

MONITORING NOTES ON CORRUPTION CASES CONVICTED BY COURTS IN 2016

VERDICTS DO NOT DETER CORRUPTORS

On average, corruption verdicts in 2016 was limited to 2 years and 2 months

A. INTRODUCTION

Eradication of corruption should be done in a variety of efforts, including both prevention and enforcement. Community organizing, advocacy of issues, and dissemination of anti-corruption policy are inseparable from these efforts, including in law enforcement. The judiciary is one of the spearheads of eradication of corruption, particularly in deterring corruptors.

Since its inception in 2012, until 2016, ICW has regularly monitored and collected data on verdicts of corruption cases in the Corruption Court (and previously also the General Court), the High Court, to the Supreme Court, either through cassation or reconsideration (PK). Through this monitoring effort, ICW can identify which institution committed the highest amount of corruption, the harshest court verdict for corruption, the average length of sentence for corruption, and potential losses of the state from the corruption cases monitored. The monitoring results are also essential in giving recommendations to the Supreme Court and the Judicial Commission to make improvements and to implement the function of performance monitoring.

B. PORTRAIT OF CORRUPTION VERDICTS IN 2016

In 2016, ICW has conducted monitoring of 573 corruption verdicts, of which 420 verdicts were made at the courts of first instance, 121 verdicts at the courts of appeal, and 32 at the Supreme Court. The number of defendants convicted by the courts at first instance, appeal, cassation, or judicial review is as follows:

Table 1. Number of Defendants and Cases of Corruption in 2016¹

Court	Defendants	Percentage (Defendants)	Verdicts	Percentage (Cases)
Corruption Court of the First Instance	467 persons	73.89%	420 verdicts	73.30%
Appellate Corruption Court	133 persons	21.04%	121 verdicts	21.12%
Supreme Court	32 persons	5.06%	32 verdicts	5.58%

From the 573 corruption cases monitored, the amount of state loss was **Rp 3,085,491,163,365**. The amount of bribes was **Rp 2,605,000,000** and **USD 212,000** and **SGD 128,700**. The amount of fine was **Rp 60,665,000,000**, and the amount of compensation money or *uang pengganti* was **Rp 720,269,569,276**.

Verdicts of the Corruption Court in 2016

ICW categorizes the sentences for corruption into three groups: lenient (less than 1 to 4 years imprisonment), moderate (4-10 years imprisonment) and harsh (over 10 years imprisonment). The lenient category is based on the consideration that the minimal prison sentence in Article 3 of the Anti-Corruption Law is 4 years imprisonment. It means that any sentence less than 4 years is a lenient one. A moderate sentence is between 4-10 years, while a harsh sentence entails more than 10 years imprisonment.

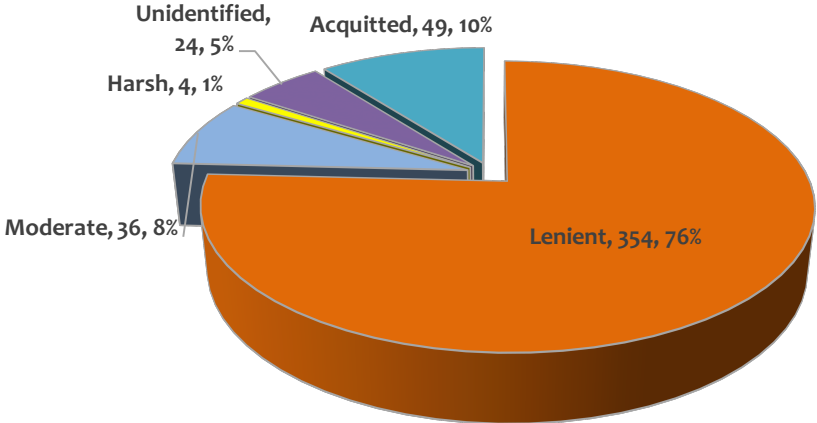
¹ The number of defendants in each court level is not summed up, as there is a possibility that the same defendant has undergone processes at different court levels.

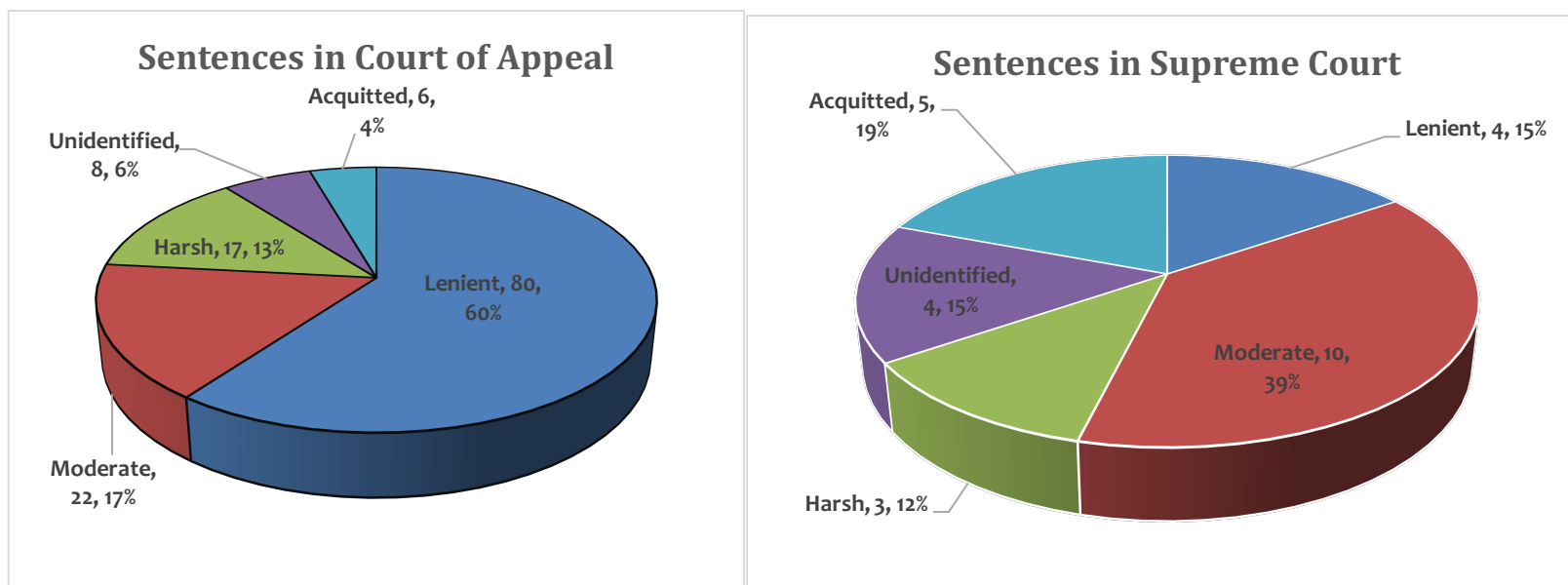
ICW finds that the average sentence in 2016 varies between levels. At the court of first instance, the average sentence is 1 year and 11 months. At the appellate court, the average sentence is 2 years and 6 months, and at the cassation level 4 years and 1 month. There is a tendency of increasing sentence at the appeal and cassation levels. However, overall across the three levels of courts, the average sentence for corruptors in 2016 is still quite lenient, 2 years and 2 months in prison.

