

**Trends in Corruption Court Trials During 2019**

**Verdict without deterrent effects**

***"Average Sentence for Corruptors is Only 2 Years and 7 months in Prison"***

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## **I. Introduction**

Corruption crime has been categorized as *extraordinary crime*. This means that the state's treatment of corruptors can no longer rely solely on conventional methods. One of them is related to the verdict handed down by the Court. Simply put, it can be understood that if the court's decision still punishes the perpetrators of corruption lightly, then surely the deterrent effect will never be realized properly.

Since 2005 Indonesia Corruption Watch has routinely monitored the verdicts handed down by the Court to perpetrators of corruption. Starting from the first level of decision in the Corruption Court, continued with the appeal stage in the High Court, then ended with the appeal in the Supreme Court. Not only that, the extraordinary legal effort in the form of a review was not immune from this observation.

This monitoring covers several important aspects, for example related to the average of sentences and demands, the amount of state losses, bribes and compensation money, as well as identifying corruptors based on their position. Also, the number of defendants who were acquitted or dismissed along with the Court that ruled it. In the end, public can see the how serious the court institution ruling the perpetrators of corruption through this monitoring.

The search medium in this presentation was obtained from various sources, both primary and secondary sources. Primary sources are obtained through the decisions listed in the MA directory and case tracking information system, while the secondary are obtained through the media, both print and electronic. However, for the record, there are still many data contained in this monitoring that cannot be accessed by the public, due to the information system in the Supreme Court which has not uploaded all decisions in 2019.

The results of this monitoring will be submitted to the relevant institutions: the Attorney General's Office, the Corruption Eradication Commission and the Supreme Court. Hopefully it can be used as consideration for formulating criminal policies that are more oriented to the entrapment of corruption perpetrators. For this reason, the following monitoring was accompanied by ICW's notes on the court's decisions on perpetrators of corruption throughout 2019.

## II. Results of Monitoring and Analysis

### - General Overview

During 2019 ICW recorded at least 1,019 cases of corruption committed in various levels of court. Of the total cases, 1,125 people were determined as defendants. This finding is not too different from the previous year's findings in total 1,053 cases with 1,162 defendants.

The above findings are divided into three court domains, namely: 941 cases were trialed in the first court, while 56 cases were appeal and 22 cases were appealed and reviewed in the Supreme Court.

The average verdicts at each court level are as follows:

No	Court Level	Average Prison Sentence
1	Corruption Criminal Court	2 years and 6 months
2	High Court (Appeals)	3 years and 8 months
3	Supreme Court (Cassation / Review)	3 years and 8 months
<b>Average Prison Sentence</b>		<b>2 years and 7 months</b>

Refer to Article 10 of the Criminal Code that states about the principal crime (imprisonment and fines) ICW findings on average imprisonment for corruptors only touches the number 2 years 7 months in prison. As for the fines of Rp. 116,483,500,000. The findings related to the verdict showed that there is an increase compared to last year, 2018, which was only 2 years 5 months in prison.

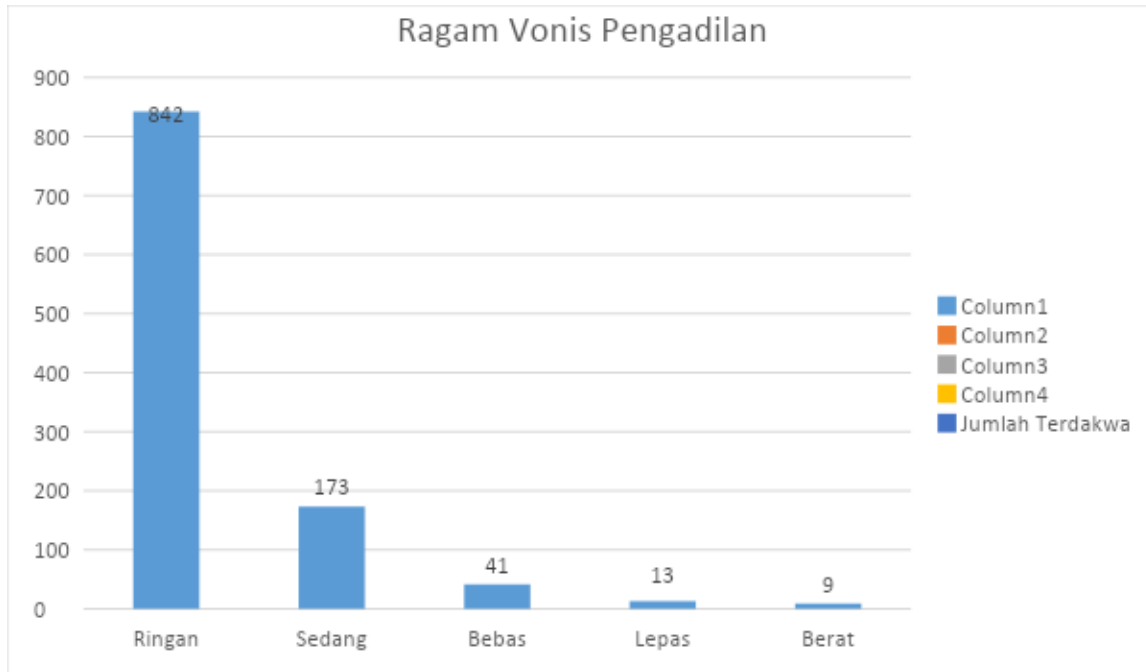
Then for additional crimes in the form of a replacement money of Rp. 748,163,50,0,055. This number is very small compared with the amount of state losses that reached Rp 12,002,548,977,762. Practically less than 10 percent of the value of assets can be returned to the state treasury. Whereas for bribery itself, the number of cases which was dominant throughout 2019, was found to be at least Rp. 422,712,229,450.

- Professional Background of the Defendant in Corruption Cases  
During 2019, at least the top three professions were local government officials, at provincial, city and regency level, as many as 334 people; then village officials as many as 228 people; and the private sector as many as 183 people. Meanwhile, from the political area, there are at least 58 members of the legislative body, both central and regional, and 20 regional head levels.

The rise of corrupt practices in the local government sector shows that the bureaucracy reformations that have been echoed by the government are still not reaping maximum results. In addition, the function of the inspectorate must also be strengthened in order to become a major part of preventing corruption. Not to mention the procurement of goods and services sector which is often used as a source of corruption.

At the village level, the practice of corruption most often involves the allocation of village funds. This is likely due to the lack of supervision from the relevant authorities and the low level of community participation. This year the number increased dramatically compared to the previous year which numbered only 158 village officials.

- Variety of Court Verdicts  
As we all know, the regulation on combating criminal acts of corruption recognizes minimum criminal concepts that are not found in other crimes. Based on that, ICW divides the categorization of sentences into several parts, namely:



- **Light Sentences (0-4 years).**  
 In the findings throughout 2019, 842 defendants were lightly convicted by the Courts at various levels. As a percentage compared to the total overall case, the light verdict reached 82.2 percent. This figure is quite increased compared to the previous year which was only around 79 percent.
- **Moderate Sentence (> 4 - 10 years)**  
 For moderate sentences, the Courts at various levels only sentence 173 Defendants. The percentage was also low, at only 16.9 percent.
- **Heavy Sentences (> 10 years)**  
 Number of defendants sentenced to above 10 years in prison is 9 people with a percentage of 0.8 percent.
- **Acquittal**  
 Acquittal rose sharply compared to 2018 which reached 41 defendants, while in the previous year, there were only 26 defendants.
- **Dismissal verdict**  
 For a verdict in the form of a proven conviction but not considered as a crime, there were 13 defendants.

- Most Professional Background on Light Verdicts

ICW also monitored the professional backgrounds of defendants who received light sentences from the court. This is important, so that the public can see the perspective of judges when issuing decisions. For example, whether the weighting element of the position has been well considered before formulating a decision.

No	Professional Background	Total
1	<i>DPR / DPRD</i> (Parliament)	43
2	Local Government Employees	263
3	Private	138
4	Schools / Campus	33
5	Regional Heads	3
6	<i>BPN / BPK / Bappeda</i>	5
7	<i>KPU</i>	4
8	Banking	14
9	Ministry / Institution	13
10	Advocates	2
11	Hospitals	6
12	Police / Prosecutor / Judge	4
13	Others	74
14	<i>BUMN / BUMD</i>	24
15	Not Identified	28
16	Village officials	188
<b>TOTAL</b>		<b>842</b>

- Overview Judgment of Each Court Level

- Trends District Court Decisions

In terms of quantity, 2019 data showed an increase in trend of District Court decisions compared to previous year. This monitoring shows the average sentence in the District Court is 2 years 6 months in prison. With details: 788 defendants were sentenced lightly, 153 defendants were sentenced lightly, and only 7 defendants were sentenced severely, 39 defendants were acquitted, and 13 defendants were dismissed. The light verdict still dominates the verdict in the district court.

- Trends in High Court Judgment

For decisions on appeal, the average sentence is 3 years and 8 months of imprisonment. With details: 38 defendants were sentenced lightly, 16 defendants were sentenced moderately, and only one defendant was given a heavy sentence. Similar to the District Court, at this level of appeal the majority of decisions are still light verdict.

- Trends in Supreme Court Decisions

At the level of cassation or reconsideration, the average sentence is 3 years and 8 months of imprisonment. With details: 16 defendants were sentenced lightly, 4 defendants were sentenced moderately, 1 defendant was given a heavy sentence, and 2 defendants were acquitted.

