Session Two: Restoring the Integrity of the Criminal Justice System - Elimination of Corruption in the Criminal Justice System

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RESTORING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM ELIMINATION OF CORRUPTION IN CRIMINAL JUSTICE

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I. INTRODUCTION

Corruption by public officials undoubtedly disrupts their integrity and neutrality in performing their official duties. It also breeds feelings of distrust and unfairness toward the national or local government among the public. As a consequence, corruption by public officials can ultimately weaken or collapse the national or local ruling government and the economic structure of a country.

Along with the growing reluctance of international investors and donors to allocate funds to countries lacking adequate rule of law, transparency and accountability in government administration, especially in the justice field; corruption has the greatest impact on the most vulnerable part of a country's population, the poor.

Why corruption develops, varies from one country to the next. Among the contributing factors are: faulty government and development policies; programmes that are poorly conceived and managed; failing institutions; inadequate checks and balances; an undeveloped civil society; a weak (corrupt) criminal justice system; inadequate civil servants' remuneration; and a lack of accountability and transparency.

One of the most important tasks for the criminal justice system is to expose corruption and to punish the wrongdoers effectively. However, the covert and consensual nature of corruption obscures the ability of investigators to detect and expose it. Other obstacles include difficulty in securing the cooperation of people involved in the case during investigation and trial. In many countries, there is some concern as to whether the current criminal justice system works properly and effectively to expose and punish corruption.

A serious impediment to the success of any anti-corruption strategy is a corrupt judiciary. A corrupt judiciary means that the legal and institutional mechanism designed to curb corruption, however well-targeted, efficient or honest, remains crippled. Unfortunately mounting evidence is steadily surfacing of widespread judicial corruption in many parts of the world. Insufficient attention has been given to the integrity of the judiciary and the broader criminal justice system.

Criminal justice officials are required to appeal to policy-makers to re-examine and amend domestic legal systems, if necessary, to counter the phenomena of corruption. Moreover, the management systems for personnel should be improved in many aspects, such as recruiting, improving the labor conditions of personnel, internal inspections, and disciplinary measures. It is also imperative that a code of conduct for public officials be enacted. Additionally, it is desirable to introduce an auditing system conducted by an outside organization or ombudsman. Promotion of further cooperation and coordination between the criminal justice system and other public organizations at the national and local level is also important.

II. THE INVESTIGATIVE ORGANIZATIONS IN JAPAN

In Japan we have several investigative organizations. One is the police and the other judicial police officers. Judicial police officers are the special investigative sections or departments which belong to administrative organizations e.g. prison officers who investigate offences in prisons. The other is the public prosecutors office. The public prosecutors in Japan investigate by themselves.

In Japan attorneys, judges and public prosecutors have the same qualifications, therefore, the status of public prosecutors is equivalent to that of judges and they receive equal salaries depending on the length of time they have held their positions. Their independence and impartiality are also protected by law. Aside from disciplinary proceedings, they cannot be dismissed from office, suspended from the performance of their duties, or be forced to accept a reduced salary.

The duties of public prosecutors include carrying out investigations, instituting prosecutions, ensuring that the courts apply the law correctly, and ensuring that judgments have been carried out. In addition, many public prosecutors are assigned to key positions in the Ministry of Justice, for example, as Vice-Minister of Justice and Director-General of the Criminal Affairs Bureau.

Prosecutorial functions are part of the executive power vested in the Cabinet, and the Cabinet is responsible to the Diet in their exercise. The Minister of Justice should have the power to supervise public prosecutors to complete his/her responsibility as a member of the Cabinet. However, prosecutoria1 functions have a quasi-judicial nature, inevitably exerting an important influence on all sectors of criminal justice, including the judiciary and the police. If the functions were controlled by political influence, then the whole criminal justice system would be jeopardized. To harmonize these requirements, the Public Prosecutors Office Law Article 14 provides that "The Minister of Justice may control and supervise public prosecutors generally in regard to their functions. ("generally" means, for example, to set up general guidance for crime prevention, the administrative interpretation of laws and how to dispose of affairs related to prosecution to maintain their uniformity.) However, in regard to the investigation and disposition of individual cases, he/she may control only the Prosecutor-General." This control was practiced only once in 1954. I will touch upon this case later. Anyway, the Minister of Justice cannot control an individual public prosecutor directly.

In identifying the overall role of prosecutors and their responsibility toward society, prosecutors are regarded as representatives of the public interest. They exercise their prosecutorial power for the purpose of maintaining law and order, based on the principle of strict fairness and impartiality, and with respect for the suspects' human rights.

The police are primarily responsible for criminal investigations and carry out the initial investigations of more than 99 percent of criminal cases. Following their investigation they must refer cases to a public prosecutor together with relevant documents and evidence, even when the police believe that the evidence gathered is insufficient. The police have no power to finalize cases, except for minor offenses.

The relationship between the police and public prosecutors in Japan is based on cooperation in general. But the police and public prosecutors belong to different organizations independent of each other. They maintain a competitive relationship especially with regard to the

detection of corrupt cases. However, public prosecutors have their own power to investigate and monopolize the decision to prosecute upon all the criminal cases, public prosecutors have important functions, or rather duties to check on police investigations.

Public prosecutors may also investigate cases themselves and often carry out supplementary investigations, that is, they interview victims and the main witnesses directly, and instruct the police to collect further evidence, if necessary. Moreover, public prosecutors may initiate and complete investigations without police assistance, and may do so in complicated cases, such as bribery or large-scale financial crimes involving politicians, senior government officials, or executives of large corporations.

In three major cities - Tokyo, Osaka, and Nagoya - the public prosecutors offices have special investigation departments where a considerable number of well trained and highly qualified public prosecutors and assistant officers are assigned to initiate investigations. The special investigation departments in the Tokyo and Osaka offices have a long history and have investigated many cases involving bribery, breach of trust, tax evasion, securities exchange violations, and the circumvention of laws such as those governing the prohibition of private monopolies and the maintenance of fair trade.

When the public prosecutors decide to start their investigation into corruption cases, they sometimes investigate not only corruption cases but also other related crimes, such as a violation against the Law for Oath, Testimony, etc. of Witnesses at the Diet, a violation against the Political Funds Control Law, an obstruction of an auction, fraud, breach of trust and so on which are stipulated in the Penal Code. An investigation against corruption is probably the most difficult among other crimes due to the fact that it is by nature a secretive crime, that often only involves two satisfied parties. Therefore, they investigate other related crimes which are easier to prove and prosecute. During the investigation, they try to find evidence of corruption e.g. a confession of bribery, material evidence which is found in the suspect's dwelling and so on.

III. THE HISTORY OF INVESTIGATIONS AGAINST CORRUPTION COMMITTED BY POLITICIANS – AND ENACTING OR REVISING THE LAWS IN JAPAN

As I mentioned above the public prosecutors have been combating corruption committed by politicians, especially in the Special Investigation Department of the Tokyo District Public Prosecutors Office. That Department was established in May 1949 for the purpose of investigating the theft or concealment of property owned by the Government. Soon after that the purpose of the Department was changed to the investigation against corruption, related crimes of corruption and white-collar crimes. The public prosecutors in the Department have been challenged to investigate a lot of corruption cases.

A. Shipbuilding Scandal (*Zosen-Gogoku*)

In 1954 it was discovered that in order to lobby for a 1953 law which allowed shipbuilding companies to borrow below the market rate, huge bribes were paid to high-ranking politicians and leading bureaucrats. During the investigation of this case involving several politicians, they tried to arrest the Secretary-General of the majority party, but the Minister of Justice, who belonged to the same party, ordered the Prosecutor-General not to arrest him. Consequently this lead to the termination of the investigation. Thus only one person was convicted and sent to prison, out of 71 people arrested. However, since it produced severe public criticism through the mass media, the Minister of Justice had to resign quickly. After that Ministers of Justice never

practiced this type of control.

B. Lockheed Scandal

One of the best known cases involving a special investigation department may be the 1976 Lockheed scandal. In this case, the public prosecutors of the Special Investigation Department, Tokyo District Public Prosecutors Office, found that Lockheed Aircraft Corporation had paid millions of dollars (more than 500 million yen) to Japanese government officials through a Japanese agency, Marubeni Trading Corporation, to smooth the way for the sale of Lockheed's airplanes to a Japanese airline corporation, All Nippon Airways. Besides many executives of Marubeni and All Nippon Airways, the former Prime Minister, Kakuei Tanaka, the former Minister of Transportation, and the former Parliamentary Vice-Minister of Transportation were arrested and prosecuted for giving and receiving bribes. The former Prime Minister was sentenced to four years imprisonment with forced labor. The Tokyo High Court rejected his appeal. He died while the case was in the Supreme Court, and so the case against him was dismissed in 1993.

C. The impact of the Lockheed Scandal

This case was one of the most sensational cases in the history of Japan. The impact was very large and the people wanted to change the money politics and eliminate the money-brokering politician. However, even after arrest and prosecution, Tanaka had immeasurable power in the Diet. He had been a kingmaker for several years. Therefore, the political reform did not go smoothly.

D. Recruit Scandal

Another noted scandal was the Recruit scandal. This was another large-scale corruption case that the same department handled in 1988. In this case, executives of Recruit Cosmos Corporation, a real estate company, and its mother company, Recruit Corporation, sold the rights to buy stocks (that had been scheduled to be offered for public subscription and were sure the rights value after that) to high-ranking government officials as bribes. These officials included the Chief Secretary to the Prime Minister, the Vice Minister of Education, the Vice-Minister of Labor, and the President of Japan Telephone and Telegram Corporation. All were arrested and prosecuted by public prosecutors. Some cases have been closed, while others are still being contested.

E. Cabinet Decision Regarding the Enforcement of Official Discipline

After the Recruit Scandal surfaced, a Cabinet Decision Regarding the Enforcement of Official Discipline was made in December 1988. It states that government officials should refrain from acts, which could invite public suspicion, such as contacting business people who have an interest in official duties. A Notice by the Chief Cabinet Secretary to each Ministry and Agency was issued in this regard. Further, in April 1989 the Administrative Vice-Ministers' Council decided on an Agreement Concerning Official Disciplinary Inspections. Based on this agreement, an inspection of the state of the enforcement of official discipline was implemented in each Ministry and Agency in addition to establishing an official discipline inspection committee.

