PERBANDINGAN SANKSI PIDANA KORUPSI

DALAM HUKUM PIDANA INDONESIA DAN THAILAND

SKRIPSI

DISUSUN DAN DIAJUKAN KEPADA FAKULTAS SYARI'AH DAN HUKUM UNIVERSITAS ISLAM NEGERI SUNAN KALIJAGA YOGYAKARTA UNTUK MEMENUHI SEBAGIAN SYARAT-SYARAT GUNA PENYUSUNAN SKRIPSI

OLEH:

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2017

ABSTRAK

Korupsi adalah penyakit kronis yang dapat menyebabkan kerusakan pada segala kehidupan berbangsa dan bernegara. Hal tersebutlah yang mengakibatkan dunia menginginkan pelaksanaan pemberantasan tindak pidana korupsi. Indonesia telah banyak melakukan pemberantasan tindak pidana korupsi, begitu juga dengan Thailand. Sanksi pun yang diberikan beragam mulai dari pidana mati sampai pada pidana tambahan yang berupa pencabutan beberapa hak tertentu ataupun denda. Pada skripsi ini meneliti tentang perbandingan sanksi tindak pidana korupsi antara Indonesia dan Thailand. Indonesia yang sampai saat ini menerapkan hukuman mati sedangkan Thailand masih belum menerapkan. Disini akan dilihat bagaimana kedua Negara tersebut memberikan sanksi tindak pidana korupsi sesuai dengan undang-undang yang ada antara Indonesia dan Thailand.

Penelitian ini merupakan penelitian pustaka (*library research*) dengan pendekatan yuridis-normatif, mengenai pemberian sanksi tindak pidana korupsi antara Thailand dan Indonesia. Sedangkan teknik pengumpulan data dalam penelitian ini berupa studi pustaka. Studi kepustakaan dilakukan dengan cara meneliti undang-undang, dokumen dan literatur yang berhubungan dengan materi penelitian.

Hasil dari penelitian ini menunjukkan bahwa terdapat beberapa persamaan dan perbedaan pemberian sanksi tindak pidana korupsi antara Indonesia dan Thailand. Persamaan tersebut adalah dalam hal pemberian sanksi pidana penjara dan pidana tambahan. Sedangkan perbedaan yang terdapat antara keduanya adalah pemberian sanksi pidana mati. Indonesia menerapkan sanksi pidana mati tersebut sedangkan Thailand masih belum. Selain itu waktu pidana penjara yang berbeda, Thailand cenderung memberikan sanksi yang ringan untuk tindak pidana korupsi dibandingkan dengan Indonesia. Akan tetapi, bagi para pejabat tertentu, Thailand cenderung memberikan sanksi yang lebih berat dari pada Indonesia.

Kata kunci: Perbandingan sanksi pidana, tindak pidana korupsi, Indonesia dan Thailand.

SURAT PERNYATAAN KEASLIAN SKRIPSI

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Menyatakan dengan sesungguhnya, bahwa skripsi yang berjudul **"Perbandingan Sanksi Pidana Korupsi dalam Hukum Pidana Indonesia dan Thailand"** adalah benar hasil karya atau laporan penelitian yang saya lakukan sendiri dan bukan plagiat dari hasil karya orang lain, kecuali yang secara tertulis diacu dalam penelitian ini dan disebutkan dalam acuan daftar pustaka.

Demikian surat pernyataan ini saya buat dengan sebenar-benarnya.

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Setelah membaca, meneliti, memberikan petunjuk dan mengoreksi serta mengadakan perbaikan seperlunya, maka kami selaku pembimbing berpendapat bahwa skripsi Saudara:

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Sudah dapat diajukan kembali kepada Jurusan Ilmu Hukum, Fakultas Syari'ah dan Hukum Universitas Islam Negeri Sunan Kalijaga sebagai salah satu syarat untuk memperoleh gelar Sarjana Strata Satu dalam Ilmu Hukum.

Dengan ini kami mengharap agar skripsi/tugas akhir Saudara tersebut di atas dapat segera dimunaqasyahkan. Atas perhatiannya kami ucapkan terima kasih.

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MOTTO

الر ۚ كِتَابٌ أَنْزَلْنَاهُ إِلَيْكَ لِتُخْرِجَ النَّاسَ مِنَ الظُّلُمَاتِ إِلَى النُّورِ بِإِذْنِ رَبِّهِمْ إِلَىٰ صِرَاطِ الْعَزِيزِ الْحَمِيدِ

(Alif, laam raa. (Ini adalah) Kitab yang Kami turunkan kepadamu supaya kamu mengeluarkan manusia dari gelap gulita kepada cahaya terang benderang dengan izin Tuhan mereka, (yaitu) menuju jalan Tuhan Yang Maha Perkasa lagi Maha Terpuji. [14] : 1)

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12. Kawan-saudara penghuni kost.
13. Para pemberi ilmu baik yang sempat bertemu maupun yang belum.

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Yogyakarta, 3 Mei 2017

Penyusun,

Miss Nootchanee Sukrinuan

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DAFTAR ISI

BAB I

PENDAHULUAN

A. Latar Belakang

Hampir setiap hari mendengar di berbagai media tentang dakwaan dan pengadilan pelaku tindak pidana korupsi,sanksi pidana korupsi,pidana pencurian,perampokan,dan tindak pidana ekonomi. Akan tetapi, kita sering pula terusik dan bertanya-tanya bilamana kita membaca tentang sanksi pidana yang dijatuhkan pada pelaku-pelaku tindak pidana tersebut.Seorang pencuri,yang mengambil sebuah handphone di jatuhi sanksi pidana 3-4 bulan.Bahkan seringkali, seorang pencuri diadili langsung oleh masyarakat, dan harus menderita pemukulan yang dapat menewaskannya. Sedangkan, seorang pelaku korupsi sekian milyar rupiah, dipidana 4-5 tahun dengan denda sekian rupiah. Seringkali pula, terdengar berita bahwa seorang koruptor yang dipenjara, tetap bisa bebas dan dapat menikmati hidup yang mewah walau dalam kamar penjara. Hati kecil dan nurani ini terusik, karena kita berpendapat bahwa korupsi itu merusak kehidupan banyak orang, bahkan bisa merusak kehidupan ekonomi sebuah bangsa, seperti Indonesia ini maupun di thailand. Sedangkan pencurian hanya merusak kehidupan satu dua keluarga. Kita tahu, bahwa dalam KUHP tindak pidana pencurian tidak berada dalam satu kategori dengan tindak pidana korupsi, walau kedua-duanya dapat dipicu oleh kebutuhan ekonomi seseorang.

Berdasarkan kententuan dalam penelitian yang saya lakukan adapun perbedaan sanksi pidana korupsi dalam hukum pidana Indonesia dan Thailand sebagai berikut :

Pada tahun 2016 KPK melakukan penanganan tindak pidana korupsi dengan rincian:

penyelidikan 96 perkara, penyidikan 99 perkara, penuntutan 76 perkara, inkracht 70 perkara, dan eksekusi 81 perkara. Dan total penanganan perkara tindak pidana korupsi dari tahun 2004-2016 adalah penyelidikan 848 perkara, penyidikan 567 perkara, penuntutan 465 perkara, inkracht 390 perkara, dan eksekusi 414 perkara.[1]

Tindak pidana korupsi yang ditangani pada skala nasional diperiksa dan diputus, semua terdakwa divonis bersalah. Pengadilan Tipikor juga tidak pernah menjatuhkan vonis percobaan atau di bawah satu tahun penjara. Dari semua perkara tersebut, rata-rata divonis di atas empat tahun.[2] Jika dibandingkan dengan tahun sebelumnya, keadaan ini lebih tinggi penanganannya, baik penyidikan, penyelidikan maupun kasus yang inkrach.

Korupsi di Indonesia disinyalir terjadi di semua bidang dan sektor pembangunan. Apalagi setelah ditetapkannya pelaksanaan otonomi daerah, berdasarkan Undang-Undang Nomor 22 Tahun 1999 tentang Pemerintahan Daerah yang diperbaharui dengan Undang-Undang Nomor 32 tahun 2004, 23 Tahun 2014 dan No. 1 Tahun 2015 tentang Pemerintahan Daerah, disinyalir korupsi terjadi bukan hanya pada tingkat pusat tetapi juga pada tingkat daerah dan bahkan menembus ke tingkat pemerintahan yang paling kecil di daerah.

Menurut Abraham Samad, peringkat Indonesia dalam Indeks Persepsi

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[1] https://acch.kpk.go.id/id/statistik/tindak-pidana-korupsi, diakses pada tanggal 21/03/17

[2] Andi Hamzah , *Perbandingan Pemberantasa korupsi di Berbagai Negeri,* (Jakarta: Sinar Grafika, 2005), hlm. 9-67.

Korupsi (IPK) pada tahun 2012 menempati posisi 100 dengan IPK 3.0.[3] sedangkan pada tahun 2015 dan 2016 menduduki peringkat 90 dari 179 negara. Sejak 2015 sampai 2016 masing-masing naik 1 poin dan pada 2015 dua poin dari penelitian yang dikeluarkan oleh Transparancy International yang menempati urutan 88 dari 168 negara[4]. Naiknya peringkat Indonesia lumayan signifikan jika kita cerminkan dengan penindakan korupsi di tahun ini. Dan posisi Indonesia berada di atas Philipina, Laos, Kamboja dan Myanmar.

Penangan korupsi di Indonesia terus membaik. Akan tetapi Indonesia belum mampu menandingi skor dan peringkat Malaysia (skor 50), Singapura (85), Thailand (38). "Indonesia lebih baik dari Filipina (35), Vietnam (31), dan Myanmar (22). Walaupun kalah, skor Indonesia semakin mendekati rerata regional ASEAN (40), Asia Pasifik (43) dan negara-negara 620 (54). 'Tahun ini, Indonesia merupakan satu-satunya negara di ASEAN yang mengalami kenaikan kembar, naik skor dan peringkat. Hal tersebut menjadi indikasi adanya progres pemberantasan korupsi di Indonesia meskipun sangat pelan.[5]

Korupsi telah menjadi masalah serius bagi bangsa Indonesia, karena telah merambah ke seluruh kehidupan masyarakat yang dilakukan secara sistematis, sehingga memunculkan stigma negatif bagi Negara dan bangsa Indonesia dalam pergaulan masyarakat internasional.Berbagai cara telah ditempuh untuk

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[3] https://www.kpk.go.id/id/berita/siaran-pers/91-bahas-kerja-sama-duta-besar-negara-negara-skandinavia-kunjungi-kpk, diakses 21/03/17

[4] http://ksp.go.id/indeks-persepsi-korupsi-indonesia-membaik/, diakses pada tanggal 21/03/17

[5] http://kpk.go.id/id/berita/berita-sub/3208-pemberantasan-korupsi-membaik, diakses pada tanggal 21/03/17

pemberantasan korupsi bersamaan dengan semakin canggihnya(*sophisticated)* modus operandi tindak pidana korupsi.[6]

Jika dibandingkan dengan Thailand, tingkat atau indeks persepsi korupsi, Indonesia masih berada dibawah Thailand. Di tingkat regional, Indonesia menempati posisi ke 15 dengan skor 36. Sedangkan Thailand berada di posisi ke 11 dengan skor 38. Hal ini menunjukkan bahwa Indonesia lebih tinggi dua angka (skor yang dimiliki) dan kalah tiga peringkat dari Thailand. Tetapi, menurut data yang dirilis oleh Transparancy International, Indonesia lebih progresif dalam menangani tindak pidana korupsi dibanding Thailand. Pada tahun 2015 ranking dan peringkat Indonesia naik, sedangkan Thailand mengalami penurunan ranking dan stagnasi skor.[7]

Menurut PERC, banyak negara yang sulit melepaskan diri dari pidana korupsi karena upaya mengenai banyaknya korupsi di tiap negara dan selalu terbentuk kepentingan politik. Setuasi di Thailand sebenarnya tidak lebih buruk ketimbang di Indonesia ataupun di negara Thailand, tetapi korupsi di sana terlalu masuk ke dunia politik, berbeda dengan di Tiongkok dan indonesia. Jika di lihat pada survei tahun 2007, Thailand bersama Indonesia masih menjadi negara terkorup ke dua di asia setelah Filipina. Pemerintah Thailand dinilai gagal mengatasi masalah pidana korupsi yang terjadi di negaranya.[8]

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[6] Chaerudin, *Hukum Tindak Pidana Korupsi*,(bandung: PT. Rafika Aditama, 2008,), hlm. 1

[7] http://www.ti.or.id/index.php/publication/2016/01/27/corruption-perceptions-index-2015, diakses 21/03/17

[8] http://www.thairath.co.th/online.php?Section=newsthairathonline&content=39964, diakses 09 Maret 2017.

Thailand dikenal sebagai negara mayoritas penduduk beragama Budha, masalah korupsi di negara ini sebenanya tidak jauh berbeda parahnya dengan Indonesia yang di kenal sebagai negara religius dengan 87 persen penduduk beragama Islam. Perilaku pidana korupsi besar-besaran yang dilakukan para politikus dalam demokrasi thailand sudah terjadi dari masa ke masa dengan berbagai macam bentuk. Walaupun kejahatan ini sangat dibenci dan dikutuk segala macam oleh rakyat thailand, namun tetap saja kejahatan ini dilakukan sebagai kegiatan yang tidak dapat lagi dihenti atau dipisahkan dari negara ini.

Atas dasar demokrasi bohongan (palsu) yang didapati dari negara kapitalisme barat, mengakibatkan terjadinya berbagai bentuk korupsi atau yang disebut secara kasar oleh masyarakat thailand sebagai "*kan-kinban kinmuang"(eating the state)* besar-besaran menjadi sulit di obati.

Adanya kesadaran bahwa dalam sangsi pidana korupsi yang berkaitan di thailand muncul dalam kebijakna tiap negara terdapat di dalam *The Consutututution of the Kingdom of Thailand B,E. 2517 (*Konstitusi kerajaan Thailand 1974) pasal 66," yang menyatakan bahwa negara harus mengorganisasikan sistem secara efisien pada perkerjaan pelayanan pemerintah dan pekerjaan lain dari negara serta harus mengambil segalah langkah untuk mencegah dan memberantas pencarian keuntungan dengan jalanya korupsi. Sedangkan pada pengaturan operasionalnya juga diatur dalam Bagian 125 yang mengatakan bahwa setiap pejabat pemerintahan yang melakukan tindakan semena-mena dan melakukan korupsi diancam dengan dua kali lipat hukum yang diberikan dari yang diberikan untuk

pelanggaran yang sama.[9]

Adapun pengambiloan judul diatas didasarkan pada tingkat tindak pidana korupsi kedua negara masih tinggi. Selain hal tersebut, juga karena alasan sosiologis yang mayoritas masyarakat religius antara Indonesia dan Thailand. 95% dari 65.104.000 populasi penduduk Thailand pada tahun 2015 memeluk agama Buddha sisanya adalah menganut agama Islam, Kristen dan hindu.[10] Sedangkan di Indonesia, 85 persen penduduknya menganut agama Islam. Sedangkan sisanya menganut agama Kristen, hindu, Buddha dan konghucu.[11]

B. Rumusan masalah

Berdasarkan latar belakang masalah di atas. Penulis merumuskan beberapa masalah yang akan menjadi pokok pembahasan antaran lain.

1. Bagaimanakah perbandingan sanksi pidana korupsi dalam hukum pidana Indonesia dengan Thailand?
2. Apakah persamaan serta perbedaan sanksi pidana korupsi dalam hukum pidana Indonesia dan Thailand?

C. Tujuan dan Manfaat Penelitian

Berangkat dari perumusan pokok masalah yang telah dikemukakan oleh karena setiap tindakan atau kegiatan yang di lakukan seseorang pada prinsip umumnya pasti memilik tujuan yang hendak di capai, maka yang menjadi tujuan

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[9] https://www.nacc.go.th/ewt_news.php?nid=943, diakses 20/03/17

[10] https://id.wikipedia.org/wiki/Thailand, diakses pada 21/03/17

[11] http://nasional.republika.co.id/berita/nasional/umum/16/01/09/o0ow4v334-persentase-umat-islam-di-indonesia-jadi-85-persen, diakses 21/03/17

pokok dalam penelitian ini adalah :

1. Untuk mendeskripsikan perumusan perbandingan sanksi pidana korupsi dalam hukum pidana Indonesia Dan Thailand.
2. Untuk menganalisa persamaan serta perbedaan sanksi pidana korupsi dalam hukum pidana Indonesia dan Thailand.

Selanjutnya kegunaan penelitian ini, harapan penyusun semoga dapat mendatangkan manfaat dalam pengembangan keilmuan hukum islam dan produk hukum dihasilkan dari kebijakan pemerintah sebagai berikut:

1. Manfaat praktis penelitian ini adalah dapat menambah wawasan berpikir seputar perbandingan sanksi hukum dalam keilmuan hukum baik dalam perundang-undangannya maupun kepustakaan, Indonesia dan Thailand lewat normal yang ada pada masyarakat atau pejabat yang berkarena sanksi pidana korupsi dalam hukum pidana Indonesia dan Thailand.
2. Dapat mengatahui sumber hukum sanksi pidana korupsi dalam pidana Indonesia maupun Thailand serta mengatahui sistem positif Thailand dan Indonesia tentang tindak pidana korupsi yang berlaku.
3. Dapat menemukan kesamaan serta perbedaan persepsi dan upaya intergritas hukum baik menurut pidana Indonesia maupu pidana di Thailand, sehingga dapat diggunakan sebagai langkah awal bagi penelitian berikutnya yang kebetulan ada titik singgung dalam masalah ini.

D. Telaah Pustaka

Untuk menghindari adanya kemungkinan pengulangan penelitian yang pernah dilakukan oleh penelitian sebelumnya dan untuk membuktikan bahwa

judul ini belum pernah di jadikan sebagai objek penelitian, maka penulisan melakukan penelusuran terhadap penelitian-penelitian terdahulu, adapun beberapa penilitian di antaranya:

Skripsi dengan judul *" Tindak Pidana Korupsi Dalam Perspektif Fiqh Jinayah dan Hukum Positif Thailand"* yang di tulis oleh Narong Mat Adam, Fakultas Syariah dan Hukum Universitas Islam Negeri Sunah Kalijaga Yogyakarta.[12] membahas tentang Pelaksanaan Tindak Pidana Korupsi dalam Perspektif Fiqih Jinayah dalam Hukum Positif di Thailand, berserta sumber-sumber hukum serta perbedaan persepsi upaya intergritas hukum di Thailand dan peraturan tersebut. Adapun persamaan dan perbedaan penelitian dengan penelitian penulisan bahwa penelitian ini sama-sama melakukan penelusuran mengenai pidana korupsi di Thailand.

