

ANNEX I.16

**THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 20 YEAR 2001
CONCERNING
AMENDMENT OF LAW NUMBER 31 YEAR 1999
CONCERNING ERADICATION OF THE CRIME OF
CORRUPTION**

**THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 20 YEAR 2001
CONCERNING
AMENDMENT OF LAW NUMBER 31 YEAR 1999 CONCERNING ERADICATION
OF THE CRIME OF CORRUPTION
WITH THE MERCY OF GOD ALMIGHTY
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,**

Considering:

- a. that the widespread corruption cases have not only inflicted losses on the state but also violated the social and economic rights of the general public so that corruption needs to be categorized as a crime that must be eradicated in an extraordinary way;
- b. that to ensure legal certainty, avoid unintended legal interpretations, protect the social and economic rights of the public, and give fair treatment in eradicating corruption it is necessary to amend Law No. 31/1999 on Corruption Eradication;
- c. that based on the considerations in letter a and b, it is necessary to enact Law on the Amendment to Law No. 31/1999 on Corruption Eradication.

In view of:

1. Article 5 paragraph (1) and Article 20 paragraphs (2) and (4) of the 1945 Constitution;
2. Law No. 8/1981 on Law of Criminal Procedure (Statute Book of 1981 No. 76, Supplement to Statute Book No. 3209);
3. Law No. 28/1999 on Good Governance, free of Corruption, Collusion and Nepotism (Statute Book of 1999 No. 75, Supplement to Statute Book No. 3851);
4. Law No. 31/1999 on Corruption Eradication (Statute Book of 1999 No. 140, Supplement to Statute Book No. 3874);

**With the joint approval of
THE HOUSE OF REPRESENTATIVES
and
THE PRESIDENT OF THE REPUBLIC OF INDONESIA
DECIDES**

To stipulate: **LAW ON THE AMENDMENT TO LAW NO. 31/1999 ON CORRUPTION ERADICATION**

Article 1

Several provisions and elucidation of articles in Law No. 31/1999 on Corruption Eradication shall be amended as follows:

1. The elucidation of Article 2 paragraph (2) shall be amended without changing its substance so that it reads as contained in the elucidation of Article-by-Article point 1 of this Law.
2. The wording of Articles 5, 6, 7, 8, 9, 10, 11 and 12 shall be amended without referring to articles in the Criminal Code but by directly mentioning elements contained in each article of the Criminal Code to which they refer so that they read as follows:

Article 5

- (1) Any person(s) who:

- a. gives or promises something to a civil servant or state apparatus with the aim of persuading him/her to perform an action or not to perform an action because of his/her position in violation of his/her obligation; or
- b. gives something to a civil servant or state apparatus because of or in relation to something in violation of his/her obligation whether or not it is done because of his/her position,

shall be sentenced to a minimum of 1 (one) year's imprisonment and a maximum of 5 (five) year's imprisonment and/or be fined a minimum of Rp50.000.000 (fifty million rupiahs) and a maximum of Rp250.000.000 (two hundred and fifty million rupiahs).

- (2) The civil servant or state apparatus who receives a payment or promise as referred to in paragraph (1) letter a or b shall be sentenced to the same jail term as that referred to in paragraph (1).

Article 6

- (1) Anybody that:

- a. gives or promises something to a judge with the aim of influencing the decision of the case handed down to him/her for trial; or
- b. gives or promises something to an individual who according to the legislation is appointed a lawyer to attend a trial session with the aim of influencing the advice or views on the case referred to the court for trial,

shall be sentenced to a minimum of 3 (three) years imprisonment and a maximum of 15 (fifteen) years imprisonment and be fined a minimum of Rp150.000.000 (one hundred and fifty million rupiahs) and a maximum of Rp750.000.000 (seven hundred and fifty million rupiahs)

- (2) the judge receiving the payment or promise as referred to in paragraph (1) letter a or the lawyer receiving the payment or promise as referred to in paragraph (1) letter b, shall be sentenced to the same jail term as that referred to in paragraph (1).

Article 7

- (1)

- a. A building contractor, building consultant who at the time of building construction, or a seller of building materials who at the time of building material delivery commits a swindle that may endanger the safety of people or goods or the safety of the nation in the state of war;
- b. A person(s) assigned to supervise construction activities or the delivery of building materials who intentionally ignores the swindle as referred to in letter a;
- c. Anybody who at the time of delivering necessities to the National Defense Forces and/or the National Police commits a swindle that may endanger the safety of the nation in the state of war; or
- d. Anybody assigned to supervise the delivery of necessities to the National Defense Forces and/or the National Police who intentionally ignores the swindle as referred to in letter c,

shall be sentenced to a minimum of 2 (two) year's imprisonment and a maximum of 7 (seven) year's imprisonment and/or be fined a minimum of Rp100.000.000 (one hundred million rupiahs) and a maximum of Rp350.000.000 (three hundred and fifty million rupiahs).