### Comparison of Trends in Sentences in Each Year

Year	Category	Defendants	Percentage
2016	Light	479	72.1%
	Moderate	69	10.4%
	Heavy	9	1.4%
	Acquitted / dismissed	56	7.6%
2017	Light	1,127	81.6%
	Moderate	169	12.2%
	Heavy	4	0.29%
	Acquitted / dismissed	35	2.5%
2018	Light	918	79%
	Moderate	180	15.4%
	Heavy	9	0.7%
	Dismissed	27	2.32 %
2019	Light	842	82.2%
	Moderate	173	16, 9%
	Heavy	9	0.9%
	Acquitted / dismissed	54	5.2%

From the above data, it can be said that the light sentences mostly happened in 2019 compared to the previous three years data. Of course this indicates that the judiciary is not in favor of efforts to eradicate corruption .



- **Acquittal and Dismissal Verdict of Corruptors**

Throughout 2019 courts at various levels have acquitted 41 defendants and decided dismissal verdict for 13 defendants. Comparing the data, it is about 5.2% of the total verdicts handed down by the panel of judges. This is the highest number, compared to 2018 data with 27 defendants and 2017 data with 35 defendants.

In summary, a verdict in the form of acquitted is common in law enforcement. Linked to Article 183 of the Criminal Procedure Code, if the Judge can not find two pieces of evidence that are relevant to the criminal act and is not convinced that the defendant is guilty then by law the defendant must be acquitted of each indictment. Likewise with the dismissal verdict, which indictment is proven but not considered as a criminal offense.

But the problem can not only be seen as normative, the transactional portrait in the court institution must also receive the spotlight. Should not let the acquittal or dismissal verdict decided by the Panel of Judges based on certain transactions. Not only that, the Prosecutor in the aspects of the indictment and verification must be seriously evaluated. Considering that, if the verdict is truly based on good legal considerations, it indicates that there is an error in law enforcement, specifically in the Prosecutor's formulating an indictment or evidence strategy.

The following is the complete data about the **acquittal and dismissal** verdicts handed down by the court:

**Acquittal or Dismissal Verdict**

<b>No.</b>	<b>Name of court</b>	<b>Number</b>
1	Palangkaraya District Court	1
2	Mamuju District Court	2
3	Palu District Court	2
4	Kendari District Court	4
5	Manado District Court	5
6	Makassar District Court	3
7	Kupang District Court	1
8	Aceh District Court	10
9	Central Jakarta District Court	17
10	Bengkulu District Court	2
11	Jayapura District Court	5
12	Supreme Court	2
<b>Total</b>		<b>54</b>

- Corruption Verdicts

According to the previous year's data, the number of defendants who were severely convicted by the Court did not change. Of course this illustrates that the verdict handed down on defendants in corruption cases has not been maximized, even though in the regulation on eradicating corruption, perpetrators of corruption can be sentenced to up to 20 years in prison, or even for life. It is such a regret that the percentage of defendants who were heavily sentenced was only 0.8 percent.

Following are the complete data about heavy sentences imposed against the defendant of corruption throughout 2019:

No	Decision Number	Name of Defendants	Sentences	Court	Public Prosecutor
1	3218 K / PID.SUS / 2018	Lie Eng Jun bin Lie Sing Kiat	12 years	MA	High Court of Bengkulu
2	16 /Pid.Sus-TPK/2019/PN Amb	Syahrhan Umasugi, SH	11 years	PN Ambon	Maluku High Prosecutor Office
3	4 / PID.SUS-TPK / 2019 / PT AMB	La Masikamba	15 years	PT Ambon	KPK
4	11 / Pid.Sus-TPK / 2019 / PN Jap	PITER WANDIK, S.Pd	15 years	PN Jayapura	unidentified
5	10 / Pid.Sus-TPK / 2019 / PN Jap	VICTOR ARIES EFENDY	15 years	PN Jayapura	unidentified
6	52 / Pid.Sus-TPK / 2019 / PN Sby	ANTONIUS ARIS SAPUTRO	16 years	PN Surabaya	Prosecutor's Office East Java
7	15 / Pid.Sus-TPK / 2019 / PN Smg	SUHARNO, SE, Bin SADINU	11 years	PN Semarang	Prosecutor's Office Temanggung
8		RIYANTO, SE, Bin HADI SUMARTO	11 years	PN Semarang	Prosecutor's Office Temanggung
9	43 / Pid.Sus-TPK / 2018 / PN.Tjk	Zainudin Hasan	12 years	PN Tanjung Karang	KPK

- Comparison of Verdict Between Law Enforcement

ICW in this section tries to analyze the verdicts demanded by both the KPK and the Prosecution Service. Of the total 1,125 defendants trialed during 2019, KPK is known

to be the prosecutor for 137 defendants while the Prosecution Service alone amounted to 911 defendants.

This data shows that the average sentences handed down by the Court when KPK become the public prosecutor is 4 years and 1-month imprisonment, while the Prosecution Service is only 2 years and 5 months imprisonment. While for light sentences, when KPK was the prosecutor, there were 63 defendants and the Prosecution Service itself were 722 defendants. Sentences that categorized as heavy for the KPK itself were appointed to 2 defendants while for the Prosecution Service were to 5 defendants.

- Recovery of State Financial Losses

Basically, an effective combination to give a maximum deterrent effect for corruptor is a maximum prison sentence accompanied by the return of crime assets. Moreover, we will discuss on how law enforcement and judges use anti-money laundering regulations. This section will specifically analyze the extent to which the judiciary uses legal instruments oriented to the recovery of state financial losses.

Based on ICW monitoring throughout 2019, the state losses arising from corrupt practices are amounted to Rp 12,002,548,977,762. Whereas the judge's verdict who imposed an additional crime in the form of a replacement money was only Rp. 748,163,509,055. Practically, less than 10 percent of state finances are only able to be returned through verdicts at various levels of the Court.

Similarly, when discussing the implementation of anti-money laundering regulations, at least the data from ICW noted that only 8 defendants were subjected to Law No. 8 of 2010, even though the link between corruption crime and money laundering is very close, both in terms of juridical and sociological. In terms of juridical, corruption is one of the predicate crimes regulated in Article 3 of the Anti-Money Laundering Law and from a sociological perspective the perpetrators of crime will certainly hide or divert the proceeds of crime in any form.

The following is the data of the verdicts on the implementation of the Anti-Money Laundering Law in 2019:

No	Decision Number	Name of Defendants	Public Prosecutor
1	5/Pid.Sus-TPK/2019/PN Plk	Cornedy, A.Md Bin Salampak Conrad	Kapuas District Prosecutor's Office
2	1/Pid.Sus-TPK/2019/PN Bgl	Tamimi Lani,S.T bin Abdul Lani alm	Bengkulu High Prosecutor's Office
3	2/Pid.Sus-TPK/2019/PN Bgl	Ferri Andrian,S.E bin Saparudin	Kaur District Prosecutor's Office
4	3/Pid.Sus-TPK/2019/PN Bgl	PT. Lian Suasa Korporasi are Adriansyah, S.H Bin Rustam Effendi	Bengkulu High Prosecutor's Office
5	10/Pid.Sus-TPK/2019/PN Mam	Wiryadi,S.E bin Armin Yusuf Sila	Majene District Prosecutor's Office
6	9/Pid.Sus-TPK/2019/PN Mam	Nahrudin, S.Pd bin Syahrudin	Majene District Prosecutor's Office
7	31/Pid.Sus-TPK/2019/PN Smg	SRI FITRI WAHYUNI	Attorney General RI
8	43/Pid.Sus-TPK/2018/PN.Tjk	Zainudin Hasan	KPK

The imposition of the Anti-Money Laundering Law to the defendant is proven to produce verdicts that are oriented towards the impoverishment of corruptors. For example, in the case that ensnared the former South Lampung Regent, Zainudin Hasan, the Panel of Judges required the person to pay a replacement money of Rp 66,700,000,000 in his verdict.

- Disparity of Punishment

The portrait of disparity in punishment still colors the Court's verdicts throughout 2019. This certainly implies a difference of opinion from the Judges when looking at the context of corruption crimes. This kind of difference should be minimized in the future. Because this is directly related to the context of justice, both for the defendant and the community itself.

Basically, the sentencing disparities are normal, considering that each case certainly has different characteristics. Not to mention how law enforcement (the Public Prosecutor) formulated the indictment and developed a proof strategy. These aspects will determine the final sentence that will be handed down by the Panel of Judges.

In ICW's records, cases with large state losses are still often lightly sentenced by a panel of judges. This is different from other cases that have a small state loss but are punished severely. Not only that, the bribery case was in the spotlight, with similar professional background characteristics, but the sentence between the two was very different. For this reason, here are examples of sentencing disparities throughout 2019:

No	Decision Number	Name of Defendants	Occupation	State Loss/Bribe	Imprisonment	Article of Decision
1	76/Pid.Sus-TPK/2019/PN Mks	MUH. SAID BIN SANGKILANG	Batugelung Headman	Rp 542.168.459	2 years and 6 months	Article 2
2	16/Pid.Sus-TPK/2019/PN Bjm	DATMI, ST Bin ASPUL ANWAR	Hambuku Kab Hulu Sungai Utara Headman	Rp 43.408.582	4 years	Article 2
3	5/Pid.Sus-TPK/2019/PN Jap	JAFET ARNOLD SAMPUL, SH	Director of PT Bina Karya Junior	Rp 1.745.694.560	1 years and 4 months	Article 2
4	6/Pid.Sus-TPK/2019/PN Bjm	H. RUSMAN ADJI Bin (Alm) HABIRIN S.	Director of PT. Citra Bakumpai Abadi	Rp 500.000.000	4 years and 6 months	Article 2
5	26/Pid.Sus-TPK/2019/PN Sby	MAHTUM SHALEH	Village Secretary of Prenduan, Sub-District Pragaan, Sumenep	Rp 245.000.000	1 year	Article 11
6	21/Pid.Sus-TPK/2019/PN Sby	KHOLIQ WICAKSONO, ST.	Head of Session (Kasi) Evaluation and Reporting on Mining in the ESDM Provincial Office of East Java	Rp 30.000.000	1 year	Article 11

- Prosecution Trends

Judicially, the Judge is not directly bound by the demand letter read out by the Public Prosecutor. Because, in a verdict, the Judge must stand on the indictment which has been arranged and read out in advance. However, this demand letter can see how serious the Public Prosecutors are when they formulate the process of proving corruption cases. Simply put, if this case has a large state loss then it becomes a question for the public when the demands on the accused are low.