Adapun karya ilmiah yang membahas masalah korupsi baik berupa uraian secara khusus menurut hukum positif Indonesia, menurut hukum pidana Islam, ataupun mengurai dua-duanya kedalam satu penelitian Abdurahman Hakim yang berjudul " Tinjauan Hukum Pidana Islam Terhadap Delik Gratifikasi (*Studi Analisis Pasal 12 B UU No. 20 Tahun 2001 tentang Perubahan Atas UU No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi)* Skripsi ini menggambarkan rumusan teori delik gratifikasi didalam sistem peraturan undang-undangan tindak pidana korupsi di Indonesia, serta menjelaskan kedudukan permasalahan ini dalam kostelasi hukum Islam, yang juga didalamnya menganalisis produk-produk sistem perundang-undangan yang dihasilkan dari

[12] Narong Mat Adam, *Tindak Pidana Korupsi Dalam Perspektif Fiqh Jinayah dan Hukum Positif Thailand*, Skripsi, Fakultas Syariah dan Hukum UIN Sunan Kalijaga Yogyakarta, 2008.

setiap kebijakan pemerintah seputar upaya penanggulangan delik gratifikasi itu sendiri.

Demikianlah beberapa karya dan hasil penelitian yang telah penyusun telaah dan masih ada beberapa karya tulis lagi yang belum terjangkau dari pengamatan baik yang berupa buku, jurnal maupun skripsi terutama karya yang pembahasanya serupa masalah korupsi ini sendiri.

E. Kerangka Teoretik

Berhubungan dengan penyataan di atas, untuk memberikan landasan berpijak dalam penulisan penelitian ini, maka dalam kerangka teoristik penyusun akan mendeskripsikan teori-teori yang digunakan dalam penelusuri pembahasan dalam penelitian ini, sehingga pada akhirnya akan di dapati pembahasan yang sistematis dan konprehensif dengan data-data yang valid.

Teori-Teori yang berkait dengan penelitian ini sebagai berikut:

1. Tindak Pidana

Tindak pidana merupakan suatu pengertian dasar dalam hukum pidana. Hukum pidana berpokok pada perbuatan yang dapat dipidana dan pidana. Perbuatan yang dapat dipidana atau yang disingkat dengan perbuatan jahat itu merupakan obyek dari ilmu pengetahuan hukum pidana.

Istilah tindak pidana berasal dari istilah hukum Belanda yaitu ”strafbaar feit”, seperti yang ada dalam Wetboek van Strafrecht atau Kitab Undang-Undang Hukum Pidana ini mempunyai berbagai istilah-istilah yang maksudnya sama dengan ”strafbaar feit “.[13]

[13] Wirjono Projodikoro, *Asas-asas Hukum Pidana di Indonesia*, (Bandung: PT. Eresco, 1989),

Moeljatno menggunakan istilah perbuatan pidana, yang didefinisikan sebagai ”perbuatan yang dilarang oleh suatu aturan hukum larangan mana yang disertai ancaman (sanksi) yang berupa pidana tertentu, bagi barangsiapa melanggar ancaman tersebut.[14]

Sedang menurut Sudarto, tindak pidana berarti suatu perbuatan yang pelakunya dapat dikenakan hukuman pidana. Dan pelaku ini dapat dikatakan sebagai subyek hukum pidana.[15]

Moeljatno mengatakan, perbuatan pidana adalah perbuatan oleh aturan hukum pidana dilarang dan diancam dengan pidana bagi barangsiapa yang melanggar larangan tersebut. Lebih lanjut beliau mengemukakan mengenai perbuatan pidana menurut wujudnya atau sifatnya, perbuatan pidana itu adalah perbuatan yang melanggar hukum. Perbuatan yang merugikan masyarakat, dalam arti bertentangan dengan atau menghambat terlaksananya tatanan dalam pergaulan masyarakat yang dianggap adil dan baik.[16]

2. Pidana Dan Pemidanaan

Pidana dan pemidanaan merupakan dua pengertian yang kerapkali disebut-sebut dalam khasanah ilmu hukum pidana. Kedua pengertian tersebut mempunyai arti yang berbeda, pidana erat kaitannya dengan hukuman terhadap suatu pelanggaran norma hukum pidana, sedangkan pemidanaan merupakan penentuan hukumnya atas suatu peristiwa di bidang hukum pidana. Menurut

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hlm. 55

[14] Moeljatno, *Asas-asas Hukum Pidana*, (Rineka Cipta: Jakarta, 1983), hlm. 59

[15] Sudarto, *Hukum Pidana I*, (Semarang: Yayasan Sudarto, 1990), hlm. 11

[16] *Ibid*., hlm. 39

Van Hamel arti dari pidana/ *straf* menurut hukum positif dewasa ini adalah ”Suatu penderitaan yang khusus, yang telah dijatuhkan oleh kekuasaan yang berwenang untuk menjatuhkan pidana atas nama negara sebagai penanggung jawab dari ketertiban hukum umum bagi seorang pelanggar, yakni semata-mata karena orang tersebut telah melanggar suatu peratura hukum yang harus ditegakkan oleh negara” .

3. Sanksi Pidana

Hukum pidana merupakan bagian dari tata hukum Indonesia, sifatnya yang mengandung sanksi istimewa yang membedakannya dengan tata hukum yang lain, maka seringkali hukum pidana itu disebut sebagai hukum sanksi istimewa. Dalam sanksi pidana yang tajam, terkandung suatu yang tragis dan menyedihkan, sehingga hukum pidana dikatakan oleh Sudarto sebagai “mengiris daging sendiri” atau ”pedang bermata dua”. Makna dari ucapan ini adalah bahwa hukum pidana yang melindungi benda hukum (nyawa,harta benda, kemerdekaan, kehormatan) dalam pelaksanaannya, ialah apabila ada pelanggaran terhadap larangan dan perintahnya justru mengadakan perlukaan terhadap benda hukum di pelanggar sendiri.[17]

4. Tujuan Pemidanaan

Tidak ada pemidanaan yang tidak memiliki tujuan apapun kecuali ditujukan untuk memberikan efek jera dan pendidikan yang menyadarkan bahwa tindakan tersebut merupakan hal yang dilarang.

Menurut Sudarto, Pidana adalah nestapa yang diberikan oleh negara

[17] *Ibid*, hlm 45

kepada seseorang yang melakukan pelanggaran terhadap ketentuan undang-undang (hukum pidana), sengaja agar dirasakan sebagai nestapa.[18] Pemberian nestapa atau penderitaan yang sengaja dikenakan kepada seorang pelanggar ketentuan Undang-undang tidak lain dimaksudkan agar orang itu menjadi jera. Hukum pidana sengaja mengenakan penderitaan dalam mempetahankan norma-norma yang diakui dalam hukum. Sanksi yang tajam dalam hukum pidana inilah yang membedakannya dengan bidang-bidang hukum yang lain. Inilah sebabnya mengapa hukum pidana harus dianggap sebagai sarana terakhir apabila sanksi atau upaya-upaya pada bidang hukum yang lain tidak memadai.

Sedangkan Van Hammel mengartikan pidana adalah suatu penderitaan yang bersifat khusus yang telah dijatuhkan oleh kekuasaan yang berwenang untuk menjatuhkan pidana atas nama Negara sebagai penanggung jawab dari ketertiban hukum umum bagi seorang pelanggar, yakni semata-mata karena orang tersebut telah melanggar suatu peraturan hukum yang harus ditegakkan oleh Negara.[19]

Beberapa pengertian serta ruang lingkup pidana atau *straft* atau *punishment* tersebut di atas, dapat dikatakan bahwa pidana mengandung unsur-unsur atau ciri-ciri sebagai berikut.

1. Pada hakekatnya merupakan suatu pengenaan penderitaan atau nestapa atau akibat-akibat lain yang tidak menyenangkan.

[18]Sudarto, *Kapita Selekta Hukum Pidana*, *(*Bandung: Alumni, 1981), hlm. 110

[19]Tolib Setyadi, *Pokok-pokok Hukum Penitensier Indonesia*, (Bandung: Alfabeta, 2010), hlm.19

2. Diberikan dengan sengja oleh orang atau badan yang mempunyai kekuasaan (oleh yang berwenang).
3. Dikenakan kepada seseorang yang telah melakukan tindak pidana menurut undung-undang.

penjatuhan pidana bukanlah sekedar untuk melakukan pembalasan atau pengimbalan. Pembalasan itu sendiri tidak mempunyai nilai tetapi hanya sebagai sarana melindungi kepentingan masyarakat. Lebih lanjut teori ini menjelaskan bahwa tujuan dari penjatuhan pidana adalah sebagai berikut:

a. Teori menakutkan yaitu tujuan dari pidana itu adalah untuk menakut-nakuti seseorang, sehingga tidak melakukan tindak pidana baik terhadap pelaku itu sendiri maupun terhadap masyarakat (preventif umum).

b. Teori memperbaiki yaitu bahwa dengan menjatuhkan pidana akan mendidik para pelaku tindak pidana sehingga menjadi orang yang baik dalam masyarakat (preventif khusus).[20]

Selanjutnya Van Hamel yang mendukung teori prevensi khusus memberikan rincian sebagai berikut:

a. Pemidanaan harus memuat suatu anasir yang menakutkan supaya sipelaku tidak melakukan niat buruk.
b. Pemidanaan harus memuat suatu anasir yang memperbaiki bagi terpidana yang nantinya memerlukan suatu reclessering.

[20]Roeslan Saleh, *Stelsel Pidana Indonesia* , (Jakarta: Bina Aksara, 1987), hlm. 26

c. Pemidanaan harus memuat suatu anasir membinasakan bagi penjahat yang sama sekali tidak dapat diperbaiki lagi.

d. Tujuan satu-satunya dari pemidanaan adalah mempertahankan tata tertib hukum.[21]

Menurut pandangan modern, prevensi sebagai tujuan dari pidana adalah merupakan sasaran utama yang akan dicapai sebab itu tujuan pidana dimaksudkan untuk kepembinaan atau perawatan bagi terpidana, artinya dengan penjatuhan pidana itu terpidana harus dibina sehingga setelah selesai menjalani pidananya, terpidana akan menjadi orang yang lebih baik dari sebelum menjalani pidana.[22]

F. Metode Penelitian

Untuk mecapai tujuan, maka metode merupakan suatu cara utama yang dipakai untuk menguji suatu kerangkean hipotesa dengan dengan mengunakan alat-alat tersebut.dalam melakukan suatu penelitian terhadap masalah sebagaimana di uraikan di atas, metode yang digunakan penilitian dalam penyusunan penelitian ini adalah :

1. Jenis penelitian

Penyusunan penulisan skripsi ini mengunakan jenis penelitian kepustakaan (*library research),* dimana sumber faktanya diperoleh dari sumber-sumber tertulis, yaitu mengumpulkan, mengklasifikasikan bahan-bahan pustaka *(literature)* baik berupa buku, jurnal, majalah, media online, dan sumber lainya yang relefan dengan topik yang di kaji.

[21]Djoko Prakoso, *Hukum Penitensir Di Indonesia,* (Bandung: Armico, 1988), hlm. 20

[22] *Ibid*., hlm. 23

2. Sifat penelitian

Penelitian ini adalah bersifat deskriptif analisis komparatif. Deskriptif menggambarkan sifat-sifat suatu individu, keadaan, gejala atau kelompok tertentu secara tepat, serta menentukan frekuansi atau penyebaran suatu *gejala/frekuansi* adanya hubungan tertentu antara suatu gejalah lain. Penelitian ini berupaya mendeskripsikan aspek pengertian dan dasar hukum serta perumusan hukumnya dalam sanksi pidana korupsi dalam hukum pidana Indonesia dan Thailand.

3. Tehnik pengumpulan data

Tehnik pengumpulan data yang digunakan penulisan dalam penelitian ini adalah :

a. Observasi tidak langsung

Observasi adalah mengumpul data-data melalui pengamatan yang tanpa harus turun di lapangan secara langsung tanpa manipulasi data.

b. Library/pustaka

Penelitian pustaka adalah penelitian yang dilakukan dengan menggunakan bahan utama dari berbagai literatur, baik buku, jurnal, media online dan peraturan perundang-undangan.

4. Sumber data

Beberapa sumber data yang dikunakan dalam penelitian ini diantaranya adalah:

a. Data primer

Data primer yakni bahab yang erat hubungannya dengan hukum primier, dan dapat membantu menganalisis serta memahami bahan hukum primer. Data ini

dapat berupa buku-buku karangan para ahli, modul, surat kabar berupa karya ilmiah seperti bahan pustaka, jurnal dan sebagainya serta bahan lainnya terkait dengan penelitian yang akan dilakukan.

b. Data sekuder

Data skunder adalah yang diperoleh dari masyarakat, data ini didapat dari sumber pertama individu atau perorangan seperti hasil wawancara di Indonesia dan Thailand. Data ini diperoleh secara langsung dari subyek penelitian yang dapet berupa wawancara

c. Bahan data tersier

Bahan tersier adalah bahan yang memberikan informasi tentang bahan hukum primer dan sekunder seperti kata-kata yang butuh penjelasan dari Kamus Besar Bahasa Indonesia, dan liannya dari media *internet.*

5. Analisis data

Data yang diperoleh dari data primer, sekunder, dan tersier kemudian dianalisis dengan teknik kualitatif, dan disajikan secara yuridis-normatif yang berkaitan erat dengan penelitian ini.

Analisis data berfungsi untuk menginterprestasikan data-data yang kemudian di analisa dengan menggunakan metode kualitatif. Yaitu analisis yang ditujukan terhadap data yang bersifat kualitas, mutu dan sifat fakta atau gejala-gejala yang berlaku. Analisis hasil penelitian berisi uraian tentang cara-cara analisis yang mengambarkan bagaimana suatu data dianalisis dan apa manfaat data yang terkumpul untuk dipergunakan dalam memecahkan masalah penelitian.

G. Sistematika Pembahasan

Dalam penulisan skripsi ini terdiri dari lima bab, yaitu sebagai berikut :

Bab satu, merupakan bab pendahuluan yang menguraikan mengenai latar belakang masalah mengenai pemilihan judul penelitian, rumusan masalah, tujuan dan kegunaan penelitian, kerangka teori serta sistematika penulisan.

Bab dua, membahas tentang landasan teori yang berisikan tinjauan umum tentang tindak pidana korupsi.

Bab tiga mengurai tentang gambaran umum perbandingan sanksi pidana korupsi dalam hukum pidana korupsi di Indonesia dan Thailand serta undang-undang yang berkaitan dengan pidana hukum tersebut.

Bab empat berisikan analisis yang berkaitan dengan undang-undang dalam perbandingan sanksi pidana korupsi dalam hukum pidana korupsi di Indonesia dan Thailand serta masalah-masalah yang berkaitan dengan pidana hukum tersebut.

Bab lima penutup yang terdiri atas kesimpulan dan saran. Yang merupakan intisari dari pembahasan bab-bab seblumnya, sedankan saran brisi kritik dan masukan.

BAB V

PENUTUP

A. Kesimpulan

Pembahasan pada bab-bab sebeumnya mengenai perbandingan sanksi tindak pidana korupsi antara Indonesia dan Thailand dapat disimpulkan sebagai berikut:

1. Sanksi tindak pidana antara Indonesia dan Thailand hampir memiliki sistem yang sama. Indonesia dan Thailand menerapkan sanksi pidana penjara bagi siapapun yang melakukan tindak pidana korupsi. Selain itu pidana tambahan juga diberikan oleh kedua Negara tersebut. Hanya saja di Thailand menerapkan sanksi duakali lipat dari ancaman pidana yang ditentukan bagi para pejabat tinggi NCC yang melakukan tindakan yang tidak adil atau tindak pidana korupsi, sedangkan Indonesia tidak menerapkan hal itu. Indonesia hanya menerapkan sanksi pidana penjara secara umum yang lebih berat daripada Thailand.
2. Hal-hal yang kesamaan dan perbedaan antara Indonesia dan Thailand dapat dilihat dengan jelas pada pemberian sanksi pidana mati. Indoensia sampai sat ini memiliki dan menggunakan sanksi pidana mati untuk pelaku tindak pidana korupsi, sedangkan Thailand masih belum. Meskipun ada rencana untuk menerapkan juga hukuman mati seperti Indonesia.

B. Saran

Dari kesimpulan di atas menuntut untuk bekerja lebih baik kepada:

1. Untuk pemerintahan Indonesia baik legislatif, eksekutif dan yudikatif agar membuat dan menerapkan satu hal yang ada di Thailand, yakni, sanksi dua kali lipat bagi pejabat Negara dan penegak hukum yang melakukan tindakan tang tidak adil atau korupsi, sehingga dapat mengurangi terjadinya tindak pidana korupsi.
2. Untuk pemerintah Thailand, agar melihat sanksi pidana bagi pelaku tindak pidana korupsi di Indonesia yang lebih efektif memberikan efek jera kepada pelaku tindak pidana korupsi, misalnya seperti hukuman mati atau hukuman tambahan lain.

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LAMPIRAN-LAMPIRAN

UNDANG-UNDANG REPUBLIK INDONESIA

NOMOR 20 TAHUN 2001

TENTANG

PERUBAHAN ATAS UNDANG-UNDANG NOMOR 31 TAHUN 1999 TENTANG PEMBERANTASAN TINDAK PIDANA KORUPSI

DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

Menimbang:

a. bahwa tindak pidana korupsi yang selama ini terjadi secara meluas, tidak hanya merugikan keuangan negara, tetapi juga telah merupakan pelanggaran terhadap hak-hak sosial dan ekonomi masyarakat secara luas, sehingga tindak pidana korupsi perlu digolongkan sebagai kejahatan yang pemberantasannya harus dilakukan secara luar biasa;

b. bahwa untuk lebih menjamin kepastian hukum, menghindari keragaman penafsiran hukum dan memberikan perlindungan terhadap hak-hak sosial dan ekonomi masyarakat, serta perlakuan secara adil dalam memberantas tindak pidana korupsi, perlu diadakan perubahan atas Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi;

c. bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a dan huruf b, perlu membentuk Undang-undang tentang Perubahan Atas Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

Mengingat:

1. Pasal 5 ayat (1) dan Pasal 20 ayat (2) dan ayat (4) Undang-Undang Dasar 1945;

2. Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76, Tambahan Lembaran Negara Nomor 3209);

3. Undang-undang Nomor 28 Tahun 1999 tentang Penyelenggara Negara yang Bebas dari Korupsi, Kolusi, dan Nepotisme (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 75, Tambahan Lembaran Negara Nomor 3851);

4. Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 140, Tambahan Lembaran Negara Nomor 3874).