- (2) The individual who receives the delivery of building materials or the individual who receives the delivery of necessities for the National Defense Forces and/or the National Police and allows the swindle to occur as referred to in paragraph (1) letter a or c, shall be sentenced to the same jail term as that referred to in paragraph (1).

Article 8

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily who intentionally embezzles money or securities kept because of his/her position, or lets or helps other person take or embezzle the money or securities, shall be sentenced to a minimum of 3 (three) year's imprisonment and a maximum of 15 (fifteen) year's imprisonment and be fined a minimum of Rp150.000.000 (one hundred and fifty million rupiahs) and a maximum Rp750.000.000 (seven hundred and fifty million rupiahs)

Article 9

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily, and intentionally falsifies books or register books specifically for administrative audit, shall be sentenced to a minimum of 1 (one) year's imprisonment and a maximum of 5 (five) year's imprisonment and be fined a minimum of Rp50.000.000 (fifty million rupiahs) and a maximum of Rp250.000.000 (two hundred and fifty million rupiahs).

Article 10

A civil servant or non-civil servant who is assigned to take up a general post continuously or temporarily, and intentionally

- a. embezzle, destroy, or damage goods, official documents, letters or registers used to convince or prove before the authorized official under his/her control because of his/her position; or
- b. lets other person embezzle, destroy or damage the goods, official documents, letters or registers; or
- c. helps other person embezzle, destroy or damage the goods, official documents, letters or registers, shall be sentenced to a minimum of 2 (two) year's imprisonment and a maximum of 7 (seven) year's imprisonment and be fined a minimum of Rp100.000.000 (one hundred million rupiahs) and a maximum of Rp350.000.000 (three hundred and fifty million rupiahs).

Article 11

A civil servant or state apparatus who receives a payment or a promise believed to have been given because of the power or authority related to his/her position or prize or promise which according to the contributor still has something to do with his/her position, shall be sentenced to a minimum of 1 (one) year's imprisonment and a maximum of 5 (five) year's imprisonment and be fined a minimum of Rp50.000.000 (fifty million rupiahs) and maximum of Rp250.000.000.000 (two hundred and fifty million rupiahs).

Article 12

- a. A civil servant or state apparatus who receives a payment or a promise believed to have been given to encourage him/her to do something or not to do anything because of his/her position in violation of his/her obligation;
- b. A civil servant or state apparatus who receive a payment believe to have been given due to the fact that he/she has done something or has not done something in relation to his/her position in violation of his/her obligation;
- c. A judge that receives a payment or a promise believed to have been given to influence the verdict of the case handed down to him/her for trial;
- d. An individual who according to the legislation is appointed a lawyer to attend a trial session, then receives payment or promise believed to have been given to influence the advice or view on the case referred to the court for trial;
- e. A civil servant or state apparatus who intentionally benefits himself/herself or other people in violation of law, or by abusing his/her power forces a person to give something, pay, or receive discounted payment, or to do something for himself/herself;
- f. A civil servant or state who, at the time of performing task, asks, receives or cuts payment from other civil servant or state apparatus or from the general treasurer as if the other civil servant or state apparatus or the general treasurer owed him/her;
- g. A civil servant or state apparatus who, at the time of performing task, asks or receives job or goods from other party as if the latter owed him/her;
- h. A civil servant or state apparatus who, at the time of performing task, uses state land for which the right to use land has been issued, as if based on the law it has harmed the people entitled to it, while in fact the action violates the law;
- i. A civil servant or state apparatus who directly or indirectly takes part in a contract work, procurement, or lease, in which at the time the activities is carried out he/she is assigned to arrange or supervise it wholly or partially,

shall be sentenced to life imprisonment or a minimum of 4 (four) year's imprisonment and a maximum of 20 (twenty) year's imprisonment and be fined minimum of Rp200.000.000 (two hundred million rupiahs) and a maximum of Rp1.000.000.000 (one billion rupiahs).

3. In between Article 12 and Article 3, 3 (three) new articles, namely Article 12A, Article 12B and Article 12C shall be inserted as follow:

Article 12A

- (1) The provisions on jail terms and fines as referred to in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 shall no longer apply to corruption cases of less than Rp5,000,000 (five million rupiahs).
- (2) The perpetrator of a corruption case of less than Rp5.000.000 (five million rupiahs) as referred to in paragraph (1) shall be sentenced to a maximum of 3 (three) year's imprisonment and fined a maximum of Rp50.000.000 (fifty million rupiahs).