F. Introduction of a Single-Member Constituency System

One of the reasons for accepting bribes in the Recruit Scandal was that the suspects

wanted to fund their election. At that time to be a successful candidate for the Diet it was very costly. Therefore, the Government considered changing the election system so that an election campaign would not be so expensive. One of the ideas to change the system was to introduce a single-member constituency system. After serious discussion at the Diet, this system was introduced and it revised the Public Offices Election Law in March 1994.

G. Kyouwa Scandal

Yet another case involving the Tokyo Special Investigation Department was the Kyouwa scandal. This affair involved bribes amounting to approximately 80 million yen to Abe Fumio by Kyouwa, a firm that manufactures steel girders. When the scandal broke, Fumio was the Secretary-General of the Liberal Democratic Party, the ruling party. Prior to that he had been head of the Hokkaido and Okinawa development agencies. In exchange for bribes he disclosed important government secrets to Kyouwa. Amid accusations of corruption, he resigned in December 1991. He was arrested in January 1992, and in May 1994 was sentenced to two years imprisonment with forced labor.

H. Sagawa Kyubin Scandal, 1992-93

The Sagawa Kyubin parcel service firm donated generous sums of money to politicians of the Liberal Democratic Party (hereinafter "LDP") responsible for transport matters as well as to other influential politicians in other parties. A rapidly expanding firm, Sagawa Kyubin had high hopes of thus obtaining the licenses for a nationwide parcel service. What was special about this affair was the fact that monies had not only been paid to politicians but also to one of the syndicates of organized crime (*Yakuza*). The fact that Kanemaru Shin, the Deputy Secretary General of the LDP, had actively sought such contact while engaged in the election campaign of Takeshita Noboru, greatly damaged confidence in the LDP.

I. Law Concerning Disclosure of Assets of the Members of the Diet for the Purpose of Ensuring Ethics in Politics

The above two cases showed that these politicians received large amounts of money due to their position. To ensure the transparency of their income and property, the Law concerning Disclosure of Assets of the Members of the Diet for the Purpose of Ensuring Ethics in Politics was enacted in December 1992. Therefore, all members of the Diet have to make public their real estate, money deposited at financial institutions, valuables, loans and debts etc.

J. The Tax Evasion Scandal by Kanemaru Shin

While the other scandals involved the financing of political activities, this was arguably a case of personal enrichment and thus rather different, especially when it emerged that the extent of the tax evasion was quite enormous. During a house search, valuables worth 3,600 million yen were seized. In March 1993 he was arrested and prosecuted by the public prosecutors of the Special Investigation Department in the Tokyo District Public Prosecutors Office.

K. General Contractors (Genecon) Scandal

In connection with payments to politicians by large enterprises in the building and construction industry (general contractors "Genecon"), the Mayor of the city of Sendai was arrested and prosecuted in 1993. The scandal soon widened, involving also the Governors of the

Prefectures of Ibaraki and Miyagi. Both of them were also arrested and prosecuted; all of them were convicted.

L. Nakamura Scandal

In 1994 the former Minister of Construction was arrested and indicted by the public prosecutor of the same department on a charge of receiving bribes in exchange for using his influence on behalf of a major construction corporation, Kajima. He was sentenced to 18 months imprisonment with forced labor in 1997. The Tokyo High Court rejected his appeal and the case is still being contested in the Supreme Court.

M. Okamitsu Scandal

In December 1996, Okamitsu a former Vice Minister of Health and Welfare, was arrested for receiving 60 million yen and other contributions in kind in bribes from the head of a welfare business group in return for favors regarding the construction of special subsidized nursing homes. In June 1998, the Tokyo District Court sentenced him to two years in prison. This case is now being tried in the Supreme Court.

N. Strict Internal Directive

Soon After the Okamitsu Scandal surfaced, in December 1996, the Administrative Vice-Ministers' Council agreed to establish an internal structure at every Ministry and Agency to ensure civil servant discipline. Based on this agreement, Ministries and Agencies prepared their internal directives on how to deal with the private sector and public officials of different organizations as well as set up their internal committees on discipline. The internal directive regulates all the officials and stipulates "must-not" items in detail. For example, any official must not have lunch with any interested contractor. Any official who violates the regulation of the directive may be reprimanded under the National Public Service Law.

O. Wining-and-Dining Scandal by the Elite Bureaucracy in the Ministry of Finance

The Wining-and-Dining Scandal by the Elite Bureaucracy in the Ministry of Finance (hereinafter "MOF") was uncovered in 1997-98. The investigation revealed hundreds of MOF officials engaged in illegal unseemly acts and one official on the elite career track was charged with corruption, acceptance of bribes. Internally, MOF itself disciplined at least 112 officials who accepted entertainment from financial institutions and insurance companies.

P. The National Public Service Ethics Law

As I mentioned above, even after every ministry and agency established an internal structure to ensure discipline by government officials, inappropriate incidents involving central government officials (e.g. Wining-and-Dining Scandal by the Elite Bureaucracy in the Ministry of Finance) were uncovered one after another including some bribery cases. It seemed that self-disciplinary measures by each ministry and agency itself had their limit. Therefore, a different approach was adopted. With a view to stamping out unethical behavior, a study committee on the ethics of government officials was established in February 1998 in accordance with the instructions of the Prime Minister. This committee mainly consisted of the members of the Administrative Vice-Ministers' Council. It pursued a study on the legislation of ethical standards of government officials in close association with ruling parties. As a consequence, the members

of the Diet compiled a bill on the ethics of central government officials and the ruling parties submitted the bill to the Diet in 1998. Finally it was enacted in August 1999. I will explain the details of this law in the next Chapter.

Q. Political Funds Control Law

This law was enacted, in view of promoting a democratic society, with the aim to keep the flow of political money open and fair by registering the political groups including political parties, disclosing their income and expenditure, and regulating the amount of donations to politicians, public office candidates and political groups. It includes criminal provisions in order to bring violators to justice. It has been revised from time to time when its effectiveness was questioned, especially when the above scandals, such as the Sagawa Kyubin scandal, the Tax Evasion scandal by Kanemaru Shin, the Genecon scandal and so on, were uncovered. As a rule, individual politicians are prohibited from receiving political donations.

Recent revisions of the law banned corporations from donating directly to the fund-management groups managed by individual politicians. Such corporations are allowed, however, to donate political funds, depending upon their size, to political parties to which the politicians belong. The law was revised on 20 December 1999, at the Diet, and was enforced on l January 2000. Some political analysts claim that the revision cannot eliminate the scandal-tainted political circle because of the loopholes in the law. Most of the prominent politicians manipulate the local chapters of the political party, which can receive political donations. Violation of the law, especially acceptance of banned political donations does not mean receiving a bribe in the legal sense, but in the common sense.

R. Nakao Scandal

Former Construction Minister Eiichi Nakao, who allegedly took 30 million yen in bribes from a construction company while he was in office between June 1996 and September 1996, was arrested on 30 June 2000. He was indicted on the charge, and subsequently arrested and indicted on another 30 million yen bribery case. He was sentenced to 2 years in prison and ordered to pay 60 million yen as part of the criminal punishment, the equivalent value of the bribe taken by him. The presiding Judge was reported to have said that Nakao bore a grave criminal responsibility and deserved harsh criticism for damaging the public's trust in politics. During his trial, he admitted his crime, showed his remorse, and apologized to the public for having betrayed their confidence, but could not avoid imprisonment, although usually such defendants who receive prison terms without suspension are few, it is possible if they show remorse towards their past deeds.

S. Suzuki Scandal

Most recently, Muneo Suzuki, a senior member of the House of Representatives, who was reported to be a most influential figure in several ministries including the Ministry of Foreign Affairs was arrested and indicted on charges of bribery. He is accused of accepting a 5,000,000 yen bribe from a timber company in return for lenient treatment in an illegal logging case. He denies the charge, saying the money was a gift. Now he is under trial.

T. Law Concerning Punishment for the Receipt of Profit for the Exertion of Influence by Persons in Public Offices

With regard to both cases mentioned above, I have to mention the new law entitled the Law concerning Punishment for the Receipt of Profit for the Exertion of Influence by Persons in Public Offices which was enacted in November 2000. This law was passed by the Diet as a response to the public distrust against politics caused by corruption cases involving members of the Diet, e.g. Nakao Case, and this new law has been in force since March 200l. The penal provisions are directed to members of the Diet, members of the local assemblies, heads of local governments and secretaries of the members of the Diet who receive financial gain in response to a request for exerting influence or having exerted influence based on their official position upon public officials in connection with the awarding of contracts or administrative dispositions. Persons who offer financial gains are also punished. Because of the Suzuki scandal, this law was revised in July 2002 to include private secretaries of members of the Diet.

IV. NEW MEASURES TO PREVENT CORRUPTION IN JAPAN

A. An Effective and Strict Rule for Public Officials

As I mentioned in Chapter III a strict law for national public officials to prevent their corruption was enacted recently. They are forced to conform to the National Public Service Ethics Law. It was passed in August 1999 and enacted in April 2000.

The objective of this law is to ensure people trust public services, deterring activities that create suspicions or distrust against the fairness of performance of duties by introducing necessary measures to contribute to retaining ethics related to the duties of national public service officials. It acknowledges that national public service officials are servants of all people and their duties are to fulfill public service entrusted by the public.

In this law many strict regulations are stipulated. For example, a report on the receipt of a gift is obligatory. Senior officials shall report to their heads of ministries or agencies when they receive a gift or hospitality worth more than 5,000 yen and compensation for their labor performed based on the relation between an organization or an entity and their duties the amount of which exceeds 5,000 yen from an organization or an entity. The report described above shall be open to the public upon request (applicable only in regard to gifts, hospitality or compensation exceeding 20,000 yen).

With reference to mandatory reports on the exchange of stocks and income, very senior officials shall report to their heads of ministries or agencies on the annual exchange of stocks, bonds and annual income.

The National Public Service Ethics Board (to be hereinafter referred to as the "Board"), which is responsible for the affairs concerning retention of ethics among public officials, was established within the National Personnel Authority. The Board is composed of a President and four Members, who are appointed by the Cabinet with the consent of the Upper and the Lower Houses of the Diet.