Dengan Persetujuan Bersama:

DEWAN PERWAKILAN RAKYAT REPUBLIK INDONESIA

DAN

PRESIDEN REPUBLIK INDONESIA,

MEMUTUSKAN:

Menetapkan:

UNDANG-UNDANG TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 31 TAHUN 1999 TENTANG PEMBERANTASAN TINDAK PIDANA KORUPSI

Pasal I

Beberapa ketentuan dan penjelasan pasal dalam Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi diubah sebagai berikut:

1. Pasal 2 ayat (2) substansi tetap, penjelasan pasal diubah sehingga rumusannya sebagaimana tercantum dalam penjelasan Pasal Demi Pasal angka 1 Undang-undang ini.
2. Ketentuan Pasal 5, Pasal 6, Pasal 7, Pasal 8, Pasal 9, Pasal 10, Pasal 11, dan Pasal 12, rumusannya diubah dengan tidak mengacu pasal-pasal dalam Kitab Undang-undang Hukum Pidana tetapi langsung menyebutkan unsur-unsur yang terdapat dalam masing-masing pasal Kitab Undang-undang Hukum Pidana yang diacu, sehingga berbunyi sebagai berikut:

“Pasal 5

(1) Dipidana dengan pidana penjara paling singkat 1 (satu) tahun dan paling lama 5 (lima) tahun dan atau pidana denda paling sedikit Rp 50.000.000,00 (lima puluh juta rupiah) dan paling banyak Rp 250.000.000,00 (dua ratus lima puluh juta rupiah) setiap orang yang:

a. memberi atau menjanjikan sesuatu kepada pegawai negeri atau penyelenggara negara dengan maksud supaya pegawai negeri atau penyelenggara negara tersebut berbuat atau tidak berbuat sesuatu dalam jabatannya, yang bertentangan dengan kewajibannya; atau

b. memberi sesuatu kepada pegawai negeri atau penyelenggara negara karena atau berhubungan dengan sesuatu yang bertentangan dengan kewajiban, dilakukan atau tidak dilakukan dalam jabatannya.

(2) Bagi pegawai negeri atau penyelenggara negara yang menerima pemberian atau janji sebagaimana dimaksud dalam ayat (1) huruf a atau huruf b, dipidana dengan pidana yang sama sebagaimana dimaksud dalam ayat (1).

Pasal 6

(1) Dipidana dengan pidana penjara paling singkat 3 (tiga) tahun dan paling lama 15 (lima belas) tahun dan pidana denda paling sedikit Rp 150.000.000,00 (seratus lima puluh juta rupiah) dan paling banyak Rp 750.000.000,00 (tujuh ratus lima puluh juta rupiah) setiap orang yang:

a. memberi atau menjanjikan sesuatu kepada hakim dengan maksud untuk mempengaruhi putusan perkara yang diserahkan kepadanya untuk diadili; atau

b. memberi atau menjanjikan sesuatu kepada seseorang yang menurut ketentuan peraturan perundang-undangan ditentukan menjadi advokat untuk menghadiri sidang pengadilan dengan maksud untuk mempengaruhi nasihat atau pendapat yang akan diberikan berhubung dengan perkara yang diserahkan kepada pengadilan untuk diadili.

(2) Bagi hakim yang menerima pemberian atau janji sebagaimana dimaksud dalam ayat (1) huruf a atau advokat yang menerima pemberian atau janji sebagaimana dimaksud dalam ayat (1) huruf b, dipidana dengan pidana yang sama sebagaimana dimaksud dalam ayat (1).

Pasal 7

(1) Dipidana dengan pidana penjara paling singkat 2 (dua) tahun dan paling lama 7 (tujuh) tahun dan atau pidana denda paling sedikit Rp 100.000.000,00 (seratus juta rupiah) dan paling banyak Rp 350.000.000,00 (tiga ratus lima puluh juta rupiah):

a. pemborong, ahli bangunan yang pada waktu membuat bangunan, atau penjual bahan bangunan yang pada waktu menyerahkan bahan bangunan, melakukan perbuatan curang yang dapat membahayakan keamanan orang atau barang, atau keselamatan negara dalam keadaan perang;

b. setiap orang yang bertugas mengawasi pembangunan atau penyerahan bahan bangunan, sengaja membiarkan perbuatan curang sebagaimana dimaksud dalam huruf a;

c. setiap orang yang pada waktu menyerahkan barang keperluan Tentara Nasional Indonesia dan atau Kepolisian Negara Republik Indonesia melakukan perbuatan curang yang dapat membahayakan keselamatan negara dalam keadaan perang; atau

d. setiap orang yang bertugas mengawasi penyerahan barang keperluan Tentara Nasional Indonesia dan atau Kepolisian Negara Republik Indonesia dengan sengaja membiarkan perbuatan curang sebagaimana dimaksud dalam huruf c.

(2) Bagi orang yang menerima penyerahan bahan bangunan atau orang yang menerima penyerahan barang keperluan Tentara Nasional Indonesia dan atau Kepolisian Negara Republik Indonesia dan membiarkan perbuatan curang sebagaimana dimaksud dalam ayat (1) huruf a atau huruf c, dipidana dengan pidana yang sama sebagaimana dimaksud dalam ayat (1).

Pasal 8

Dipidana dengan pidana penjara paling singkat 3 (tiga) tahun dan paling lama 15 (lima belas) tahun dan pidana denda paling sedikit Rp 150.000.000,00 (seratus lima puluh juta rupiah) dan paling banyak Rp 750.000.000,00 (tujuh ratus lima puluh juta rupiah), pegawai negeri atau orang selain pegawai negeri yang ditugaskan menjalankan suatu jabatan umum secara terus menerus atau untuk sementara waktu, dengan sengaja menggelapkan uang atau surat berharga yang disimpan karena jabatannya, atau membiarkan uang atau surat berharga tersebut diambil atau digelapkan oleh orang lain, atau membantu dalam melakukan perbuatan tersebut.

Pasal 9

Dipidana dengan pidana penjara paling singkat 1 (satu) tahun dan paling lama 5 (lima) tahun dan pidana denda paling sedikit Rp 50.000.000,00 (lima puluh juta rupiah) dan paling banyak Rp 250.000.000,00 (dua ratus lima puluh juta rupiah) pegawai negeri atau orang selain pegawai negeri yang diberi tugas menjalankan suatu jabatan umum secara terus menerus atau untuk sementara waktu, dengan sengaja memalsu buku-buku atau daftar-daftar yang khusus untuk pemeriksaan administrasi.

Pasal 10

Dipidana dengan pidana penjara paling singkat 2 (dua) tahun dan paling lama 7 (tujuh) tahun dan pidana denda paling sedikit Rp 100.000.000,00 (seratus juta rupiah) dan paling banyak Rp 350.000.000,00 (tiga ratus lima puluh juta rupiah) pegawai negeri atau orang selain pegawai negeri yang diberi tugas menjalankan suatu jabatan umum secara terus menerus atau untuk sementara waktu, dengan sengaja:

a. menggelapkan, menghancurkan, merusakkan, atau membuat tidak dapat dipakai barang, akta, surat, atau daftar yang digunakan untuk meyakinkan atau membuktikan di muka pejabat yang

berwenang, yang dikuasai karena jabatannya; atau

b. membiarkan orang lain menghilangkan, menghancurkan, merusakkan, atau membuat tidak dapat dipakai barang, akta, surat, atau daftar tersebut; atau

c. membantu orang lain menghilangkan, menghancurkan, merusakkan, atau membuat tidak dapat dipakai barang, akta, surat, atau daftar tersebut.

Pasal 11

Dipidana dengan pidana penjara paling singkat 1 (satu) tahun dan paling lama 5 (lima) tahun dan atau pidana denda paling sedikit Rp 50.000.000,00 (lima puluh juta rupiah) dan paling banyak Rp 250.000.000,00 (dua ratus lima puluh juta rupiah) pegawai negeri atau penyelenggara negara yang menerima hadiah atau janji padahal diketahui atau patut diduga, bahwa hadiah atau janji tersebut diberikan karena kekuasaan atau kewenangan yang berhubungan dengan jabatannya, atau yang menurut pikiran orang yang memberikan hadiah atau janji tersebut ada hubungan dengan jabatannya.

Pasal 12

Dipidana dengan pidana penjara seumur hidup atau pidana penjara paling singkat 4 (empat) tahun dan paling lama 20 (dua puluh) tahun dan pidana denda paling sedikit Rp 200.000.000,00 (dua ratus juta rupiah) dan paling banyak Rp 1.000.000.000,00 (satu miliar rupiah):

a. pegawai negeri atau penyelenggara negara yang menerima hadiah atau janji, padahal diketahui atau patut diduga bahwa hadiah atau janji tersebut diberikan untuk menggerakkan agar melakukan atau tidak melakukan sesuatu dalam jabatannya, yang bertentangan dengan kewajibannya;
b. pegawai negeri atau penyelenggara negara yang menerima hadiah, padahal diketahui atau patut diduga bahwa hadiah tersebut diberikan sebagai akibat atau disebabkan karena telah melakukan atau tidak melakukan sesuatu dalam jabatannya yang bertentangan dengan kewajibannya;
c. hakim yang menerima hadiah atau janji, padahal diketahui atau patut diduga bahwa hadiah atau janji tersebut diberikan untuk mempengaruhi putusan perkara yang diserahkan kepadanya untuk diadili;
d. seseorang yang menurut ketentuan peraturan perundang-undangan ditentukan menjadi advokat untuk menghadiri sidang pengadilan, menerima hadiah atau janji, padahal diketahui atau patut diduga bahwa hadiah atau janji tersebut untuk mempengaruhi nasihat atau pendapat yang akan diberikan, berhubung dengan perkara yang diserahkan kepada pengadilan untuk diadili;
e. pegawai negeri atau penyelenggara negara yang dengan maksud menguntungkan diri sendiri atau orang lain secara melawan hukum, atau dengan menyalahgunakan kekuasaannya memaksa seseorang memberikan sesuatu, membayar, atau menerima pembayaran dengan potongan, atau untuk mengerjakan sesuatu bagi dirinya sendiri;
f. pegawai negeri atau penyelenggara negara yang pada waktu menjalankan tugas, meminta, menerima, atau memotong pembayaran kepada pegawai negeri atau penyelenggara negara yang lain atau kepada kas umum, seolah-olah pegawai negeri atau penyelenggara negara yang lain atau kas umum tersebut mempunyai utang kepadanya, padahal diketahui bahwa hal tersebut bukan merupakan utang;
g. pegawai negeri atau penyelenggara negara yang pada waktu menjalankan tugas, meminta atau menerima pekerjaan, atau penyerahan barang, seolah-olah merupakan utang kepada dirinya, padahal diketahui bahwa hal tersebut bukan merupakan utang;
h. pegawai negeri atau penyelenggara negara yang pada waktu menjalankan tugas, telah menggunakan tanah negara yang di atasnya terdapat hak pakai, seolah-olah sesuai dengan peraturan perundang-undangan, telah merugikan orang yang berhak, padahal diketahuinya bahwa perbuatan tersebut bertentangan dengan peraturan perundang-undangan; atau
i. pegawai negeri atau penyelenggara negara baik langsung maupun tidak langsung dengan sengaja

turut serta dalam pemborongan, pengadaan, atau persewaan, yang pada saat dilakukan perbuatan, untuk seluruh atau sebagian ditugaskan untuk mengurus atau mengawasinya."

3. Di antara Pasal 12 dan Pasal 13 disisipkan 3 (tiga) pasal baru yakni Pasal 12 A, Pasal 12 B, dan Pasal 12 C, yang berbunyi sebagai berikut:

"Pasal 12A

(1) Ketentuan mengenai pidana penjara dan pidana denda sebagaimana dimaksud dalam Pasal 5, Pasal 6, Pasal 7, Pasal 8, Pasal 9, Pasal 10, Pasal 11 dan Pasal 12 tidak berlaku bagi tindak pidana korupsi yang nilainya kurang dari Rp 5.000.000,00 (lima juta rupiah).

(2) Bagi pelaku tindak pidana korupsi yang nilainya kurang dari Rp 5.000.000,00 (lima juta rupiah) sebagaimana dimaksud dalam ayat (1) dipidana dengan pidana penjara paling lama 3 (tiga) tahun dan pidana denda paling banyak Rp 50.000.000,00 (lima puluh juta rupiah).

Pasal 12B

(1) Setiap gratifikasi kepada pegawai negeri atau penyelenggara negara dianggap pemberian suap, apabila berhubungan dengan jabatannya dan yang berlawanan dengan kewajiban atau tugasnya, dengan ketentuan sebagai berikut:

a. yang nilainya Rp 10.000.000,00 (sepuluh juta rupiah) atau lebih, pembuktian bahwa gratifikasi tersebut bukan merupakan suap dilakukan oleh penerima gratifikasi;

b. yang nilainya kurang dari Rp 10.000.000,00 (sepuluh juta rupiah), pembuktian bahwa gratifikasi tersebut suap dilakukan oleh penuntut umum.

(2) Pidana bagi pegawai negeri atau penyelenggara negara sebagaimana dimaksud dalam ayat (1) adalah pidana penjara seumur hidup atau pidana penjara paling singkat 4 (empat) tahun dan paling lama 20 (dua puluh) tahun, dan pidana denda paling sedikit Rp 200.000.000,00 (dua ratus juta rupiah) dan paling banyak Rp 1.000.000.000,00 (satu miliar rupiah).

Pasal 12C

(1) Ketentuan sebagaimana dimaksud dalam Pasal 12 B ayat (1) tidak berlaku, jika penerima melaporkan gratifikasi yang diterimanya kepada Komisi Pemberantasan Tindak Pidana Korupsi.

(2) Penyampaian laporan sebagaimana dimaksud dalam ayat (1) wajib dilakukan oleh penerima gratifikasi paling lambat 30 (tiga puluh) hari kerja terhitung sejak tanggal gratifikasi tersebut diterima.

(3) Komisi Pemberantasan Tindak Pidana Korupsi dalam waktu paling lambat 30 (tiga puluh) hari kerja sejak tanggal menerima laporan wajib menetapkan gratifikasi dapat menjadi milik penerima atau milik negara.

(4) Ketentuan mengenai tata cara penyampaian laporan sebagaimana dimaksud dalam ayat (2) dan penentuan status gratifikasi sebagaimana dimaksud dalam ayat (3) diatur dalam Undang-undang tentang Komisi Pemberantasan Tindak Pidana Korupsi."

4. Di antara Pasal 26 dan Pasal 27 disisipkan 1 (satu) pasal baru menjadi Pasal 26 A yang berbunyi sebagai berikut:

"Pasal 26A

Alat bukti yang sah dalam bentuk petunjuk sebagaimana dimaksud dalam Pasal 188 ayat (2) Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, khusus untuk tindak pidana korupsi juga dapat diperoleh dari:

a. alat bukti lain yang berupa informasi yang diucapkan, dikirim, diterima, atau disimpan secara elektronik dengan alat optik atau yang serupa dengan itu; dan

b. dokumen, yakni setiap rekaman data atau informasi yang dapat dilihat, dibaca, dan atau didengar yang dapat dikeluarkan dengan atau tanpa bantuan suatu sarana, baik yang tertuang di atas kertas, benda fisik apapun selain kertas, maupun yang terekam secara elektronik, yang berupa tulisan, suara, gambar, peta, rancangan, foto, huruf, tanda, angka, atau perforasi yang memiliki makna."

5. Pasal 37 dipecah menjadi 2 (dua) pasal yakni menjadi Pasal 37 dan Pasal 37 A dengan ketentuan sebagai berikut:

a. Pasal 37 dengan substansi yang berasal dari ayat (1) dan ayat (2) dengan penyempurnaan pada ayat (2) frase yang berbunyi "keterangan tersebut dipergunakan sebagai hal yang menguntungkan baginya" diubah menjadi "pembuktian tersebut digunakan oleh pengadilan sebagai dasar untuk menyatakan bahwa dakwaan tidak terbukti", sehingga bunyi keseluruhan Pasal 37 adalah sebagai berikut:

"Pasal 37

(1) Terdakwa mempunyai hak untuk membuktikan bahwa ia tidak melakukan tindak pidana korupsi.

(2) Dalam hal terdakwa dapat membuktikan bahwa ia tidak melakukan tindak pidana korupsi, maka pembuktian tersebut dipergunakan oleh pengadilan sebagai dasar untuk menyatakan bahwa dakwaan tidak terbukti."

b. Pasal 37 A dengan substansi yang berasal dari ayat (3), ayat (4), dan ayat (5) dengan penyempurnaan kata "dapat" pada ayat (4) dihapus dan penunjukan ayat (1) dan ayat (2) pada ayat (5) dihapus, serta ayat (3), ayat (4), dan ayat (5) masing-masing berubah menjadi ayat (1), ayat (2), dan ayat (3), sehingga bunyi keseluruhan Pasal 37 A adalah sebagai berikut:

"Pasal 37A

(1) Terdakwa wajib memberikan keterangan tentang seluruh harta bendanya dan harta benda istri atau suami, anak, dan harta benda setiap orang atau korporasi yang diduga mempunyai hubungan dengan perkara yang didakwakan.

(2) Dalam hal terdakwa tidak dapat membuktikan tentang kekayaan yang tidak seimbang dengan penghasilannya atau sumber penambahan kekayaannya, maka keterangan sebagaimana dimaksud dalam ayat (1) digunakan untuk memperkuat alat bukti yang sudah ada bahwa terdakwa telah melakukan tindak pidana korupsi.