Article 12B

- (1) Any gratification for a civil servant or state apparatus shall be considered as a bribe when it has something to do with his/her position and is against his/her obligation or task, with the provision that
 - a. when the gratification amounts to Rp10.000.000 (ten million rupiahs) or more, it is the recipient of the gratification who shall prove that the gratification is not a bribe;
 - b. when the gratification amounts to less than Rp10.000.000 (ten million rupiahs), it is the public prosecutor who shall prove that the gratification is a bribe.
- (2) A civil servant or state apparatus who is found guilty of the criminal offense as referred to in paragraph (1) shall be sentenced to life imprisonment or a minimum of 4 (four) year's imprisonment and a maximum of 20 (twenty) year's imprisonment and be fined a minimum of Rp200.000.000 (two hundred million rupiahs) and a maximum of Rp1.000.000.000 (one billion rupiahs).

Article 12C

- (1) The provisions as referred to in Article 12B paragraph (1) shall not be valid if the recipient reports the gratification to the Corruption Eradication Commission.
- (2) The recipient of gratification shall convey the report as referred to in paragraph (1) no later than 30 (thirty) working days after the gratification has been received.
- (3) The Corruption Eradication Commission within a period of 30 (thirty) working days at the latest after the receipt date of the report shall decide whether the gratification belongs to the recipient or the state.
- (4) The procedures for conveying the report as referred to in paragraph (2) and for determining, the status of the gratification as referred to in paragraph (3) shall be laid down in Law on the Corruption Eradication Commission.

4. In between Article 26 and Article 27, 1 (one) new article, namely Article 26A, shall be inserted as follows:

Article 26A

The valid evidentiary material in the form of tip as referred to in Article 188 paragraph (2) of Law No. 8/1981 on Law of Criminal Procedure, especially for corruption offense may be obtained from:

- a. other evidentiary material in the form of information uttered, sent received, or kept electronically by means of optical device or other similar equipment; and
- b. documents, namely any recorded data or information that can be seen, read and/or heard, and issued with or without the help of equipment, either those printed on paper and physical material

other than paper, or those recorded electronically in the form of writing, voice, picture, map, draft, photograph, letters, signs, figures or perforations that have meaning.

5. Article 37 shall be split into Article 37 and Article 37A with the provision that:
 - a. The substance of Article 37 originates from paragraph (1) and paragraph (2) and the clause in paragraph (2) reading “the information is used as something that benefit himself/herself” is changed into “the authentication shall be used by the court as the basis to state the accusation is unfounded”, so that Article 37 shall entirely read as follow

Article 37

- (1) The defendant shall have the right to prove that he/she did not commit a corruption offense.
 - (2) In the event that the defendant can prove that he/she did not commit a corruption offense, the authentication shall be used by the court as the basis to state that the accusation is unfounded.
- b. The substance of Article 37A originates from paragraph (3), paragraph (4), and paragraph (5) with the word “can” in paragraph (4) being omitted, the reference of paragraph (1) and paragraph (2) in paragraph (5) being abolished and paragraph (3), paragraph (4) and paragraph (5) being changed into paragraph (1), paragraph (2) and paragraph (3), so that Article 37A shall entirely read as follows:

Article 37A

- (1) The defendant shall be required to provide information on his/her entire wealth and the wealth of his wife or her husband, and his/her children as well as the wealth of any individual or corporation believed to have linkage with the case of which the defendant is accused.
- (2) In the event that the defendant can not prove that his/her wealth is proportional to the amount of his/her income or any additional income from his/her wealth, the information as referred to in paragraph (1) shall be used to strengthen the existing evidentiary material that the defendant has committed a corruption offense.
- (3) The provisions as referred to in paragraph (1) and paragraph (2) deal with criminal offences or main cases 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, so that public prosecutors are put under constant obligation to prove their accusation.

6. In between Article 38 and Article 39, 3 (three) new articles, namely Article 38A, Article 38B and Article 38C shall be inserted as follows:

Article 38A

The authentication as referred to in Article 12B paragraph (1) shall be done during the questioning in a court trial.

Article 38B

- (1) Anybody that is accused of committing one of the corruption 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, shall in turn prove his/her wealth for which he/she has not been indicted but is believed to have originated from corruption offense.
- (2) In the event that the defendant can not prove that the wealth as referred to in paragraph (1) does not originate from corruption offense, the wealth shall be considered as originating from corruption offense either and the judge shall he authorized to decided that the wealth shall be partially or entirely confiscated for the state.
- (3) The public prosecutor shall file a request for the confiscation of the wealth as referred to in paragraph (2) at the time when he/she reads his/her indictment of the main case.