ICW divides the assessment of prosecutors' demands, both from the Prosecution Service or the KPK into 3 (three) parts, namely: light (0-4 years), moderate (> 4-10 years), and heavy (> 10 years). During 2019, at least 1,125 defendants were trialed in various court cases, divided into: 137 defendants were prosecuted by the KPK and 911 defendants were prosecuted by the Prosecution Service.

The average demands where the Prosecutor came from the KPK is 5 years and 2 months imprisonment, whereas from the Prosecution Service is 3 years and 4 months imprisonment.

Throughout 2019, the KPK demanded 51 defendants lightly, demanded 72 defendants moderately, and only demanded 6 defendants heavily. While from the Prosecution Service itself, 604 defendants were lightly prosecuted, 276 were moderately prosecuted, and 13 were heavily prosecuted.

- Judicial Review

Throughout 2019, the Supreme Court has reduced the sentence of at least 6 convicted corruption cases. Starting from a reduction imprisonment, or even the removal of replacement money. There is a strong suspicion that many convicted corruption cases have filed extraordinary legal remedies in the form of a review because Artidjo Alkostar has retired, as if this moment was used by the convicts to look for loopholes in order to get reduced sentences.

The following is a list of reviews that were granted by the Supreme Court during 2019:

No	Decision Number	Name of Defendants	Occupation	State Loss/Bribe	Verdict	Judicial Review
1	97PK/PID.SUS/2019	Irman Gusman	Chairman of DPD RI	Rp100,000,000	4 years and 6 months	3 years
2	266 PK/Pid.Sus/2018	Choel Mallarangeng	Businessman	Rp464,391,000,000	3 years and 6 months	3 years
3	UNIDENTIFIED	Suroso Atmomartoyo	Director of Processing PT Pertamina	Rp2,600,000,000	7 years	7 years and write-off replacement money
4	UNIDENTIFIED	Tarmizi	Substitute Registrar of South Jakarta District Court	Rp425,000,000	4 years	3 years
5	156/Pid.Sus/2019	Patrialis Akbar	Former Judge Constitutional Court	Rp144,000,000	8 years	7 years
6	UNIDENTIFIED	M Sanusi	Former member of DPRD DKI Jakarta	Rp2,000,000,000	10 years	7 years

- Controversial Verdict

Basically, every Judge's verdict must be considered true (*Res Judicata Pro Veritate Habetur*). However, frequently, the various verdicts handed down reap controversy in the community. Starting from the aspect of certainty, expediency, and justice as if not seen in the verdict handed down by the Court, even though the Court is the final filter to provide a maximum deterrent effect for corruptors.

This note is based on several indicators. Starting from the amount of state financial losses, cases that get public attention, and facts that appear in court

Therefore, the following 2 (two) most controversial verdict throughout 2019:

### **1. Syafruddin Arsyad Tumenggung's Dismissal Verdict**

As it is known that in the middle of 2019 the Supreme Court decided to dismiss the defendant in a corruption case, Syafruddin Arsyad Tumenggung, in the case of the issuance of Certificate of Clearance (SKL) of the Bank Indonesia Liquidity Assistance (BLBI) Obligor which had caused financial losses of Rp 4.58 trillion. The cassation panel was of the view that Tumenggung's act of issuing *SKL* was not a criminal offense, so that a verdict was dismissed (ontslag van allerechtsvervolging).

At that time, the cassation panel did not share the same view of the case, some said it entered the criminal domain, civil and administrative matters. There are several crucial notes related to this Tumenggung's dismissal verdict. First, the debate over the scope of the case was considered over when the suspect Tumenggung submitted a pretrial hearing. The pretrial ruling has confirmed that the case of *SKL* issuance for the BLBI obligor is in the criminal domain.

Second, the cassation decision is very different from the prior decision. In the first level, Tumenggung was given a 12-year sentence and the appeal stage was increased to 15 years imprisonment. It would be a strange thing if the cassation decision would dismiss the defendant from the snare of the law. Third, one of the cassation panel examining this case was subject to ethical sanctions by the Supreme Court Supervisory Agency. Because, the judge was proven to have a meeting with the attorney when this case was ongoing in the Supreme Court.

### **2. Sofyan Basir's Acquittal**

Former PLN Director, Sofyan Basir, was acquitted by the Corruption Court in early November 2019. This verdict has drawn criticism from the public, because evidence of Sofyan Basir's involvement has often been mentioned in various trials with other defendants.

Sofyan at that time was allegedly involved in helping to smooth out the bribery process committed by Eni M Saragih and Idrus Marham. Facts revealed at the trial included: (1) Sofyan also find out about the fee received by Eni in the project; (2) Sofyan wanted that the ration fee obtained from the project to be divided equally among three people, the other two are Eni and Idrus; (3) Sofyan attended 9



meetings between the former member of the DPR RI and Johannes Kotjo (private party);

This verdict also added to the series of acquittal handed down by the Corruption Criminal Court to cases investigated by the KPK. After previously Mochtar Mohammad (former Mayor of Bekasi) and Suparman (former Regent of Rokan Hulu).

Based on the above arguments, the dismissal verdict of the former Head of Indonesia Bank Restructuring Agency and the acquittal of the former Director of PLN, Sofyan Basir, was categorized as a controversial verdict.

- Ideal Verdict

It is believed that the deterrence of the corruptor can be done in two ways, namely maximum imprisonment and additional criminal sanctions in the form of replacement money. However, not many Judges have that perspective, instead most verdicts remain within the minimum threshold of punishment. Not only that, the value of state losses due to corrupt practices was not followed by additional penalties in the form of maximum replacement money.

Therefore, the followings are ideal verdicts throughout 2019 that illustrate the maximum deterrence of corruptor:

No	Decision No.	Name of defendant	State Loss / Bribe	Demands	Jail	Money Substitutes	Court
1	2 / PID.SUS-TPK / 2019 / PN AMB	La Masikamba	Rp 790 million	12 years	15 years	USD 7.881.951.000	PN Ambon
2	52 / Pid.Sus-TPK / 2019 / PN Sby	ANTONIUS ARIS SAPUTRO	Rp 63,342 million	18 years 6 months	16 years	Rp 61,000,000,000	PN Surabaya

### III. Conclusion

1. Trends in corruption court sentences throughout 2019 have not shown full support for the corruption eradication sector. Based on ICW findings that show that the average sentence against a corruption defendant was only 2 years and 7 months in prison. Specifically, from 1,125 corruption defendants trialed, at least 842 of them were given light sentences and only 9 were given severe sentences. Although the regulation on the eradication of corruption which is used as the basis of examination in a trial makes it possible to sentence a defendant to 20 years in prison, and even for life;
2. The performance of law enforcers, whether the Attorney General's Office or the Corruption Eradication Commission, has not satisfied the public in regards of prosecution. It is due to the average demand during 2019 that numbered only 3 years and 7 months in prison. In addition, these two law enforcement agencies are very minimal in severely prosecuting the accused, the Prosecutor's Office alone is only consist of 13 people and the KPK has only 6 people in its team. Even the Prosecutors' Office in quantity was more dominant in suing the defendants of corruption lightly. Of the total 911 defendants prosecuted, 604 of them were prosecuted under 4 years in prison;
3. Efforts to recover state losses remain an unresolved problem in 2019. This is due to a significant difference in the state losses arising from corrupt practices compared to the amount of replacement money. ICW's findings in 2019 showed that the country had lost Rp 12,002,548,977,762, while the total replacement money was only Rp 748,163,509,055;
4. Law enforcers still rarely use the Anti Money Laundering instrument when formulating indictments. This is evident from the total cases monitored by ICW, in fact only 9 defendants were charged with this regulation. Of course, this illustrates that law enforcement officials, both the Prosecutor's Office or the Corruption Eradication Commission, have not seen the issue of impoverishment of corruptors as an ideal way of combating corruption;
5. A portrait of the difference in sentences between defendants with a similar classification of cases still often occurred throughout 2019. Although in reality each case has different characteristics, disparity should have been able to be reduced. For example, cases with large state losses are punished lighter than cases with smaller state losses;

6. Extraordinary legal remedies in the form of judicial review submitted by the convict of corruption cases are still frequently granted by the Supreme Court. In the ICW monitoring throughout 2019, at least 6 convicted persons have been reduced by the Supreme Court. This is a concern because there is no longer a figure like Artidjo Alkostar in the internal Supreme Court who has a perspective in punishing corruptor;

#### **IV. Recommendation**

1. The Chief Justice of the Supreme Court must specifically highlight the trend of verdicts that is still light against perpetrators of corruption. The step to formulate criminal guidelines is very urgent to be realized. So that in the future each judge has certain standards when deciding corruption cases;
2. Law enforcers, be it the Prosecutors' Office or the Corruption Eradication Commission (KPK), to put a good use of prosecution guidelines when handling corruption defendants. Moreover, the current prosecution guidelines are included as one of the points to be updated through the National Strategy for Corruption Prevention. This is done so that in the future prosecutions carried out by law enforcers can be truly oriented towards the entrapment of corruptors;
3. Law enforcers, both the Prosecutors' Office and the Corruption Eradication Commission, must always use the Anti-Money Laundering Law when indicting corruptors. It is because both legally and in reality, corruption crimes often intersect directly with money laundering. This will simultaneously provide a maximum deterrent effect on corruptors;
4. In the midst of the rampant situation of convicted corruption cases trying their luck by submitting a judicial review, the Supreme Court should be more selective in assessing the feasibility of the evidence before passing the final verdict. Don't let the JR be used as an opportunity for corruption convicts to escape from the snare of the law without basing it on clear requirements;
5. The Supreme Court must immediately fix the electronic system of community hearings against the decisions of Judges. A channel in the form of a case management information system is actually quite good, but the problem of delays in uploading decisions and the lack of information must be followed up seriously by the Supreme Court;



## **A. The Evaluation of the Role of the Supreme Court in Corruption Court Sentences During 2019**

### **1. Introduction**

The role of the court as a part of the criminal justice system is very important as social engineering to control crime. However, the steps of the investigation carried out by the Police and the prosecution by the Prosecutor's Office will not have any implication when the Court annuls the actual crime committed by the defendant. For this reason, the role of the wider community is important to continue to provide constructive criticism to the judiciary to create law enforcement based on providing a deterrent effect to the perpetrators of crime.

