

A New Standard to Convict Defendants in Corruption Cases



In light of the disparity of court decisions on corruption cases, the Indonesian Supreme Court recently enacted Supreme Court Regulation No. 1 of 2020. Under the new regulation, the Supreme Court introduces criteria-based benchmark to assist the courts in convicting defendants in corruption cases under Articles 2 and 3 of the Anti-Corruption Law (Law No. 31 of 1999).

As a background, Articles 2 and 3 criminalises an action or abuse of authority, opportunity or facility that causes a loss to the state. It is essential also to note that although the court has never declared a death penalty, Article 2(2) allows the court to impose the death penalty in certain circumstances. An individual that violates Article 2 may be subject to imprisonment between 4 to 20 years and a fine between IDR 200 million to IDR 1 billion. Meanwhile, an individual that violates Article 3 may be subject to imprisonment between 1 to 20 years and a fine between IDR 500 million to IDR 1 billion.

Now, under the new regulation, the court should sequentially consider six aspects to determine conviction for violation of Articles 2 and 3, namely:

1. the amount of loss suffered by the state;
2. the scale of the crime, impact and benefits enjoyed by the defendant;
3. the term of imprisonment;
4. any incriminating and alleviating conditions;
5. the criminal conviction; and
6. any other provisions relating to a criminal conviction.

The regulation provides guidelines for categories 1 and 2, which we will discuss below.

Categorising State Loss

In assessing the loss suffered by the state, the new regulation introduces a quantitative benchmark to determine conviction. This benchmark consists of five stages, with the lowest financial loss set at a maximum of IDR 200 million (for violation of Article 3 only). The next stages are light financial loss of between IDR 200 million to IDR 1 billion; medium financial loss of between IDR 1 billion to IDR 25 billion; severe financial loss of between IDR 25 billion to IDR 100 billion; and finally, the most severe financial loss of a minimum IDR 100 billion.

The Scale of Crime, Impact and Benefits Obtained

The next benchmark relates to the scale of the crime, impact and benefits obtained by the defendant. Here, the scale is divided into three: low, medium and high. The court will assess whether the defendant plays a significant role in committing the crime (i.e. was he the mastermind, participant, or a mere helper?), the scale of the impact of the crime (i.e. nationwide, provincial or city/district level), and the amount of return on state loss.

Criminal Conviction

The regulation provides further guidelines for judges in categorising the two above categories in the annexe to the regulation. Here we see that both categories play a role in determining the appropriate imprisonment term and fine. For instance, a defendant who falls under the category of 'Most Severe' state loss and 'High' scale may be subject to 16 to 20 years of imprisonment and a fine between IDR 800 million to IDR 1 billion. But if that defendant falls on the 'Medium' scale (despite him also falling in the 'Most Severe' category), the term of imprisonment and fine will decrease to between 13 to 16 years, and IDR 650 million to IDR 800 million, respectively.

In line with the Anti-Corruption Law, this regulation reaffirms the imposition of the death penalty in certain conditions, *provided that* the defendant falls within the 'High' category in terms of the scale of crime, impact and benefit. However, unlike the Anti-Corruption Law, the regulation gives discretion to judges to refrain from imposing a fine if the loss suffered by the state is below IDR 50 million. The regulation also offers an alleviating condition to justice collaborator by allowing judges to impose the lightest conviction to him among other defendants in the same corruption case.

Conclusion: Progressive Approach and Key Takeaways

As detailed above, the regulation sets an algorithm for judges to proportionally determine conviction by classifying the defendant's action (*actus reus*), rather than looking at his criminal intent (*mens rea*). Most importantly, the regulation highlights that the loss suffered by the state must be caused by the defendant's action, and not by the defendant's intention of doing so.

Through the regulation, the Supreme Court takes a progressive approach, ensuring that the judiciary has a standardised and fair benchmark in convicting defendants for corruption, with the aim that it will eventually eliminate the disparity of conviction in corruption cases. However, the scope of this regulation is limited only to acts of corruption that cause loss to the state under Articles 2 and 3 of the Anti-Corruption Law and does not accommodate other common types of corruption such as bribery or gratification.

Because the regulation is only binding to judiciary institutions under the Supreme Court, it leaves room for prosecutors to demand conviction that is not in line with the benchmark under this regulation. Nevertheless, the ultimate authority is still held by the judges, and they can sentence the defendant beyond the prosecutor's demand by referring to this regulation. The enactment of this regulation is a positive step and we hope that other law enforcement institutions, such as the KPK (Indonesia's Corruption Eradication Commission) and the Attorney General's Office, will follow the Supreme Court's lead to create a more holistic approach in the handling of corruption cases in Indonesia.

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