Table 2. Average Sentence in 2016

Court Level	Average Sentence
Corruption Court of the First Instance	1 year 11 months
Appellate Corruption Court	2 years 6 months
Supreme Court	4 years 1 month

Sentences in Court of First Instance





Verdicts of the Corruption Court of the First Instance in 2016. The number of verdicts at this level is much higher than the verdicts of the Court of Appeal/High Court and Supreme Court (Cassation/Reconsideration). From the 420 corruption cases completed in 2016, the majority of defendants were convicted in the ‘lenient’ category (0 to 4 years in prison), as many as 354 persons (75.80%). Those given ‘moderate’ sentences (between 4 and 10 years) were 36 persons (7.71%). ‘Harsh’ sentences (more than 10 years) were given to 4 persons (0.86%), while 49 persons (10.49%) were acquitted by the Corruption Courts.

Verdicts of the Appellate Corruption Court in 2016. Within this court level, there have been 121 verdicts and 133 defendants identified. The majority of the defendants are convicted in the ‘lenient’ category (0 to 4 years in prison), as many as 80 persons (60.15%). 22 persons were given ‘moderate’ sentences (4 to 10 years in prison, 16.54%), and 17 persons (12.78%) were given ‘harsh’ sentences, or more than 10 years in prison.

Verdicts of the Supreme Court in 2016. There is not much difference with the lower levels of the courts, the Supreme Court also has a tendency of giving lenient sentences throughout 2016. From a total of 32 defendants, the Supreme Court gave ‘lenient’ sentences to 14 persons (43.75%). This is not much different from the number of defendants convicted in the ‘moderate’ category (4 to 10 years in prison), or as many as 10 persons (31.25%). Only 3 persons (9.38%) were given ‘harsh’ sentences (more than 10 years in prison). The Supreme Court also acquitted one defendant in a corruption case in 2016.

The above data, when compared with the decisions of the Corruption Court in between 2013 and 2015, show a similar picture (See Table 3. Distribution of Verdicts of the Corruption Courts in All Levels in 2013, 2014 and 2015). Between 2013 and 2015, the majority of defendants tried at the Corruption Court of the First Instance received lenient sentences. The number of those given lenient sentences is significantly larger than those receiving moderate, much less harsh, sentences. This condition occurred as well in the appellate court and in the Supreme Court, and thus in general, the three levels of the Corruption Court tend to give lenient sentences to defendants in corruption cases.

The Corruption Court should have reflected on the spirit of the Military Court, which sentenced Brig. Gen. Teddy Hernayadi to life imprisonment, having found him guilty for corruption in the military hardware procurement process, resulting in state loss of as much as USD 12 million (1 December 2016).

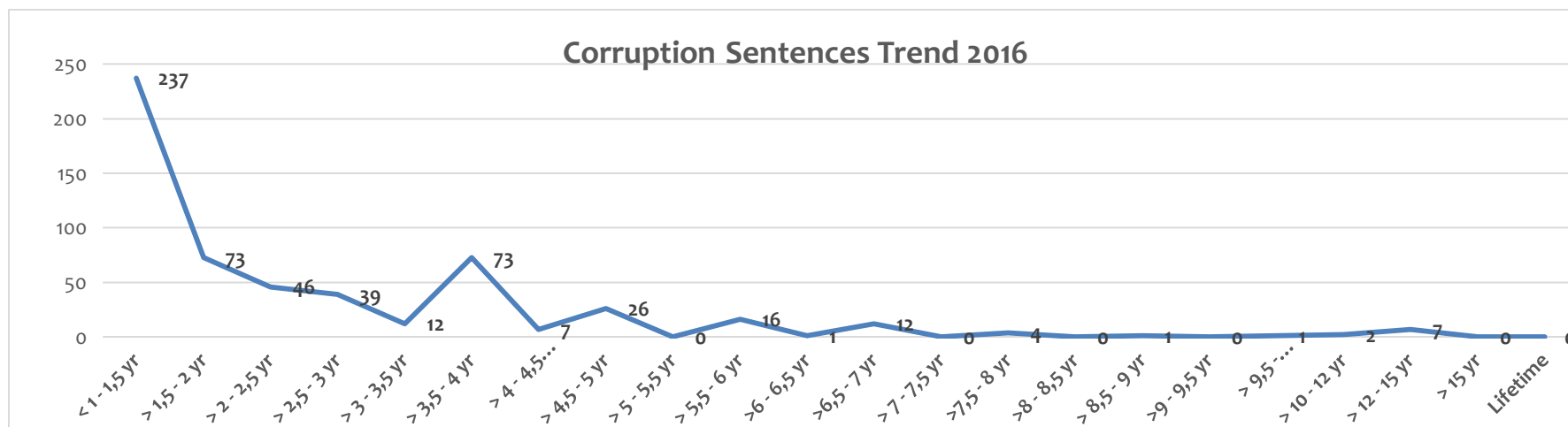
Table 3. Distribution of Verdicts of the Corruption Courts in All Levels in 2013, 2014 and 2015

Year	Category	First Instance	Appellate	Supreme
2013	Acquitted	17	6	3
	Lenient (0-4 years)	348	34	13
	Moderate (4-10 years)	50	11	8
	Harsh (> 10 years)	6	1	2
	Not identified	2	0	0
2014	Acquitted	20	1	6
	Lenient	255	92	25
	Moderate	37	18	4
	Harsh	3	2	1

	Not identified	0	1	14
2015	Acquitted	36	0	3
	Lenient	288	100	12
	Moderate	24	25	10
	Harsh	1	2	1
	Not identified	30	3	3