The duties and responsibilities of the Board are to develop a standard of disciplinary actions as punishment against public officials violating this law, or other regulations based on this law, to conduct research and studies concerning retention of ethics in national public services, to

give guidance and suggestions to the heads of ministries and agencies in their efforts to establish and maintain management systems that encourage public officials to follow the law. The Board is also entitled to review the copies of reports sent to the Board described in the above paragraphs, request the appointing officers to investigate the alleged violation of this law, or the other regulations based on this law, and to take necessary actions at the discretion of the Board, impose a disciplinary action as punishment against the employees violating this law, the Code, or the other regulations based on this law at the discretion of the Board.

If an official violates the law, they must be subject to disciplinary action, such as suspension from their duties, a reduction in salary, dismissal from their office or a reprimand.

The impact of this law is very large and has had a good influence on public officials' behavior. Before this law was enacted, high ranking public officials sometimes indulged in entertainment given by interested persons. However, after this law was passed these occurrences have been reduced.

B. Information Disclosure Mechanism

In accordance with the principle that sovereignty resides with the people, trying to achieve the aim of maintaining transparency in the authorities, and providing for the right to request the disclosure of administrative documents, etc., the Disclosure of Information Act was approved by the Diet in May 1999. The law went into effect in 2001. The purpose of the law is to strive for greater disclosure of information held by administrative organs, thereby ensuring that the government is accountable to the people for its various operations. Under this Law any person may request disclosure of administrative documents.

At first, information disclosure mechanisms in Japan started to work at the local level. Citizens' groups have utilized information disclosure ordinances in order to check inappropriate use of public money, and achieved some concrete results. Though there is plenty of room for improvement, information disclosure mechanisms in local governments have played a very important role in enhancing their transparency. The enactment of the national law, the Disclosure of Information Act was also significant in achieving greater transparency of the administration.

Under the law, new organs within the Cabinet (the Cabinet Secretariat, the Cabinet Office, etc.), and organs under the jurisdiction of the Cabinet (the National Personnel Authority) etc., as well as the Board of Audit, are established.

The scope is as follows: documents, drawings, and electromagnetic records that, having been prepared or obtained by an employee of an administrative organ in the course of his or her duties, are held by the administrative organ concerned for organizational use by its employees. However, non-disclosure of information is provided by the law and these exceptions are, for instance, information concerning an individual from which a particular individual can be identified.

With regard to the procedure for the disposition of disclosure requests, disclosure decisions shall be made within thirty days of the date of the disclosure request (a maximum thirty days extension is possible). When information relating to a third party is recorded in an administrative document, the third party may be given the opportunity to submit a written opinion. That opportunity shall be afforded when disclosure takes place due to public interest reasons. Documents, etc. shall be disclosed by inspection or provision of copies, and

electromagnetic recordings shall be disclosed by a method to be determined by cabinet order. The fees for disclosure requests and the implementation of disclosure shall reflect the actual expenses to be determined by cabinet order. Consideration shall be given to see that the fees are as affordable as possible.

The Information Disclosure Review Board was established within the Cabinet Office in order to examine and deliberate appeals in response to references from the heads of administrative organs concerning appeals of disclosure decisions. The Review Board consists of nine members appointed by the Prime Minister having been approved by both Houses. The Review Board may request that the reference agency 1) present the administrative documents concerned with the appeal, or 2) produce and submit materials classifying or arranging in a manner specified by the Review Board the information recorded in the administrative documents concerned with the appeal. The Review Board may have a designated member hear statements of opinion from the appellant. The plaintiff may file an information disclosure lawsuit with the district court in the seat of the high court that has jurisdiction over the plaintiff's residence.

The introduction of an information disclosure system changes and is changing the ways things work in the administration, both at national government and at local government levels. One result is that public officials now have more sense of responsibility and they keep the spirit of "accountability" in their mind when actually doing their work. Now public servants try to do their best so that they can do a good job as seen from the viewpoint of the public, rather than as seen from the viewpoint of the administrative insiders.

With an information disclosure mechanism, if public servants believe that they are doing a really good job, they will feel that the public trusts their work more than before, because citizens are watching and scrutinizing them. An information disclosure system itself cannot eliminate corruption immediately, but such systems can create an environment in which corruption is made more difficult.

V. TRADITIONAL MEASURES TO PREVENT CORRUPTION IN JAPAN - ESPECIALLY FOR PUBLIC PROSECUTORS AND JUDGES

A. Adequate Remuneration for Public Officials, Especially Judges and Public Prosecutors

In Japan, generally speaking the Government pays an adequate salary to public officials. The amount is enough to maintain a middle class life. Among the public officials, a higher salary is paid to the police, and correctional officers compared with other civil officers. Therefore, recently the most popular occupation among parents for their children is to become a public official. This is because the salary is given until retirement age, there is no dismissal without disciplinary sanctions and it carries a respectable social status. Moreover, they are provided with apartments by the government while they work as public officers. They can expect a stable life until their retirement, and receive retirement money and a life pension afterwards. A disciplinary discharge due to illegal acts such as bribery, disrupts their total life plan.

For your reference, the National Personnel Authority (NPA), an organization under the Cabinet, has responsibility for the issues related to the personnel of the government. The NPA submits a remuneration report and recommendation to the Cabinet and the Diet every year, based on research and a survey of the salaries in Japan including the private sector. The government takes it into consideration when it decides the salaries of public officers for the next year. So as

for public officers, in general, their salary level is maintained, not lower than workers in the private sector.

For the purpose of maintaining the integrity, the status and salary of judges is guaranteed by law and kept substantially higher than other public officers. In the case of public prosecutors who have an equivalent status as judges, the same practice is implemented. Therefore, they receive a much higher salary than ordinary public officials by about 2 or 3 times. When they are transferred to other courts or public prosecutors office, the Government provides appropriate residences for them. Furthermore they are provided with adequate facilities and competent assistants to carry out their work.

B. Effective Systems to Prevent the Abuse of Power and Maintain the Integrity of Public Prosecutors

1. Internal Restrictions

In order to ensure an appropriate disposition and prevent an erroneous or arbitrary exercise of discretion, there are several systems of checks in Japan. The first works as a self-check system. In Japan, each public prosecutor is fully competent to perform prosecutorial work. It can be said that each prosecutor constitutes a single administrative agency. On the other hand, being subject to the control and supervision of senior public prosecutors, their approval is required in making prosecutorial decisions. It is evident that prosecutors themselves are aware that they may easily fall into self-righteousness, leading to arbitrary dispositions, whether intentionally or unintentionally. It is sometimes very useful, especially for young and inexperienced prosecutors, to consult a senior to discuss the best disposition of a case. Accordingly, the prosecutors office has developed some procedures for making their decisions more objective, and a prosecutor, whenever refraining from instituting a prosecution, must show their reasons in writing and must obtain approval from their senior, who in turn is careful to examine whether their decision is well grounded.

2. External Restrictions (in cases not to prosecute)

If the prosecutor still makes an arbitrary decision when they decide not to prosecute by use of their discretion, there are three additional restrictions: (1) inquest into prosecution, (2) analogical (or quasi) institution of prosecution and (3) complaint to High Prosecutors Office.

To ensure those systems, the victims should receive the result of the disposition by public prosecutors. Therefore, we have a notification program to victims. In the Criminal Code of Procedure (hereinafter, "CCP"), a public prosecutor should promptly notify the complainant, accuser or claimant of the result of the disposition (CCP article 260). In particular, on request of the complainant, accuser or claimant, a public prosecutor should give reasons why the case was not prosecuted (CCP article 261), for instance "suspension of prosecution", "insufficiency of evidence" etc. However, in order for the criminal justice system to be better understood and receive the cooperation of the public, and to exercise power more appropriately, other efforts are necessary. Therefore, the Notification to Victims, etc. Program was launched on 1 April 1999.

When the victims, a bereaved family or witnesses desire notification, a public prosecutor shall inform in word or writing as follows;

(i) the disposition of the case (e.g. prosecution for formal trial, prosecution for summary

proceedings, non-prosecution or referral to the family court),
(ii) in prosecuted cases, the name of the court and the date of the trial,
(iii) the result of the judgment, sentencing, whether to appeal to a higher court,
(iv) a summary of the prosecuted offences, a heading and a summary of the non-prosecution, whether detained, bailed etc.

a) Prosecution Review Commission

This system's purpose is to maintain the proper exercise of the public prosecutors' power by subjecting it to popular review. There is a Prosecution Review Commission in each district court. The Commission consists of 11 members selected from among persons eligible to vote for members of the House of Representatives of the Diet. It is empowered to examine the propriety of decisions by public prosecutors not to institute prosecution. The Commission must conduct an investigation whenever it receives an investigation request from an injured party or a person authorized to make a complaint or accusation. In some instances, the Commission can carry out investigations on its own initiative, and is competent to examine witnesses in the course of the investigation.

The Commission then notifies the Chief Prosecutor of the District Public Prosecutors Office of its conclusion. If the non-prosecution is found to be improper by the Commission, the Chief Prosecutor orders a public prosecutor from the same office to further investigate the case and to re-examine the original disposition. After the re-investigation and re-examination, the public prosecutor in charge must ask for the approval of the Superintending Prosecutor before making the final disposition.

Although the Commission's verdict is not binding upon the prosecutor, it is highly respected in the re-investigation process. Since Japan does not have a jury system or private prosecution system, "prosecution review" allows the public to participate in the criminal justice administration. Recently, from the point of view of expansion of participation by the people in the justice system, the Justice System Reform Council suggests that the existing system should be changed and a system should be introduced that grants legally binding effect to certain resolutions of the Inquests into Prosecution in order to further expand the role of those Inquests. Therefore, the Council considers the structure, authority and procedures of the Inquests into Prosecution, as well as who files the indictments and conducts the prosecution at trial.

b) "Analogical Institution of Prosecution through Judicial Action" or "Quasi Prosecution"

The sole exception to the monopolization of prosecution by public prosecutors is called the system of "Analogical Institution of Prosecution through Judicial Action" or "Quasi-Prosecution". This system purports to protect the parties injured by crimes involving abuse of authority by public officials. A person, who has made a complaint or accusation and is not satisfied with the public prosecutor's decision not to prosecute, may apply to the court to order the case to be tried. The court, after conducting hearings, must either dismiss the application, or order the case to be tried if well-founded. If the application is granted, then a practicing lawyer is appointed by the court to exercise the functions of the public prosecutor.

c) Complaints to Higher Prosecutors Office

This system is not stipulated in the legislation. However, in practice, those who are not satisfied with the disposition of non-prosecution may appeal to the Higher Prosecutors Office and

urge the exercise of supervisory powers. If necessary, the Higher Prosecutors Office might review the case and sometimes request re-investigation by the original prosecutors office.