(3) Ketentuan sebagaimana dimaksud dalam ayat (1) dan ayat (2) merupakan tindak pidana atau perkara pokok sebagaimana dimaksud dalam Pasal 2, Pasal 3, Pasal 4, Pasal 13, Pasal 14, Pasal 15, dan Pasal 16 Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi dan Pasal 5 sampai dengan Pasal 12 Undang-undang ini, sehingga penuntut umum tetap berkewajiban untuk membuktikan dakwaannya."

6. Di antara Pasal 38 dan Pasal 39 ditambahkan 3 (tiga) pasal baru yakni Pasal 38 A, Pasal 38 B, dan Pasal

38 C yang seluruhnya berbunyi sebagai berikut:

“Pasal 38A

Pembuktian sebagaimana dimaksud dalam Pasal 12 B ayat (1) dilakukan pada saat pemeriksaan di sidang pengadilan.

Pasal 38B

(1) Setiap orang yang didakwa melakukan salah satu tindak pidana korupsi sebagaimana dimaksud dalam Pasal 2, Pasal 3, Pasal 4, Pasal 13, Pasal 14, Pasal 15, dan Pasal 16 Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi dan Pasal 5 sampai dengan Pasal 12 Undang-undang ini, wajib membuktikan sebaliknya terhadap harta benda miliknya yang belum didakwakan, tetapi juga diduga berasal dari tindak pidana korupsi.

(2) Dalam hal terdakwa tidak dapat membuktikan bahwa harta benda sebagaimana dimaksud dalam ayat (1) diperoleh bukan karena tindak pidana korupsi, harta benda tersebut dianggap diperoleh juga dari tindak pidana korupsi dan hakim berwenang memutuskan seluruh atau sebagian harta benda tersebut dirampas untuk negara.

(3) Tuntutan perampasan harta benda sebagaimana dimaksud dalam ayat (2) diajukan oleh penuntut umum pada saat membacakan tuntutannya pada perkara pokok.

(4) Pembuktian bahwa harta benda sebagaimana dimaksud dalam ayat (1) bukan berasal dari tindak pidana korupsi diajukan oleh terdakwa pada saat membacakan pembelaannya dalam perkara pokok dan dapat diulangi pada memori banding dan memori kasasi.

(5) Hakim wajib membuka persidangan yang khusus untuk memeriksa pembuktian yang diajukan terdakwa sebagaimana dimaksud dalam ayat (4).

(6) Apabila terdakwa dibebaskan atau dinyatakan lepas dari segala tuntutan hukum dari perkara pokok, maka tuntutan perampasan harta benda sebagaimana dimaksud dalam ayat (1) dan ayat (2) harus ditolak oleh hakim.

Pasal 38C

Apabila setelah putusan pengadilan telah memperoleh kekuatan hukum tetap, diketahui masih terdapat harta benda milik terpidana yang diduga atau patut diduga juga berasal dari tindak pidana korupsi yang belum dikenakan perampasan untuk negara sebagaimana dimaksud dalam Pasal 38 B ayat (2), maka negara dapat melakukan gugatan perdata terhadap terpidana dan atau ahli warisnya.”

7. Di antara Bab VI dan Bab VII ditambah bab baru yakni Bab VI A mengenai Ketentuan Peralihan yang berisi 1 (satu) pasal, yakni Pasal 43 A yang diletakkan di antara Pasal 43 dan Pasal 44 sehingga keseluruhannya berbunyi sebagai berikut:

“BAB VIA

KETENTUAN PERALIHAN

Pasal 43A

(1) Tindak pidana korupsi yang terjadi sebelum Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi diundangkan, diperiksa dan diputus berdasarkan ketentuan Undang-undang Nomor 3 Tahun 1971 tentang Pemberantasan Tindak Pidana Korupsi, dengan

ketentuan maksimum pidana penjara yang menguntungkan bagi terdakwa diberlakukan ketentuan dalam Pasal 5, Pasal 6, Pasal 7, Pasal 8, Pasal 9, dan Pasal 10 Undang-undang ini dan Pasal 13 Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

(2) Ketentuan minimum pidana penjara dalam Pasal 5, Pasal 6, Pasal 7, Pasal 8, Pasal 9, dan Pasal 10 Undang-undang ini dan Pasal 13 Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi tidak berlaku bagi tindak pidana korupsi yang terjadi sebelum berlakunya Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

(3) Tindak pidana korupsi yang terjadi sebelum Undang-undang ini diundangkan, diperiksa dan diputus berdasarkan ketentuan Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, dengan ketentuan mengenai maksimum pidana penjara bagi tindak pidana korupsi yang nilainya kurang dari Rp 5.000.000,00 (lima juta rupiah) berlaku ketentuan sebagaimana dimaksud dalam Pasal 12 A ayat (2) Undang-undang ini."

8. Dalam BAB VII sebelum Pasal 44 ditambah 1 (satu) pasal baru yakni Pasal 43 B yang berbunyi sebagai berikut:

"Pasal 43B

Pada saat mulai berlakunya Undang-undang ini, Pasal 209, Pasal 210, Pasal 387, Pasal 388, Pasal 415, Pasal 416, Pasal 417, Pasal 418, Pasal 419, Pasal 420, Pasal 423, Pasal 425, dan Pasal 435 Kitab Undang-undang Hukum Pidana jis. Undang-undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana (Berita Republik Indonesia II Nomor 9), Undang-undang Nomor 73 Tahun 1958 tentang Menyatakan Berlakunya Undang-undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana untuk Seluruh Wilayah Republik Indonesia dan Mengubah Kitab Undang-undang Hukum Pidana (Lembaran Negara Tahun 1958 Nomor 127, Tambahan Lembaran Negara Nomor 1660) sebagaimana telah beberapa kali diubah terakhir dengan Undang-undang Nomor 27 Tahun 1999 tentang Perubahan Kitab Undang-undang Hukum Pidana Yang Berkaitan Dengan Kejahatan Terhadap Keamanan Negara, dinyatakan tidak berlaku."

Pasal II

Undang-undang ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Undang-undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Disahkan Di Jakarta,

Pada Tanggal 21 November 2001

PRESIDEN REPUBLIK INDONESIA,

Ttd.

MEGAWATI SOEKARNOPUTRI

Diundangkan Di Jakarta,

Pada Tanggal 21 November 2001

SEKRETARIS NEGARA REPUBLIK INDONESIA,

Ttd.

BAMBANG KESOWO

LEMBARAN NEGARA REPUBLIK INDONESIA TAHUN 2001 NOMOR 134

PENJELASAN

UNDANG-UNDANG REPUBLIK INDONESIA

NOMOR 20 TAHUN 2001

TENTANG

PERUBAHAN ATAS UNDANG-UNDANG NOMOR 31 TAHUN 1999 TENTANG PEMBERANTASAN TINDAK PIDANA KORUPSI

I. UMUM

Sejak Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi (Lembaran Negara Republik Indonesia Tahun 1999 Nomor 140, Tambahan Lembaran Negara Republik Indonesia Nomor 3874) diundangkan, terdapat berbagai interpretasi atau penafsiran yang berkembang di masyarakat khususnya mengenai penerapan Undang-undang tersebut terhadap tindak pidana korupsi yang terjadi sebelum Undang-undang Nomor 31 Tahun 1999 diundangkan. Hal ini disebabkan Pasal 44 Undang-undang tersebut menyatakan bahwa Undang-undang Nomor 3 Tahun 1971 tentang Pemberantasan Tindak Pidana Korupsi dinyatakan tidak berlaku sejak Undang-undang Nomor 31 Tahun 1999 diundangkan, sehingga timbul suatu anggapan adanya kekosongan hukum untuk memproses tindak pidana korupsi yang terjadi sebelum berlakunya Undang-undang Nomor 31 Tahun 1999.

Di samping hal tersebut, mengingat korupsi di Indonesia terjadi secara sistematik dan meluas sehingga tidak hanya merugikan keuangan negara, tetapi juga telah melanggar hak-hak sosial dan ekonomi masyarakat secara luas, maka pemberantasan korupsi perlu dilakukan dengan cara luar biasa. Dengan demikian, pemberantasan tindak pidana korupsi harus dilakukan dengan cara yang khusus, antara lain penerapan sistem pembuktian terbalik yakni pembuktian yang dibebankan kepada terdakwa.

Untuk mencapai kepastian hukum, menghilangkan keragaman penafsiran, dan perlakuan adil dalam memberantas tindak pidana korupsi, perlu diadakan perubahan atas Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi.

Ketentuan perluasan mengenai sumber perolehan alat bukti yang sah yang berupa petunjuk, dirumuskan bahwa mengenai "petunjuk" selain diperoleh dari keterangan saksi, surat, dan keterangan terdakwa, juga diperoleh dari alat bukti lain yang berupa informasi yang diucapkan, dikirim, diterima, atau disimpan secara elektronik dengan alat optik atau yang serupa dengan itu tetapi tidak terbatas pada data penghubung elektronik (electronic data interchange), surat elektronik (e-mail), telegram, teleks, dan faksimili, dan dari dokumen, yakni setiap rekaman data atau informasi yang dapat dilihat, dibaca dan atau didengar yang dapat dikeluarkan dengan atau tanpa bantuan suatu sarana, baik yang tertuang di atas kertas, benda fisik apapun selain kertas, maupun yang terekam secara elektronik, yang berupa tulisan, suara, gambar, peta, rancangan, foto, huruf, tanda, angka, atau perforasi yang memiliki makna.

Ketentuan mengenai "pembuktian terbalik" perlu ditambahkan dalam Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi sebagai ketentuan yang bersifat "premium remidium" dan sekaligus mengandung sifat prevensi khusus terhadap pegawai negeri sebagaimana dimaksud dalam Pasal 1 angka 2 atau terhadap penyelenggara negara sebagaimana dimaksud dalam Pasal 2 Undang-undang Nomor 28 Tahun 1999 tentang Penyelenggara Negara yang Bersih dan Bebas dari Korupsi, Kolusi, dan Nepotisme, untuk tidak melakukan tindak pidana korupsi.

Pembuktian terbalik ini diberlakukan pada tindak pidana baru tentang gratifikasi dan terhadap tuntutan perampasan harta benda terdakwa yang diduga berasal dari salah satu tindak pidana sebagaimana dimaksud dalam Pasal 2, Pasal 3, Pasal 4, Pasal 13, Pasal 14, Pasal 15, dan Pasal 16 Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi dan Pasal 5 sampai dengan Pasal 12 Undang-undang ini.

Dalam Undang-undang ini diatur pula hak negara untuk mengajukan gugatan perdata terhadap harta

benda terpidana yang disembunyikan atau tersembunyi dan baru diketahui setelah putusan pengadilan memperoleh kekuatan hukum tetap. Harta benda yang disembunyikan atau tersembunyi tersebut diduga atau patut diduga berasal dari tindak pidana korupsi. Gugatan perdata dilakukan terhadap terpidana dan atau ahli warisnya. Untuk melakukan gugatan tersebut, negara dapat menunjuk kuasanya untuk mewakili negara.

Selanjutnya dalam Undang-undang ini juga diatur ketentuan baru mengenai maksimum pidana penjara dan pidana denda bagi tindak pidana korupsi yang nilainya kurang dari Rp. 5.000.000,00 (lima juta rupiah). Ketentuan ini dimaksudkan untuk menghilangkan rasa kekurangadilan bagi pelaku tindak pidana korupsi, dalam hal nilai yang dikorup relatif kecil.

Di samping itu, dalam Undang-undang ini dicantumkan Ketentuan Peralihan. Substansi dalam Ketentuan Peralihan ini pada dasarnya sesuai dengan asas umum hukum pidana sebagaimana dimaksud dalam Pasal 1 ayat (2) Kitab Undang-undang Hukum Pidana.

II. PASAL DEMI PASAL

Pasal I

Angka 1

Pasal 2

ayat (2)

Yang dimaksud dengan "keadaan tertentu" dalam ketentuan ini adalah keadaan yang dapat dijadikan alasan pemberatan pidana bagi pelaku tindak pidana korupsi yaitu apabila tindak pidana tersebut dilakukan terhadap dana-dana yang diperuntukkan bagi penanggulangan keadaan bahaya, bencana alam nasional, penanggulangan akibat kerusuhan sosial yang meluas, penanggulangan krisis ekonomi dan moneter, dan pengulangan tindak pidana korupsi.

Angka 2

Pasal 5

Ayat (1)

Cukup jelas.

Ayat (2)

Yang dimaksud dengan "penyelenggara negara" dalam Pasal ini adalah penyelenggara negara sebagaimana dimaksud dalam Pasal 2 Undang-undang Nomor 28 Tahun 1999 tentang Penyelenggara Negara yang Bersih dan Bebas dari Korupsi, Kolusi, dan Nepotisme. Pengertian "penyelenggara negara" tersebut berlaku pula untuk pasal-pasal berikutnya dalam Undang-undang ini.

Pasal 6

Cukup jelas.

Pasal 7

Cukup jelas.

Pasal 8

Cukup jelas.

Pasal 9

Cukup jelas.

Pasal 10

Cukup jelas.

Pasal 11

Cukup jelas.

Pasal 12

Huruf a

Cukup jelas.

Huruf b

Cukup jelas.

Huruf c

Cukup jelas.

Huruf d

Yang dimaksud dengan "advokat" adalah orang yang berprofesi memberi jasa hukum baik di dalam maupun di luar pengadilan yang memenuhi persyaratan sesuai dengan ketentuan peraturan perundang-undangan yang berlaku

Huruf e

Cukup jelas.

Huruf f

Cukup jelas.

Huruf g

Cukup jelas.

Huruf h

Cukup jelas.

Huruf i

Cukup jelas.

Angka 3

Pasal 12A

Cukup jelas.

Pasal 12B

Ayat (1)

Yang dimaksud dengan "gratifikasi" dalam ayat ini adalah pemberian dalam arti luas, yakni meliputi pemberian uang, barang, rabat (discount), komisi, pinjaman tanpa bunga, tiket perjalanan, fasilitas penginapan, perjalanan wisata, pengobatan cuma-cuma, dan fasilitas lainnya. Gratifikasi tersebut baik yang diterima di dalam negeri maupun di luar negeri dan yang dilakukan dengan menggunakan sarana elektronik atau tanpa sarana elektronik.

Ayat (2)

Cukup jelas.

Pasal 12C

Cukup jelas.

Angka 4

Pasal 26A

Huruf a

Yang dimaksud dengan "disimpan secara elektronik" misalnya data yang disimpan dalam mikro film, Compact Disk Read Only Memory (CD-ROM) atau Write Once Read Many (WORM).

Yang dimaksud dengan "alat optik atau yang serupa dengan itu" dalam ayat ini tidak terbatas pada data penghubung elektronik (electronic data interchange), surat elektronik (e-mail), telegram, teleks, dan faksimili.

Huruf b

Cukup jelas.

Angka 5

Pasal 37

Ayat (1)

Pasal ini sebagai konsekuensi berimbang atas penerapan pembuktian terbalik terhadap terdakwa. Terdakwa tetap memerlukan perlindungan hukum yang berimbang atas pelanggaran hak-hak yang mendasar yang berkaitan dengan asas praduga tak bersalah (presumption of innocence) dan menyalahkan diri sendiri (non self-incrimination).

Ayat (2)

Ketentuan ini tidak menganut sistem pembuktian secara negatif menurut undang-undang (negatief

wettelijk).

Pasal 37A

Cukup jelas.

Angka 6

Pasal 38A

Cukup jelas.

Pasal 38B

Ketentuan dalam Pasal ini merupakan pembuktian terbalik yang dikhususkan pada perampasan harta benda yang diduga keras juga berasal dari tindak pidana korupsi berdasarkan salah satu dakwaan sebagaimana dimaksud dalam Pasal 2, Pasal 3, Pasal 4, Pasal 13, Pasal 14, Pasal 15, dan Pasal 16 Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi dan Pasal 5 sampai dengan Pasal 12 Undang-undang ini sebagai tindak pidana pokok.

Pertimbangan apakah seluruh atau sebagian harta benda tersebut dirampas untuk negara diserahkan kepada hakim dengan pertimbangan prikemanusiaan dan jaminan hidup bagi terdakwa.

Dasar pemikiran ketentuan sebagaimana dimaksud dalam ayat (6) ialah alasan logika hukum karena dibebaskannya atau dilepaskannya terdakwa dari segala tuntutan hukum dari perkara pokok, berarti terdakwa bukan pelaku tindak pidana korupsi dalam kasus tersebut.

Pasal 38C

Dasar pemikiran ketentuan dalam Pasal ini adalah untuk memenuhi rasa keadilan masyarakat terhadap pelaku tindak pidana korupsi yang menyembunyikan harta benda yang diduga atau patut diduga berasal dari tindak pidana korupsi.

Harta benda tersebut diketahui setelah putusan pengadilan memperoleh kekuatan hukum tetap. Dalam hal tersebut, negara memiliki hak untuk melakukan gugatan perdata kepada terpidana dan atau ahli warisnya terhadap harta benda yang diperoleh sebelum putusan pengadilan memperoleh kekuatan tetap, baik putusan tersebut didasarkan pada Undang-undang sebelum berlakunya Undang-undang Nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi atau setelah berlakunya Undang-undang tersebut.

Untuk melakukan gugatan tersebut negara dapat menunjuk kuasanya untuk mewakili negara.

Angka 7

Cukup jelas

Angka 8

Cukup jelas.

Pasal II

Cukup jelas.

TAMBAHAN LEMBARAN NEGARA REPUBLIK INDONESIA NOMOR 4150

ORGANIC ACT ON COUNTER CORRUPTION, B.E. 2542 (1999)

BHUMIBOL ADULYADEJ, REX.

Given on the 8th Day of November B.E. 2542;

Being the 54th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have the organic law on counter corruption;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act shall be called the "Organic Act on Counter Corruption, B.E. 2542 (1999)".