The evidentiary regime in Indonesia actually refers to the concept of *negative wettelijk bewijstheorie* which implies that the Judge must hold on the evidence and conviction in order to subsequently give or not give a sentence against the defendant (Article 183 of the Criminal Procedure Code). However, in certain cases, it is not uncommon for Judges to decide a case not based on the concept, therefore the community often sees decisions that contradict the facts.

Article 5 of the Judicial Power Law should be the starting point of the Judge's rationale before deciding on a case. The provision states that Judges are required to explore, follow, and understand the legal values and sense of justice that lives in the community. Even this concept of justice is mentioned and strengthened by the opinion of Gustav Radbruch who expressed about legal values, namely justice, certainty, and expediency. Of course, if a Judge's verdict does not accommodate the overall value, it will create mistrust of the community towards law enforcement itself.

The presence of the Corruption Court in the institutional structure of the Court under the Supreme Court should be a good first step to maximize the state's treatment of perpetrators of these crimes. In addition, Judges at the Corruption Court are also equipped with special knowledge regarding regulations to eradicate corruption. The logic is simple, the verdict handed down should be oriented to giving a deterrent effect to the perpetrators of corruption crimes.

However, it seems that the high public expectations were not answered by the Judges' verdicts in the Corruption Court. Monitoring conducted by Indonesia Corruption Watch from 2005 to 2019 shows that Judge's verdict was still at a light level, or it can be said that it did not have a deterrent effect on the perpetrators of corruption crimes. Not only that, as a

financial crime is crucial, which must also be considered is the issue of recovery of state financial losses. But the results are similar, the amount of replacement money is often not proportional to the value of the state losses incurred by corrupt practices.

Not only that, the gap of verdicts still often occurs when the public monitors the verdicts in the Corruption Court. Even though, in terms of the indictment, the value of state losses / bribes, the Article imposed in the decision is not much different. This uniformity will certainly cause injustice, both from the perpetrators of crime and from the community as victims of corruption.

The administrative context of the judiciary is also important to seriously noted. For example, there are still many Corruption Courts, whether in the first instance, appeal or cassation / reconsideration, which do not upload the decisions on the Supreme Court website. This will make it difficult for anyone to monitor the verdicts handed down by the Court itself.

If it is associated with current contextual issues, the Chief Justice of the Supreme Court has just been elected to lead the highest judicial institution in Indonesia for at least the next five years. Improvements from various sides should be the priority agenda of the new Chief Justice. This is important, so that problems that always recur every year will no longer occur in the future.

Based on ICW's findings related to the Corruption Court's verdicts, this section will attach a note concerning the evaluation of the role of the Supreme Court in the trial during 2019.

## 2. General Overview

During 2019 ICW recorded at least 1,019 cases of corruption committed in various levels of court. Of the total cases, 1,125 people were declared as defendants. This finding is not too different from the previous year which totaled 1,053 cases with 1,162 defendants.

The above findings are divided into 3 court domains, namely: 941 cases were trialed in the first instance Court, while 56 cases were appeal and 22 cases were cassation and reviewed in the Supreme Court.

The average verdicts at each court level are as follows:

No.	Court Level	Average Prison Sentence
1	Corruption Criminal Court	2 years and 6 months
2	High Court	3 years and 8 months
3	Supreme Court	3 years and 8 months
<b>Average Prison Sentence</b>		<b>2 years and 7 months</b>

Refer to Article 10 of the Criminal Code that states about the principal crime (imprisonment and fines) ICW findings on average imprisonment for corruptors only touches the number 2 years 7 months in prison. As for the fines is Rp. 116,483,500,000. Then for additional crimes in the form of a replacement money of Rp. 748,163,50,0,055. This figure is very little compared with the amount of state losses that reached Rp 12,002,548,977,762. Practically less than 10 percent of the value of assets can be returned to the state treasury. Whereas for bribery itself, the number of cases which was dominant throughout 2019, was found to be at least Rp. 422,712,229,450.

**a. Professional Background of the Defendant of Corruption Cases**

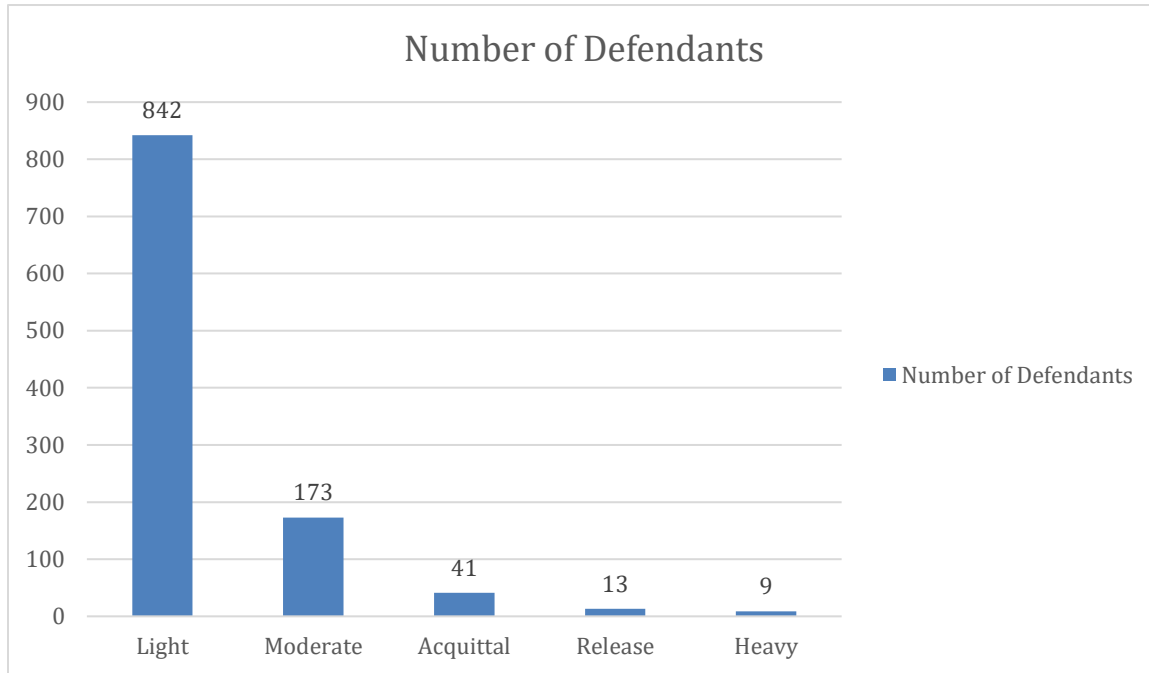
During 2019, at least the top three professions were local government officials, at provincial, city and regency level, as many as 334 people; then village officials as many as 228 people; and the private sector as many as 183 people. Meanwhile, from the political area, there are at least 58 members of the legislative body, both central and regional, and 20 from regional head levels.

The rise of corrupt practices in the local government sector shows that the bureaucracy reformations that have been echoed by the government are still not reaping maximum results. In addition, the function of the inspectorate must also be strengthened in order to become a major part of preventing corruption. Moreover, the procurement of goods and services sector which is often used as a source of corruption, also need to be strengthened.

At the village level, the practice of corruption most often involves the allocation of village funds. This is likely due to the lack of supervision from the relevant authorities and the low level of community participation. This year, the number increased dramatically compared to the previous year which numbered only 158 village officials.

## b. Variety of Court Verdicts

As known, the regulation on combating criminal acts of corruption recognizes minimum criminal concepts that are not found in other crimes. Based on that, ICW divides the categorization of sentences into several parts, namely:



- **Light Sentences (0-4 years).**  
In the findings throughout 2019, 842 defendants were lightly convicted by the Courts at various levels. As a percentage compared to the total overall case, the light verdict reached 82.2 percent. This figure is quite increased compared to the previous year which was only around 79 percent.
- **Moderate Sentence (> 4 - 10 years)**  
For moderate sentences, the Courts at various levels only sentence 173 Defendants. The percentage was also low, at only 16.9 percent.
- **Heavy Sentences (> 10 years)**  
Number of defendants sentenced to above 10 years in prison is 9 people with a percentage of 0.8 percent.
- **Acquittal**  
Acquittal rose sharply compared to 2018 which reached 41 defendants. The previous year there were only 26 defendants.



- Dismissal verdict

For a verdict in the form of a proven conviction but is seen as not a crime as many as 13 defendants.

**c. Most Professional Background on Light Verdicts**

ICW also monitored the professional backgrounds of defendants who received light sentences from the court. This is important, so that the public can see the perspective of judges when issuing decisions. For example, whether the weighting element of the position has been well considered before formulating a decision.