3. External Restrictions (in cases to prosecute)

On the contrary, if public prosecutors abuse their power to prosecute when they do not have enough evidence, at the trial, judges will announce not guilty and criticize the indictment and the procedure of the investigations. This will cause a sensation in Japan and the mass media will be sure to criticize it. This works to prevent abuse of power by public prosecutors and is one of the ways to maintain the integrity of public prosecutors in Japan.

C. Effective Systems to Prevent the Abuse of Power and Maintain the Integrity of Judges

In Japan the judicial system itself works to prevent corruption of judges. Firstly, the judgment is announced in an open court and it is printed soon after the announcement. Enough reasons are requested in the judgment. Furthermore, the documents are open to the people after the case is completely finished. So it is easy for the parties involved and the mass-media to criticize the judgment. Therefore, if the judges are corrupt, the people soon recognize it according to that system.

Secondly major cases are judged by three judges on a bench and the parties have the right to appeal. This acts as a check because each judge can "supervise" the other.

On the other hand, if judges commit corruption, investigative organizations, especially the Special Investigation Department of the District Public Prosecutors Office will start investigations. As I mentioned before, there have been no judges prosecuted for corruption but a judge was arrested for corruption about 20 years ago. He was an assistant judge and his name was Taniai. He received two golf clubs, a golf bag and two business suits from a private lawyer whose case was handled by Taniai. However, the amount or value of the bribery was not enough to be prosecuted and he was released after detention. He was dealt with by suspension of prosecution. However, he was soon dismissed by the Court of Impeachment, a legislative body composed of Representatives and Councillors drawn from the Diet.

VI. RESTORING THE INTEGRITY OF PUBLIC PROSECUTORS AND JUDGES

A. Two Serious Cases Committed by Public Prosecutors

Frankly speaking, the Japanese believe in the integrity of judges and public prosecutors. The trust in them by the people is really high. In actual fact most Japanese people do not believe these persons accept bribes. However, I have to introduce two serious cases committed by public prosecutors and in the first case there is also some concern about a judge.

(i) Yamashita Case

A suspect, Ms. Sonoko Furukawa, a former judge's wife, began harassing the victim, a girlfriend of her lover, out of jealousy in late 2000. She sent many harassing messages to the victim, some of them, reading, "I will kill you." Not only that, the suspect made more than 1,200 silent calls to the company of the victim's husband and distributed defamatory handouts at the elementary school of the victims son.

During the investigation by the police, Eiji Yamashita, a former deputy chief public prosecutor at the Fukuoka District Public Prosecutors Office leaked investigative information to the suspect's husband, Mr. Furukawa. Because Yamashita wanted him to stop the suspect's conduct. So Yamashita advised him to warn his wife not to further harass the victims. Yamashita's intention was not wrong but his conduct possibly violated some laws even though he never received a bribe from anyone. Finally Yamashita was not prosecuted but forced to resign in March 2000 after being suspended from duty for three months.

Soon after uncovering this case, the Minister of Justice apologized to the people through the mass media and explained about new education and training programs for public prosecutors. The details of this program will be introduced later.

(ii) Mitsui Case

The next case is also a very serious bribery case which was committed by a Senior Public Prosecutor in April 2002. His name is Tamaki Mitsui and he was the Director of the Public Security Department of the Osaka High Public Prosecutors Office. He accepted hospitality from a gang member in return for providing him with information on police investigations. When he attempted to buy real estate in Osaka Prefecture in 1994, he used the name of an assistant public prosecutor to obtain inside information about the land from a credit union to which it had been mortgaged. This is a case of abusing power and it is prohibited as it is defined as corruption by the Penal Code. Moreover, he had been on friendly terms with Tadamitsu Tomari, a gang member, and Mitsui had personally thanked Tomari for setting him up with a prostitute and giving him 50,000 yen. In return, Mitsui offered to help Tomari when he was in trouble. Furthermore, Mitsui was wined and dined by Tomari at expensive nightclubs in June and July of the previous year in return for providing him with information about police investigations and the criminal record of another gang member who was on the run. Mitsui's total entertainment bill reportedly ran to 280,000 yen. He also used false documents last July to receive a tax reduction on the purchase of an apartment in Chuo Ward, Kobe in Hyogo Prefecture. This is a fraud case. Mitsui's case is the only one which has been committed by a public prosecutor since World War II.

Regarding the investigation process, the first step was that information was sent to the Osaka High Public Prosecutors Office in an anonymous letter. The letter said that Mitsui had a relationship with gangsters and it was believed that he had received money from the gangsters. Then, the Osaka High Public Prosecutors Office started the investigation with two or three assistant officers who were former members of the Special Unit in the Special Investigation Department of the Osaka District Public Prosecutors Office. They had to ensure total secrecy because the suspect, Mitsui worked in the same office.

They already knew that Mitsui was very fond of investing and making deals in real estate. Therefore, they went to the Nishinomiya Municipal Administrative Office to look into the real estate registry books which are made for taxation purposes. They looked at the books to find the real estate which was owned by Mitsui. They tried to investigate all of Mitsui's real estate dealings and ways he bought real estate. At first they went to real estate registry offices to look at the registry books. These showed who owned the real estate and who sold it to the present owner and so on. They found one property, an apartment, was sold from Mitsui to Tomari. It revealed the relationship between Mitsui and Tomari. They inquired into the dealing, especially the tax. Because if Mitsui bought the room as his own residence, he did not need to pay tax, but if he bought it for investment, he had to pay tax. Mitsui sold the room soon after he bought it to Tomari, but he applied for an exemption from taxation to the Nishinomiya Municipal

Administrative Office because he pretended the room was his personal residence. Consequently, they found Mitsui had falsified documents to receive a tax reduction on the purchase of the apartment.

They also interviewed the officers in the Osaka High Public Prosecutors Office in confidence in regard to Mitsui's activities and found that Mitsui had ordered an assistant officer to retrieve the criminal record of a related gang member of Tomari.

After this investigation, the Osaka High Public Prosecutors Office decided to transfer the evidence to the Special Investigation Department of the Osaka District Public Prosecutors Office. Then, the Head of the Department decided to start a compulsory investigation immediately. A public prosecutor of the Department called up Tomari at his office and arrested and questioned him. At first he denied it but finally he confessed to everything. Another public prosecutor also called up Mitsui and arrested him. Mitsui denied all of the cases and never confessed. Despite this, the Head of the Department decided to prosecute Mitsui. Mitsui's trial is now proceeding but Tomari has already been sentenced to 5 months imprisonment. Although the trial has not yet concluded Mitsui has been already dismissed for disciplinary reasons.

Soon after uncovering this case, the Minister of Justice apologized to the people through the mass media and promised to establish a new system to prevent such crimes by public prosecutors. The Minister of Justice ordered the Prosecutor-General to reform the system. One of the reformed systems is a reporting system of private economic activities by public prosecutors. The details of the new system will be introduced later.

B. Restoring the Integrity of Public Prosecutors

Due to these cases, the Prosecutor General had to restore the integrity and confirm the confidence of the people. The most important thing to restore integrity and confidence is to deal with each case appropriately. People watch the disposition of each case and they consider what the public prosecutors are going to do. If public prosecutors are corrupt, the people and the mass media will soon find the dispositions inadequate and criticize them very severely. On the contrary, if public prosecutors perform their task adequately, the people trust them. This is the most important basic principle of Japanese public prosecutors.

Additionally, new systems are adopted for restoring the integrity of public prosecutors. These are as follows.

1. Training and Education Programs for Public Prosecutors

For the purpose of cultivating the integrity of each public prosecutor, the Supreme Public Prosecutors Office provides new programs for young public prosecutors. In general training programs, new ethics programs are provided such as listening to victims of crime. Some of the young public prosecutors are sent to private lawyers offices or private companies for several months to learn about ordinary people's lives.

For a senior public prosecutor (defined by length of service - 22 years experience) the Supreme Public Prosecutors Office provides new training programs on how to manage a public prosecutors office with integrity and how to be trusted by the people. In the programs they are lectured to by victims, mass media representatives, police officers and so on.

2. New Strict Regulations on Public Prosecutors Concerning their Private Economic Activities

The Supreme Public Prosecutors Office instructed all public prosecutors to maintain integrity not only in their work but also in their private life. Because to maintain the trust of the public all public prosecutors have to lead upstanding lives even in private matters. Therefore, the Supreme Public Prosecutors Office made strict new rules for public prosecutors regarding their private economic activities. If a public prosecutor buys or sells real estate or stocks, he/she has to report it to the Prosecutor-General via his/her direct bosses.

C. Restoring the Integrity of Judges

1. The Real Situation of Judges in Japan

In the Yamashita Case, the judge, Mr. Furukawa also harmed the public's confidence in Judges. However, the integrity of Japanese judges is generally very high. There have been no judges prosecuted for a corruption case since World War II. I think that Japanese judges are one of the most decent professionals in the world. I would like to show two cases of how Japanese judges are clean and honest. Therefore, there are no discussions on how to prevent the corruption of judges in Japan.

The first case is the so called "Judge Yamaguchi Case". In the 1950's Japanese markets were under control by the Government because of the confusion after World War II. The people needed a kind of ticket which was issued by the Government to buy goods in the market. However, it was not enough to live and the people bought food or other goods on the black market. It was a violation against the economic control laws but they had to do it to survive. However, Judge Yamaguchi did not violate the laws and he did not buy anything on the black market. Finally he died from malnutrition. For him to comply with the laws was more important than his life.

The other case is the experience of a judge who participated in a UNAFEI training course. He and his wife are both District Court judges. His wife handles civil cases. They have a daughter who goes to kindergarten. About a year ago the father of their daughter's friend came to their residence. (The reason why he came was that he was a party in a case which the female judge handled) He never offered a bribe or favorable treatment of his case. It's possible he hoped for favorable treatment because of the good relationship between his daughter and their daughter. After his visit, the female judge asked the Chief Judge of the District Court to remove her from the case immediately. Of course, he did not commit any crime and the female judge did not act inappropriately. However, the people might think she treated him favorably because of his courtesy visit. She worried about that situation. Maybe she was over anxious but most judges want to avoid being thought of suspiciously by the people.