Section 2. This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. There shall be repealed:

(1) The Counter Corruption Act, B.E. 2518 (1975);

(2) The Counter Corruption Act (No. 2), B.E. 2530 (1987);

(3) The Act on the Declaration of Assets and Liabilities of Senators and Members of the House of Representatives, B.E. 2539 (1996);

Section 4. In this Organic Act:

"State official" means a person holding a political position, Government official or local official assuming a position or having permanent salaries, official or person performing duties in a State enterprise or a State agency, local administrator and member of a local assembly who is not a person holding a political position, official under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and person or group of persons exercising or entrusted to exercise the State's administrative power in the performance of a particular act under the law, whether established under the governmental bureaucratic channel or by a State enterprise or other State undertaking;

"person holding a political position" means:

(1) Prime Minister;

(2) Minister;

(3) member of the House of Representatives;

(4) senator;

(5) political official other than (1) and (2) under the law on political officials;

(6) political parliamentary official under the law on parliamentary officials;

(7) Governor of Bangkok Metropolitan, Deputy Governor of Bangkok Metropolitan and member of the Bangkok Metropolitan Assembly;

(8) executive member and member of a Nakhon Municipality Council;

(9) local administrator or member of a local assembly of a local government organisation the income or budget of which is not lower than that prescribed in the Government Gazette by the National Counter Corruption Commission;

"person holding a high-ranking position" means the person holding the position as head of a Government agency at the level of a Department, Sub-Ministry or Ministry in respect of ordinary Government officials, the person holding the position as Commander of a National Force or Commander-in-chief in respect of military officials, the person holding the position as Commander of the National Royal Thai Police Force, the person holding the position as Permanent-Secretary of the Bangkok Metropolitan Administration, member of the Board the top executive of a State enterprise or head of an independent agency under the Constitution which enjoys the status of a juristic person, or the person holding the position prescribed by other laws;

"injured person" means the person injured by the commission of the act giving rise to unusual wealthiness of a State official, the commission of an offence of malfeasance in office under the Penal Code or the commission of an offence of malfeasance or corruption under other laws;

"alleged culprit" means the person who is alleged to have committed, or who is under the circumstance apparent to the National Counter Corruption Commission as indicating the commission of, an act which prima facie constitutes a basis for the removal from office, the criminal proceedings, the lodging of a request that assets devolve on the State or the initiation of a disciplinary action as provided in this Organic Act, and shall also include the principal, instigator or aider and abetter in the commission of the said act;

"President" means the President of the National Counter Corruption Commission; "member" means a member of the National Counter Corruption Commission;

"member of a sub-committee" means a member of a sub-committee on national counter corruption appointed by the National Counter Corruption Commission to perform activities under this Organic Act; "Secretary-General" means the Secretary-General of the National Counter Corruption Commission;

"competent official" means the Secretary-General and the Government official attached to the Office of the National Counter Corruption Commission, including the Government official or official assisting in the official service of the Office of the National Counter Corruption

Commission, entrusted by the National Counter Corruption Commission to perform activities under this Organic Act; "corruption" means the performance or omission of a particular act in office or in the course of official duty, or the performance or omission of a particular act under the circumstance likely to cause other persons to believe that the person so performing or omitting holds such office or has such duty although the office or duty is not held or assumed by such person, or the exercise of power in office or in the course official duty with a view to acquiring undue benefits for his or her own or for other persons;

"unusual increase of assets" means the phenomenon where the assets and liabilities listed in the account showing assets and liabilities submitted by the person holding a political position upon vacation of office differ from the account showing assets and liabilities submitted at the time of taking office, in the manner that the assets unusually increase or liabilities unusually decrease;

"unusual wealthiness" means having an unusually large quantity of assets, having an unusual increase of assets, having an unusual decrease of liabilities or having illegitimate acquisition of assets in a consequence of the performance of duties or the exercise of power in office or in the course of duty.

Section 5. The President of the National Counter Corruption Commission shall have charge and control of the execution of this Organic Act and shall have the power to issue notifications or regulations and appoint competent officials with the approval of the National Counter Corruption Commission for the execution of this Organic Act. The notification and regulation under paragraph one which are of general application shall enter into force upon their publication in the Government Gazette.

CHAPTER I

National Counter Corruption Commissio

Section 6. There shall be the National Counter Corruption Commission called the "N.C.C. Commission." in brief, consisting of the President and other eight qualified members appointed by the King with the advice of the Senate.

Section 7. The selection and election of members shall be conducted as follows:

(1) the President of the Senate shall cause to be established the Selection Committee of fifteen members, consisting of the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, Rectors of all State higher education institutions which are juristic persons, being elected among themselves to be seven in number, and representatives of all political parties having a member who is a member of the House of Representatives, provided that each party shall have one representative and all such representatives shall elect among themselves to be five in number; and the Selection Committee shall have the duties to select and prepare a list of names of eighteen qualified persons and submit it to the President of the Senate with the consent of the

nominated persons within thirty days as from the date when a ground for the selection of persons to be in such office occurs. The resolution making such nomination must be passed by votes of not less than three-fourths of the total number of the existing members of the Selection Committee;

(2) the President of the Senate shall convoke a sitting of the Senate for the purpose of passing a resolution, by secret ballot, electing the nominated persons in the list under (1). For this purpose, the persons who receive the highest votes which are more than one-half of the total number of the existing senators shall be elected as members, but if the number of the persons who are elected and receive the highest votes which are more than one-half of the total number of the existing senators is less than nine, the name-list of the remaining nominees shall be submitted to the senators for voting on another occasion consecutively. In such case, the persons receiving the highest votes in respective order in the specified number shall be elected as members. If there are persons receiving equal votes in any order which result in having more than nine persons, the President of the Senate shall draw lots to determine who are elected persons.

The persons elected as members under (2) shall meet and elect one among themselves to be President and shall, then, notify the President of the Senate of result thereof.

The President of the Senate shall countersign the Royal Command appointing the President and members.

Section 8. The persons nominated for election as members must be of apparent integrity, with qualifications under section 9 and without any of the prohibitions under section 10.

Section 9. The persons nominated for election as members must be of the following qualifications:

(1) being of Thai nationality by birth;

(2) being of not less than forty five years of age;

(3) having, in the past, been a Minister, judge of the Constitutional Court, Election Commissioner, Ombudsman, member of the National Human Rights Commission, member of the State Audit Commission, or serving or having, in the past, served in the position not lower than Deputy Prosecutor-General, Director-General or its equivalent, or holding the position not lower than Professor.

Section 10. The persons nominated for election as members must not be under any of the following prohibitions:

(1) being a member of the House of Representatives, senator, political official, member of a local assembly or local administrator;

(2) being or having, in the past, been a member or a person holding other position of a political party over the period of three years before the date of the nomination;

(3) being a judge of the Constitutional Court, Election Commissioner, Ombudsman, member of the National Human Rights Commission, judge of an Administrative Court or member of the State Audit Commission;

(4) being of unsound mind or of mental infirmity;

(5) being a Buddhist priest, novice, monk or clergy;

(6) being detained by a warrant of the Court or by a lawful order;

(7) being under suspension of the right to vote;

(8) being addicted to drugs;

(9) being an undischarged bankrupt;

(10) having been sentenced by a judgment to imprisonment and being detained by a warrant of the Court;

(11) having been discharged for a period of less than five years on the nomination day after being sentenced by a judgment to imprisonment for a term of two years or more except for an offence committed through negligence;

(12) having been expelled, dismissed or removed from the official service, a State agency or a State enterprise on the ground of corruption or deemed corruption;

(13) having been ordered by a judgment or an order of the Court that his or her assets shall devolve upon the State on the ground of unusual wealthiness or an unusual increase of assets;

(14) being under the prohibition from holding a political position under section 34 and section 41;

(15) having been removed from office by the resolution of the Senate, provided that, from the date of the resolution to the nomination day, the period of five years has not elapsed.

Section 11. The person elected as member shall not: (1) be a Government official holding a permanent position or receiving salaries;

(2) be an official or employee of a State agency, State enterprise or local administration, or be a member of the Board or counsel of a State enterprise or State agency;

(3) hold any position in a partnership, a company or an organisation carrying out businesses for sharing profits or incomes, or be an employee of any person;

(4) engage in any other independent profession. When the Senate has elected the person in (1), (2), (3) or (4) with the consent of that person, the elected person can commence the performance of duties only when he or she has resigned from the position in (1), (2), (3) or has adduced evidence to the satisfaction that his or her engagement in the independent profession in (4) has ceased to exist. This must be done within fifteen days as from the date

of election. If that person has not resigned or ceased to engage in the independent profession within the specified time, it shall be deemed that that person has never been elected as member and the provisions of section 14 shall apply.

Section 12. Members shall hold office for a term of nine years as from the date of their appointment by the King and shall serve for only one term. Members who vacate office at the expiration of term shall remain in office to continue to perform their duties until the newly appointed members take office.

Section 13. In addition to the vacation of office at the expiration of the term under section 12, members vacate office upon:

(1) death;

(2) having attained the age of seventy years;

(3) resignation;

(4) being disqualified under section 9 or being under any of the prohibitions under section 10;

(5) violation of section 11;

(6) being removed by a resolution of Senate under section 16;

(7) being sentenced by a judgment to imprisonment. When the circumstance under paragraph one occurs, the remaining members may continue to perform duties and it shall be deemed that the N.C.C. Commission consists of the existing members.

Section 14. Upon vacation of office of a member, the proceeding under section 7 shall be commenced within thirty days as from the date of vacation. In the case where a member vacates office under section 13, the provisions of section 7 shall apply mutatis mutandis. In this case, the Selection Committee shall prepare and submit to the President of the Senate a name-list of qualified persons in the number two times the number of the persons having vacated office. In the case where a member vacates office while the National Assembly is not in session, the proceeding under section 7 shall be commenced within thirty days as from the date of the opening of the National Assembly's session.

Section 15. Members shall submit an account showing particulars of their assets and liabilities, their spouses and children who have not yet become sui juris to the President of the National Assembly upon taking or vacating office, and the provisions of section 32, section 33, section 35 paragraph one and paragraph three, section 41 and section 119 shall apply mutatis mutandis.

Section 16. Members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House have the right to lodge with the President of the Senate a complaint that any member has acted unjustly, intentionally violated the Constitution or laws or has been under any circumstance which is seriously detrimental to the

dignity of the holding of office, in order to request the Senate to pass a resolution removing that member from office. The resolution of the Senate removing the member from office under paragraph one shall be passed by votes of not less than three-fourths of the total number of the existing members of the Senate.

Section 17. Members of the House of Representatives, senators or members of both Houses of not less than one-fourth of the total number of the existing members of both Houses have the right to lodge with the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions a request wherein it is alleged that any member has become unusually wealthy or has committed an offence of corruption or malfeasance in office. The request under paragraph one shall clearly itemise the circumstance in which such person has allegedly committed the act under paragraph one and shall be submitted to the President of the Senate. Upon receipt of the said request, the President of the Senate shall refer it to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for trial and adjudication. In the case where the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions gives an order admitting the request, the alleged member shall not perform his or her duty until the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions has passed a judgment dismissing the said request. The proceedings in Court shall be in accordance with the organic law on criminal proceedings for persons holding political positions.

Section 18. Salaries, emoluments and other benefits of the President and members shall be in accordance with the laws on such particular matters.

CHAPTER II

Powers and Duties of the National Counter Corruption Commission

Section 19. The N.C.C. Commission shall have the following powers and duties:

(1) to inquire into facts, summarise the case and prepare the opinion to be submitted to the Senate under Chapter 5, Removal from Office;

(2) to inquire into facts, summarise the case and prepare the opinion to be referred to the Prosecutor-General for the purpose of prosecution before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions under Chapter 6, Criminal Proceedings Against Persons Holding Political Positions under section 308 of the Constitution;

(3) to inquire and decide whether a State official has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office;

(4) to inspect the accuracy and actual existence of assets and liabilities of State officials and inspect change of assets and liabilities of the persons holding political positions under Chapter 3, Inspection of Assets and Liabilities;

(5) to prescribe rules with respect to the determination of positions and classes or levels of State officials obliged to submit an account showing particulars of assets and liabilities;

(6) to prescribe rules and procedures for the submission of the account showing particulars of assets and liabilities of State officials and the disclosure of accounts showing particulars of assets and liabilities of persons holding the position of Prime Minister and Minister;

(7) to submit an inspection report and a report on the performance of duties together with remarks to the Council of Ministers, the House of Representatives and the Senate annually and publish these reports for dissemination;

(8) to propose measures, opinions or recommendations to the Council of Ministers, National Assembly, Courts or State Audit Commission for the purpose of improving the performance of government service or formulating action plans or projects of Government agencies, State enterprises or other State agencies in an endeavour to control corruption and the commission of an offence of malfeasance in office or malfeasance in judicial office;

(9) to refer matters to the agency concerned for the purpose of making a request to the Court for an order or judgment cancelling or revoking a right or document of title in respect of which the State official has given approval or granted permission conferring the rights or benefits or issued the document of title to a particular person in contravention of the law or official regulations to the detriment of the Government service;

(10) to take action with a view to preventing corruption and building up attitudes and taste concerning integrity and honesty, and to take such action as to facilitate members of the public or groups of persons to have participation in counter corruption;

(11) to give approval to the appointment of the Secretary-General;

(12) to appoint persons or a group of persons for performing duties as entrusted;

(13) to carry out other acts provided by this Organic Act or other laws to be the responsibility of the N.C.C. Commission.

Section 20. At a meeting of the N.C.C. Commission, the presence of not less than one-half of the total number of the members is required to constitute a quorum. But, a quorum for considering and making a determination of a particular matter or for giving approval to a particular matter shall be constituted by the presence of not less than two-thirds of the total number of the members.

Section 21. A meeting shall be in accordance with the regulations prescribed by the N.C.C. Commission. The calling for a meeting shall be in writing and notified to every member not less than three days in advance unless such member has known of the calling for a meeting at the previous meeting. In such a case, the written notification of the calling for a meeting may be made only to the members not present at the meeting. The provisions in paragraph two

shall not apply in the case where there occurs a compelling necessary urgency. In such a case, the President may call for a meeting otherwise.

Section 22. The President has the power and duty to conduct a meeting and, in the interest of its orderly proceeding, shall have the power to give any order as is necessary. If the President is not present at the meeting or is unable to perform the duty, the members present at the meeting shall elect one member among themselves to preside over the meeting.

Section 23. A resolution of a meeting shall be by a majority of votes, except that in the case of passing a resolution making a determination or giving an approval in accordance with the provisions of this Organic Act, the President and members shall cast votes for the purpose of the resolution and the resolution shall be passed by votes of not less than two-thirds of the total number of the existing member. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

Section 24. There shall be written minutes of each meeting. If a dissenting opinion is presented, the dissenting opinion and reasons invoked shall be recorded in the minutes of the meeting. If minority members present their dissenting opinion in writing, it shall also be recorded in the minutes of the meeting.

Section 25. In the performance of duties under this Organic Act, the N.C.C. Commission shall have the powers as follows:

(1) to give an order instructing a Government official, official or employee of a Government agency, State agency, State enterprise or local administration to perform all such acts as are necessary for the performance of duties of the N.C.C. Commission or to summon relevant documents or evidence from any person or to summon any person to give statements or testimonies, for the purpose of a fact inquiry;

(2) to file an application with the competent Court for an issuance of a warrant permitting an entry into a dwelling-place, place of business or any other place including a vehicle of any person from sunrise to sunset or during the working hours for the purposes of inspecting, searching, seizing or attaching documents, property or other evidence related to the matter under inquiry. If action is not completed within such time, such action may be further taken until its completion;

(3) to address a written request to a Government agency, State agency, State enterprise, local administration or private agency to carry out a particular act for the purpose of the performance of duties of, or the conduct of a fact inquiry or the making of a determination by, the N.C.C. Commission;

(4) to prescribe regulations with respect to the rules and procedures for the payment of per diem, travelling fees and remuneration of a witness and in connection with the performance of duties of competent officials or other matters, for the execution of this Organic Act;

(5) to prescribe the regulation with respect to the payment of a reward under section 30.

Section 26. In taking criminal proceedings against a State official under this Organic Act, the N.C.C. Commission shall have the powers as follows:

(1) to inquire into facts and gather evidence in order for the facts to be known or the offence to be proved and in order for the offender to be prosecuted and punished;

(2) to file an application with the competent Court for an issuance of a warrant of arrest and custody of the alleged culprit who, from the fact inquiry, appears to be an offender or against whom the N.C.C. Commission has passed a resolution that the allegation has a prima facie case, for the purpose of referring such person to the Prosecutor-General for further proceeding.

Section 27. In the performance of duties under this Organic Act, the President, the member or the Secretary-General as entrusted by the President shall have the power to sign a written communication carried out in accordance with the powers and duties of the N.C.C. Commission.

Section 28. In the case where the President has the duty to perform any act other than the conduct of a meeting and is temporarily unable to perform the duty, the members shall elect one member among themselves to act as the President.

Section 29. In the case where any member, member of a sub-committee or competent official is directly or indirectly interested in any particular matter, that person shall not attend and participate in the fact inquiry, the consideration or the determination of such matter.

Section 30. In conducting a fact inquiry in the case of the allegation that a State official has become unusually wealthy or in the inspection of the change of assets and liabilities of a person holding a political position, if any person gives the N.C.C. Commission a trace or clue, information or facts in connection with assets or liabilities of the alleged culprit or the person under inquiry, including the principal, instigator or the aider and abetter and the giving of such trace or clue, information or facts results in the assets which constitute the unusual wealthiness or the unusually increased assets devolving on the State by a final order of the Court, such person shall be entitled to the reward in accordance with the regulation prescribed by the N.C.C. Commission.

Section 31. In the performance of duties under this Organic Act, the President, a member, a member of a sub-committee and a competent official shall be an official under the Penal Code.

CHAPTER III

Inspection of Assets and Liabilities

Part I

Declaration of Accounts Showing Particulars of Assets and Liabilities of Persons Holding Political Positions

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Section 32. Persons holding political positions shall, on each occasion of taking or vacating office, submit to the N.C.C. Commission an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become sui juris as they actually exist on the date of the submission, in accordance with the form prescribed by the N.C.C. Commission. The assets and liabilities which are subject to the declaration requirement shall include assets and liabilities in foreign countries and those which are not in possession of the declarers, their spouses and children who have not become sui juris. In the case where any person holding a political position under paragraph one hold more than one political position, such person shall submit separate accounts showing particulars of assets and liabilities for every position in accordance with the time prescribed for the submission of the account in respect of such position.

Section 33. The account showing particulars of assets and liabilities under section 32 shall be submitted together with copies of the supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return for the previous fiscal year. The declarer shall certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page thereof, prepare lists of the supporting documents accompanying the account showing particulars of assets and liabilities so submitted, and shall make the submission within such time as follows:

(1) in the case of the taking of office, within thirty days as from the date of taking office;

(2) in the case of the vacation of office, within thirty days as from the date of the vacation;

(3) in the case where the person holding a political position, who has already submitted the account, dies while being in office or before submitting the same after the vacation of office, an heir or an administrator of an estate of such person shall submit an account showing particulars of assets and liabilities existing on the date of such person's death within ninety days as from the date of the death. In addition to the submission of the account under (2), the person holding a political position, who vacates office, shall also re-submit an account showing particulars of assets and liabilities within thirty days as from the date of the expiration of one year after the vacation of office.

