.* Erlangga Universitas Press, Surabaya.

Mertokusumo, S. (2012). *Legal theory*. Cahaya Atma Pustaka, Yogyakarta.

Nashriana. (2011). *Asset recovery in corruption: Efforts to recover state financial losses.* Fakultas Hukum Universitas Brawijaya.

Nasution, S. (2000). *Metode research.* Bumi Aksara, Jakarta.

Parry. (1976). *Government performance*. Corruption and political trust in East Asia, University of Houston.

Pope, J. (2003). *Strategy to eradicate corruption.* Yayasan Obor Indonesia, Jakarta.

Prasetyo, T. (2013). *Law and legal system based on Pancasila*. Pertama Perkasa, Yogyakarta.

Prasetyo, T., & Absul, H.B. (2012). *Philosophy, theory, and law science towards a just and dignified society*. Raja Grafindo Persada.

Ridwan, H.R. (2009). *Criminal law enforcement policies in eradicating corruption in Indonesia. Journal Jure Humano, 1*(1), 1-9.

Ridwan, H.R. (2010). *Criminal law formulation policy in combating corruption crime.* Thesis, Master of Law Program, Postgraduate Program of Diponegoro University. Semarang.

Ridwan, H.R. (2010). *State administrative law*. Raja Grafindo Persada, Jakarta.

Saragih, Y.M., Prasetyo, T., & Jawade, H. (2018). Juridical analysis of the authority of the corruption eradication commission as prosecutors for corruption crimes. *UNIFICATION: Journal of Legal Studies, 5*(1), 33-44.

Satjipto, R. (2006). *Law in the universe of order.* UKI Press, Jakarta.

Simorangkir, J.T.C. (2000). *Legal dictionary*. Sinar Grafika, Jakarta.

Soerjono, S. (1981). *Some socio -juridical aspects and society*. Bandung: Alumni.

Sudarto. (1997). *Criminal law and law.* Alumni, Bandung.