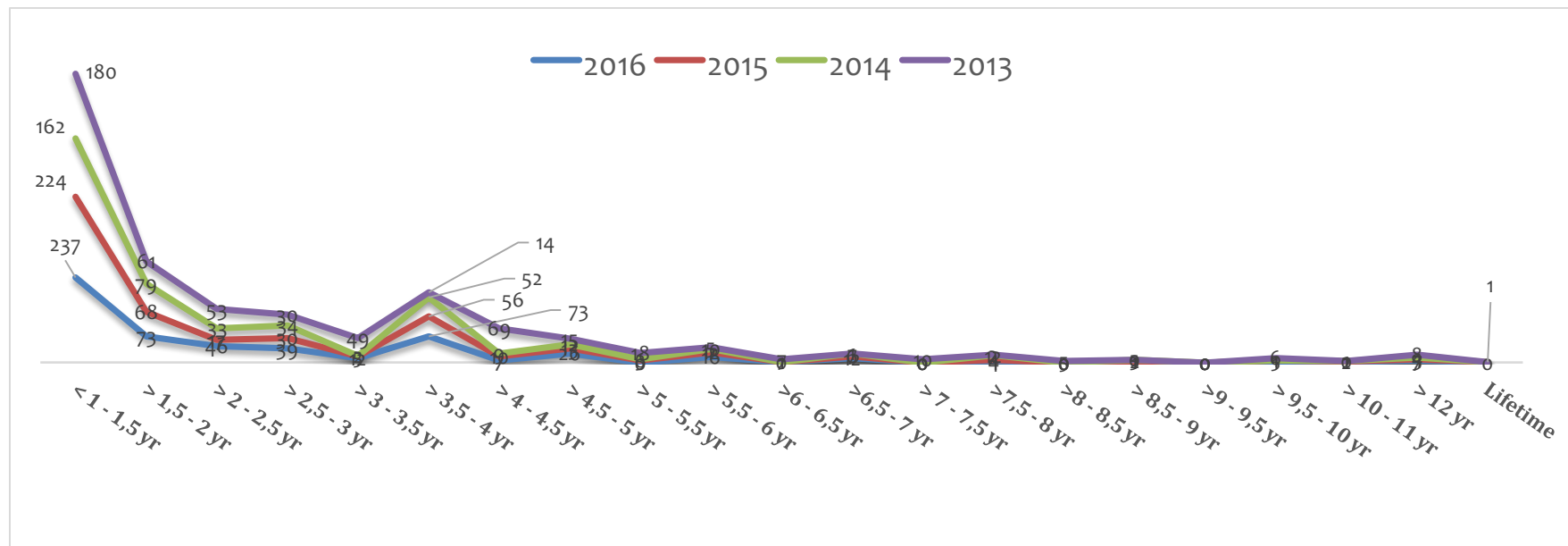
The distribution of the conviction trends in corruption cases throughout 2016 is shown below. Of the total, 273 defendants were sentenced with lenient sentences, namely up to one year and six months. This is the largest group, followed by those given a sentence of one year and six months to two years, or 73 defendants, and similarly, those given a sentence of three years and six months to four years. Not many defendants were given moderate and harsh sentences, or more than 4 years. For the moderate category, the largest group is those given four years and six months to five years, or 26 defendants, while for the harsh category, the courts sentenced seven defendants with 12 to 15 years' imprisonment. In general, the punishment for corruptors is relatively lenient (equal to or less than 4 years).

Figure 1. Distribution of Corruption Verdicts in 2016

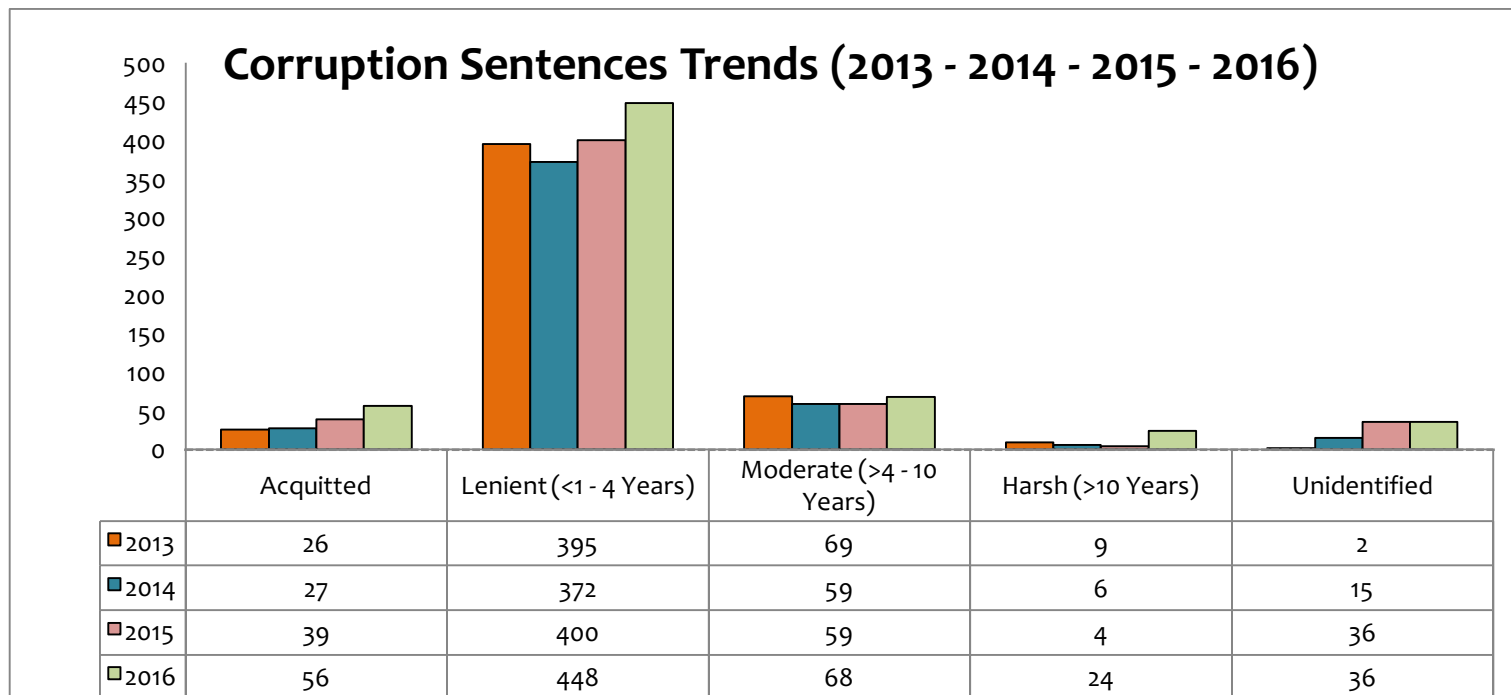


The distribution pattern of corruption verdicts in 2016 (First Instance, Appellate and Supreme) has not changed much compared to the earlier years. On the whole, sentences of less than 1 year to 1 year and 6 months are the most frequently imposed. In 2013, 180 defendants were sentenced with such a lenient sentence, while in 2014, the number was 162 and in 2015, 224. In 2016, the number is 237.