Section 34. Any person holding a political position intentionally fails to submit an account showing particulars of assets and liabilities and supporting documents to the N.C.C. Commission within the time prescribed by this Organic Act or intentionally submits such account and supporting documents with false statements being included therein or fails to disclose facts which should have been disclosed, such person shall vacate Office as from the

date of the expiration of the time-limit prescribed for the submission of the account showing particulars of assets and liabilities or as from the date of the discovery of such act, as the case may be, and such person shall not hold a political position for the period of five years as from the date of the vacation of office. For this purpose, the N.C.C. Commission shall refer the matter to the Constitutional Court for final decision and, when the Constitutional Court gives a final decision that it is the case of an intentional submission of the account showing particulars of assets and liabilities and supporting documents with false statements being included therein or failure to disclose facts which should have been disclosed, such person shall vacate the political position currently held, without prejudice to the acts previously done by such person while in office.

Section 35. When the account showing the particulars of assets and liabilities and its supporting documents under section 33 have been received, the President or the member as entrusted by the President shall affix his or her signature on every page of the account. The account and supporting documents under paragraph one submitted by the Prime Minister and Ministers shall be disclosed to the public without delay but not later than thirty days as from the date of the expiration of the time-limit prescribed for the submission of such account. The account of the persons holding other positions shall not be disclosed to any person unless the disclosure will be useful for the trial and adjudication of cases or for the making of a determination and is requested by the courts or the State Audit Commission. The President shall convene a meeting of the N.C.C. Commission to inspect the accuracy and the actual existence of assets and liabilities without delay.

Section 36. In the case where the submission of the account is made by reason of the vacation of office or death of any person holding a political position, the N.C.C. Commission shall inspect the change of assets and liabilities of such person and prepare an inspection report. Such report shall be published in the Government Gazette.

Section 37. In the case where any person holding a political position vacates office or dies and it appears that such person or his or her heir or administrator of the estate intentionally fails to submit an account showing particulars of assets and liabilities, the N.C.C. Commission shall have the power to inspect the change of assets and liabilities of the person holding the political position or of the estate without relying upon the account showing particulars of assets and liabilities required to be submitted under section 33 (2) and (3). For this purpose, the N.C.C. Commission shall compare assets and liabilities which exist on the date of the vacation of office or death with the account showing particulars of assets and liabilities submitted at the time of taking office and shall then prepare an inspection report and publish it in the Government Gazette.

Section 38. In the case where the inspection report reveals an unusual change of the property, the N.C.C. Commission shall request the person holding the political position, heirs or the administrator of the estate, as the case may be, to explain the acquisition of such property before the N.C.C. Commission passes a resolution that such person has an unusual increase of property. In the case where it appears that any person holding a political position has an unusual increase of assets, the President shall furnish all existing documents together with the

inspection report to the Prosecutor-General for instituting prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions so that the unusually increased assets shall devolve on the State, and the provisions of section 80 paragraph two shall apply mutatis mutandis.

Part II

Declaration of an Account Showing Particulars of Assets and Liabilities of State Officials

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Section 39. The persons holing the following positions have the duty to submit to the N.C.C. Commission an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become sui juris upon taking office, every three years while being in office and upon vacation of office, in accordance with the form prescribed by the N.C.C. Commission.

(1) President of the Supreme Court of Justice;

(2) President of the Constitutional Court;

(3) President of the Supreme Administrative Court;

(4) Prosecutor-General;

(5) Election Commissioner;

(6) Ombudsman;

(7) judge of the Constitutional Court;

(8) member of the State Audit Commission;

(9) Vice President of the Supreme Court of Justice;

(10) Vice President of the Supreme Administrative Court;

(11) Chief of the Military Judicial Office;

(12) judge of the Supreme Court of Justice;

(13) judge of the Supreme Administrative Court;

(14) Deputy Prosecutor-General;

(15) person holding a high-ranking position. The account showing assets and liabilities upon vacation of office of the persons under (1), (4), (9), (11), (12), (13), (14) and (15) shall be submitted only when such persons cease to be State officials. The provisions of section 32, section 33 and section 35 paragraph one and paragraph three shall apply to the declaration, submission and receipt of the account showing particulars of assets and liabilities

and to the inspection of the accuracy and actual existence of the assets and liabilities of the persons under paragraph one mutatis mutandis.

Section 40. For the purpose of the execution of this Organic Act, the N.C.C. Commission has the power to prescribe in the Government Gazette the positions of State officials, in addition to those specified in section 39, who shall be under the obligation to submit an account showing particulars of assets and liabilities, and the provisions of section 39 shall apply mutatis mutandis.

Section 41. In the case where any person under section 39 or section 40 who intentionally fails to submit an account showing particulars of assets and liabilities and supporting documents to the N.C.C. Commission within the time prescribed by this Organic Act or intentionally submits an account showing particulars of assets and liabilities and supporting documents with false statements being included therein or fails to disclose facts which should have been disclosed, such person shall vacate office as from the date of the expiration of the time-limit prescribed for the submission of the account or the date of the discovery of the said act, as the case may be, and shall not take a position as a State official for the period of five years as from the date of the vacation of office.

Section 42. The N.C.C. Commission shall have the power to order State officials holding positions other than those specified in section 39 and section 40 to submit an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become sui juris, in accordance with the rules, procedures and time prescribed in the Government Gazette by the N.C.C. Commission. The State officials designated by the N.C.C. Commission under paragraph one also have the duty to submit an account showing particulars of assets and liabilities periodically within thirty days as from the end of every five-year period while in office. In such a case, particulars of assets and liabilities which must be shown shall only be limited to the items which vary from the last submission. The inspection of the account showing particulars of assets and liabilities of State officials submitted under this section shall be conducted on every occasion of its submission or upon approval by the N.C.C. Commission in the event there appears to the N.C.C. Commission a circumstance indicative of the unusual wealthiness of such State officials or upon indication from the fact inquiry that such State official has become unusually wealthy or committed an offence of corruption or an offence of malfeasance in office or malfeasance in judicial office or upon such person ceasing to be a State official or being proximate to such cessation.

CHAPTER IV

Fact Inquiry

Section 43. Subject section 44, the N.C.C. Commission shall conduct a fact inquiry in accordance with the provisions of this Chapter in the following circumstances:

(1) the President of the Senate refers the matter to the N.C.C. Commission for the purpose of a fact inquiry in consequence of the lodging of a petition requesting the Senate to pass a resolution removing the alleged culprit from office under section 59;

(2) the injured person lodges a request with the N.C.C. Commission for the purpose of taking legal proceedings against the alleged culprit under section 66;

(3) an allegation is lodged with the N.C.C. Commission for the purpose of enabling the property to devolve on the State under section 75;

(4) there is a reasonable cause to suspect that a State official has become unusually wealthy under section 77 or has committed an offence under section 88;

(5) an allegation is made to the N.C.C. Commission against a State official under section 84.

Section 44. The N.C.C. Commission shall not conduct a fact inquiry in the following circumstances:

(1) the matter to be inquired into is the matter in respect of which the N.C.C. Commission has completed its fact inquiry and no fresh evidence which is material to the inquiry is found;

(2) the alleged culprit is the same person as the alleged culprit in the matter under inquiry, of which the cause of the allegation is the same.

Section 45. In conducting the fact inquiry under section 43, the N.C.C. Commission may appoint, for conducting an inquiry on its behalf, an inquiry sub-committee which shall consist of one member and competent officials and/or qualified persons as designated by the N.C.C. Commission and shall have the duty to acquire facts and gather evidence in order for the facts or the offence to become known. In appointing an inquiry sub-committee, regard shall be had to the appropriateness to the status and level of the position and the reasonable protection of the alleged culprit. The performance of duties of the inquiry sub-committee shall be in accordance with the regulation prescribed by the N.C.C. Commission.

Section 46. The person under the following circumstances shall not be appointed as a member to an inquiry sub-committee:

(1) having knowledge of the events to which the allegation relates;

(2) being interested in the matter to which the allegation relates;

(3) having current animosity towards the person making the allegation or the alleged culprit;

(4) being the person making the allegation or such person's or the alleged culprit's spouse, ancestor, descendant, or brother or sister of full or half blood;

(5) having a close relationship with the person making the allegation or the alleged culprit in the capacity as such person's relative or being a such person's partner or having commercial mutual benefits or conflicting interest vis-a-vis the person making the allegation or the alleged culprit. In the case where it appears that the person under paragraph one is appointed as a member to an inquiry sub-committee, such member shall inform the President thereof without delay. In the meantime, such member shall not be involved in the proceeding of the inquiry sub-committee. The provisions of paragraph two shall also apply mutatis mutandis to the case where any member of the sub-committee is challenged by the alleged culprit that he or she is under the circumstance under paragraph one. The submission of a challenge, the consideration of a challenge and the appointment of a replacing member of the inquiry sub-committee shall be in accordance with the rules and procedures prescribed by the N.C.C. Commission.

Section 47. In conducting a fact inquiry, the allegation shall be informed to the alleged culprit and there shall be fixed a reasonable time within which the alleged culprit may give explanations, present evidence or bring witnesses to testify in support of the explanations. In giving explanations and testimonies of the alleged culprit, the alleged culprit shall have the right to have the presence of his or her attorney or the person upon whom he or she reposes confidence for hearing the explanations or testimonies.

Section 48. In the case where an inquiry sub-committee is appointed, the presence of at least two members of the sub-committee, at least one of whom must be the member who is the competent official, is required for the hearing of the alleged culprit's explanations or the examination of the alleged culprit and witnesses. But, if it is the hearing of the explanations or the examination of the person under section 58, the presence of the member of the sub-committee who is also the member is also required therefor. The member of the inquiry sub-committee shall not commit or cause to be committee any act which amounts to seducing, threatening or giving a promise to the alleged culprit or witnesses with a view to inducing them to give any statements with respect to the matters to which the allegation relates.

Section 49. For the purpose of the performance of duties of the inquiry sub-committee, the inquiry sub-committee shall have the power to carry out the acts under section 25 (1), (2) or (3) or section 26 as entrusted by the N.C.C. Commission.

Section 50. Upon the completion of the gathering of evidence, the inquiry file shall be prepared and submitted to the President. Such file shall contain the following particulars:

(1) the names and positions of the person making the allegation and the alleged culprit;

(2) the matter to which the allegation relates;

(3) the allegation and summary of facts obtained from the fact inquiry;

(4) reasons given in the consideration and decision of both issues of fact and issues of law;

(5) the provisions of law relied upon;

(6) the summary of the opinion on the matter to which the allegation relates.

Section 51. When the President has received the inquiry file under section 50, the President shall cause to be held a meeting for considering it within thirty days. In the interest of justice, in the case where an inquiry sub-committee has been appointed, the N.C.C. Commission may pass a resolution directing the same sub-committee to inquire into additional facts or appointing a new inquiry sub-committee to inquire into additional facts on its behalf.

Section 52. The member who is under the circumstance under section 46 shall not attend the meeting for considering the inquiry file, with the exception of the member whose knowledge of the events to which the allegation relates is obtained on account of being appointed as a member of the inquiry sub-committee.

Section 53. The N.C.C. Commission shall consider the allegation from the inquiry file and pass a resolution as to whether the allegation has a prima facie case. In the case where the N.C.C. Commission passes a resolution that the allegation has no prima facie case, such allegation shall lapse.

Section 54. When the N.C.C. Commission has passed a resolution under section 53, if such allegation is the matter referred to the Commission by the President of the Senate under section 43 (1) or is the matter in respect of which the injured person lodged a request for taking legal proceeding against the alleged culprit under section 43 (2), the President shall furnish a report to the President of the Senate or inform the injured person thereof, as the case may be, without delay. The report under paragraph one shall be signed by the members having attended the consideration and shall specify the background or the allegation, the summary of facts obtained from the inquiry, reasons given in the consideration and decision and provisions of the Constitution and laws relied upon.

Section 55. In the case where the N.C.C. Commission passes a resolution that the allegation has a prima facie case and such allegation is the matter referred to the Commission under section 43 (1) or is the matter in respect of which the injured person lodged a request for taking legal proceedings against the alleged culprit under section 43 (2), then, as from the day the N.C.C. Commission passes that resolution, the alleged culprit shall not continue the performance of duties until the Senate passes a resolution or the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions passes a judgment, as the case may be.

Section 56. In the case where the N.C.C. Commission passes a resolution that the allegation has a prima facie case, the President shall furnish a report under section 54 paragraph two, existing documents as well as the opinion to:

(1) the President of the Senate, if such allegation is the matter referred to the Commission by the President of the Senate under section 43 (1) or is the matter in respect of which the injured person lodged a request under section 43 (2);

(2) the Prosecutor-General, if the inquiry reveals a prima facie case for a criminal offence or unusual wealthiness and the alleged culprit is the person under section 58 except ProsecutorGeneral or is a political official other than the persons under section 58 (1) and (2);

(3) the Prosecutor-General, if the inquiry reveals a prima facie case for a criminal offence or unusual wealthiness and the alleged culprit is a State official who is not a person holding a political position and a person holding a high-ranking position (4) the superior or the person who has the power to appoint or remove the allege culprit, if the inquiry reveals a prima facie case for a disciplinary offence or a prima facie case justifying the removal from office, and the alleged culprit is a State official who is not a person holding a political position. In the case where the N.C.C Commission is of the opinion that any allegation referred to the Commission by the President of the Senate under section 43 (1) is of particular importance, the 16 N.C.C. Commission may prepare a separate report specifically on such allegation and furnish the same to the Senate for consideration in advance.

Section 57. During the fact inquiry, if the alleged culprit vacates office or vacates the Government service by any reason other than death, the N.C.C. Commission shall have the power to proceed with the fact inquiry for the purpose of taking criminal proceedings, initiating disciplinary action, or making a request that the property devolve on the State.

CHAPTER V

Removal from Office

Section 58. When it appears that any person holding any of the following positions is under the circumstance of unusual wealthiness or under circumstances indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the Constitution or the law, the Senate has the power to initiate the removal of such person from office in accordance with the provisions of this Chapter:

(1) Prime Minister;

(2) Minister;

(3) member of the House of Representatives;

(4) senator;

(5) President of the Supreme Court of Justice;

(6) President of the Constitutional Court;

(7) President of the Supreme Administrative Court;

(8) Prosecutor-General;

(9) Election Commissioner;

(10) Ombudsman;

(11) judge of the Constitutional Court;

(12) member of the State Audit Commission;

(13) Vice President of the Supreme Court of Justice;

(14) Vice President of the Supreme Administrative Court;

(15) Chief of the Military Judicial Office;

(16) Deputy Prosecutor-General;

(17) a person holding a high-raking position.

Section 59. Members of the House of Representatives of not less than one-fourth of the total number of the existing members of the House or voters of not less than fifty thousand in number have the right to lodge with the President of the Senate a joint request that the Senate pass a resolution removing the persons holding positions under section 58 from office. Senators of not less than one-fourth of the total number of the existing members of the Senate have the right to lodge with the President of the Senate a joint request that the Senate pass a resolution removing a senator from office.

Section 60. In the case of the lodging by voters of a request for the removal of the persons holding the positions under section 58 from office, there shall be not more than one hundred initiators for the purposes of preparing the request and attesting the signatures of voters of not less than fifty thousand in number who shall have participated in the request. The initiators and participants shall be the persons entitled to vote under the organic law on election of members of the House of Representatives and senators. The initiators shall, in person, identify themselves to the President of the Senate before commencing the gathering of names of the people entitled to participate in the request.

Section 61. The request for the removal from office under section 59 and section 60 shall be in writing, specify the names, age, numbers of the civic identification cards of the persons making the request, be accompanied by copies of the civic identification cards or expired civic identification cards or any other cards or evidence issued by the Government bearing the photographs capable of identification and signed by the persons making the request with the clear statement as to the date, month and year of the signatures. The request shall also clearly itemise circumstances in which the persons holding the positions under section 58 have allegedly become unusually wealthy, committed corruption or committed an offence of malfeasance in office or malfeasance in judicial office or intentional exercise of power contrary to the provisions of the Constitutions or any law and shall so reasonably and sufficiently specify evidence or clue as to enable the N.C.C. Commission to proceed with a fact inquiry. Such request shall be submitted to the President of the Senate within one hundred eighty days as from the date the initiators identify themselves in person to the President of the Senate.

Section 62. In the case where members of the House of Representatives lodge a request for the removal of the persons holding the positions under section 58 from office or in the case where senators lodge a request for the removal of a senator from office, the provisions of section 61 shall apply mutatis mutandis.

Section 63. Upon receipt of the request, the President of the Senate shall examine it and consider its correctness and conformity with the provisions of the Constitution and with section 61 or section 62. If the President of the Senate considers that it is correct and conforms to the said provisions, the President of the Senate shall refer the matter to the N.C.C. Commission for further proceeding in accordance with Chapter 4 Fact Inquiry without delay. If the President of the Senate considers that it is not correct or does not conform to the said provisions, the President of the Senate shall notify it to the persons making the request or the initiators for taking the corrective action. The persons making the request or the initiators shall accomplish the action under paragraph one within thirty days as from the date of receipt of the notification by the President of the Senate.

Section 64. When the N.C.C. Commission has passed a resolution that the allegation put in the request for the Senate passing a resolution removing the alleged culprit from office has a prima facie case and has furnished the report to the President of the Senate under section 56 (1), the President of the Senate shall convoke a sitting of the Senate for considering and passing a resolution without delay. 18 In the case where the N.C.C.Commission submits the report out of session of the Senate, the President of the Senate shall inform the President of the National Assembly in order to tender a petition to the King for the issuance of a Royal Command convoking an extraordinary session of the National Assembly for considering the matter. The President of the Senate shall countersign the Royal Command.