<b>No</b>	<b>Professional Background</b>	<b>Total</b>
1	<i>DPR / DPRD</i> (Parliament)	43
2	Local Government Employees	263
3	Private	138
4	Schools / Campus	33
5	Regional Heads	3
6	<i>BPN / BPK / Bappeda</i>	5
7	KPU	4
8	Banking	14
9	Ministry / Institution	13
10	Advocates	2
11	Hospitals	6
12	Police / Prosecutor / Judge	4
13	Others	74
14	<i>BUMN / BUMD</i>	24
15	Not Identified	28
16	Village officials	188
<b>TOTAL</b>		<b>842</b>

#### d. Overview Judgment of Each Court Level

- Trends District Court Decisions

In terms of quantity, 2019 showed an increase in trend in District Court decisions compared to previous year. This monitoring shows the average sentence in the District Court is 2 years 6 months in prison. With details: 788 defendants were sentenced lightly, 153 defendants were sentenced moderately, and only 7 defendants were sentenced severely, 39 defendants were acquitted, and 13 defendants were acquitted. So, the light verdict still dominates the verdict in the district court.

- Trends in High Court Judgment

For decisions on appeal, the average sentence is 3 years and 8 months of imprisonment. With details: 38 defendants were sentenced lightly, 16 defendants were sentenced moderately, and only one defendant was given a heavy sentence. Similar to the District Court, at this level of appeal the majority of decisions are still light.

- Trends in Supreme Court Decisions

At the level of cassation or reconsideration the average sentence is 3 years and 8 months imprisonment. With details: 16 defendants were sentenced lightly, 4 defendants were sentenced moderately, 1 defendant was given a heavy sentence, and 2 defendants were acquitted.

#### Comparison of Trends in Sentences in Each Year

Year	Category	Defendants	Percentage
2016	Light	479	72.1%
	Moderate	69	10.4%
	Heavy	9	1.4%
	Acquitted / dismissed	56	7.6%
2017	Light	1,127	81.6%
	Moderate	169	12.2%
	Heavy	4	0.29%
	Acquitted / dismissed	35	2.5%
2018	Light	918	79%
	Moderate	180	15.4%

	Heavy	9	0.7%
	Acquitted / dismissed	27	2.32 %
2019	Light	842	82.2%
	Moderate	173	16, 9%
	Heavy	9	0.9%
	Acquitted / dismissed	54	5.2%

From the data above it can be said that the light sentences in 2019 are considered the most compared to the previous three years. Of course, this indicates that the judiciary does not side with the issue of eradicating corruption.

**e. Acquittal and Dismissal Verdict of Corruptors**

Throughout 2019 courts at various levels have acquitted 41 defendants and dismissed 13 defendants. If presented, about 5.2% of the total verdicts handed down by the panel of judges. This number is the highest compared to 2018 with 27 defendants and 2017 with 35 defendants.

In essence, a verdict in the form of acquitted is common in law enforcement. Linked to Article 183 of the Criminal Procedure Code, if the Judge cannot find two pieces of evidence that are relevant to the criminal act and is not convinced that the defendant is guilty then by law the defendant must be acquitted of each indictment. Likewise, with the dismissal verdict, which indictment is proven but not considered as a criminal offense.

But the problem can not only be seen as normative, the transactional portrait in the court institution must also receive the spotlight. Do not let the acquittal or dismissal verdict decided by the Panel of Judges based on certain transactions. Not only that, in the aspects of the indictment and verification the Prosecutor must be seriously evaluated. Because, if the verdict is truly based on good legal considerations, it means that there is an error in law enforcement, in this case the Prosecutor in formulating an indictment or evidence strategy.

The following is the complete data about the acquittal and dismissal verdicts handed down by the court:

**Acquittal or Dismissal Verdict**

<b>No.</b>	<b>Name of court</b>	<b>Number</b>
1	Palangkaraya District Court	1
2	Mamuju District Court	2
3	Palu District Court	2
4	Kendari District Court	4
5	Manado District Court	5
6	Makassar District Court	3
7	Kupang District Court	1
8	Aceh District Court	10
9	Central Jakarta District Court	17
10	Bengkulu District Court	2
11	Jayapura District Court	5
12	Supreme Court	2
<b>Total</b>		<b>54</b>

- **Heavy Verdict of Corruptors**

According to the previous year's data, it states that the number of defendants who were severely convicted by the Court did not change. Of course, this illustrates that the verdict handed down on defendants in corruption cases has not been maximized. Although in the regulation on eradicating corruption, perpetrators of corruption can be sentenced to up to 20 years in prison, or even for life. It should be regretted that the percentage of defendants who were heavily sentenced was only 0.8 percent.

Following are the complete data about heavy sentences imposed against the defendant of corruption throughout 2019:

No	Decision Number	Name of Defendants	Sentences	Court	Public Prosecutor
1	3218 K / PID.SUS / 2018	Lie Eng Jun bin Lie Sing Kiat	12 years	MA	High Court of Bengkulu
2	16 / Pid.Sus-TPK/2019/PN Amb	Syahrhan Umasugi, SH	11 years	PN Ambon	Maluku High Prosecutor Office
3	4 / PID.SUS-TPK / 2019 / PT AMB	La Masikamba	15 years	PT Ambon	KPK
4	11 / Pid.Sus-TPK / 2019 / PN Jap	PITER WANDIK, S.Pd	15 years	PN Jayapura	unidentified
5	10 / Pid.Sus-TPK / 2019 / PN Jap	VICTOR ARIES EFENDY	15 years	PN Jayapura	unidentified
6	52 / Pid.Sus-TPK / 2019 / PN Sby	ANTONIUS ARIS SAPUTRO	16 years	PN Surabaya	Prosecutor's Office East Java
7	15 / Pid.Sus-TPK / 2019 / PN Smg	SUHARNO, SE, Bin SADINU	11 years	PN Semaran g	Prosecutor's Office Temanggung
8		RIYANTO, SE, Bin HADI SUMARTO	11 years	PN Semaran g	Prosecutor's Office Temanggung
9	43 / Pid.Sus-TPK / 2018 / PN.Tjk	Zainudin Hasan	12 years	PN Tanjung Karang	KPK

- **Comparison of Verdict Between Law Enforcement**

ICW in this section tries to analyze the verdicts demanded by both the KPK and the Prosecution Service. Of the total 1,125 defendants trialed during 2019, the KPK is known to be the prosecutor for 137 defendants while the Prosecution Service alone amounted to 911 defendants.

This data shows that the average sentences handed down by the Court when the KPK is a public prosecutor is 4 years and 1-month imprisonment, while the Prosecution Service is only 2 years and 5 months imprisonment in average. Then for light sentences, when the KPK were the prosecutors there were 63 defendants and the

Prosecution Service itself were 722 defendants. Sentences that categorized as heavy for the KPK itself were only given to 2 defendants and for the Prosecution Service were only given to 5 defendants.

- **Recovery of State Financial Losses**

Basically, an effective combination to give a maximum deterrent effect for corruptor is a maximum prison sentence accompanied by the return of crime assets. Moreover, need to look on how law enforcement and judges use anti-money laundering regulations. This section will specifically analyze the extent to which the judiciary uses legal instruments oriented to the recovery of state financial losses.

ICW monitoring throughout 2019, state losses arising from corrupt practices amounted to Rp 12,002,548,977,762. Whereas the judge's verdict who imposed an additional crime in the form of a replacement money was only Rp. 748,163,509,055. Practically less than 10 percent of state finances are only able to be returned through verdicts at various levels of the Court.

Similarly, when discussing the implementation of anti-money laundering regulations, at least the ICW data noted that only 8 defendants were subject to Law No. 8 of 2010, even though the link between corruption crime and money laundering is very close, both in terms of juridical and sociological. In terms of juridical, corruption is one of the predicate crimes regulated in Article 3 of the Anti-Money Laundering Law and from a sociological perspective the perpetrators of crime will certainly hide or divert the proceeds of crime in any form.

The following is the data of the verdicts on the implementation of the Anti-Money Laundering Law in 2019:

No	Decision Number	Name of Defendants	Public Prosecutor
1	5/Pid.Sus-TPK/2019/PN Plk	Cornedy, A.Md Bin Salampak Conrad	Kapuas District Prosecutor's Office
2	1/Pid.Sus-TPK/2019/PN Bgl	Tamimi Lani,S.T bin Abdul Lani alm	Bengkulu High Prosecutor's Office
3	2/Pid.Sus-TPK/2019/PN Bgl	Ferri Andrian,S.E bin Saparudin	Kaur District Prosecutor's Office
4	3/Pid.Sus-TPK/2019/PN Bgl	PT. Lian Suasa Korporasi are Adriansyah, S.H Bin Rustam Effendi	Bengkulu High Prosecutor's Office
5	10/Pid.Sus-TPK/2019/PN Mam	Wiryadi,S.E bin Armin Yusuf Sila	Majene District Prosecutor's Office
6	9/Pid.Sus-TPK/2019/PN Mam	Nahrudin, S.Pd bin Syahrudin	Majene District Prosecutor's Office
7	31/Pid.Sus-TPK/2019/PN Smg	SRI FITRI WAHYUNI	Attorney General RI
8	43/Pid.Sus-TPK/2018/PN.Tjk	Zainudin Hasan	KPK

The imposition of the Anti-Money Laundering Law to the defendant is proven to produce verdicts that are oriented towards the impoverishment of corruptors. For example, in the case that ensnared the former South Lampung Regent, Zainudin Hasan, the Panel of Judges required the person to pay a replacement money of Rp 66,700,000,000 in his verdict.