As I mentioned above, Japanese judges are very ethical. Therefore, they do not want to develop dubious relationships not only regarding the parties in their cases but also regarding their private lives.

2. Measures to Prevent Corruption by Judges and to Restore the Integrity of Judges

As I mentioned above, Japanese judges are very decent, but it may be the result of good strategies in the justice system. There are two measures to ensure their integrity: (1) Control by the Law for Impeachment of Judges (2) Control by the Law concerning Status of Judges.

(i) Control by the Law for Impeachment of Judges

In Japan no executive organ or agency can take disciplinary action against a judge. This power is vested only in the Court of Impeachment, a legislative body composed of Representatives and Councillors drawn from the Diet. The Court of Impeachment may dismiss a judge if he/she neglects his/her duties to a remarkable degree, or if there has been misconduct, whether or not it relates to official duties.

With regard to the procedure of impeachment of judges, the Committee of Impeachment, a legislative body composed of Representatives and Councillors drawn from the Diet should prosecute a suspected judge in the Court of Impeachment. There are about 200-300 complaints which are received by the Committee every year. However, owing to strict screening by the Committee, only a few cases have been prosecuted since World War II. There are about 8 cases. One of them is the Taniai Case which I introduced earlier. This system plays a role of restraining judges from receiving bribes.

(ii) Control by the Law Concerning Status of Judges

In Japan each High Court can take disciplinary action against judges who are under its jurisdiction. The disciplinary sanctions are only minor fines (under 10,000yen) and reprimands. These sanctions seem light but the effect of a warning is enough. This system is also thought to contribute to the prevention of corruption by judges.

VII. CONCLUSION

Preventing corruption is important, yet it poses many difficulties. In order to restore the integrity of public officials and maintain the people's trust in the public administration and in the judicial field, the Government should take various and comprehensive measures to curb corruption and enforce strict official discipline. Apart from that, it is very important to have a positive, effective and strong political will to eradicate corruption.

For the purposes of eradicating corruption, public support is indispensable. In order to mobilize public support, the Government is encouraged to initiate public awareness campaigns and implement educational programs on the dangerous of corruption.

Ensuring good governance in the public sector is a prerequisite for containing corruption. Therefore, we should introduce the following: careful selection of staff with competence and integrity for public service; adequate remuneration; an establishment of a code of conduct, including rules concerning conflicts of interest and incompatibilities; strict internal and external controls including random audits and independent anti-corruption bodies and so on.

The highest possible degree of transparency of the public sector should be maintained to promote integrity and to fight corruption. The mass media and NGOs play an important role in ensuring transparency. The Government should ensure a public right of access to information. Disclosure of assets of certain public officials should be considered.

Penalties for corruption offenses should be effective, proportionate and persuasive. The fact that an offender has acted for the benefit of an organized criminal group should be treated as an aggravating circumstance in sentencing. Bribes should be subject to confiscation. Bribery

offenders could also be deprived of privileges and proceeds derived from the offense.

I believe such comprehensive measures will establish a society without corruption.

RESTORING THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM: ELIMINATING CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

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I. INTRODUCTION

In a democratic society, the integrity of the criminal justice system is very important because every element within the system has a close connection with the so called index or indices of democracy, in particular the existence of an open, accountable and responsive government, the promotion and protection of human rights (specifically civil and political rights) and the character of its civil society as a society of self-confident citizens. (Beetham, l999, pp.l62-l69). The meaning of integrity includes commitment to the values of honesty and totality or wholeness of the criminal justice system in achieving its goals as well as, the consistency of the system to uphold the basic values of the system.

As a system, the criminal justice system consists of a physical system - namely the network of the judicial system which utilizes the enforcement of substantive criminal law, law of criminal procedure and law of the implementation of criminal sanctions - and an abstract system - namely a system of philosophy and values which control all efforts in the attainment of the aims of the system. The aims of the criminal justice system cover three stages namely the short term stage (rehabilitation of the offender); the medium stage (crime prevention); and the long term stage (social welfare).

Furthermore, the term "restoring integrity" has a special meaning for Indonesia, more so since 1998, when Indonesia began its ongoing process of reforms and transformation towards becoming a democratic society.

Reforms themselves should be interpreted as an organized effort of the nation to actualize the indices of democracy. In this case, the major problem of the criminal justice system is not only limited to the frustration caused by the massive volume of cases (overworked and understaffed) and the severity of overcrowding in the correctional institutions. In the transition to becoming a democratic society, there are several difficult problems to overcome. These problems hamper efforts to restore the integrity of the criminal justice system. These serious complications include, practices of obstruction of justice, miscarriages of justice, politicization of the criminal justice system and corruption; these problems are more often than not interrelated.

Obstruction of justice consists of: (a) The use of physical force, threats or intimidation, or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences; (b) the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences. (Palermo Convention, 2000, Art. 23).

Miscarriage of justice occurs whenever suspects, defendants or convicts are mistreated by the State in breach of their rights, whether because of, first, deficient processes or, second, the

laws which are applied to them or, third, because there is no factual justification for the applied treatment or punishment; fourth, whenever suspects or defendants or convicts are treated adversely by the State to a disproportionate extent in comparison with the need to protect the rights of others; fifth, whenever the rights of others are not effectively or proportionately protected or vindicated by State action against wrongdoers or, sixth, by State law itself. (Walker and Starmer, 1999, 99. 31- 33).

Politicizing the criminal justice system involves perverting the judicial or criminal justice process in order to achieve particular political ends. These ends are generally to punish enemies of the regime in power or to deter others from joining those enemies. A politicized criminal justice system may also involve an attempt to get publicity for causes that are supported by a regime's opponents. (Fairchild and Dammer, 200l, p. 12).

According to substantive law, the crime of corruption has been defined very comprehensively, but in terms of the criminal justice system the crime of corruption should be defined as the crime of bribery which includes several unlawful acts, as follows:

(i) The promise, offering or giving to a justice or law enforcement official directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the justice or official act or refrain from acting in the exercise of his or her official duties;
(ii) The soliciting or acceptance by a justice or law enforcement official, directly or indirectly, of an undue advantage, for the official himself or herself or other person or entity, in order that the justice or official act or refrain from acting in the exercise of his or her official duties. (Palermo Convention, 2000, Art. 8).

II. BASIC VALUES OF THE CRIMINAL JUSTICE SYSTEM

The integrity of the judiciary as well as the criminal justice system is central to the maintenance of a democratic society. Through the judiciary and the criminal justice system the rule of law is applied and human rights are protected. Without an impartial judiciary and the criminal justice system, the democratic character of a society will be destroyed. To adequately fulfill this rule, the judicial system and the criminal justice system must be independent and impartial.

A democratic government requires a system of checks and balances to prevent one branch of government from abusing its authority and taking away rights provided by the Constitution. So we have the "executive branch" which enforces the law; the "legislative branch" which makes the law and the "judicial branch" which interprets the law.

The judicial branch consists of the courts, which includes the district courts, the high courts (courts of appeal) and the Supreme Court and are all protected by the universal principle of the independence of the judiciary. An independent judiciary is essential in a democracy, but as a part of the (criminal) justice system, the independent judiciary should be supported by other essential elements such as police and a public prosecutor with sufficient independence from political process and other interferences (i.e. bribery) that allows the agencies to aggressively enforce the laws. Consequently, the character of being independent and impartial is not only implemented in terms of the judiciary, but also includes other elements of the criminal justice system. This concept is very important to understand because the police public prosecutors are part of the executive branch which have a close relationship with executive power. (Horton, 2000, pp. 2-3).

The values of any system of justice may be classified as professed values and underlying values. Professed values are those that are proclaimed as values by the participants in the system. For example, equal justice under law, independence of the judiciary, fair and impartial trial, non-discrimination, human rights etc. - the ideal that most established systems of justice aim for is to treat all individuals equally and according to an existing rule, regardless of social status or background. Underlying values are those that are not openly proclaimed but that nevertheless govern actions within the criminal justice system. Efficiency, or expeditious handling of cases, is one such value. Affirmation of local culture is another underlying value in the criminal justice process. (Fairchild and Dammer, 200l, pp. 11).

Public service ethics in crime and justice are another such underlying value which should be upheld by police officers, public prosecutors, correctional officers, judges and legal professionals. According to the Josephson Institute of Ethics, these kinds of ethics consist of the following principles:

(i) *Public Service*. Public servants should treat their office as a public trust, only using the power and resources of public office to the advantage of public interests, and not to attain personal benefit or pursue any other private interest incompatible with the public good.
(ii) *Objective Judgment*. Public servants should employ independent objective judgment in performing their duties, deciding all matters on the merits, free from avoidable conflicts of interest and both real and apparent improper influences.
(iii) *Accountability.* Public servants should assure that government is conducted openly, efficiently, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.
(iv) *Democratic Leadership*. Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.
(v) *Respectability.* Public servants should safeguard public confidence in the integrity of government by being honest, fair, caring and respectful and by avoiding conduct creating the appearance of impropriety or which is otherwise unbefitting a public official.(Pollock, l998, pp. 5).

III. THE NATURE OF CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

Corruption is an old affliction, and no corruption is more damaging than the corruption among justice and security officials, those pledged to uphold the law. Official corruption can speed environmental destruction, accelerate the drug trade, even encourage the smuggling of biological, chemical or nuclear weapon materials.

Economically, corruption represents an arbitrary, exorbitant tax. It can lead to wasteful government spending, higher deficit, greater income inequality, and a crisis of confidence that cam spark capital flight, crash the economy, destabilize governments, and put people half way around the world out of work. The crisis has been aggravated by corruption. Robert Klitgaard, Dean of the Rand Graduate School in Santa Monica California, has developed a formula to gauge the likelihood of corruption. He describes it: $C = M + D - A$ or "Corruption equals Monopoly plus Discretion minus Accountability." If you have a monopoly, you are far likelier to become corrupt. (AI Gore, l999).

In Terms of discretion, the chief administrators of the criminal justice system have a

responsibility to ensure that officers under their command exercise sound, mature and thoughtful discretion. In the framework of the criminal justice system, limits on the use of discretion vary from element to element of the system. The following chart further defines who within the judicia1 system uses discretion and how they use it.