Section 65. A senator has autonomy in casting a vote, which must be by secret ballot. A resolution for the removal of any person from office shall be passed by votes of not less than threefifths of the total number of the existing members of the Senate. A person who is removed from office shall vacate office or be released from government service as from the date of the resolution of the Senate. Such person shall be deprived of the right to hold any political position or a position in a State agency or to serve in the government service for five years. The resolution of the Senate under this section shall be final and no request for the removal of such person from office shall be made on the same ground, without, however, prejudice to the trial of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions or the Court having jurisdiction to try and adjudicate the case, as the case may be. When the Senate has passed a resolution removing any person from office, the President of the Senate shall, without delay, notify the resolution to the N.C.C. Commission, the person who is removed from office, Secretary to the Cabinet and State officials concerned.

CHAPTER VI

Criminal Proceedings Against Persons Holding Political Positions Under Section 308 of the Constitution

Section 66. In the case where the injured person alleges that the person holding the position of Prime Minister, Minister, member of the House of Representatives, senator or any other political official has become unusually wealthy, or committed an offence of malfeasance in office under the Penal Code or malfeasance in office or corruption under other law, the injured person shall lodge a written request with the N.C.C. Commission. The provisions under paragraph one shall also apply to the case where the alleged culprit or other person is the principal, instigator or aider and abetter.

Section 67. The request under section 66 shall at least contain the following particulars:

(1) the name and address of the injured person;

(2) the name and address of the person lodging the request on behalf of the injured person and the relationship with the injured person (if any);

(3) the name or position of the alleged culprit;

(4) the allegation and circumstance under which the alleged offence was committed, the injury sustained, together with so clear and sufficient evidence as to enable the further conduct of an inquiry;

(5) the signature of the injured person or of the person lodging the request on behalf of the injured person, as the case may be.

Section 68. In the case where the injured person is unable to lodge a request, the following persons may lodge a request on behalf of the injured person:

(1) the person authorised in writing by the injured person to lodge a request on behalf of the injured person;

(2) a legal representative or a curator, only in the case where the injured person is a minor or an incompetent person under the former's care and is unable to lodge a request by himself or herself;

(3) the ancestor, descendant, husband or wife in the case where the injured person is deceased, or, by reason of necessity, becomes, unable to lodge a request by himself or herself or unable to grant authorisation;

(4) the manager or other representatives of a juristic person in the case where the injured person is a juristic person;

(5) the relative of the injured person in the case where the injured person is a minor without a legal representative or a person of unsound mind or an incompetent person without a curator or where the legal representative or the curator is unable to perform the duty by reason of any cause including the conflict of interest towards the minor or the incompetent person.

Section 69. When the request is correctly and duly received, the N.C.C. Commission shall proceed in accordance with Chapter 4, Fact Inquiry.

Section 70. In the case where the N.C.C. Commission passes a resolution that the allegation has a prima facie case for the offence under section 66, the President shall refer the report, existing documents and the opinion to the Prosecutor-General for the purpose of instituting the prosecution before in Supreme Court of Justice's Criminal Division for Persons Holding Political Positions, in accordance with the organic law on criminal proceedings against persons holding political positions.

Section 71. The provisions of section 70 shall apply mutatis mutandis to the case where the N.C.C. Commission passes a resolution that the allegation made in the request to the Senate under section 59 has a prima facie case under section 66.

Section 72. In the case where the injured person or the N.C.C. Commission lodges, with the administrative official or police official having jurisdiction over the territory in which the offence concerned was committed, a complaint against the person specified in section 66 accusing that person of having committed an offence provided in section 66, the administrative official or police official receiving the complaint shall have the power to submit a motion to the competent Court for issuing a warrant of arrest for arresting such person. In the case where other necessary ground arises which justifies an arrest without a warrant as provided by law, the administrative official or police official shall have the power to arrest such person. The administrative official or police official who arrests such person shall refer the arrested person together with the arrest record to the N.C.C. Commission within forty eight hours.

Section 73. In the case where it is not necessary to keep the arrested person in custody, the N.C.C. Commission may grant a provisional release with or without bail. In the case where it is necessary to keep the arrested person in custody, the N.C.C. Commission may submit a motion to the Criminal Court for the Court's issuance of a warrant of detention in accordance with the rules and for the length of time prescribed in the Criminal Procedure Code for the offence to which the complaint relates.

Section 74. When the prosecution is intended to be instituted under section 70, the N.C.C. Commission shall inform, in writing, the alleged culprit to appear before, and report to, the person entrusted by the N.C.C. Commission on the date and at the time specified. If the alleged culprit fails to enter an appearance and report within the specified time, the N.C.C. Commission shall inform the administrative official or police official for the purpose of causing the alleged culprit to be obtained and referred to the Prosecutor-General or the N.C.C. Commission, as the case may be, for further proceeding with the case. The custody of the alleged culprit and the provisional release shall be within the power of the N.C.C. Commission, the person entrusted by the N.C.C. Commission or the Prosecutor-General, as the case may be. For this purpose, the organic law on criminal proceedings against persons holding political positions or the Criminal Procedure Code, as the case may be, shall apply mutatis mutandis.

CHAPTER VII

The Request for the Property to Devolve on the State

Section 75. In the case where an allegation is made that any person holding a political position or any State official has become unusually wealthy, the N.C.C. Commission shall make a preliminary determination as to whether the circumstance or the matter put in the allegation falls within the matters capable of acceptance by the N.C.C. Commission. If the alleged culprit is the person who has already submitted an account showing particulars of assets and liabilities, the N.C.C. Commission shall also take such account into consideration. The allegation of unusual wealthiness shall be made at the time the alleged culprit is a State official or has ceased to be a State official for not more than two years.

Section 76. The allegation under section 75 shall at least contain the following particulars:

(1) the name and address of the person making the allegation; (2) the name or position of the alleged culprit;

(3) the allegation and circumstance under which the alleged culprit has allegedly become wealthy.

Section 77. In the case where the allegation meets the requirements in section 75 or the in case where there is a reasonable cause to suspect that a State official who is not a person holding a political position has become unusually wealthy, the N.C.C. Commission shall proceed in accordance with Chapter 4, Fact Inquiry.

Section 78. In the case where the N.C.C. Commission discovers that any property of the alleged culprit is connected with the unusual wealthiness and is under the circumstance convincingly indicative of the possibility of its transfer, move, transformation or concealment, the N.C.C. Commission shall have the power to issue an order of temporary seizure or attachment of that property , without prejudice to the right of the alleged culprit to submit an application for taking such property for use with or without bail or security. When there occurs a temporary seizure or attachment of the property under paragraph one, the N.C.C. Commission shall cause to be conducted proof of the property without delay. In the case where the alleged culprit is unable to present evidence that the property under temporary seizure or attachment is not connected with the unusual wealthiness, the N.C.C. Commission shall have the 21 power to continue its seizure or attachment until the N.C.C. Commission passes a resolution that the allegation has no prima facie case, which must be within one year as from the date of the seizure or attachment or until the Court passes a final judgment dismissing that case. But, if the proof is successful, the property shall be returned to such person.

Section 79. For the purpose of a fact inquiry, the N.C.C. Commission shall order the alleged culprit to show particulars of assets and liabilities of the alleged culprit in accordance with

items and procedures and within the time prescribed by the N.C.C. Commission, which shall not be less than thirty days and shall not be more than sixty days.

Section 80. If the N.C.C. Commission has conducted a fact inquiry and passed a resolution that the alleged culprit has become unusually wealthy, the N.C.C. Commission shall proceed as follows:

(1) in the case where it is the alleged culprit under section 66, the President shall refer the matter to the Prosecutor-General for submission of a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions requesting the Court to order that the property devolve upon the State;

(2) in the case where the alleged culprit is the person holding the position of President of the Supreme Court of Justice, President of the Constitutional Court, President of the Supreme Administrative Court, Election Commissioner, Ombudsman, judge of the Constitutional Court, member of the State Audit Commission, Vice President of the Supreme Court of Justice, Vice President of the Supreme Administrative Court, Chief of the Military Judicial Office, Deputy Prosecutor-General or is the person holding a high-ranking position, the President shall refer the matter to the ProsecutorGeneral for submission of a motion to the Court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(3) in the case where the alleged culprit is the person holding the position of ProsecutorGeneral, the President shall submit a motion to the Court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State;

(4) in the case where the alleged culprit is a State official who is not the person under (1), (2) and (3), the President shall refer the matter to the Prosecutor-General for submission of a motion to the Court having competence to try and adjudicate the case requesting the Court to order that the property devolve upon the State, and the President shall notify it to the superior or the person having the power to appoint or remove the alleged culprit for the purpose of issuing a punitive order of expulsion or dismissal on the deemed ground of the commission of corruption, except that in the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court Procedure or public prosecutor under the law on public prosecutors service, the President shall notify it to the President of the Judicial Commission, the President of the Judicial Commission of Administrative Courts or the President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court Procedure or the law on public prosecutors service. In the case under (1) or (2), when the Prosecutor-General receives the report and documents together with the opinion from the N.C.C. Commission and is of the opinion that the report, documents and opinion referred to by the N.C.C. Commission are not so complete as to justify the institution of legal proceedings, the Prosecutor-General shall notify it to the N.C.C. Commission for further

action. For this purpose, the incomplete items shall fully be specified at the same time. In this case, the N.C.C. Commission and Prosecutor-General shall appoint a working committee consisting of representatives of each side in an equal number for the purpose of collecting full evidence to be referred to the Prosecutor-General for further submission of a motion to the Supreme Court of Justice's Criminal Division of Persons Holding Political Positions or the Court having competence to try and adjudicate the case, as the case may be, requesting the Court to give a subsequent order that 22 the property devolve upon the State. In the case where such working committee fails to reach an agreement as to the legal proceedings, the N.C.C. Commission shall have the power to submit a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions or the Court having competence to try and adjudicate the case, as the case may be, requesting the Court to order that the property devolve upon the State. In the case under (2), (3) or (4), the Civil Procedure Code shall apply mutatis mutandis.

Section 81. The Prosecutor-General or the President, as the case may be, shall submit a motion requesting the Court to order that the property devolve upon the State under section 80 within ninety days as from the date the matter is received from the N.C.C. Commission. In the case in which a request is made that the property be ordered to devolve upon the State, onus of proof to the Court that the said property does not result from the unusual wealthiness is upon the alleged culprit.

Section 82. A transfer or any act in connection with the property of the State official which is done after the N.C.C. Commission has ordered such State official to declare particulars of assets and liabilities under section 79 may, if the N.C.C. Commission or the Prosecutor-General, as the case may be, files an application by way of motion, be cancelled or suspended by an order of the Court, unless the transferee or the beneficiary satisfies the Court that the property or benefit has been transferred to acquired in good faith and in return for remuneration.

Section 83. If the Court gives an order that the alleged culprit's property in respect of which the N.C.C. has passed a resolution confirming its representing the unusual wealthiness or the unusual increase devolve upon the State but the execution is unable to be conducted of the whole or part of such property, the execution may be conducted of other property of the alleged culprit within the prescription of ten years, provided that it shall not be conducted in excess of the value of the property ordered by the Court to devolve upon the State.

CHAPTER VIII

Inspection of State Officials Not Being Persons Holding Political Positions under Section 308 of the Constitution

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Section 84. In making an allegation that a State official who is not the person under section 66 committed an offence of corruption, malfeasance in office or malfeasance in judicial office, the person making such allegation shall submit an allegation in writing bearing his or

her signature to the N.C.C. Commission at the time the person against whom the allegation is made is a State official or has ceased to be a State official for not later than two years.

Section 85. The allegation under section 84 shall at least contain the following particulars:

(1) the name and address of the person making the allegation;

(2) the name or position of the alleged culprit;

(3) the allegation and circumstance under which the alleged offence was committed, together with, or by reference to, evidence.

Section 86. The N.C.C. Commission shall not accept or invoke for consideration the allegation under section 84 which is of the following descriptions:

(1) the matter involving the same allegation or issue as that in respect of which the N.C.C. Commission has given its final decision, for which no fresh evidence which is material to the case is found;

(2) the matter the same issue of which has been admitted by the Court and is pending the Court's trial or has been adjudicated by the Court's final decision or order.

Section 87. The N.C.C. Commission may refuse to accept or invoke for consideration the allegation which is of the following descriptions:

(1) the matter which exhibits the nature of an anonymous letter, for which no clear evidence is so sufficiently specified as to enable a fact inquiry;

(2) the matter surviving the period of more than five years as from the date of its occurrence to the date of the allegation, for which evidence cannot be so sufficiently obtained as to enable a further inquiry.

Section 88. When the N.C.C. Commission has received the allegation against the State official under section 84 or has a reasonable cause to suspect that any State official has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, the N.C.C. Commission shall proceed in accordance with Chapter 4, Fact Inquiry.

Section 89. In the case where the injured person has lodged a complaint, or a denunciation is made, to the inquiry official requesting for an action against a State official who is not the person under section 66 in consequence of the commission of the act under section 88, the inquiry official shall refer the matter to the N.C.C. Commission within thirty days as from the date of the complaint or the denunciation, for the purpose of proceeding with it in accordance with the provisions in this Chapter. In this connection, if the N.C.C. Commission, having considered the matter, is of the opinion that it is not the case under section 88, the N.C.C. Commission shall refers it back to the inquiry official for proceeding with it in accordance with the Criminal Procedure Code.

Section 90. In conducting a fact inquiry, if the N.C.C. Commission is of the opinion that the continued performance of the alleged culprit shall cause injury to the Government service or cause an impediment to the inquiry, the N.C.C. Commission shall refer the matter to the superior of the alleged culprit for an order of suspension from the Government service or from work pending the decision of the N.C.C. Commission. If the superior of the alleged culprit has ordered a suspension from Government service or from work and a subsequent outcome of the inquiry reveals that the allegation has no prima facie case, the N.C.C. Commission shall inform the superior of the alleged culprit thereof for the purpose of issuing an order allowing the alleged culprit to resume the Government service or work in the original position.

Section 91. When the N.C.C. Commission has conducted the inquiry and passed a resolution that a particular allegation has no prima facie case, such allegation shall lapse. Any allegation which, according to the N.C.C. Commission's resolution, has a prima facie case shall be pursued as follows:

(1) if a prima facie case for a disciplinary offence is found, it shall be proceeded with in accordance with section 92;

(2) if a prima facie case for a criminal offence is found, it shall be proceeded with in accordance with section 97.

Section 92. In the case where a prima facie case for a disciplinary offence is found, when the N.C.C. Commission, after having considered the circumstances of the commission of the offence, passes a resolution that a particular alleged culprit has committed a disciplinary offence, the President shall send the report and existing documents together with the opinion to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of considering the 24 disciplinary penalty for the offence in respect of which the N.C.C. Commission has passed the resolution, without the appointment of a disciplinary inquiry committee. In considering the disciplinary penalty to be inflicted upon the alleged culprit, it shall be deemed that the report, documents and opinion of the N.C.C. Commission is the disciplinary inquiry file of the disciplinary inquiry committee under the law, rules or regulations on personnel administration applicable to such alleged culprit, as the case may be. In the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court Procedure or public prosecutor under the law on public prosecutors service, the President shall send the report and existing documents together with the opinion to the President of the Judicial Commission, the President of the Judicial Commission of the Administrative Courts or the President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court Procedure or the law on public prosecutors service without delay. In this connection, the report and documents of the N.C.C. Commission shall also be regarded as part of the inquiry file. The outcome shall be furnished to the N.C.C. Commission for information within fifteen days as from the date the order of the disciplinary penalty is issued or the date a decision is

given that no disciplinary offence is found. In the case of the alleged culprit to whom no laws, rules or regulations on disciplines are found applicable, the President shall, upon the N.C.C. Commission's resolution that such alleged culprit has committed an offence as alleged, send the report and existing documents together with the opinion of the N.C.C. Commission to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of proceeding in accordance with his or her powers and duties.

Section 93. Upon receipt the report under section 92 paragraph one and paragraph three, the superior or the person having the power to order the appointment and removal shall consider the penalty within thirty days as from the date of receipt thereof, and the superior or the person having the power to order the appointment and removal shall furnish a copy of the penalty order to the N.C.C. Commission for information within fifteen days as from the date the order is issued.

Section 94. Any superior or the person having the power to order the appointment and removal who fails to take action under section 93 is deemed to commit a disciplinary offence or a legal offence under the law, rule or regulation on personnel administration applicable to the alleged culprit in question.

Section 95. In the case where the superior of the alleged culprit fails to take the disciplinary action under section 93 or the N.C.C. Commission considers that the disciplinary action taken by the superior under section 93 is incorrect or inappropriate, the N.C.C. Commission shall present its opinion to the Prime Minister and the Prime Minister shall have the power to give an order as the Prime Minister thinks fit. In the case of necessity, the N.C.C. Commission may order the Civil Service Commission under the law on civil service or other commission having the duty to control and supervise the execution of the law, rule and regulation on personnel administration for State officials or the commission which performs the management of the State enterprise or the person who has given an order appointing a member of a commission, committee or sub-committee or an employee of a Government agency, State agency or State enterprise, as the case may be, to consider and take correct and appropriate action within the powers and duties, except that in the case where the alleged culprit is a judicial official under the law on judicial service, a judge of the administrative court under the law on establishment of Administrative Courts and Administrative Courts Procedure, or a public prosecutor under the law on public prosecutors service, the N.C.C. Commission shall furnish its opinion to the President of the Judicial Commission, President of the Judicial Commission of the Administrative Courts or President of the Public Prosecutors Commission, as the case may be.

Section 96. The alleged culprit punished under section 93 may exercise the right to appeal against the exercise of the superior's discretion in giving the penalty order, in accordance with the 25 law, rule or regulation on personnel administration applicable to such alleged culprit, provided that such right must be exercised within thirty days as from the date the superior or the person having the power to order the appointment or removal gives the penalty order.

Section 97. In the case where the N.C.C. Commission passes a resolution that any matter put in the allegation amounts to a criminal offence, the President shall furnish the report, documents and opinion to the Prosecutor- General or, in the case where the alleged culprit is the Prosecutor-General, proceed with the prosecution, for the purpose of criminal proceedings before the Court having competence to try and adjudicate the case. In this instance, the report of the N.C.C. Commission shall be deemed the inquiry file under the Criminal Procedure Code and the Court shall accept the case without conducting a preliminary examination. When the Prosecutor-General has received the report and documents together with the opinion from the N.C.C. Commission under paragraph one and considers that the report, documents and opinion furnished by the N.C.C. Commission are not so complete as to justify the institution of the prosecution, the Prosecutor-General shall inform the N.C.C. Commission thereof for further proceeding. In this instance, the incomplete items shall, at the same time, fully be specified. In this case, the N.C.C. Commission and the Prosecutor-General shall appoint a working committee consisting of representatives of each side in an equal number, for the purpose of collecting full evidence and furnish it to the Prosecutor-General for instituting the prosecution. In the case where such working committee fails to arrive at a conclusion as to the prosecution, the N.C.C. Commission shall have the power to initiate the prosecution of its own motion or appoint an attorney to institute the prosecution on its behalf.

