

STATUTE BOOK OF THE REPUBLIC OF INDONESIA OF 2001  
NUMBER 134

ELUCIDATION OF LAW NO. 20/ 2001  
ON  
AMENDMENT TO LAW NO. 31/1999  
ON  
CORRUPTION ERADICATION

**I. GENERAL**

Since Law No. 31/1999 on Corruption Eradication (Statute Book of 1999 No. 140, Supplement to Statute Book No. 3874) was promulgated there have been various public interpretations of the application of the Law to corruption offenses committed before the promulgation of Law No. 31/1999. This is because Article 44 of the Law stipulates that Law No. 31/1971 on Corruption Eradication was declared null and void starting from the promulgation date of Law No. 31/1999, thus heading to the assumption of legal vacuum to process corruption offenses committed before Law No. 31/1999 takes effect.

What is more, the corruption cases in Indonesia which are committed systematically have been spreading so that they have not only inflicted losses on the state but also have violated the social and economic rights of the general public and accordingly, corruption eradication efforts must be made in an extraordinary way. As such, corruption eradication must be done in a specific way through among other things the application of inverted authentication system, the one charged to the defendant.

To achieve legal certainty, avoid various interpretations, and give fair treatment in eradicating corruption offenses, Law No. 31/1999 on Corruption Eradication needs to be amended.

Provision of the expansion of source of valid evidentiary materials in the form of tip stipulate can be obtained not only from witnesses, letters, and information from the defendant but also from other evidentially materials in the form of information uttered, sent, received or kept electronically by means of optical device or other similar equipment but not limited to electronic data interchange, e-mail, telegram, telex, facsimile, as well as from documents, namely any piece of recorded data or information that can be seen, read and/or heard and issued with or without the help of means, either those put on papers, physical materials other than papers, or those recorded electronically in the form of writing, voice, picture, map, draft, photograph, letters, signs, figures or perforations that have meaning.

Provisions on 'inverted authentication' need to be added to Law 31 on Corruption Eradication as 'premium remedium' provisions and are likewise designed to prevent civil servants as referred to in Article 1 point 2 or state officials as referred to in Article 2 of Law No 28/1999 on the running of the government, free of corruption, collusion and nepotism, from committing corruption offenses.

This inverted authentication applies to new criminal offenses on gratification and requests for the seizure of the wealth of the defendant believed to have originated from one of the criminal offenses as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law No.31/1999 on Corruption Eradication and Article 5 up to Article 12 of this law.

This Law also deals with the rights of the state to file civil indictment against the convict for the wealth hidden intentionally or unintentionally and only known after the court verdict gains fixed legal strength. The intentionally or unintentionally hidden wealth is believed to have originated from corruption offenses. The civil indictment is filed against the convict and/or his beneficiary. To file the indictment, the state may appoint proxy to represent it.

This law also contains new provisions on maximum jail term and maximum fines imposed on those involved in a corruption case of less than Rp5.000.000 (five million rupiahs). These provisions are designed to avoid a sense of unfairness among those involved in relatively small corruption cases.

In addition, this Law also contains transitional provisions. The substance of the transitional provisions agrees with the principle of the criminal code as referred to in Article 1 paragraph (2) of Law of Criminal Procedure.

## **II. BY ARTICLE**

### **Article I**

#### **Point 1**

##### **Article 2 paragraph (2)**

Referred to as "certain condition" is the condition that may serve as a reason for meting out heavier punishment to those embezzling funds earmarked for controlling states of emergency, national disasters, widespread social unrest, economic and monetary crisis, and corruption offenses.

#### **Point 2**

### **Article 5**

#### **Paragraph (1)**

Sufficiently clear.

**Paragraph (2)**

"State apparatus" in this article is the state apparatus as referred to in Article of Law No. 28/1999 on the Running of Government, free of Corruption, Collusion and Nepotism. The definition of "state apparatus" also applies to other articles in this Law.

**Article 6**

Sufficiently clear.

**Article 7**

Sufficiently clear.

**Article 8**

Sufficiently clear.

**Article 9**

Sufficiently clear.

**Article 10**

Sufficiently clear.

**Article 11**

Sufficiently clear.

**Article 12**

Letter a

Sufficiently clear.

Letter b

Sufficiently clear.

Letter c

Sufficiently clear.

Letter d

A "lawyer" is the person whose profession is to provide legal aid either inside or outside the court and meets the requirements according to the existing law.

Letter e

Sufficiently clear.

Letter f

Sufficiently clear.

Letter g

Sufficiently clear.

Letter h

Sufficiently clear.

Letter i

Sufficiently clear.

**Point 3**

**Article 12A**

Sufficiently clear.

**Article 12B**

**Paragraph (1)**

"Gratification" is payments or gifts in broad sense, including money, goods, discount, recompense, interest-free loan, travel ticket, lodging, tour, free medicine, and other facilities. The gratification includes the gratification received at home or from abroad and the gratification done using electronic device or not using electronic device.

**Paragraph (2)**

Sufficiently clear.

**Article 12C**

Sufficiently clear.

**Point 4**

**Article 26A**

**Letter a**

"Kept electronically" is for instance data kept on microfilm, Compact Disk Read Only Memory (CD-ROM) or Write Once Read Many (WORM).

Referred to as "optical device or other similar device" is not limited to electronic data interchange, e-mail, telegram, telex and facsimile.

**Letter b**

Sufficiently clear.

**Point 5**

**Article 37**

**Paragraph (1)**

This article is the proportional consequence of the application of inverted authentication on the defendant. The defendant continues to require proportional legal protection against the violation of basic rights related to the presumption of innocence and non-self incrimination.

**Paragraph (2)**

This rule does not recognize a negative authentication according to law (negatief wettelijk).

**Article 37A**

Sufficiently clear.

**Point 6**

**Article 38A**

Sufficiently clear.

**Article 38B**

The provisions in this article constitute inverted authentication specially designed for the confiscation of wealth strongly believed to have originated from corruption offenses based on one of the indictment as referred to in Article 2, Article 3, Article 4, Article 13, Article 14, Article 15, and Article 16 of Law No. 31/1999 on Corruption Eradication and Article 5 up to Article 12 of this Law as main criminal offenses.

The question of whether the confiscated wealth will be wholly or partially transferred to the state is left to the judge to decide because of humanitarian consideration and life guarantee for the defendant.

The idea of stipulating the provisions in paragraph (6) is based on the logic of law in that acquitting or exonerating the defendant of all legal proceedings in the main case means that the defendant is not the perpetrator of the corruption case.

**Article 38C**

The idea of stipulating the provisions in this article is based on the need to meet a public sense of justice towards the perpetrators of corruption offenses who hide wealth believed to have originated from the corruption offenses.

The wealth is known after the court verdict gains fixed legal strength. In this context, the state has the right to file a civil indictment against the convict and/or his/her beneficiary for the wealth gained before the court verdict gains fixed legal strength no matter whether the verdict is based on the law before or after Law No.31/1999 on Corruption Eradication takes effect.

To file the indictment the state can appoint a proxy to represent it.

**Point 7**

Sufficiently clear.

**Point 8**

Sufficiently clear.

**Article II**

Sufficiently clear.

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