Graph 2. Distribution of Corruption Verdicts 2013-2016



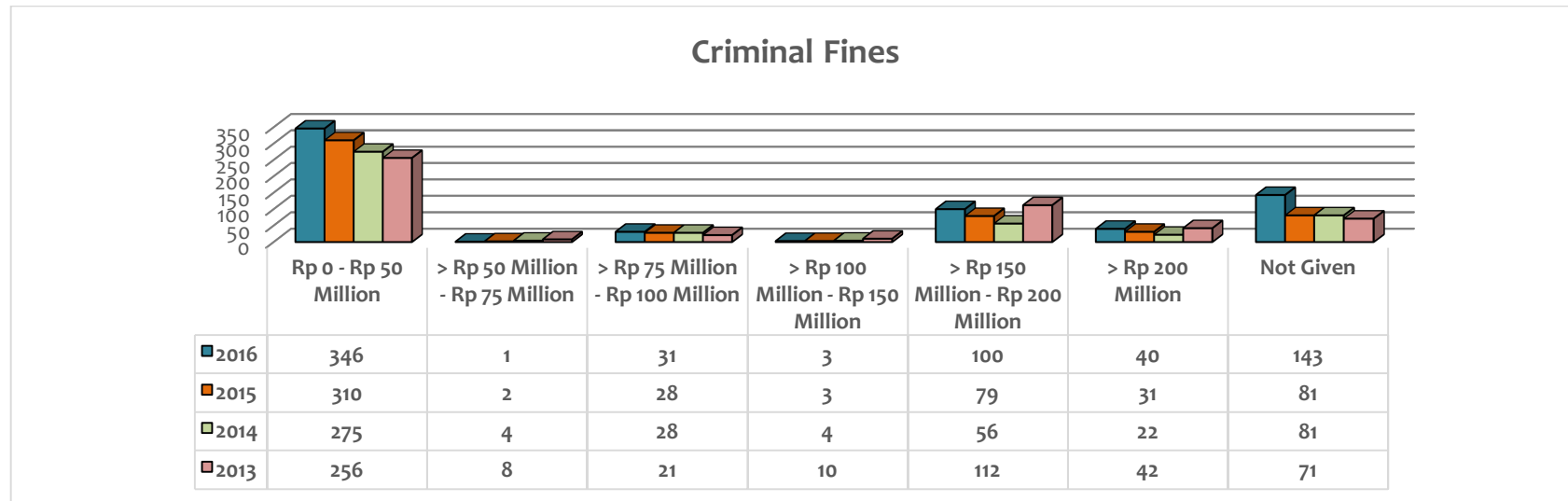
Such a trend is made possible because the Anti-Corruption Law has a maximum and minimum sentence provision. The judges tend to give minimum sentences as elaborated in Article 2 and Article 3. Article 2 gives a minimum penalty of 4 years and Article 3 1 year imprisonment.



Throughout 2013 to 2016, the Corruption Court verdicts tend to be dominated by lenient sentences. While there is no significant change between the years, there is a trend of increasing number of defendants given lenient sentences. This does not necessarily mean that the number of corruption cases is increasing, and there are many more actors that are caught and given lenient sentences. This is instead caused by two main factors. *First*, the number of verdicts made by the Corruption Court may be larger than those obtained from the Supreme Court’s directory of verdicts. So, these cannot represent the entirety of the cases and defendants. *Second*, the cases are tried by three levels of courts in different periods. A case can be decided in the court of first instance in 2013, but the appeal verdict may be made in 2014, and similarly at the cassation level. Thus, there is the possibility of one case having verdicts in all three court levels in different times. Therefore the number in the data merely describes and represents the map of verdicts against perpetrators of corruption in each analyzed year.

Fines and Compensation

In addition to the imposition of criminal penalties for defendants in corruption cases, fines are also imposed. In 2016, the majority of the accused found guilty and sentenced were also sentenced with a criminal fine, up to Rp 50 million, imposed to as many as 346 defendants. Although the majority were given minimal criminal fines, as many as 100 defendants were given fines ranging between Rp 150 million to Rp 200 million.



Unfortunately, the implementation of the fine is often hampered because the defendants often prefer to undergo imprisonment in lieu of the criminal fine.

As well as fines, imposition of compensation for the defendant is one form of additional penalty stipulated in the Penal Code. In principle, the imposition of compensation aims to seize the assets acquired by the defendant in a corruption case. In 2016, the total was at least **Rp 720,269,569,276, or about Rp 720 billion**, of compensation in corruption cases. Of the total of 573 decisions from 2016 successfully traced, only 246 decisions imposed compensation. This was less than half the total number of verdicts in 2016.

The total amount of compensation in 2016 is smaller than the compensation recorded in 2015. Of the total of 483, the courts demanded compensation in 183 verdicts during 2015, with a total of **Rp. 1,542,360,967,116/Rp 1.542 trillion**. Meanwhile, in 2014, of a total of 373, only 164 verdicts include compensation obligations to the amount of **Rp 1,491,269,831,925/Rp 1,491 trillion**.

Referring to the use of the articles in corruption cases throughout 2016, the application of Article 2 and Article 3 is the most dominant. In the construction of the articles, there is an element of “benefiting oneself/others/corporation” thus requiring proof of the results of the crime enjoyed by the defendant. Thus, the use of these two articles should be accompanied with Article 18 that regulates the obligation of compensation as a means of seizing the proceeds of the crime of corruption. Unfortunately not many court verdicts in 2016 obliged the defendant to pay such compensation. In addition, not all charges in the cases include the demand for compensation.

Acquittals/Discharges

As with previous years, 2016 is also marked by quite a number of acquittals and discharges issued by the Corruption Court. There are 56 defendants who were released by Corruption Court judges from the following courts.

Table 4. Acquittals/Discharges by Court

Court Name	Number of Acquittals/Discharges
Makassar Corruption Court	20
Jayapura High Court	6
Aceh Corruption Court	6
Palu Corruption Court	4
Ternate Corruption Court	4
Pekanbaru Corruption Court	3
Gorontalo Corruption Court	2
Bandung Corruption Court	2
Surabaya Corruption Court	1
Tanjung Karang Corruption Court	1
Jambi Corruption Court	1

Palembang Corruption Court	1
Kupang Corruption Court	1
Manado Corruption Court	1
Ambon Corruption Court	1
Padang Corruption Court	1
Supreme Court	1
TOTAL	56

The Makassar Corruption Court gives the highest number of acquittals, to 20 defendants. The Supreme Court is also found to acquit one corruption defendant: Adam Rahayan, former mayor of Tual, who caused a state loss of Rp 5,785,000,000 in the case of corruption of insurance funds of Southeast Maluku legislators in the 1999-2004 period. The number of defendants acquitted by the courts is probably greater, as many court verdicts from 2016 have not been obtained

Sentences Harsher than Charges

In the practice of sentencing of defendants in corruption cases, often the judges give sentences amounting two thirds of the sentence demanded by the prosecution. This is a common practice and is a consequence of the lack of sentencing guidelines. Although often giving more lenient sentences than those demanded by the prosecution, the courts are also found to give harsher sentences than demanded by the prosecution. At least 12 defendants were given harsher punishments than demanded by the prosecution.