- **Disparity of Punishment**

The portrait of disparity in punishment still colors the Court's verdicts throughout 2019. This certainly implies a difference of opinion from the Judges when looking at the context of corruption crimes. This kind of difference should be minimized in the future. Because this is directly related to the context of justice, both for the defendant and the community itself.

Basically, the sentencing disparities are normal, considering that each case certainly has different characteristics. Not to mention how law enforcement (the Public

Prosecutor) formulated the indictment and developed a proof strategy. These aspects will determine the final sentence that will be handed down by the Panel of Judges.

In ICW's records, cases with large state losses are still often lightly sentenced by a panel of judges. This is different from other cases that have a small state loss but are punished severely. Not only that, even though the bribery case was in the spotlight, with similar professional background characteristics, the sentence between the two was very different.

For this reason, here are examples of sentencing disparities throughout 2019:

No	Decision Number	Name of Defendants	Occupation	State Loss/Bribe	Imprisonment	Article of Decision
1	76/Pid.Sus-TPK/2019/PN Mks	MUH. SAID BIN SANGKILANG	Batugelung Headman	Rp 542.168.459	2 years and 6 months	Article 2
2	16/Pid.Sus-TPK/2019/PN Bjm	DATMI, ST Bin ASPUL ANWAR	Hambuku Kab Hulu Sungai Utara Headman	Rp 43.408.582	4 years	Article 2
3	5/Pid.Sus-TPK/2019/PN Jap	JAFET ARNOLD SAMPUL, SH	Director of PT Bina Karya Junior	Rp 1.745.694.560	1 years and 4 months	Article 2
4	6/Pid.Sus-TPK/2019/PN Bjm	H. RUSMAN ADJI Bin (Alm) HABIRIN S.	Director of PT. Citra Bakumpai Abadi	Rp 500.000.000	4 years and 6 months	Article 2
5	26/Pid.Sus-TPK/2019/PN Sby	MAHTUM SHALEH	Village Secretary of Prenduan, Sub-District Pragaan, Sumenep	Rp 245.000.000	1 year	Article 11



6	21/Pid.Sus-TPK/2019/PN Sby	KHOLIQ WICAKSONO, ST.	Head of Session (Kasi) Evaluation and Reporting on Mining in the ESDM Provincial Office of East Java	Rp 30.000.000	1 year	Article 11
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#### f. Judicial Review

Throughout 2019, the Supreme Court has reduced the sentence of at least 6 convicted corruption cases. Starting from a reduction imprisonment, or even the removal of replacement money. There is a strong suspicion that many convicted corruption cases have filed extraordinary legal remedies in the form of a review because Artidjo Alkostar has retired. This moment was used by the convicts to look for loopholes in order to get reduced sentences.

The following is a list of reviews that were granted by the Supreme Court during 2019:

No	Decision Number	Name of Defendants	Occupation	State Loss/Bribe	Sentences	Sentences of Judicial Review
1	97PK/PID.SUS/2019	Irman Gusman	Chairman of DPD RI	Rp100,000,000	4 years and 6 months	3 years
2	266 PK/Pid.Sus/2018	Choel Mallarangeng	Businessman	Rp464,391,000,000	3 years and 6 months	3 years
3	UNIDENTIFIED	Suroso Atmomartoyo	Director of Processing PT Pertamina	Rp2,600,000,000	7 years	7 years and write-off replacement money
4	UNIDENTIFIED	Tarmizi	Substitute Registrar of South Jakarta District Court	Rp425,000,000	4 years	3 years

5	156/Pid.Sus/2019	Paternalis Akbar	Former Judge Constitutional Court	Rp144,000,000	8 years	7 years
6	UNIDENTIFIED	M Sanusi	Former member of DPRD DKI Jakarta	Rp2,000,000,000	10 years	7 years

- **Controversial Verdict**

Basically, every Judge's verdict must be considered true (*Res Judicata Pro Veritate Habetur*). However, not infrequently the various verdicts handed down reap controversy in the community. Starting from the aspect of certainty, expediency, and justice as if not seen in the verdict handed down by the Court. Though the Court is the final filter to provide a maximum deterrent effect for corruptors.

This note is based on several indicators, starting from the amount of state financial losses, cases that get public attention, and facts that appear in court.

Therefore, the following 2 (two) most controversial verdict throughout 2019:

- 1. Syafruddin Arsyad Tumenggung's Dismissal Verdict**

As it is known that in the middle of 2019 the Supreme Court decided to dismiss the defendant in a corruption case, Syafruddin Arsyad Tumenggung, in the case of the issuance of Certificate of Clearance (SKL) of the Bank Indonesia Liquidity Assistance (BLBI) Obligor which had caused financial losses of Rp 4.58 trillion. The cassation panel was of the view that Tumenggung's act of issuing SKL was not a criminal offense, so that a verdict was dismissed (*ontslag van allerechtsvervolging*).

At that time, the cassation panel did not share the same view of the case, while some said it entered the criminal domain, civil and administrative matters. There are several crucial notes related to this Tumenggung's dismissal verdict. First, the debate over the scope of the case was considered over when the suspect Tumenggung submitted a pretrial hearing. The pretrial ruling has confirmed that the case of SKL issuance for the BLBI obligor is in the criminal domain.

Second, the cassation decision is very different from the prior decision. In the first level, Tumenggung was given a 12-year sentence and the appeal stage was increased to 15 years imprisonment. It would be odd if the cassation decision

would dismiss the defendant from the snare of the law. Third, one of the cassation panel examining this case was subject to ethical sanctions by the Supreme Court Supervisory Agency. Because, the judge was proven to have a meeting with the attorney when this case was ongoing in the Supreme Court.

## **2. Sofyan Basir's Acquittal**

Former PLN Director, Sofyan Basir, was acquitted by the Corruption Court in early November 2019. This verdict has drawn criticism from the public. This is because evidence of Sofyan Basir's involvement has often been mentioned in various trials with other defendants.

Sofyan at that time was allegedly involved in helping to smooth out the bribery process committed by Eni M Saragih and Idrus Marham. Facts revealed at the trial included: (1) Sofyan also find out about the fee received by Eni in the project; (2) Sofyan wanted that the ration fee obtained from the project to be divided equally among three people, the other two are Eni and Idrus; (3) Sofyan attended 9 meetings between the former member of the DPR RI and Johannes Kotjo (private party);

This verdict also added to the series of acquittal handed down by the Corruption Criminal Court to cases investigated by the KPK. After previously Mochtar Mohammad (former Mayor of Bekasi) and Suparman (former Regent of Rokan Hulu).

Based on the above arguments, the dismissal verdict of the former Head of Indonesia Bank Restructuring Agency and the acquittal of the former Director of PLN, Sofyan Basir, was categorized as a controversial verdict.

- **Ideal Verdict**

It is believed that the deterrence of the corruptor can be done in two ways, namely maximum imprisonment and additional criminal sanctions in the form of replacement money. However, not many Judges have that perspective, instead most verdicts remain within the minimum threshold of punishment. Not only that, the value of state losses due to corrupt practices was not followed by additional penalties in the form of maximum replacement money.

Therefore, the followings are ideal verdicts throughout 2019 that illustrate the maximum deterrence of corruptor:

No	Decision No.	Name of defendant	State Loss / Bribe	Demands	Jail	Money Substitutes	Court
1	2 / PID.SUS-TPK / 2019 / PN AMB	La Masikamba	Rp 790 million	12 years	15 years	Rp. 7.881.951.000	PN Ambon
2	52 / Pid.Sus-TPK / 2019 / PN Sby	ANTONIUS ARIS SAPUTRO	Rp 63,342 million	18 years 6 months	16 years	Rp 61,000,000,000	PN Surabaya

### 3. Conclusion

- Trends in corruption court sentences throughout 2019 have not shown full support for the corruption eradication sector. This is due to ICW findings that show that the average sentence against a corruption defendant was only 2 years and 7 months in prison. Specifically, from 1,125 corruption defendants trialed, at least 842 of them were given light sentences and only 9 were given severe sentences, even though the regulation on the eradication of corruption which is used as the basis of examination in a trial makes it possible to sentence a defendant to 20 years in prison, and even for life;
- Efforts to recover state losses remain an unresolved problem in 2019. This is due to a significant difference in the state losses arising from corrupt practices compared to the amount of replacement money. ICW's findings in 2019 showed that the country had lost Rp 12,002,548,977,762, while the total replacement money was only Rp 748,163,509,055;
- A portrait of the difference in sentences between defendants with a similar classification of cases still often occurred throughout 2019. Although in reality each case has different characteristics, disparity should have been able to be reduced. For example, cases with large state losses are punished lighter than cases with smaller state losses;
- Extraordinary legal remedies in the form of judicial review submitted by the convict of corruption cases are still frequently granted by the Supreme Court. In the ICW monitoring throughout 2019, at least 6 convicted persons have been reduced by the Supreme Court. This is a concern because there is no longer a figure like Artidjo Alkostar in the internal Supreme Court who has a perspective in punishing corruptor.

#### 4. Recommendation

- The Chief Justice of the Supreme Court must specifically highlight the trend of light verdicts towards the perpetrators of corruption. The step to formulate criminal guidelines is very urgent to be implemented, so that each judge has certain standards when deciding corruption cases in the future;
- In the midst of the rampant situation of convicted corruption cases trying their luck by submitting a judicial review, the Supreme Court should be more selective in assessing the feasibility of the evidence before passing the final verdict. Don't let the judicial review be used as an opportunity for corruption convicts to escape from the snare of the law without basing it on clear requirements;
- The Supreme Court must immediately fix the community hearings electronic system against the decisions of Judges. A channel in the form of a case management information system is actually quite good, but the problem of delays in uploading decisions and the lack of information must be followed up seriously by the Supreme Court.