USE OF DISCRETION WITHIN THE CRIMINAL JUSTICE SYSTEM

Type of Justice Official	When Discretion Is Used
Police	When investigating crimes While searching for people While enforcing laws While detaining or arresting
Prosecutors	When seeking indictments When investigating specific crimes While detaining While filing charges While dropping cases While reducing charges
Judges	When dismissing charges While detaining While imposing sentences
Correctiona1 Officials	When assigning to a correction facility For disciplinary matters When awarding privileges When determining remission When determining conditional release

(Trautman, 1988, pp. 43-44).

The Declaration of the Global Forum on Fighting Corruption: Safeguarding Integrity Among Justice and Security Officials (Washington DC, 1999) asserted that corruption of justice and security officials, especially-betrays their trust. Corruption cannot long co-exist with democracy and the rule of law. Corruption misallocates resources, hurts the poor, and weakens economies and societies.

The UN Palermo Convention Against Transnational Organized Crime (2000) also criminalizes acts of corruption, which in some countries have greatly aided the rapid growth of organized crime, besides criminalization of participation in an organized criminal group, laundering of proceeds of crime, and other serious crime, where the offence is transnational in nature and involves on organized criminal group.

The judicial and criminal justice system is corrupted when any act or omission is intended to result in the loss of impartiality of the judiciary and other elements of the criminal justice system. Specifically, corruption occurs whenever a judge and other criminal justice officers seeks or receives a benefit of any kind or promise of a benefit of any kind in respect to an exercise of power or other action. Such acts usually constitute criminal offences under criminal law. Examples of corrupt criminal conduct are:

- bribery;
- fraud;
- utilization of public resources for private gain;
- deliberate loss of court and criminal justice process records; and
- deliberate alteration of court and criminal justice process records.

Corruption also occurs when, instead of procedures being determined on the basis of evidence and the law, they are decided on the basis of improper influences, inducements, pressures, threats, or interferences, directly or indirectly, from any quarter or any reason including those arising from:

- a conflict of interest;
- nepotism;
- favoritism to friends;
- consideration of promotional prospects;
- consideration of post retirement placements;
- improper socialization with members of the legal profession, the executive or the legislature;
- socialization with litigants, or prospective litigants;
- predetermination of an issue involved in the litigation;
- prejudice;
- having regard to the power of government or political parties. (CIJL, 2000).

IV. POLICY AND STRATEGIC FRAMEWORK FOR THE ELIMINATION OF CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM

Recognizing the corrosive and negative impact of corruption in the criminal justice system, particularly on the maintenance of a democratic society, the rule of law and the legal protection of human rights, the government should be implementing policies and strategic frameworks based upon a triple-track approach that could prevent, detect and combat corruption in the criminal justice system.

A. The Preventive Approach :

(i) Increasing criminal justice system officials' awareness and compliance to the basic values of the criminal justice system (professed values and underlying values), public service ethics (public service, objective judgment, democratic leadership, accountability, and respectability);
(ii) Encouraging criminal justice officials, including lawyers to assist in preventing and eliminating corruption;
(iii) Creating a culture of intolerance to corruption in the criminal justice system;
(iv) Encouraging the consideration of the corruption of the criminal justice system as an impediment to the protection of human rights;
(v) Ensuring the independence, integrity and impartiality of the criminal justice system, among others by criminalizing the obstruction of justice ;
(vi) Requiring that the selection, appointment, education and promotion of criminal justice officials be based on merit and provide protection against appointments or promotion for extraneous reasons or improper motives;
(vii) Improving the overall conditions of service in the criminal justice system including adequate funding and salaries;
(viii) Basic legal training of criminal justice officials, associations of lawyers as well as academic

institutions should include the teaching of ethics intensively;
(ix) Formulating and socializing a Code of Conduct for the criminal justice officials based on international standards;
(x) Developing international cooperation to prevent, detect and investigate corruption in the criminal justice system, such as joint training and technical assistance programs, harmonization of law, joint investigations on a case by case basis, mutual legal assistance, extradition, exchange of information, etc.

B. The Detection Approach:

(i) Increasing public awareness and providing encouragement to the public to participate in the process of detecting, exposing, preventing and eliminating corruption in the criminal justice system, and therefore, increasing public confidence in the criminal justice system and in the judiciary;
(ii) Encouraging participation of the public, civil society coalitions and the independent media, by a synergy of efforts in reporting and criticizing corruption in the criminal justice system;
(iii) Protecting informants, complainants and witnesses thereby ensuring they are not victimized. This scheme could include examples of the type of measures which may be employed such as confidentiality, anonymity, safe conduct (limited immunity from prosecution) and the use of a video-link in cases where the victim is unable or unwilling to be present. The existence of a "Whistleblower" law should also be considered.

C. The Repressive Approach:

(i) Complaints and allegations of corruption against criminal justice system officials should be investigated promptly, consistently according to the rule of law;
(ii) Bar Associations should provide strong and effective professional mechanisms and sanctions to be imposed on members of the legal profession who engage in or assist corruption in the criminal justice system;
(iii) Provide an independent mechanism for the investigation and prosecution of corruption committed by criminal justice officials;

V. GENERAL CONCLUSIONS

Since May 1998 upholding the supremacy of law and maintaining the principle of good governance by combating corruption, collusion and nepotism have been top priorities of the Government of Indonesia. The existence of People Consultative Assembly Decree No. XI/1998, Law No. 28/l999, Law No. 3l/1999 Jo., Law No. 20/200l, Law No. 15/2002 on Money Laundering which stipulates that corruption is a predicate offence, the creation of a Judicial Commission in the New Constitution to safeguard the dignity and honor of judges, the existence of an Anti Corruption Commission in the near future, all demonstrates the sound political will of the government to eliminate all kinds of corruption, collusion and nepotism systematically.

Nevertheless, the success or failure to eliminate and combat corruption will actually depend on three factors namely, political will, a comprehensive strategy - either preventive, by detection or a repressive strategy - and last but not least public participation and public pressure to fight against corruption.

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PAYMENT OF A COMPENSATION PENALTY AS AN ADDITIONAL PENALTY IN CORRUPTION CASES (Its effectiveness in the effort to eliminate corruption)

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I. INTRODUCTION

Indonesian criminal law recognizes two kinds of penalty, namely, the principal penalty and the additional penalty. A principal penalty can be imposed by a judge upon a defendant in the absence of any additional penalty, but an additional penalty should be imposed along with a principal penalty. An additional penalty cannot be imposed separately (without imposing any principal penalty). The principal penalty for a corruption case is imprisonment, either temporary or for life. Law No. 31 of 1999 on the Eradication of Corruption even states that under certain aggravating circumstances the death penalty can be imposed upon a corrupter (see Article 2 paragraph 2 of Law No. 31 of 1999).

In corruption cases, either according to the old law (Law No. 3 of 1971) or according to the new law (Law No. 31 of 1999 which has been renewed by Law No. 20 of 2001), there is an additional penalty which is called "Payment of Compensation Penalty" (*Pembayaran Uang Pengganti*). In the old law (Law No. 3 of 1971) it is stated in Article 34 sub c which reads that upon a corrupter an additional penalty can be imposed which is:

"Payment of Compensation whose amount is the same as the value of the assets obtained by the defendant from committing corruption".

Even though Law No. 3 of 1971 has been replaced by Law No. 31 of 1999 which is renewed by Law No. 20 of 2001, due to the non-retroactive principle, its provisions are still binding in the prosecution of corruption committed prior to the enactment of Law No. 31 of 1999 (prior to August 18, 1999).

The new Law on the Eradication of Corruption (Law No. 31 of 1999 amended by Law No. 20 of 2001) maintains the existence of "payment of a compensation penalty" as an additional penalty for corruption cases. Article 18 paragraph 1 sub b of this Law states that upon a corrupter an additional penalty can be imposed, which is:

"Payment of Compensation whose amount is the same as the value of the assets obtained by the defendant from committing corruption".

It has been widely known that society in general will not be pleased if the result of law enforcement in corruption cases is only the corrupters being imposed with criminal law penalties, however severe the penalties are. It is the hope of society that law enforcement should also result in the recovery of the financial/economic losses which are caused by corruption. Effectively imposed, the payment of a compensation penalty will pressure a corrupter to strive hard to recover the economic/financial loss emanating from the corruption he committed, in addition to the imprisonment penalty (or even the death penalty) which is imposed upon him. Unfortunately,

as this paper further discusses, there are some legal problems that hamper the effectiveness of the application of this additional penalty.

This paper discusses two problems in this regard. The first problem is about how to determine the amount of the compensation penalty. The second problem relates to the legal consequence of non payment or partial payment of the penalty. The legal consequence in this regard is discussed in accordance with criminal law provisions as well as in accordance with civil law provisions.

II. PROBLEMS

A. The Amount of the Compensation Penalty

Law No. 3 of 197l amended by Law No. 3l of 1999 amended by Law No. 20 of 2001 (all of them are about the Eradication of Corruption) defines a norm to state the maximum amount of the payment of compensation penalty. Both laws state that the maximum amount of the penalty "should be the same as the value of the assets obtained from corruption". (article 34 sub c of Law No. 3 of 1971 and article 18 paragraph 1 sub b of Law No. 31 of 1999).

Grammatically interpreted, the law requires a judge to identify assets emanating from the corruption the defendant committed and calculate their value prior to determining the amount of the payment of a compensation penalty to be imposed upon the defendant (the corrupter). Admittedly, it is not easy to identify one by one assets which come from corruption, and, accordingly, it is not easy to fulfill the legal requirement in accordance with the grammatical interpretation of the provisions of the law.

In Edi Tansil's case, for example, the amount of money gained by corruption by Edi Tansil was about Rp 1, 2 trillions (about US $ 120 million). This does not necessary mean that Edi Tansil obtained assets of the same value as the value of the money he gained corruptly from the state, because some of the money was transferred (or given) to other people or legal entities as bribes, donations or gifts. Some of the money was used to purchase assets which do not belong to Edi Tansil himself, but to a limited liability company. This raises the following legal problems:

(i) Can the assets be categorized as *"the assets obtained from the corruption"* even though the corrupter has no share in the limited liability company?
(ii) If the corrupter has only 20% of the shares of the limited liability company, how should the judge calculate the value of the assets obtained from the corruption: 20% of the value of the assets or 100% of the assets' value?