- (4) The defendant shall file a request for authentication that the wealth as referred to in paragraph (1) does not originate from corruption offense at the time when he/she reads his defense in the main case and he/she can repeat it in the brief for an appeal and in the brief for a Supreme Court verdict.
- (5) The judge shall open a special court session to inspect the authentication from the defendant as referred to in paragraph (4).
- (6) In the event that the defendant is acquitted of all legal proceedings in the main case, the judge shall reject the request for the confiscation of the wealth as referred to in paragraph (1) and paragraph (2).

Article 38C

If after a decision had been made the Court has already gained fixed legal strength, and it is known that there still exists wealth owned by the convict believed to have originated from corruption offenses, which has not been confiscated for the state as referred to in Article 38B paragraph (2), the state shall file a civil indictment against the convict and/or his/her beneficiary.

7. In between Chapter VI and Chapter VII, a new chapter (Chapter VIA) on transitional provisions shall be inserted and the chapter contains 1 (one) article (Article 43) inserted between Article 43 and Article 44 so that Chapter VIA entirely reads as follows:

**CHAPTER VIA
TRANSITIONAL PROVISIONS**

Article 43A

- (1) The corruption offenses committed before the promulgation of Law No. 31/1999 on Corruption Eradication shall be investigated and decided based on Law No.3/I 971 on Corruption Eradication, with the provision that the maximum jail term beneficial to the defendant shall be based on Article 5, Article 6, Article 7, Article 8, Article 9, and Article 10 of this Law and Article 13 of Law No. 31/1999 on Corruption Eradication.
- (2) The provisions on minimum jail term as referred to in Article 5, Article 6, Article 7, Article 8, Article 9 and Article 10 of the Law and Article 13 of Law No. 31/1999 on Corruption Eradication shall not apply to corruption offenses committed before the enforcement of Law No. 31/1999 on Corruption Eradication.
- (3) The corruption offense committed before the promulgation of this Law shall be investigated and decided based on Law No. 31/1999 on Corruption Eradication, with the provision that the maximum jail term imposed on anybody involved in a corruption case of less than Rp5.0000.000 (five million rupiahs) shall be based on Article 12A paragraph (2) of this Law.

8. A new article (Article 13B) shall be added to CHAPTER VII before Article 44 as follows:

Article 43B

At the time when this Law begins to take effect, Article 209, Article 210, Article 387, Article 388, Article 415, Article 416, Article 417, Article 418, Article 419, Article 420, Article 423, Article 425 and Article 435 of Law of Criminal Procedure adj. Law No.1/1946 on Regulation of Criminal Procedure (Statute Book of the Republic of Indonesia II No. 9), Law No. 73/1958 on Stating the Enforcement of Law No. 1/1946 on Regulation of Criminal Procedure for the Entire Territory of the Republic of Indonesia and Amending Law of Criminal Procedure (Statute Book of 1958 No. 127, Supplement to Statute Book No. 1660) as has been several times amended the latest by Law No. 27/1999 on Amendment to the Law of Criminal Procedure Regarding Crimes Against the State Security, shall be declared null and void.

Article II

This Law shall take effect as of the date of promulgation.

For public cognizance, this Law shall be promulgated by placing it in the Statute Book of the Republic of Indonesia.

Endorsed in Jakarta

On November 21, 2001

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Sgd,

MEGAWATI SUKARNOPUTRI

Promulgated in Jakarta

On November 21, 2001

THE STATE SECRETARY,

sgd.

BAMBANG KESOWO

STATUTE BOOK OF THE REPUBLIC OF INDONESIA OF 2001 NUMBER 134

(Law No. 20/2001 dated November 21, 2001)

**THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 20 YEAR 2001
CONCERNING
AMENDMENT OF LAW NUMBER 31 YEAR 1999 CONCERNING ERADICATION
OF THE CRIME OF CORRUPTION**

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 evidentiary 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 basically agrees with the principle of the criminal code as referred to in Article 1 paragraph (2) of Law of Criminal Procedure.

II. ARTICLE BY ARTICLE

Article 1

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 up to Article 11

Sufficiently clear.

Article 12

Letter a up to 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 up to 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

Point 5 Article 37

Sufficiently clear.

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 and Point 8

Sufficiently clear.

Article II

Sufficiently clear.

SUPPLEMENT TO STATUTE BOOK OF THE REPUBLIC OF INDONESIA NO. 4150