Section 98. When the prosecution is intended to be instituted under section 97, the provisions of section 74 shall apply mutatis mutandis.

Section 99. In the case where the N.C.C. Commission passes a resolution that a particular allegation has a prima facie case for an offence under section 91, if, in addition to proceeding in accordance with section 92 or section 97, it the inquiry by the N.C.C. Commission reveals that the alleged culprit granted approval or permission conferring rights or benefits on, or issued a document of title to, any person contrary to the law or official regulation to the detriment of the Government service, the President shall furnish the report and existing documents together with its opinion to the superior or head of the agency concerned for the purpose of filing an application to the Court for an order or judgment cancelling or revoking the right or document of title in respect of which the alleged culprit granted approval or permission. The provisions of section 93, section 94 and section 95 shall apply to the case under paragraph one mutatis mutandis.

CHAPTER IX

Conflicts Between Personal Interest and Public Interest

Section 100. Any State official shall not carry out the following acts:

(1) being a party to or having interest in a contract made with a Government agency where such State official performs duties in the capacity as State official who has the power to conduct supervision, control, inspection or legal proceedings;

(2) being a partner or shareholder in a partnership or company which is a party to a contract made with a Government agency where such State official performs duties in the capacity as a State official who has the power to conduct supervision, control, inspection or legal proceedings;

(3) being a concessionaire or continuing to hold a concession from the State, State agency, State enterprise or local administration or being a party to a contract of a directly or indirectly monopolistic nature made with the State, a Government agency, State agency, State enterprise or local administration, or being a partner or shareholder in a partnership or company which is a concessionaire or a contractual party in such manner;

(4) being interested in the capacity as a director, counsel, representative, official or employee in a private business which is under supervision, control or audit of the State agency to which such State official is attached or where such State official performs duties in the capacity as State official, provided that the nature of the interest of the private business may be contrary to or inconsistent with public interest or the interest of the Government service or may affect the autonomy in the performance of duties of such State official. The positions of State officials prohibited from carrying out the activities under paragraph one shall be prescribed and published in the Government Gazette by the N.C.C. Commission. The provisions of paragraph one shall apply to spouses of the State officials under paragraph two. For this purpose, the activities carried out by the spouse shall be deemed as the activities carried out by the State official.

Section 101. The provisions of section 100 shall apply mutatis mutandis to the activities carried out by the person who has already ceased to be the State official for less than two years, with the exception of the holding of shares of not more than five percent of the total number of shares issued by a public limited company which is not a party to a contract made with the State agency under section 100 (2), for which permission is obtained under the law on securities and securities exchange.

Section 102. The provisions of section 100 shall not apply to the carrying out of activities of the State official who is entrusted, by the Government agency having the power to supervise, control or inspect the operation of a limited company or a public limited company, to perform duties in the limited company or public limited company in which the State agency holds shares or with which it participates in an undertaking.

Section 103. Any State official shall not receive property or any other benefit from any person other than the legitimate property or benefit derived under the law, rules or regulations issued by virtue of the provisions of law, with the exception of the acceptance of the property or any other benefit on the ethical basis in accordance with the rules and in such amount as prescribed by the N.C.C. Commission. The provisions of paragraph one shall apply mutatis mutandis to the acceptance of property or any other benefit by the person who has ceased to be a State official for less than two years.

CHAPTER X

Office of the National Counter Corruption Commission

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Section 104. There shall be the Office of the National Counter Corruption Commission called the "Office of the N.C.C." in brief, as an independent Government agency under the Constitution, which shall be ascribed the status of Department under the law on organisation of State administration.

Section 105. The Office of the N.C.C. has the powers and duties in connection with the general official affairs of the N.C.C. Commission and shall have the powers and duties as follows:

(1) to be responsible for the administrative work of the N.C.C. Commission;

(2) to study and gather data related to the work of the N.C.C. Commission;

(3) to study, and encourage the studies and research in, and disseminate knowledge about corruption in the governmental and political circles;

(4) to perform other acts as entrusted by the N.C.C. Commission.

Section 106. A Government official of the Office of the N.C.C. is the person recruited and appointed as the Government official under this Organic Act. The Government official of the Office of the N.C.C. shall be the Government official under the law on Officials' Pension Fund.

Section 107. The N.C.C. Commission shall have the power to issue regulations or notifications with respect to general administration, personnel administration, budget, finance and property and other businesses of the Office and, in particular, with respect to the following matters:

(1) internal organisation of the Office of the N.C.C. and the scope of duties of such Government agency;

(2) qualifications, selection, recruitment, appointment, trial performance of official duties, transfer, elevation of position, vacation of office, elevation of salary scale, special remuneration, resignation from official service, suspension of official service, temporary dismissal from official service, disciplines, disciplinary inquiry and penalty, the lodging of a complaint and the appeal against a penalty, in respect of Government officials and employees of the Office;

(3) the acting for and acting as the holder of a position of Government official of the Office of the N.C.C.;

(4) the prescription of working days and hours, traditional holidays, annual holidays and leave of absence of Government officials of the Office of the N.C.C.;

(5) the prescription of the uniform and dress of the Government officials of the Office of the N.C.C.;

(6) the employment and appointment of a person as an expert or specialist beneficial to the performance of official duties of the N.C.C. Commission as well as the rate of remuneration therefor;

(7) the appointment of a person or a group of persons for carrying out any act as entrusted;

(8) the budget and procurement administration and management of the Office of the N.C.C.;

(9) the provision of welfare or other aids to Government officials of the Office of the N.C.C.;

(10) the keeping of the personnel record and the control of retirement of Government officials of the Office of the N.C.C.;

(11) the prescription of procedures and conditions for the employment of employees of the Office of the N.C.C. and the prescription of the uniform and dress, working days and hours, traditional holidays, annual holidays, leave of absence and the provision of welfare or other aids to employees of the Office of the N.C.C..

The regulations and notifications under paragraph one shall be signed by the President and shall come into force upon their publication in the Government Gazette.

Section 108. The Office of the N.C.C. shall have Secretary-General of the National Counter Corruption Commission who shall be responsible for the work performance of the Office of the N.C.C. and directly answerable to the President and shall be the superior of Government officials and employees of the Office of the N.C.C.. For these purposes, there may also be Deputy SecretaryGeneral or Assistant Secretary-General of the National Counter Corruption Commission to assist in directing and performing official duties. The Secretary-General shall represent the Office of the N.C.C. in its affairs vis-a-vis third persons. For this purpose, the Secretary-General may delegate powers to any person to perform any particular act, in accordance with the regulations prescribed and published in the Government Gazette by the N.C.C. Commission.

Section 109. The Secretary-General shall hold office for a term of six years and shall serve for only one term. In addition to vacation of office at the expiration of the term, the Secretary-General vacates office upon:

(1) death;

(2) termination of official service under the law on official pensions;

(3) resignation;

(4) removed by the Royal Command upon approval of the N.C.C. Commission and the Senate;

(5) being expelled or dismissed in accordance with the disciplinary penalty;

(6) being a bankrupt;

(7) being imprisoned by a final judgment except for an offence committed through negligence or a petty offence;

(8) being an incompetent person or a quasi-incompetent person;

(9) being a political official, senator, member of the House of Representatives, member of a political party, or executive member or holder of a position with the responsibility in the administration of a political party;

(10) being a manager, director, counsel, representative or employee of a person, partnership, company or any organisation carrying out business for profits.

Section 110. The law on civil service insofar as it concerns ordinary Government officials shall apply mutatis mutandis to the prescription of positions and salary scales as well as emoluments of Government officials of the Office of the N.C.C. and, for this purpose, the expression "C.S.C. shall mean the N.C.C. Commission and the expression "Government agency ascribed the status of a Department the head of which has responsibility in the performance of official duties with direct answerability to the Prime Minister" shall mean the Office of the N.C.C..

Section 111. The law on salaries and emoluments shall apply mutatis mutandis to the salary scales, rates of emolument and the entitlement to emoluments of Government officials of the Office of the N.C.C.. The payment of salaries and emoluments to Government officials of the Office of the N.C.C. shall be in accordance with the law on that particular matter.

Section 112. The recruitment of persons to be Government officials of the Office of the N.C.C. and their appointment to any positions shall be made by the following persons:

(1) with respect to the recruitment and appointment to the position of Secretary-General, the President shall make the recruitment with the approval of the N.C.C. Commission and the Senate and shall present it to the King for appointment;

(2) with respect to the recruitment and appointment to the position of Deputy SecretaryGeneral or its equivalent, the President shall make the recruitment and present it to the King for appointment;

(3) with respect to the recruitment and appointment to any position other than in (1) and (2), the Secretary-General shall make the recruitment and appointment.

Section 113. A transfer of an official of a municipality who is not an extraordinary official of a municipality, official of a Tambon Administrative Organisation and a transfer of a

Government official under other law for recruitment as a Government official of the Office of the N.C.C. may be made on the basis of that person's consent. For this purpose, the person having the power to make the recruitment shall make an agreement with the original agency and refer it to the N.C.C. Commission for consideration and approval. The N.C.C. Commission shall consider and prescribe the position to which the appointment is to be made and the salary scale therefor, provided that the salary granted must not be higher than that of the Office of the N.C.C.'s Government official who possesses the same qualifications, ability and expertise. For the purpose of the computation of the duration of the Government service, the time of service or working time of the person transferred under paragraph one while being the official or Government official shall also be regarded as the time of service of the Government official of the Office of the N.C.C. under this Organic Act. A transfer of a political official and a Government official, who is under a trial performance of official duties, to be a Government official of the Office of the N.C.C. under this Organic Act shall not be made.

Section 114. Government officials of the Office of the N.C.C. are entitled to the same pensions and benefits in accordance with the laws on such matters as those to which ordinary Government officials are entitled.

Section 115. The Office of the N.C.C. shall present to the Council of Ministers the budget in accordance with the resolution of the N.C.C. Commission for the purpose of incorporating it in the annual appropriations bill or the supplementary appropriations bill, as the case may be, in order to set it aside as subsidies of the N.C.C. Commission and the Office of the N.C.C.. In this instance, the Council of Ministers may also prepare the opinion with regard to the allocation of budget of the N.C.C. Commission and the Office of the N.C.C. and enclose the opinion in the memorandum pertaining to the introduction of the annual appropriations bill or the supplementary appropriations bill.

Section 116. In introducing or considering the budget, the annual appropriations bill or the supplementary appropriations bill under section 115 or in considering any matter in connection with the N.C.C. Commission or the Office the of N.C.C., if the Secretary-General makes a request, the Council of Ministers, the House of Representatives, the Senate or the parliamentary committee 30 concerned may allow the Secretary-General or the person entrusted by the Secretary-General to give explanations. Section 117. The Office of the N.C.C. shall be the audit reception centre under the organic law on State audit. When the Office of the State Audit has audited and certified all types of accounts and financial matters of the N.C.C. Commission and the Office of the N.C.C., it shall present the audit report to the House of Representatives, the Senate and the Council of Ministers without delay.

CHAPTER XI

Penalties

Section 118. Any person who fails to comply with an order of the N.C.C. Commission under section 25 (1) or section 79 shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Section 119. Any State official who intentionally fails to submit an account showing assets and liabilities and supporting documents to the N.C.C. Commission within the time prescribed by this Organic Act or intentionally submits an account showing assets and liabilities and supporting documents with false statements being included therein or conceals facts which should have been disclosed shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Section 120. Any person who discloses statements, facts or information obtained in consequence of the performance of duties under this Organic Act without authorisation by the N.C.C. Commission and without such act being committed in discharge of official duties or for the purpose of verifying or inquiring into facts or for official or public interest shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Section 121. Any person who has in possession or keeps the property, accounts, documents or any other evidence seized, attached or ordered to be furnished by the N.C.C. Commission, or damages, destroys, conceals, takes away, causes such property, accounts, documents or evidence to be lost or useless shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both.

Section 122. Any State official who violates the provisions of section 100, section 101 or section 103 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both. In the case of an offence under section 100 paragraph three, if any State official proves that he or she has not connived at his or her spouse's carrying out the activities under section 100 paragraph one, it shall be deemed that such person is not guilty of the offence.

Section 123. Any State official who performs or refrains from performing any act in the circumstance likely to cause others to believe that he or she holds a particular position or has a particular duty despite not holding such position or not having such duty, for acquiring illegitimate benefits for himself or herself or for others shall be liable to imprisonment for a term of one to ten years or to a fine of two to twenty thousand Baht or to both.

Section 124. Any person who initiates the request for the removal of a person from office under section 60 or submits a request for taking criminal proceedings under section 66 or submits an 31 allegation under section 84 knowing that there is no ground for removing that person from office or that there is no circumstance indicative of that person's unusual

wealthiness or that there is no commission of an offence of malfeasance in office under the Penal Code or under other laws, or makes a false allegation or presents false evidence shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both. In the case where the commission of the act under paragraph one is the request for removing a particular person from office, it shall be deemed that the person against whom the request is made for removal from office is also the injured person in the commission of such offence.

Section 125. Any person, being the President, member, member of a sub-committee, competent official or person entrusted by the N.C.C. Commission, who performs duties unjustly, commits an offence of corruption or an offence of malfeasance in office shall be liable to twice the penalty provided by the law for such offence.

Transitional Provisions

Section 126. In the case where the selection of members takes place while there is not yet President of the Supreme Administrative Court, the Selection Committee under section 7 shall have fourteen persons consisting of the President of the Supreme Court of Justice, the President of the Constitutional Court, Rectors of all State higher education institutions which are juristic persons, being elected among themselves to be seven in number, and representatives of all political parties having a member who is a member of the House of Representatives, provided that each party shall have one representative and all such representatives shall elect among themselves to be five in number, as members.

Section 127. The members elected by the resolution of the Senate under section 315 paragraph three of the Constitution of the Kingdom of Thailand shall hold office for half a term of that provided in section 12 and the provisions allowing members to serve for only one term shall not apply to such members

Section 128. All allegations made against State officials, being the allegations falling within the powers and duties of the Office of the Counter Corruption Commission, which have been accepted by the Office of the Counter Corruption prior to the date of the entry into force of this Organic Act and pending the procedure under the Counter Corruption Act, B.E. 2518 (1975) shall be proceeded by the National Counter Corruption Commission in accordance with this Organic Act. For this purpose, the activities already carried out by the Counter Corruption Commission shall be valid and further proceeding shall be as determined by the National Counter Corruption Commission. In the case where the allegation under paragraph one is the allegation in respect of which the Counter Corruption Commission passes a resolution that a State official committed corruption, the National Counter Corruption Commission shall refer the matter to the superior or the State agency concerned for further proceeding.

Section 129. The accounts showing assets and liabilities submitted by State officials under the Counter Corruption Act, B.E. 2518 and kept by the Office of the Counter Corruption

Commission shall be kept by the Office of the National Counter Corruption Commission for the purpose of the performance under this Organic Act and, if such State officials have vacated office for more than five years, may be destroyed.

Section 130. All rules, regulations, notifications or orders issued by virtue of the Constitution of the Kingdom of Thailand or the Counter Corruption Act, B.E. 2518 and remaining in force on the date of the entry into force of this Organic Act shall continue to be in force insofar as they are not contrary 32 to or inconsistent with the provisions of this Organic Act until regulations or notifications under this Organic Act are issued.

Section 131. All undertakings, property, rights, liabilities, Government officials, employees and budget of the Office of the Counter Corruption Commission under the Counter Corruption Act, B.E. 2518 shall be transferred to the Office of the National Counter Corruption Commission under this Organic Act. The Government officials and employees transferred under paragraph one shall hold office and receive salaries and emoluments not lower than their original office and entitlement.

Section 132. The Secretary-General of the Counter Corruption Commission under the Counter Corruption Act, B.E. 2518 shall perform the duty as Secretary-General of the National Counter Corruption Commission under this Organic Act until appointment of the Secretary-General of the National Counter Corruption Commission is made.

Section 133. The State official under section 100 who obtains a concession from the State, a Government agency, State agency, State enterprise or local administration or becomes a party to a contract of a directly or indirectly monopolistic nature made with the State, a Government agency, State agency, State enterprise or local administration or becomes a partner or shareholder in a partnership or company which is a concessionaire or a contractual party in such manner may, if the concession, the contract, the entry into partnership or the shareholding with or in a partnership or a company which is a concessionaire or a contractual party in such manner is in existence on the date of the entry into force of this Organic Act, continue to hold such concession or to be a contractual party, partner or shareholder in the partnership or the company which is a concessionaire or a contractual party in such manner until the expiration of the concession or the contract.

Countersigned by:

Chuan Leekpai

Prime Minister

Remark: The reason for the promulgation of this Organic Act is that section 301 of the Constitution of the Kingdom of Thailand provides that the National Counter Corruption Commission has the powers to inspect assets and liabilities of persons holding political positions and other State officials, to conduct a fact inquiry and prepare an opinion in the case where a request is lodged for removing high-raking State officials from office and to inquire and give a decision as to whether a State official has become unusually wealthy or committed

an offence of corruption or malfeasance in office, and in this connection, section 329 provides that the organic law on counter corruption shall be enacted within two years as from the date of the promulgation of the Constitution of the Kingdom of Thailand. In this instance, section 331 provides that such organic law shall have the essential substance with regard to the acts amounting to unusual wealthiness and corruption, acts amounting to conflict of interest between personal interest and public interest, the rules, procedures and process for the inquiry of facts related to the allegation and penalties to be inflicted upon the President or a member of the National Counter Corruption Commission in the event of carrying out an act unjustly, committing an offence of corruption or malfeasance in office. In addition, section 302 provides that the National Counter Corruption Commission shall have the Office of the National Counter Corruption Commission as a secretariat which shall enjoy autonomy in the personnel administration, budget management and other activities as provided by law. It is, therefore, necessary that this Organic Act be enacted.

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Penyusun

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