Table 5. Sentences Harsher than Demanded by the Prosecution

No.	Case Number	Name of Defendant	Occupation	Charged *	Actual *
1.	36/PID.SUS.KOR/2016/PT.MKS	Syarifudin	Civil servant	1,6	4
2.	1361K/PID.SUS/2016	.Marusel Marpaung	Entrepreneur	5	7
3.	2527K/PID.SUS/2015	Salma Igrisa	Civil servant	4	5
4.	2807K/Pid.Sus/2015	Surya Gani	Civil servant	4,6	7
5.	62/PIDSUS.TPK/2015PN.KPG	Adam Harewila	Camat (district head)	1,6	4

6.	14/Pid.Sus-TPK/2016/PN.Bdg	Encang Soleh	Entrepreneur	10	12
7.	3/Pid.Sus/TPK/2016/PN. Bdg	Budi Subiantoro	Civil servant	2	4
8.	52/Pid.Sus/TPK/2016/PN.Sby	Abdul Munir	Civil servant	1,6	2
9.	936K/Pid.Sus/2015	Saipudin	Civil servant	3	5
10.	1452K/PID.SUS/2015	Agus Nurjaman	Civil servant	3	5
11.	33/PID.SUS-TPK/2015/PN.Tpg	Dewi Kusraesin	Entrepreneur	3	4
12.	34/PID.SUS_TPK/2015/PN.Tpg	Raja Ishak	Civil servant	2	5
13.	7/PID.SUS/TPK/2016/PN.Mam	Rachmat SR Sampetoding	Private sector	4	5
14.	25/Pid.Sus-TPK/2016/PN.plk	Heri Mustain	Head of Land Authority	4	5
15.	1/Pid.Sus-TPK/2016/PT.JAP	Supran	Former Head of Election Committee (Sorong)	5	6
16.	2/Pid.Sus-TPK/2016/PT.JAP	Yulius Sanggek	Secretary of Election Committee (Sorong)	5	6
17.	05/PID.SUS-TPK/2016/PN.BNA	Zakaria	Civil servant	1,6	2
18.	207/Pid.Sus/TPK/2016/PN.Sby	Erwin Hamonangan	Civil servant	2	2,6
19.	208/Pid.Sus/TPK/2016/PN.Sby	Istriyono	Civil servant	2	2,6

***In years and months**

The harsher sentences show at least two major issues. First, the prosecution was not optimal in charging the defendants. Second, the judges did not use the charge as a reference in sentencing, and did not have accountable and adequate guidelines.

Besides the many verdicts harsher than the charges, the opposite also occurred: many verdicts were much more lenient than charged by the prosecution, often less than half. At least there were 59 defendants who were given sentences that were much more lenient than charged.

Table 6. Sentences Less than Half than Demanded by the Prosecution

No.	Case Number	Name of Defendant	Occupation	Demanded *	Actual *
1.	66/Pid.Sus/TPK/2016/PN.Sby	Suhariyono	Head of Bulog (Madura)	11	2
2.	33/PID.SUS-TPK/2016/PT.PBR	Purboyo	Regional parliament member	8,6	2
3.	17/Pid.Sus-TPK/2016/PNPdg	Arda Wangsa	BKD civil servant	6,6	1
4.	20/Pid.Sus-Tpk/2016/PN.DPS	I Wayan Cateng	Former village cooperative manager	4,6	1
5.	28/Pid.Sus-TPK/2016/PN Pal	Basram N Maru	Regional parliament member	5	1
6.	08/Pid.Sus-TPK/2016/PN-Bna	Budijono	Head of PT Pertani Persero	10	4
7.	18/Pid.Sus-TPK/2016/PN.Mdn	Fachrudin Siregar	Civil servant	8	3
8.	9/Pid.Sus-TPK/2016/PT YYK		Former civil		

		Waldjono	servant	6,6	1,6
9.	38/PID.SUS-TPK/2016/PT.PBR	Hidayat Tagor and Rismayeni	Regional parliament member	8,6	3
10.	2621K/PID.SUS/2015	Deki Bermama	Private sector	15	7
11.	48/PID.SUS/TPK/2015/PN.JKT.PST	Hidayat Abdul Rachman	Civil servant	9	2
12.	93/Pid.Sus/TPK/2015/PN.Jkt.Pst	Suryadharma Ali	Minister of Religion	11	6
13.	96/PID.SUS/TPK/2015/PN.Jkt.PST	Edi Sriyanto	Entrepreneur	7	3
14.	112/PID.SUS/TPK/2015/PN.JKT.PST	Muhammad Iqbal	Private sector	10	3
15.	132/PID.SUS/TPK/2015/PN.JKT.PST	Sudarto	Private sector	9	5
16.	140/Pid.Sus/TPK/2015/PN.Jkt.Pst	Dasep Ahmadi	Private sector	12	7
17.	4/PID.SUS.TPK/2016/PT.DPS	I Gede Jargem	Civil servant	10	4
18.	5/Pid.Sus-TPK/2016/PN.DPS	I Ketut Ngenteg	Private sector	4	1

19.	6/Pid.Sus-TPK/2016/PN.Dps	Anak Agung Oka Suwirta	Driver	4	1
20.	53/Pid.Sus-TPK/2015/PN.Dps	I Gusti Ayu Pakrawati	Private sector	4	1
21.	02/PID.SUS/2016/PT.MTR	Ruslan	Private sector	7,6	3
22.	02/PID.SUS/2016/PT.MTR	Damrun M Amin	Private sector	7,6	3
23.	01/Pid.Sus-TPK/2016/PN.Kpg	Andi Sianto	Private sector	4	1
24.	03/Pid.Sus-TPK/2016/PN.Kpg	Adolfina Bana	Civil servant	7,6	3
25.	04/PID-SUS-TPK/2016/PN.KPG	Silvanus Marianus Tibo	Civil servant	5	2
26.	17/Pid.Sus-TPK/2016/PN.Kpg	Ramlan	Private sector	4	1,6
27.	7/Pid.Sus-TPK/2016/PT.JAP	Daniel Samoe Buntu	Civil servant	5	1
28.	10/Pid.Sus-TPK/2016/PT.JAP	M. Ali Daeng	Head of Damri Regional	4,6	1

			Office of Jayapura		
29.	12/Pid.Sus-TPK/2016/PT.JAP	Toguan Hutapea	Civil servant	7	1
30.	17/Pid.Sus-TPK/2016/PT.JAP	Buang Salakory	Secretary of Regional Parliament of Mimika	6	1
31.	18/Pid.Sus.Tpk/2016/PT JAP	Misrawaty	Civil servant	4,6	1
32.	3/PID.TPK/2016/PT.SMR	Andi Tomaru	Civil servant	5,6	1,4
33.	5/PID.TPK/2016/PT.SMR	Suriadji	Private sector	4	1,6
34.	36/Pid.Sus-TPK/2015/PN.PDG	Khuslaini	Private sector	6,6	1
35.	36/Pid.Sus-TPK/2015/PN.PDG	Mara Husni	Private sector	6,6	2
36.	64/Pid.Sus-TPK/2015/PN.PBR	Hartono	Employee of Pelindo I	8	2
37.	19/Pid.Sus/TPK/2016/PN.Sby	Edi Junaidi	Private sector	13,6	5

38.	166/Pid.Sus/TPK/2016/PN.Sby	Suprijatin	Housewife	6	2,6
39.	173/Pid.Sus/TPK/2016/PN.Sby	Fuat Krisnanto	Civil servant	4,6	1,6
40.	190/Pid.Sus/TPK/2016/PN.Sby	Indroyono	Private sector	8,6	2
41.	201/Pid.Sus/TPK/2016/PN.Sby	Maryani	Private sector	7	3
42.	205/Pid.Sus/TPK/2016/PN.Sby	Karwati	Private sector	4	1
43.	57/Pid.Sus-TPK/2015/PN.Plk	Hery Reonardo	Civil servant	5	2
44.	51/PID.SUS/TPK/2015/PN.Mnd	Joel Ch Kumajas	-	7	1,6
45.	45/PID.SUS/TPK/2015/PN.Mnd	Deny Ferdinand	-	7	1,6

***In years and months**

Disparity in Sentencing

In addition to the issue of sentences higher or much lower than demanded by the prosecution, another recurring issue is the significant disparity between sentences. The disparity in sentencing is a serious issue, as it involves the sense of justice that is intended from a criminal prosecution. Unfortunately, disparity in sentencing implies that there is injustice in the decisions of the judges towards the defendants. While the disparity cannot be eliminated, it should be reduced or minimized.