There is also a problem relating to the fluctuation of the value of assets. If by corruption a person gains money amounting to Rp 1 billion and uses the money to buy a plot of land and due to the fluctuation of land prices, the value of the land becomes Rp 2 billion how much should the judge determine the amount of the payment of a compensation penalty to be imposed. It is clear that the asset obtained from the corruption in this case (the plot of the land) is valued at Rp 2 billion. Nevertheless, it is odd for a judge to impose upon a corrupter a payment of a compensation penalty amounting to Rp 2 billion, if the legally admissible evidence shows that the amount of the money gained by corruption is only Rp 1 billion.

Apparently, judges find it is difficult to fulfill the grammatical interpretation requirement on identifying and calculating one by one assets that are obtained from corruption. In their

verdicts they often impose payment of a compensation penalty without specifying what assets are obtained by the defendant from corruption as well as calculating how much the value of the asset is. In Dicky Iskandar Dinata's case, for example, the verdict imposed upon Dicky was the payment of a compensation penalty amounting to Rp 800 billion (about US $ 80 million). The verdict never specified which assets were obtained by corruption. The verdict seems to ignore the fact that the money the defendant gained from corruption was used for currency speculation, which brought no profit to the defendant because he incurred a total loss.

B. The Legal Consequence of Non or Partial Fulfillment of the Penalty

In Law No. 3 of 1971 the legal consequence of non-fulfillment of payment of the compensation penalty can be found in the elucidation of Article 34 sub c which states that a "substitute imprisonment for fine penalty" should be applied in case of non-fulfillment of payment of the compensation penalty. This substitute imprisonment penalty is provided in Article 30 of the Criminal Code which reads:

(1) If the fine is not paid, the penalty is substituted with imprisonment.
(2) The minimum period of the substituted imprisonment is one day and the maximum period is six months.
(3) If there is an aggravating factor due to accumulation of offences or recidivism or due to the provision of Article 52 the maximum period can be extended to eight months.
(4) The substitute imprisonment may not exceed an eight month period.

According to the provisions of law as stated above, in the case of the non fulfillment of payment of the compensation penalty, imprisonment should be imposed. This substitute imprisonment may not exceed an eight month period. Accordingly, it is logical for a corrupter to choose the substitute imprisonment penalty rather than the payment of a compensation penalty. The substitute imprisonment penalty may not exceed 8 months, whereas the payment of a compensation penalty may amount to hundreds of billions or even trillions of rupiahs. If a corrupter is required to pay a compensation penalty amounting to Rp 800 billions, it is logical for him to choose being imprisoned for another 8 months rather than paying Rp 800 billions. In his logical calculation, it is difficult for him to obtain Rp 800 billion from fair and honest business in an 8 month period.

Under this system almost no corrupter fulfills the payment of the compensation penalty which is imposed upon him by the verdict of the judge. Consequently, it is difficult to compensate the financial/economic losses suffered by the state due to corruption. To overcome this problem the Supreme Court issued "Supreme Court Circular No. 4 of 1988". The essence of this circular is:

(i) If a judge imposes upon a corrupter the payment of a compensation penalty, it is recommended that no substitute penalty be stated in the verdict for the non fulfillment of the compensation penalty.
(ii) In case of non payment, the assets of the corrupter can be seized and auctioned in order to meet the amount of the payment of the compensation penalty.
(iii) If the seizure and auction cannot meet the amount of the payment of the compensation penalty, a civil lawsuit can be filed against the corrupter.

It is understood that Supreme Court Circular No. 4 of 1988 is aimed at ensuring the payment of a compensation penalty to recover the states financial/economic losses as far as

possible. From this standpoint filing a civil law suit against a non paying corrupter is more effective than imposing upon him a substitute imprisonment of no longer than 8 months. Admittedly, a judgment in a civil case ordering a defendant (a corrupter) to pay a certain amount of money to the state in order to compensate the state's financial/economic loss may also be unenforceable, if the defendant has no more assets or if the corrupter is very smart in concealing his assets. Nevertheless, an order to pay that is issued by a civil court can be regarded as a debt as long as it is still not fully paid. Accordingly, the obligation to pay this debt can be transferred to the wife and children (and all heirs) of the obligor (the defendant/corrupter), if it is still not fully paid upon the death of the corrupter. Article 1100 of the Civil Code states that a debt is transferred to the heirs of an obligor if it is still not paid by the time of the obligor's death.

Supreme Court Circular No. 4 of 1988 is still applicable after the enactment of Law No. 31 of 1999 as well as Law No. 20 of 2001, because the Supreme Court has never withdrawn the Circular. In practice, the Circular is no longer useful since the new law on the eradication of corruption threatens a more severe substitute penalty for non fulfillment of payment of a compensation penalty (if compared with the substitute penalty under Law No. 3 of 1971). Article 18 paragraphs 2 and 3 of Law No. 31 of 1999 provides:

(1) If the convict does not pay the compensation as stated in paragraph 1 sub b in the maximum period of 1 month after the binding verdict, his assets may be seized and auctioned by the prosecutor to cover the compensation penalty.

(2) If the convict has insufficient assets to cover the compensation penalty, imprisonment can be imposed for a period that is no longer than the maximum penalty of the principle penalty, in accordance with this law and the period for this imprisonment as stated in the judge's verdict.

Supreme Court Circular No. 4 of 1988 as well as Article 18 of Law No. 31 of 1999 (which is not amended by Law No. 20 of 2001) states that a corrupter's assets should be seized and auctioned in order to pay the compensation penalty. Nevertheless, the recommendation of the Supreme Court Circular to not state the substitute penalty for the payment of a compensation penalty is no longer useful, since Law No. 31 of 1999 amended by Law No. 20 of 2001 provides a severer substitute penalty in this regard. According to the new law, if a convicted corrupter does not fulfill his obligation in relation to the payment of the compensation penalty, the penalty can be substituted with an imprisonment penalty of the same period as the principal penalty. Since life imprisonment can become the maximum penalty for a corruption case, it can also be utilized as the substitute penalty for the payment of a compensation penalty in case of non-payment. Accordingly, the verdict in a corruption case may state as follows:

(i)The court herewith finds the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii)The court, accordingly, imposes upon the defendant imprisonment for a period of 5 (five) years;
(iii)The court, accordingly, imposes upon the defendant, a fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) months as the substitute penalty for non-payment of the fine;
(iv)The court, accordingly, imposes upon the defendant the payment of a compensation penalty amounting to Rp 800,000,000, - (eight hundred billion rupiahs) or life imprisonment as the substitute penalty of non payment of the compensation;

Law No. 31 of 1999 states that the death penalty can be imposed in corruption cases under

certain circumstances. Article 2 paragraph 2 of Law No. 31 of 1999 states:

In case corruption, as stated in paragraph 1, is committed under certain circumstances, the death penalty can be imposed.

Law No. 20 of 2001 aids in the elucidation of this Article by stating:

The "certain circumstances" in this provision mean the ones that can be used as aggravating factors, namely, if the corruption is committed against funds which are allocated for overcoming danger, national disasters, for overcoming the result of a widespread social riot, for overcoming economic and monetary crises, and for overcoming corruption cases.

Fulfilling the provisions of law as stated above, in theory the death penalty can be imposed as the substitute penalty for the payment of the compensation penalty. Accordingly, the court verdict may read:

(i) The court herewith finds that the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii) The court, accordingly, imposes upon the defendant imprisonment for the period of 5 (five) years;
(iii) The court, accordingly, imposes upon the defendant, the fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) month as the substitute penalty for non-payment of the fine;
(iv)The court, accordingly, imposes upon the defendant the payment of a compensation penalty amounting to Rp 800,000,000, - (eight hundred billion rupiahs) or the death penalty as the substitute penalty for non-payment of the compensation;

In practice we may also face the problem not of non-payment but of partial payment of the penalty. If the payment of a compensation penalty amounted to Rp 100 billion with imprisonment of 10 years as the substitute penalty and it is paid partially by the corrupter, Rp 10 billion for example, how long should the substitute penalty be? Logically, the substitute penalty can be mathematically calculated. If the corrupter pays only 10% of the amount stated in the verdict, logically he has to carry out 90% (100% - 10%) of the period of the substitute penalty. However, if the substitute penalty is life imprisonment or the death penalty, how can we make a mathematical calculation in the case of partial payment?

III. RECOMMENDATIONS

A. The Amount of the Compensation Penalty

As discussed above the law provides that the maximum amount of the payment of a compensation penalty is:
"the same as the value of assets obtained from corruption"
(Article 34 sub c Law No. 3 of 1971 or Article 18 paragraph 1 sub b of Law No. 31 of 1999 amended by Law No. 20 of 2001).

As also discussed above, in practice it is difficult to specify one by one and calculate assets which are obtained by a corrupter from the corruption he has committed. To overcome this problem, it is recommended that the word "assets" not be interpreted grammatically, but interpreted broadly, so that it means everything which can be enjoyed by a corrupter from

committing corruption. Fulfilling this interpretation, the amount of the payment of the compensation penalty should be the same as the monetary value of the corruption itself. If the proceeds of the corruption are used by the corrupter for gambling, it has to be noted that gambling is something that can be enjoyed by the corrupter who uses the money from corruption to pay for it. Accordingly the amount of the compensation penalty can be calculated as the same as the amount of money he uses to gamble. If the corrupter uses the money he gets from the corruption to conduct a business that fails, it has to be noted that conducting business is something that the corrupter can enjoy (even though the failure is not enjoyed by the corrupter). Accordingly, the amount of the compensation penalty should be the same amount of money he uses for this enjoyable business. Similarly, if the corrupter uses the corrupt money for paying prostitutes, the amount of the compensation penalty should be the same as the amount of money he uses to pay the prostitutes, since this is something the corrupter enjoys. Everything that can be enjoyed by using the proceeds of corruption can be regarded as "the assets obtained from corruption" as stated in Article 34 sub c of Law No. 3 of 1971 and Article 18 paragraph 1 sub b of Law No. 31 of 1999 amended by Law No. 20 of 2001.

This broad interpretation is easier and more practicable than a grammatical interpretation. Further, it also complies with the purpose of the legal provision in this regard, namely, to compensate the financial/economic losses suffered by the state due to the corruption. In reality, this interpretation has also been used by many judges, since most verdicts containing payment of a compensation penalty, there is no specification and calculation of each item of the defendant's assets, which the court deems obtained from corruption. The monetary value of corruption seems more decisive in determining the amount of the compensation penalty, if compared with the value of assets obtained from corruption.