## B. Evaluation of the Role of the Prosecutor's Office in Corruption Court Sentences During 2019

### 1. Introduction

As stated by Lawrence M Friedman that to measure the effectiveness of law enforcement in a country can refer to three indicators, namely *legal structure*, *legal substance*, and *legal culture*. All of these aspects should go hand in hand in order to create an objective and professional climate of law enforcement. Likewise, in efforts to eradicate corruption, synchronization between law enforcers in running the criminal justice system is believed to create a deterrent effect for perpetrators of crime.

In various international agreements, corruption crime itself has been categorized as *extraordinary crime*, *transnational crime*, and *white-collar crime*. Of course, this categorization has impacted law enforcement that can no longer rely solely on conventional methods. State efforts, in this case law enforcement, are expected to be able to use extraordinary ways to eradicate corrupt practices. Indonesia Corruption Watch (ICW) believes that the granting of a deterrent effect for perpetrators of corruption crimes can only be achieved in two ways, namely maximum punishment followed by recovery of state financial losses.

The Attorney General's office as a law enforcement agency plays the role of *dominus litis* or case controller that has a large responsibility in the context of providing a deterrent effect for corruptors. Mainly in the momentum of the trial, starting from the preparation of the indictment, the process of showing evidence, and ending with the reading of the demand letter became a crucial issue that must always be considered by the public. With this basis, the public can see the extent of the seriousness of the Prosecutor's Office in viewing the crime of corruption.

ICW recently dismissed data related to the trend of the Corruption Court (Corruption Criminal Act) sentences throughout 2019. The results are still disappointing, the average sentence for corruption is only 2 years and 7 months imprisonment, not to mention, if it is associated with the issue of recovery of state losses which is still far from expectations. Total state losses due to corrupt practices last year reached Rp 12 trillion, while the replacement money dropped by the Court was only Rp 748 billion. Of course, the homework of law enforcement officers who show evidence in the Courts (KPK and Prosecutors' Office) is still very much in order to be able to contribute in creating an ideal punishment for perpetrators of corruption crimes.

In this section ICW will focus on the issue of two major issues within the scope of the Prosecutor's work, including: the application of money laundering rules in the indictment, which many believe is an entry point for the impoverishment of corrupt criminals and the extent to which prison criminal prosecution is maximized.

## 2. General Findings

During 2019 ICW recorded at least 1,019 cases of corruption committed in various levels of court. Of the total cases, 1,125 people were found as defendants. This finding is not too different from the previous year which totaled 1,053 cases with 1,162 defendants.

The above findings are divided into 3 court domains, namely: 941 cases were trialed in the first court, while 56 cases were appeal and 22 cases were appealed and reviewed in the Supreme Court.

The average verdicts at each court level are as follows:

<b>No.</b>	<b>Court Level</b>	<b>Average Prison Sentence</b>
1	Corruption Criminal Court	2 years and 6 months
2	High Court (Appeals)	3 years and 8 months
3	Supreme Court (Cassation / Review)	3 years and 8 months
<b>Average Prison Sentence</b>		<b>2 years and 7 months</b>

Refer to Article 10 of the Criminal Code that states about the principal crime (imprisonment and fines) ICW findings on average imprisonment for corruptors only touches the number 2 years 7 months in prison. As for the fines of Rp. 116,483,500,000. Then for additional crimes in the form of a replacement money of Rp. 748,163,50,0,055. This figure is very little compared with the amount of state losses that reached Rp 12,002,548,977,762. Practically less than 10 percent of the value of assets can be returned to the state treasury. Whereas for bribery itself, the number of cases which was dominant throughout 2019, was found to be at least Rp. 422,712,229,450.

## 1. Indictment Average

Legally, the Judge is not directly tied to the letter of demand read out by the Public Prosecutor, because, the judge's decision must be based on the indictment which has been compiled and read out in advance. However, in the letter of demand, the public can see how serious the Prosecutor is when he concludes the process of proving corruption cases. Simply put, if this case has a large state loss, then of course the law enforcers must demand the maximum criminal for the perpetrators of corruption.

However, the facts found are just the opposite. The average prosecutor's demands are only 3 years and 4 months imprisonment. This conclusion was drawn from the average of 1,125 defendants who were trialed in various court cases, divided into: 137 defendants were prosecuted by the KPK and 911 defendants were prosecuted by the Prosecutor's Office. ICW divides the assessment of prosecutors' demands, both from the Prosecutor's Office or the KPK into 3 (three) parts, which are: light (0-4 years), moderate (> 4-10 years), and severe (> 10 years). In the total of 911 defendants who were prosecuted by the prosecutor's office, 604 defendants were lightly prosecuted, 276 defendants were moderately prosecuted, and only 13 defendants were charged heavily.

No	Year	Category	Amount	Average
1	2017	Light	656	3 years 1 month
		Moderate	259	
		Heavy	6	
2	2018	Light	703	3 years
		Moderate	256	
		Heavy	9	
3	2019	Light	604	3 years 4 months
		Moderate	276	
		Heavy	13	

It can be seen from the table above that the trends of Prosecutors' prosecutions tend to increase compared to 2019's data. However, this increase is not significant enough to illustrate the granting of a deterrent effect to perpetrators of corruption crimes. The same



thing that happens every year is that the majority of claims filed by the Prosecutor's Office only range from one to four years in prison or fall into the light category.

In fact, regulations related to the eradication of corruption (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001) allow an offender to be prosecuted with a maximum sentence. For example, in the Article related to state losses can be sentenced to 20 years, even for the rest of life (Article 2 and Article 3). Likewise, in the context of state administrators who accept bribes, the maximum sentence is 20 years imprisonment (Article 12).

For example, when the Sragen District Attorney charged Agus Fatchur Rahman, a former Sragen Regent, with a prison sentence of 1 year and 6 months. He was involved in the regional government's fund corruption in Sragen regency in 2011, resulting in state financial losses of Rp 11.2 billion. With the amount of state losses that are fairly large, it can be said that the Prosecutor's demands are very light. Moreover, the person concerned holds the position of Regent. The Prosecutor's Office should be able to provide an additional penalty if they find such cases.

Corruption crime has been categorized as *extraordinary crime*, *white collar crime*, and *transnational crime*. This is due to the impact of corrupt practices that place the community as the most affected party followed by state financial losses. Therefore, the consequences of this categorization require each country to be able to apply extra penalties for corruptors.

## **2. Recovery of State Financial Losses**

Corruption is basically a financial crime. This is because the majority of corrupt actors have a background as state administrators, that makes the logical consequence of this crime model is the loss of state finances. For this reason, law enforcers are demanded to not only focus on the issue of imprisonment, but also to address the aspect of restoring state losses.

Cases that are quite striking in terms of the amount of state financial losses throughout 2019 are quite diverse, starting from the issue of the issuance of Bank Indonesia Liquidity Assistance Bonds (Rp. 4.58 trillion) to the procurement of electronic-based identity cards (Rp. 2.3 trillion). The number of ICW findings related to state financial losses in 2019 reached up to Rp 12 trillion in total. The question to reflect on this matter is to what extent has the value of the country's financial losses been recovered by law enforcement officials?

The fact is that the law enforcement structure has not been able to recover state financial losses due to corruption crimes. The total substitute money dropped by the panel of judges at the trial only reached Rp. 748 billion. This is a sign that the law enforcement regime

throughout 2019 failed to create a deterrent effect, both in terms of imprisonment and recovery of state financial losses.

ICW believes that there are several important instruments to be attached to perpetrators of corruption in order to maximize the recovery of state financial losses. First, the imposition of the Anti-Money Laundering Law (TPPU). It is because the TPPU imposition model accommodates the reversal of the burden of proof and tends to be oriented to the follow the money approach. However, in fact, throughout 2019 the Prosecutor's Office only demanded TPPU against six defendants and one corporation.

<b>No</b>	<b>Decision Number</b>	<b>Name of Defendants</b>	<b>Public Prosecutor</b>
1	5/Pid.Sus-TPK/2019/PN Plk	Cornedy, A.Md Bin Salampak Conrad	Kapuas District Prosecutor's Office
2	1/Pid.Sus-TPK/2019/PN Bgl	Tamimi Lani,S.T bin Abdul Lani alm	Bengkulu High Prosecutor's Office
3	2/Pid.Sus-TPK/2019/PN Bgl	Ferri Andrian,S.E bin Saparudin	Kaur District Prosecutor's Office
4	3/Pid.Sus-TPK/2019/PN Bgl	PT. Lian Suasa Korporasi are Adriansyah, S.H Bin Rustam Effendi	Bengkulu High Prosecutor's Office
5	10/Pid.Sus-TPK/2019/PN Mam	Wiryadi,S.E bin Armin Yusuf Sila	Majene District Prosecutor's Office
6	9/Pid.Sus-TPK/2019/PN Mam	Nahrudin, S.Pd bin Syahrudin	Majene District Prosecutor's Office
7	31/Pid.Sus-TPK/2019/PN Smg	SRI FITRI WAHYUNI	Attorney General RI

The link between corruption and money laundering is very close, both in juridical and sociological terms. From the juridical point of view corruption itself is one of the predicate crimes regulated in Article 2 of the TPPU Law and in its sociological aspect the perpetrators of the crime always want to hide or divert the proceeds of crime in any form.

Second, maximizing additional penalties in the form of replacement money. This is regulated in Article 18 paragraph (1) letter b which states that the payment of a replacement money in the same amount as much as the property obtained from corruption. This provision can be applied to all articles of punishment in the regulation to eradicate corruption. For example, in the case above, the combination of the imposition of TPPU and replacement money was quite successful, the case involving Zainudin Hasan was charged a replacement money by a panel of judges worth Rp 66.7 billion. Third, the use of articles related to gratification. This is because the model of proving corruption is seen as sufficient to facilitate law enforcement by accommodating the reversal of the burden of proof.