The existence of differences in criminal sanctioning, or disparity, is commonplace. This is because each case has its own characteristics. Problems only arise when the gap becomes significant even between cases that have a lot in common, for example, resulting in a similar amount of state loss, or the actors involved having the same position, etc. Eliminating disparity in sentencing is impossible, but reducing the disparities is important to achieve a sense of justice for both perpetrators and victims of corruption.

Table 7. Disparity in Sentencing

Case Number	Name of Defendant	Occupation	State Loss	Demanded	Actual
133/PID.SUS/TPK/2015/PN.J KT.PST	Wiwit Ayu Wulandari	.. Civil servant	Rp. 12,820,933,3 60	1 year 6 months	.. 1 year
01/Pid.Sus- TPK/2016/PN.Kpg	Andi Sianto	.. Private sector	Rp. 14,387,927	4 years	.. 1 year
57/Pid.Sus/TPK/2016/PN.Sb	Fitriyah	.. Employee of East Java	Rp. 19,388,656,	9 years	1 year

y	Mayasari	Bank	900		
10/PID.SUS-TPK/2016/PT.YYK	Dwi Maryani	Lecturer	Rp. 25,387,830	1 year 6 months	1 year

In this model of disparity, it appears that the defendants were given the same sentence: one year in prison, despite the difference in the amount of state loss. The cases of Wiwit Ayu and Dwi Maryani had relatively small losses (tens of million), however, the sentence is the same as in the case involving large losses (billions). It is thus questionable whether the judges did not make considerations on the amount of state losses arising from each corruption case.

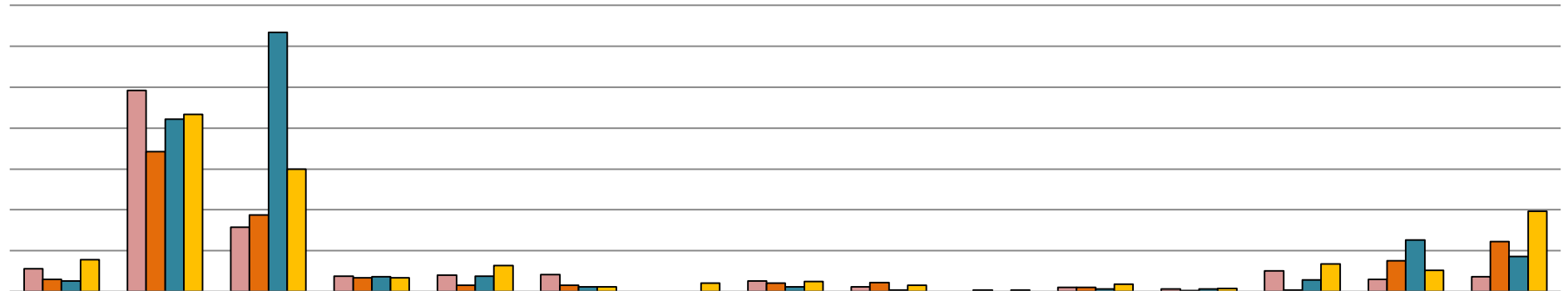
Table 8. Disparity in Sentencing (State Loss)

Case Number	Name of Defendant	Occupation	State Loss	Demanded	Actual
8/Pid.Sus-TPK/2016/PN YYK	Mardiyanta	Assistant Village Head	Rp. 340.000.000	5 years	2 years
1361K/PID.SUS/2016	Marusel Marpaung	Entrepreneur	Rp. 341.312.457	5 years	7 years
05/PID.SUS-TPK/2016/PN.BNA	Zakaria	Civil servant	Rp126,401,250	1 year 6 months	2 years
2772K/Pid.Sus/2015	Rito Nasibu	Civil servant	Rp127,941,818	8 years	6 years

In this model of disparity, there are two examples. First, in the cases where the state lost Rp 340 million, the defendants were charged with the same sentence, but in reality, were given different sentences. Mardiyanta was given 2 years (lenient), while Marusel Marpaung was given 7 years in prison (moderate), which was also higher than the prosecutor's demand. In the other cases, where the state lost about Rp 126-127 million, the defendant Zakaria was charged with 1 years and 6 months in prison, but received 2 years (lenient), while Rito Nasibu was charged with 8 years, and received 6 years (moderate). This shows that even though the state loss was relatively similar, the defendants were punished differently. While state loss is not the sole consideration to determine the amount of the penalty for the defendant, in many cases the state loss is not given adequate consideration in the verdict.

In terms of the actors or perpetrators of corruption, there is virtually no change. The most dominant actors are civil servants in the local governments of provinces, cities and regencies, with 217 defendants in 2016. The second group consists of the private sector, with 150 defendants. The number is not final as there are at least 98 other defendants whose profession and background are not known, because the decisions are incomplete and cannot be investigated further. It should be noted that the increasing numbers of actors who have the background as village heads (15 defendants) in 2016 is an indication of an increase in misappropriation of village funds. (See the Trends of Corruption Eradication in Antikorupsi.org)