B. The Legal Consequence of Non Payment According to Criminal Law Provisions

In corruption cases prosecuted under Law No. 3 of 1971 (corruption cases that are committed prior to August 18, 1999), it is recommended that Supreme Court Circular No. 4 of 1988 be applied. According to this Circular, the verdict should not specify the substitute penalty for non fulfillment of the payment of a Compensation Penalty. In the case of non payment or partial payment, a civil lawsuit should be filed against the defendant to obtain a civil court judgment ordering him to pay in full.

Unlike the old law (Law No. 3 of 1971) the new law (Law No. 31 of 1999 amended by Law No. 20 of 2001) provides a more severe substitute penalty for non fulfillment of the payment of a Compensation Penalty. Hence, it is recommended that the verdict containing a Compensation Penalty clearly state its substitute penalty, which should be as severe as possible.

Even though according to the new law the death penalty may be imposed upon a corrupter as a principal penalty, and even though the new law states that the substitute penalty for the non fulfillment of payment of Compensation Penalty may be the same as the principal penalty, the writer refuses to use the death penalty as the substitute penalty in this regard. The reason is that Article 18 paragraph 3 of Law No. 31 of 1999 clearly states that the substitute penalty is:

"the imprisonment penalty whose period does not exceed its principal penalty"

Accordingly, the substitute penalty should be the "imprisonment penalty". The death penalty is not an "imprisonment penalty". Therefore, it cannot be used as the substitute penalty for the non fulfillment of the payment of the Compensation Penalty.

The writer supports the use of life imprisonment as the substitute penalty in this regard. Life imprisonment is an imprisonment penalty, so that its use as the substitute penalty for non-fulfillment of payment of the Compensation Penalty is still justifiable by the provision of Article 18 paragraph 3 of Law No. 31 of 1999. Accordingly, the writer agrees with the court verdict which states:

(i) The court herewith finds the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii) The court, accordingly, imposes upon the defendant imprisonment for the period of 5 (five) years;
(iii)The court, accordingly, imposes upon the defendant, a fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) months as the substitute penalty for non payment of the fine;
(iv)The court, accordingly, imposes upon the defendant the payment of compensation amounting to Rp 800,000,000,000, - (eight hundred billion rupiahs) or life imprisonment as the substitute penalty for non-payment of the compensation;

The problem is: how to execute the life imprisonment penalty as the substitute penalty in the case of partial payment of the compensation penalty?

It is logical and fair that partial fulfillment of payment of a compensation penalty should result in a more lenient substitute penalty. As long as the substitute penalty is temporary imprisonment (like imprisonment for 5 years, 10 years or 20 years), it is easy to calculate the rest of the period due to the partial fulfillment of the payment of the compensation penalty. Mathematical calculation can be used for this purpose. If the corrupter pays only 10% of the amount of the compensation penalty, it is logical and fair for him to carry out 90% (100% - 10%) of the period of the substitute penalty. - To calculate 90% of imprisonment for 20 years is easy, but to calculate 90% of imprisonment for life is impossible.

To overcome this problem it is recommended that a court verdict containing payment of compensation penalty with life imprisonment as the substitute penalty clearly describes the condition, by which the life imprisonment can be changed into imprisonment for twenty years. The verdict should read as follows:

(i) The court herewith finds the defendant guilty of having committed corruption as provided in Article 2 paragraph 1 of Law No. 31 of 1999 which is maintained by Law No. 20 of 2001;
(ii) The court, accordingly, imposes upon the defendant imprisonment for a period of 5 (five) years;
(iii) The court, accordingly, imposes upon the defendant, the fine of Rp 1,000,000,000, - (one billion rupiahs) or imprisonment for 3 (three) months as the substitute penalty for non paying the fine;
(iv) The court, accordingly, imposes upon the defendant the payment of a compensation penalty amounting to Rp 800,000,000,000, - (eight hundred billion rupiahs) or life imprisonment as the substitute penalty for non-payment of the compensation. This life imprisonment can be changed to imprisonment for 20 (twenty) years if the defendant pays at least 10% of the compensation penalty;

By opening the opportunity to change life imprisonment into imprisonment for twenty years, it is easy to apply a mathematical calculation for cases of partial payment of the

compensation penalty. Nevertheless, the writer admits that this recommendation may be challenged by legal positivism lawyers by questioning the legal basis of the authority of a judge to change a penalty he imposes in his verdict.

C. Legal Consequences According to Civil Law Provisions

The previous discussion clearly describes that we have to differentiate the prosecution of corruption which is committed prior to 18 August 1999 and the prosecution of corruption which is committed after 18 August 1999. Corruption which is committed prior to 18 August 1999 is prosecuted under Law No. 3 of 1971, whereas corruption which is committed after 18 August 1999 is prosecuted under Law No. 31 of 1999 amended by Law No. 20 of 2001.

For corruption which is prosecuted under Law No. 3 of 1971, Supreme Court Circular No. 4 of 1988 should be applied. This means that a civil lawsuit should be filed against a corrupter who does not fully fulfill the payment of a compensation penalty.

For corruption which is prosecuted under Law No. 31 of 1999 amended by Law No. 20 of 2001, Article 18 paragraph 3 of Law No. 31 of 1999 (which is not amended by Law No. 20 of 2001) should be strictly implemented. The substitute penalty for the payment of a compensation penalty should be as severe as possible. The period of the substitute imprisonment penalty should be as severe as the maximum period in the principal penalty. If necessary and permitted by law, in the case where the compensation penalty amounts to tens of billions of rupiahs or trillions of rupiahs, imprisonment for life should be chosen as the substitute penalty. Otherwise, it will be difficult to pressure the corrupters to compensate the financial/economic losses suffered by the state due to the corruption they have committed.

In all corruption cases, which are prosecuted either under Law No. 3 of 1971 or under Law No. 31 of 1999 amended by Law No. 20 of 2001, a civil lawsuit should be filed in case of the death of a corrupter who has not yet fulfilled his obligation in relation to the payment of a compensation penalty. The lawsuit should, of course, be addressed not to the deceased corrupter, but to his wife, children or heirs. The legal basis of this lawsuit is Article 1100 of the Civil Code which states that a debt can be inherited by the debtor's heirs.

For this purpose the word "debt" should be interpreted broadly. "Debt" should not be interpreted only as "something emanating from borrowing". "Debt" should mean "an outstanding obligation to pay which is imposed by law". Accordingly, an unpaid obligation to pay the compensation penalty should also be regarded as a debt, which, according to Article 1100 of the Civil Code, can be inherited by its obligor's heirs at the time of the obligor's death.

The civil lawsuit demanding for the full payment of the compensation penalty can be filed by the prosecutors' office (or the Attorney General's Office, because in the Indonesian system prosecutors are within the Attorney General's Office and are under the supervision of the Attorney General). Article 270 of the Code of Criminal Procedures states that a verdict rendered by the court in a criminal case is enforced (executed) by the prosecutor. Filing a lawsuit for this purpose is within the framework of enforcing a court verdict containing payment of a compensation penalty. It is the implementation of the legal provision as stated in Article 270 of The Code of Criminal Procedures. Accordingly, to file this lawsuit the prosecutors' office (or the Attorney General's Office) is not required to obtain a power of attorney from any government agency.

IV. CONCLUSION

It should be kept in mind that "the reformation era" in Indonesia requires tougher law enforcement in corruption cases. The evidence of this requirement is the enactment of the new law on eradication of corruption (Law No. 31 of 1999 amended by Law No. 20 of 2001) to replace the old law on the same matter (Law No. 3 of 1971). If compared with the old law, the new law contains severer provisions, like:

(i) The new law states that under certain circumstances the death penalty can be imposed in a corruption case, whereas no provision relating to the death penalty is stated in the old law. (See Article 2 paragraph 2 of Law No. 31 of 1999 amended by Law No.20 of 2001).
(ii) The new law threatens a more severe substitute penalty for non or partial fulfillment of the payment of the compensation penalty compared with the substitute penalty stated under the old law. (Please compare Article 18 paragraph 3 of Law No. 31 of 1999 with the elucidation of Article 34 sub c of Law No. 3 of 1971)

The requirements of the reformation era as described above should be fulfilled by imposing severer penalties upon corrupters in corruption cases prosecuted during the reformation era, when compared with the ones imposed in corruption cases prosecuted prior to the reformation era. In relation to the payment of a compensation penalty, the requirement of the reformation era should be fulfilled by imposing upon corrupters a compensation penalty amounting to the same value as the monetary value of the corruption, and by imposing upon them a severe imprisonment penalty, imprisonment for life if necessary, as the substitute penalty in the case of the compensation penalty not being paid.

Von Feyeurbach with his "psychological pressure theory" (*psychologische angst teorie*) states that a severe penalty is needed to establish a psychological pressure which prevents every one from committing crime. According to this theory the payment of a severe compensation penalty and its severe substitute penalty, will at least establish the following psychological pressures:

- A psychological pressure on everyone that has an opportunity to commit corruption to prevent himself from committing it, because the legal consequences will be severe. The legal consequence under criminal law is suffered by the corrupter himself, but the legal consequence under civil law will be suffered not only by the corrupter, himself, but also by his wife, his children and all his heirs.
- A psychological pressure for every convicted corrupter, upon whom the payment of a compensation penalty is imposed, to strive hard to pay the compensation penalty in full, if necessary by retrieving and selling his concealed assets. Otherwise, his wife, children and all his heirs will inherit the obligation to pay the compensation penalty, if the compensation is still unpaid after his death.
- A psychological pressure from the wife, children and family members of a convicted corrupter, upon whom the payment of a compensation penalty is imposed, to insist the corrupter pay the compensation penalty in full. Otherwise, the obligation to pay the compensation penalty will be inherited by them.

Admittedly, so far we have had no empirical data to support the verity of this psychological pressure theory. Nevertheless, if our criminal justice system is successful in imposing severer criminal penalties upon corrupters who are prosecuted within the reformation era, they can show the public that the Indonesian government is more serious in its effort to

eliminate corruption, so that under no circumstances can anyone undermine our government's effort to eliminate corruption in Indonesia.