### 3. Conclusion

- The average prosecutor's demands are still at a light level, which is 3 years and 4 months imprisonment;
- Prosecutor's Office still rarely uses the legal instruments of the TPPU Law in ensnaring perpetrators of corruption crimes;
- The regime of deterrent effects at the Prosecutor's Office for perpetrators of corruption crimes is still oriented towards imprisonment;

### 4. Recommendation

- The Attorney General's Office must immediately finalize the discussion of the prosecution guidelines;
- Reorientation of law enforcement in the Prosecutor's Office to no longer only focus on imprisonment, but also lead to recovery of state financial losses. This is done by attaching TPPU instruments, gratuities, and additional penalties in the form of replacement money.

## **C. Evaluation of the Role of the KPK in Corruption Court Sentences during 2019**

### **1. Introduction**

The role of law enforcement is very important in efforts to provide a deterrent effect on the perpetrators of crime. The authorities possessed such as investigation and prosecution should be able to contribute directly to minimize the practice of crime. Based on the principle of functional differentiation in criminal law, it will facilitate the public to provide critical notes at every step or stage of law enforcement in handling a case.

The Corruption Eradication Commission (KPK) itself as an extraordinary law enforcement agency is given special authority in handling cases by Law Number 19 of 2019, which includes four legal remedies at once, from investigation to execution of Judges' verdicts. For this reason, the legal steps taken by the KPK must really be oriented towards providing a deterrent effect on perpetrators of corruption crimes. As a note, corruption is a crime that is directly affiliated with economic aspects. So that the direction of corruption eradication carried out by the KPK cannot only be focused on imprisonment, but also must touch recovery of state financial losses.

Indonesia Corruption Watch (ICW) recently dismissed data related to the trend of the Corruption Court (Tipikor) sentences throughout 2019. The results are still disappointing, the average sentence for corruption is only 2 years and 7 months imprisonment. Moreover, if it is associated with the issue of recovery of state losses which is still far from expectations. Total state losses due to corrupt practices last year reached Rp 12 trillion, while the replacement money dropped by the Court was only Rp 748 billion. Of course, the homework of law enforcement officers who show evidence in the Courts (KPK and Prosecutors' Office) is still very much in order to be able to contribute in creating an ideal punishment for perpetrators of corruption crimes.

The role of law enforcement in the trial is believed to influence the Judge's verdict. In the perspective of eradicating corruption, for example, when law enforcers prepare indictments it should also adhere to the Law on Money Laundering and no longer provide a loophole for judges by giving Articles that allow perpetrators of corruption crimes to be lightly punished. In addition, in the evidentiary section, law enforcers must submit quality-oriented evidence in order to influence judges that the defendant is legally proven and convincingly commits a crime of corruption. Then the demands on both the Corruption Eradication Commission and the Prosecutor's Office must severely punish every perpetrator of a corruption crime, especially with certain job qualifications. The severe punishment is in the form of a

combination of imprisonment of heavy prison and additional punishment in the form of imposition of replacement money.

Based on ICW's findings related to the Corruption Court's verdicts, this section will attach a note that questions the evaluation of the role of the KPK in trials throughout 2019.

## 2. General Findings

During 2019 ICW recorded at least 1,019 cases of corruption committed in various levels of court. Of the total cases, 1,125 people were found as defendants. This finding is not too different from the previous year which totaled 1,053 cases with 1,162 defendants.

The above findings are divided into 3 court domains, namely: 941 cases were trialed in the first court, while 56 cases were appeal and 22 cases were appealed and reviewed in the Supreme Court.

The average verdicts at each court level are as follows:

No.	Court Level	Average Prison Sentence
1	Corruption Criminal Court	2 years and 6 months
2	High Court (Appeals)	3 years and 8 months
3	Supreme Court (Cassation / Review)	3 years and 8 months
<b>Average Prison Sentence</b>		<b>2 years and 7 months</b>

Refer to Article 10 of the Criminal Code that states about the principal crime (imprisonment and fines) ICW findings on average imprisonment for corruptors only touches the number 2 years 7 months in prison. As for the fines of Rp. 116,483,500,000. Then for additional crimes in the form of a replacement money of Rp. 748,163,50,0,055. This figure is very little compared with the amount of state losses that reached Rp 12,002,548,977,762. Practically less than 10 percent of the value of assets can be returned to the state treasury. Whereas for bribery itself, the number of cases which was dominant throughout 2019, was found to be at least Rp. 422,712,229,450.

**a. Indictment Average**

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However, the facts found are just the opposite. The average demands where the prosecutor came from the KPK is only 5 years 2 months imprisonment. This conclusion was drawn from the average of 1,125 defendants who were trialed in various court cases, divided into: 137 defendants were prosecuted by the KPK and 911 defendants were prosecuted by the Prosecutor's Office. ICW divides the assessment of prosecutors' demands, both from the Prosecutor's Office or the KPK into 3 (three) parts, namely: light (0-4 years), moderate (> 4-10 years), and severe (> 10 years). In the total of 911 defendants who were prosecuted by the prosecutor's office, 604 defendants were lightly prosecuted, 276 defendants were moderate, and only 13 defendants were charged heavily.

No	Year	Category	Amount	Average
1	2017	Light	16	5 years and 3 months
		Moderate	29	
		Heavy	6	
2	2018	Light	42	5 years and 6 months
		Moderate	90	
		Heavy	8	
3	2019	Light	51	5 years and 2 months
		Moderate	72	
		Heavy	6	

It can be seen in the table above that the KPK prosecution trend had increased three months in 2018, but the increase no longer occurred in the following year. Prosecution carried out by the KPK actually declined around four months compared to the previous year. Then the

number of the lightly prosecuted defendants in 2019 is the highest number compared to the previous period, which reached 51 defendants.

In fact, regulations related to the eradication of corruption (Law No. 31 of 1999 in conjunction with Law No. 20 of 2001) allow an offender to be prosecuted with a maximum sentence. For example, in the Article related to state losses can be sentenced to 20 years, even for the rest of life (Article 2 and Article 3). Likewise, in the context of state administrators who accept bribes, the maximum sentence is 20 years imprisonment (Article 12).

For example, when the KPK demanded Joe Fandy Yoesman, a private company, allegedly gave a bribe worth of Rp 5 billion to Jambi DPRD members to get several projects. In terms of the amount of money disbursed by the defendant, the KPK only demanded that the person be sentenced to 2 years and 6 months imprisonment, whereas the regulation of criminal acts of corruption makes it possible to prosecute more severe prison sentences.

ICW itself considers there are several juridical and sociological arguments that should be considered by the KPK to be able to sue the perpetrators of corruption crimes. First, corruption has been categorized as extraordinary crime, white collar crime, and transnational crime. This is due to the impact of corrupt practices that place the community as the most affected party followed by state financial losses. Therefore, the consequences of this categorization require each country to be able to apply extra penalties for corruptors.

Secondly, the KPK as a law enforcement agency is given extraordinary authority by law to maximize efforts to eradicate corruption. This can be seen in the consideration section of Law 30 of 2002 in conjunction with Law No. 19 of 2019 which states that the KPK was formed because other law enforcers have not functioned effectively and efficiently in combating corruption. KPK then was also given extraordinary authority in Article 6 of the Act a quo, which includes investigation and prosecution. These two reasons lead to the conclusion that the KPK should be able to be a role model for law enforcement in eradicating corruption by other law enforcers. However, the pilot concept for other law enforcers will not run well if KPK is still at the moderate level of prosecution as mentioned above.

#### **b. Recovery of State Financial Losses**

Corruption is basically a financial crime. This is because the majority of corrupt actors have a background as state administrators, that makes the logical consequence of this crime model is the loss of state finances. For this reason, law enforcers are demanded to not only focus on the issue of imprisonment, but also to address the aspect of restoring state losses.

Cases that are quite striking in terms of the magnitude of state financial losses throughout 2019 are quite diverse, ranging from the issue of issuance of Bank Indonesia Liquidity Assistance Obligation Certificates (Rp 4.58 trillion) to the procurement of electronic-based identity cards (Rp 2.3 trillion) . Even if added to the number of ICW findings related to state financial losses in 2019 it will reaches Rp 12 trillion. The question to reflect on this matter is to what extent has the value of the country's financial losses been recovered by law enforcement officials?

The fact is that the law enforcement structure has not been able to recover state financial losses due to corruption crimes. The total substitute money dropped by the panel of judges at the trial only reached Rp. 748 billion. This is a sign that the law enforcement regime throughout 2019 failed to create a deterrent effect, both in terms of imprisonment and recovery of state financial losses.

ICW believes that there are several important instruments to be attached to perpetrators of corruption in order to maximize the recovery of state financial losses. First, the imposition of the Anti-Money Laundering Law (TPPU). It is because the TPPU imposition model accommodates the reversal of the burden of proof and tend to be oriented to the follow the money approach. However, in fact, throughout 2019 the KPK only demanded TPPU against one defendant, namely former South Lampung Regent, Zainudin Hasan.

The link between corruption and money laundering is very close, both in juridical and sociological terms. From the juridical point of view corruption itself is one of the predicate crimes regulated in Article 2 of the TPPU Law and in its sociological aspect the perpetrators of the crime always want to hide or divert the proceeds of crime in any form.

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### 3. Conclusion

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- The regime of deterrent effects at the KPK for perpetrators of corruption crimes is still oriented towards imprisonment;

### 4. Recommendation

- KPK must immediately arrange and establish prosecution guidelines;
- Reorientation of law enforcement in the KPK to no longer only focus on imprisonment, but also lead to recovery of state financial losses. This is done by attaching TPPU instruments, gratuities, and additional penalties in the form of replacement money.