Corruption Actors Trends 2013 s/d 2016

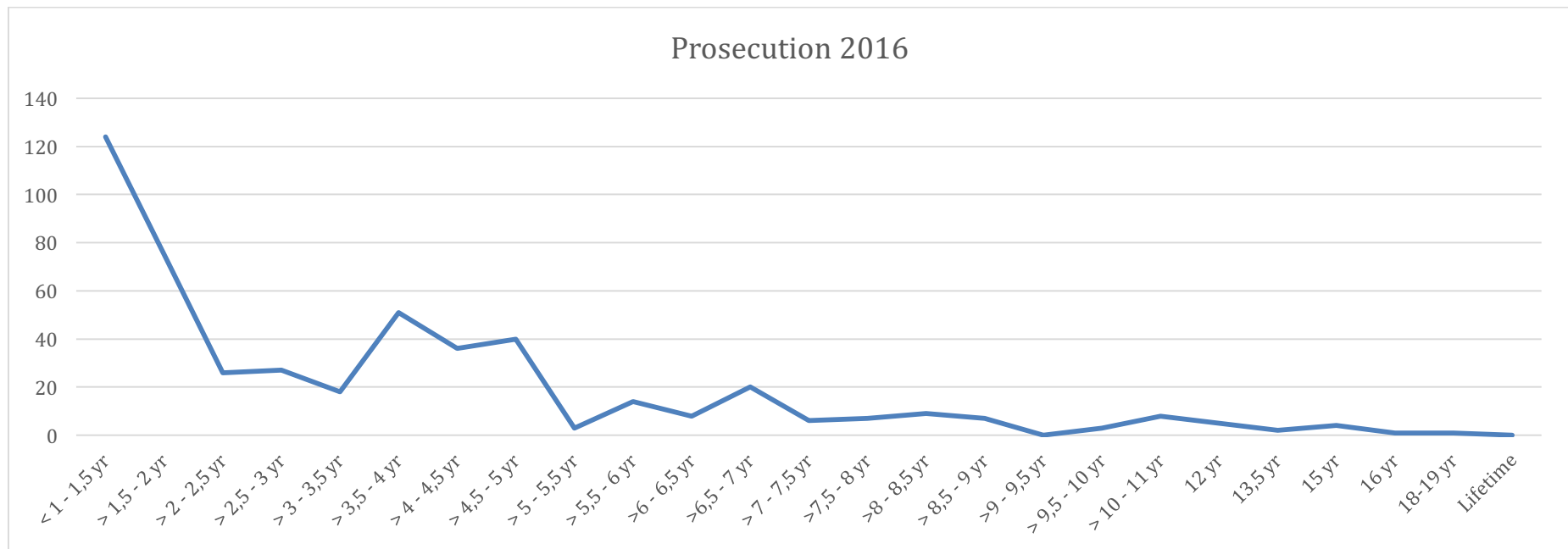


	Member of Parliament	Civil Servant	Private	Education Sector	Major/gov ernor	BPN/Bappeda/BPK	Election Commission	Bank	Ministries	Lawyer/Auditor	Health Sector	Law Enforcement	Etc	State Owned Company	Unidentified
2013	28	246	79	19	20	21	0	13	6	0	5	3	25	15	18
2014	15	171	94	17	8	8	0	10	11	2	5	1	2	38	61
2015	13	211	317	18	19	6	0	6	2	0	3	3	14	63	43
2016	39	217	150	17	32	6	10	12	8	2	9	4	34	26	98

CHARGES

The performance of the prosecution has been less than optimal in 2016. There are several indicators that can be used as references for performance assessment of the prosecutors in corruption cases throughout the year. First, an overview of the prosecution of defendants in corruption cases. Second, successful prosecution in the court judgments.

In general, the prosecution still continues to charge the defendants with lenient penalties of 1 year to 1 year and 6 months, with 124 defendants.



This shows a lack of commitment of the prosecutors to give harsher penalties for perpetrators of corruption. Only 157 defendants were

charged using Article 18 or the obligation of compensation. In the context of the successful prosecution of corruption in the courts of the first instance, the performance cannot be said to be satisfactory. It is recorded that prosecutors could only successfully penalize 394 out of a total of 467 defendants. In addition, only one case used the Article on Money Laundering (Musafah, an employee of the Ministry of Trade).

Corruption Courts

The monitoring of the performance of the Corruption Court in 2016 focused on the verdicts throughout Indonesia uploaded by the Supreme Court to the directory of verdicts. Data have been successfully obtained from 24 Corruption Courts of the First Instance and 15 Appellate Corruption Courts. This has not covered the entire Corruption Courts in 33 provinces. There are many decisions from both first instance and appellate courts that cannot be accessed yet.

Table 9. Corruption Courts Used as Source of 2016 Verdict Trends

Sumatra	Corruption Court of Aceh, Corruption Court of Jambi, Corruption Court of Palembang, Corruption Court of Pekanbaru, Corruption Court of Tanjung Karang, Corruption Court of Tanjung Pinang, Corruption Court of Bengkulu, Corruption Court of Medan, Corruption Court of Padang	Appellate Corruption Court of Medan, Appellate Corruption Court of Palembang, Appellate Corruption Court of Aceh, Appellate Corruption Court of Bengkulu
Java	Corruption Court of Yogyakarta, Corruption Court of	Appellate Corruption Court of DKI Jakarta, Appellate

	Bandung, Corruption Court of Jakarta, Corruption Court of Serang, Corruption Court of Surabaya	Corruption Court of Yogyakarta
Kalimantan	Corruption Court of Palangkaraya	Appellate Corruption Court of Palangkaraya, Appellate Corruption Court of Samarinda
Sulawesi and Maluku	Corruption Court of Ternate, Corruption Court of Gorontalo, Corruption Court of Kendari, Corruption Court of Makassar, Corruption Court of Mamuju, Corruption Court of Manado, Corruption Court of Palu, Corruption Court of Ambon	Appellate Corruption Court of Palu, Appellate Corruption Court of Makasar, Appellate Corruption Court of Maluku
Papua and West Papua	Corruption Court of Manokwari	Appellate Corruption Court of Jayapura
Bali, West Nusa Tenggara and East Nusa Tenggara	Corruption Court of Denpasar, Corruption Court of Kupang	Appellate Corruption Court of Denpasar, Appellate Corruption Court of Mataram

D. CONCLUSION

Reflecting on the trend of sentencing of corruption cases in 2016, at least eight main problems have been identified.

First, the sentencing for corruptors does not provide a deterrent effect because the courts still give lenient sentences on corruption cases. As many as 76% of the defendants were sentenced leniently in 2016 at the Corruption Courts of the First Instance. This has actually occurred since 2013, dominated by a sentence of between 1 year and 1 year 6 months in prison. In addition, based on the distribution patterns of corruption graph, the sentences of 1 year-1 year six months, and 3 years 6 months-4 years are dominant, likely due to the judges imposing the minimum punishment under the provisions of Article 2 (4 years) and Article 3 (1 year). If compared with the maximum threat of imprisonment in the Anti-Corruption Law, namely 20 years, and the average sentence for corruptors in 2016 being 2 years and 2 months, the sentence is only about one eighth of the maximum possible penalty.

Second, the leniency of the Corruption Court verdicts also cannot be separated from the charges made by the prosecutor in the trials. Prosecutors generally failed in formulating appropriate punishments for the defendants. Prosecutors tend to charge the defendants leniently, both in imprisonment and criminal fines, and not demanding cash obligations, revocation of political rights or imposing of sanctions for the crime of money laundering. The prosecutors seem to not have a focus on eradicating corruption.

Third, the imposing of low amounts of criminal fines. In addition to the principal criminal sanction of imprisonment, Article 10 paragraph (4) of the Criminal Code regulates criminal fines. In the context of deterrence, the combination of imprisonment and fines is intended to punish the perpetrators of corruption to the fullest extent, resulting in a deterrent effect. Unfortunately, these conditions do not occur in 2016. In 2016, at least 346 respondents were imposed with small fines (less than Rp 50 million). Besides, there is also the possibility that the defendants do not pay the fine, and replacing it with a relatively short duration of imprisonment. The Anti Corruption Law, in Articles 2 and 3, mentions criminal fines that can be imposed to the defendants.

Fourth, disparity of sentencing remains a serious problem. When attempts to punish the extraordinary crime of corruption with the harshest sentence continue to be implemented, it is the judiciary that raises the issue of disparity. At least there are two main reasons why

disparity of sentencing needs serious attention. *First*, disparity of sentencing will ultimately harm the public's sense of justice. Disparities in sentencing raise public doubts about the courts. This is because similar cases are given significantly different sentences. In the context of corruption, disparity in sentencing raises the possibility of corruption cases resulting in large amounts of losses to the state being sentenced more leniently than corruption cases resulting in relatively smaller state loss. *Second*, in extreme conditions, disparity may occur due to transactions in decision-making. This is because the judges, having autonomy and independence, can make decisions in a corruption case arbitrarily, without accountability of the considerations.

Fifth, between 2013 and 2016, the largest proportion of corruption was committed by civil servants of provincial and regency/city governments, as well as the private sector. The dominance of these actors indicates a serious issue regarding the relationship between the two actors in the context of governance. It is highly probable that procurement of goods and services is still often misused for personal gains.

The executive, in implementing its authority, also has a role in the effort to increase penalties for corruptors. Reflecting on the actors of corruption between 2013 and 2016, the civil servants in the city/regency and provincial governments make up the highest proportion. The creation of Law No. 30 of 2014 on Government Administration, which was feared to protect local bureaucrats engaged in the practice of corruption, did not have a significant impact, as regional bureaucrats continue to be the most significant actors of corruption. In fact, the number is increasing compared to earlier years.

Law 30/2014, which reduced the jurisdiction of Article 3 of the Anti-Corruption Law by reducing abuse of authority into administrative irregularities, in fact does not reduce the number of regional bureaucrats engaged in corrupt practices.

Sixth, lack of innovation in the prosecution and punishment. In 2016, ICW found very little effort in political disenfranchisement of convicted corruptors. This is evident from the decisions in 573 corruption cases in 2016, in which there were only seven verdicts including the additional penalty of revocation of political rights. The amount is very small compared to the number of defendants throughout 2016.

Often, the prosecution, who wants to punish the accused with revocation of political rights, is rejected by the judge. As examples are the

cases of Muhammad Sanusi (convicted of bribery in the discussion of draft reclamation regulation) and Damayanti Wisnu Putranti (convicted of bribery in infrastructure projects), in which the prosecutors demanded that the judges revoke the political rights of both, but during the reading of the verdict, the judges rejected the prosecution for various reasons.

Revocation of political rights is an important punishment, since the perpetrators of corruption often come from the political realm, and when finished serving the prison sentence, can still run as a regional head or as a legislator. If this penalty is applied, the opportunity for corruption convicts to be elected will be closed.

Judges should be aware that in order to provide a deterrent effect to the perpetrators of corruption, it is not enough to rely solely on imprisonment, fines, and compensation. Article 18 of the Anti-Corruption Law regarding the revocation of political rights must also be imposed to the perpetrators of corruption.

Seventh, poor information management in the Supreme Court. There are some issues that arise in the information management specifically related to court decisions.

- many Corruption Courts have not uploaded their verdicts
- in many cases, the verdicts cannot be downloaded
- many copies of the verdicts are illegible
- verdict summaries are not detailed and not user friendly
- the directory of Supreme Court decisions is not managed properly, because verdicts are only categorized by courts and types of cases, but not by year. It is difficult to trace all decisions in 2016 as these are mixed with the decisions of previous years.
- the Corruption Courts are slow in uploading their verdicts, sometimes up to one year late.

Eighth, lack of commitment against corruption in the leadership of the Supreme Court. Over the last five years – under Hatta Ali – the credibility of the judiciary has collapsed due to legal proceedings and raids conducted by the Corruption Eradication Commission against a number of judges and clerks in the Courts and the Supreme Court. The court is also judged to lack sympathy on the anti-corruption efforts

as lenient sentences are given to criminals. Not a few judges and court officials, including the Supreme Court also fail from reporting their assets. Reform in the Supreme Court is not running optimally. The reform is translated merely as the uploading of verdicts on the Supreme Court's website.

E. RECOMMENDATIONS

As a recommendation for the future, there are several issues of concern to the Supreme Court, the Attorney General's Office, and the Government in efforts to combat corruption.

Supreme Court

- The Supreme Court should notice this phenomenon to be evaluated and make policy changes. Corruption, being a serious crime or organized crime and a crime that violates human rights or an extraordinary crime, should also be prosecuted and punished with severe punishment. A more severe punishment is meant to fulfill the sense of justice in the society and cause a deterrent effect for potential future offenders.
- The policy is to be formulated into a circular letter (SEMA)/regulation (PERMA), which requires the judge to give harsher sentences in corruption cases. Besides maximizing the principal sentence, further criminal punishment should be imposed, such as fines, restitution, revocation of political rights and pension funds, dismissal of employment status, as well as removing the right to obtain a remission in the case of defendants who are not Justice Collaborators or Whistle Blowers.
- The Supreme Court should formulate Punishment Guidelines to force the creation of justice and prevent disparity in criminal punishment and also to encourage judges to give optimal sentences.
- The Supreme Court should improve the management of the verdict directory. As a form of public disclosure, the Supreme Court should provide more optimal service and satisfy public needs.

Attorney General's Office

- The Attorney General shall instruct prosecutors to perform optimally in prosecution through policies that regulate reward and punishment.
- The Attorney General shall order the prosecution to demand additional penalties of revocation of political rights and compensation.
- The Attorney General must emulate the Commission efforts in revoking the political rights of criminals who are public officials/members of political parties.
- The Attorney General should focus on the execution of restitution and seizing the assets of criminals.
- The Prosecutor's Office should be more innovative in the prosecution by using the article on money laundering.

President

- The government should immediately propose amendments to the Anti-Corruption Law, which is outdated and have legal loopholes
- The government should rearrange the construction of Articles 2 and 3 of the Anti-Corruption Law.
- The Government should change the concept of 'special minimum' in the Anti-Corruption Law, because in practice it causes many problems such as disparity, injustice and lenient sentences. Sentencing in the Anticorruption Law should be able to reduce the overly broad discretion of judges in sentencing.
- The government should ensure that other criminal offenses (Illicit Enrichment/trading in influence) included in UNCAC that have not been entered into the Anti-Corruption Law be adopted in the national law.
- The Government should fully supervise and encourage the Attorney General's Office to be more progressive in apprehending corruption cases.

The issue of lenient sentences in corruption cases should be viewed more seriously by the various stakeholders: the Supreme Court, the Attorney General's Office, the Corruption Eradication Commission, the Police, and the Government. Stakeholders should sit together and do a thorough evaluation of the process of adjudication of corruption cases. It is important that the Corruption Courts that are specially

formed do not lose direction and purpose of their formation. If not immediately evaluated, the existence of the Corruption Court would be meaningless.

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