

THE HARMONIZATION OF LAW ENFORCEMENT IN THE ERADICATION OF CRIMINAL ACTS OF CORRUPTION

Siti Humulhaer
Universitas Islam Syekh-Yusuf (UNIS) Tangerang, Banten, Indonesia
shumulhaer@unis.ac.id

Abstract

The law enforcement in eradicating criminal acts of corruption must synergize with other institutions so as to create harmonization between law enforcers so as to create legal certainty and justice for all parties. This study uses qualitative research methods that use various sources such as laws and regulations, books and scientific articles which are analyzed using the literary method. The results and discussion of this study are that in terms of the direction of eradicating corruption in the future, laws and regulations regarding law enforcement officials must be harmonized in carrying out their investigative duties and functions. To find out the extent of the effectiveness of the law, the first thing that can be measured is "the extent to which the rule of law is complied with or not complied with", especially by law enforcers.

Keywords: *Corruption; Harmonization; Enforcement; Eradication.*

A. INTRODUCTION

The penal system holds a strategic position in efforts to deal with criminal acts that have occurred, including tackling criminal acts of corruption. The criminal act of corruption is related to the fate of many people because it causes losses to the people's economy. The criminal system in a broad sense includes the criminal law enforcement system. The criminal law enforcement system is part of the crime prevention policy. The implementation of the corruption penalty system in Indonesia has not resulted in significant changes in the reduction of corruption.¹

Efforts to prevent corruption are carried out with various actions that still refer to the applicable provisions. In addition, efforts are made to eradicate corruption practices not to be trapped in justifying the slightest corruption under the pretext of harmonization of people's lives and an integralistic mindset that denies violations, by linking to cultural values and other paternalistic mindsets that deny abuses committed by those in power.²

Problems in enforcing the law on corruption must be properly resolved, so there is a need for harmonization between institutions handling corruption, meaning that corruption handling agencies know their respective duties and authorities in eradicating and enforcing corruption laws. The

1 Elly Sudarti, dan Sahuri Lasmadi, Harmonisasi Sistem Pemidanaan dan Tujuan Pemidanaan Pada Tindak Pidana Korupsi Suap, *Pandecta Research Law Journal*, Vol. 16, No. 1, 2021, page.174.

2 Marten Bunga, Amelia Arief, dan Hardianto Djanggih. Urgensi Peran Serta Masyarakat Dalam Upaya Pencegahan Dan Pemberantasan Tindak Pidana Korupsi, *Law Reform*, Vol. 15, No. 1, 2019, page.86.

most important thing in upholding the law on corruption is cooperation between agencies handling corruption by providing handling of investigations and investigations and even sharing in handling corruption cases.³

To and overcome corruption crimes in Indonesia and to eliminate them, or at least to reduce them, both in quality and quantity, a juridical approach is not enough, but rather it also needs a sociological and political approach. Particularly in dealing with corruption crimes, criminal-law procedural code related to their resolution should be applied as effective as possible. It is not sufficient by applying a conventional system of proof, but apparently a pure reversal burden of proof should be applied. However, the implementation of a pure reversal burden of proof may result in violations against presumption of innocence and non self-incrimination principles, violations against human rights and right of silence, as well as results in bureaucratic chaos.⁴

Indonesia as a sovereign and dignified unitary state highly upholds a just legal system for all Indonesian people. This can be used as a mirror for elements of the nation, not only government officials who are dedicated in efforts to prevent, eradicate and enforce the law, but all components of the nation must play an active role. In efforts to eradicate and enforce the law in criminal acts, especially the problem of criminal acts of corruption, law enforcement officials must harmonize the law with law enforcement officials.⁵

Legal harmonization is defined as an effort or process of adjusting legal principles and systems, in order to realize legal simplicity, legal certainty and justice. Harmonization of law as a process in the formation of laws and regulations, overcoming conflicting matters and irregularities between legal norms in laws and regulations, so that harmonious national laws and regulations are formed, in the sense of harmony, harmony, balance, integrated and consistent, and adhere to the principles.⁶

The thought of harmonization stems from Rudolf Stammler who argued that the concepts and principles of a just law include "harmonization" between the aims, objectives and interests of individuals with the aims, objectives and interests of the general public. In other words, law will be created well if there is harmony between the aims, objectives and interests of the ruler (government) and the community.⁷

3 Junaidi Abdullah, Tugas Dan Wewenang Lembaga-Lembaga Penanganan Tindak Pidana Korupsi Di Indonesia, *YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam*, Vol. 5, No. 1, 2016, page.119.

4 Wahyu Wiriadinata, Corruption and Reversal Burden Of Proof, *Indonesian Journal of International Law*, Vol. 12, No. 2, 2015, page.251

5 Mustafa Mustafa, AlMawardi's Thoughts on the Welfare State in the 1998-2019 Reform Era in Indonesia, *International Journal of Islamic Thought and Humanities*, Vol. 1, No. 1, 2022, page.66-93

6 Ronny Winarno, Harmonisasi Peraturan Pemberantasan Korupsi di Era Global, *Jurnal Lex Publica*, Vol. 4, No. 1, 2017, page.666.

7 Haniah Ilhami, Hartini, Destri Budi Nugraheni, Harmonisasi Regulasi Oleh Otoritas Jasa Keuangan Syariah Pada Akad Murabahah (Analisis Terhadap Standar Produk Murabahah), *Jurnal Mimbar Hukum*, Vol. 33, No. 2, 2021, page.346-372

The basis and orientation in every step of harmonization of law is the goal of harmonization, values and principles of law, as well as the purpose of the law itself, namely harmony between justice, legal certainty and conformity to purpose (*doelmatigheid*). In the end, the implementation of law enforcement needs to pay attention to the actualization of the values contained in the constitution and the principles of good law enforcement ("good law enforcement governance").⁸

Regarding the return of assets, what is of great importance is the harmonization of legislation and the justice system, the harmonization of assets for corruption crimes needs to be carried out considering that the law enforcement process against corruptors is not only the authority of the Corruption Eradication Commission alone, but also the authority of the Police and the Attorney General's Office.⁹

The unlimited power of the prosecutor's office in investigations has the potential to violate the freedom rights of suspects because at any time a suspect can be detained (revoked) of his freedom. The unlimited power of the prosecutor's office in investigations is due to the lack of harmony in the standard of supervision of investigating prosecutors in various regulations, especially regarding investigative authority. The lack of harmonization of the standard of investigative authority has resulted in arbitrariness on the part of the prosecutor's office in conducting investigations and determining when suspects are deprived of their liberty.¹⁰

In harmonization of law with a systems approach, namely the connotation of the system as an entity. Seeing the national legal system as "a set of legal subsystems or legal subsystems that are interrelated which form a complex whole but constitute a single unit", which is based on Pancasila and the 1945 Constitution as the basic concept of the national legal system. It is necessary to harmonize the Corruption Crime Eradication Law and the Human Rights Law in order to create laws and regulations that do not overlap with one another.¹¹

Efforts to eradicate and enforce criminal acts of corruption among law enforcers must have good harmonization with one another.¹² Optimize with the integrity and synergy of the Police, the Attorney General's Office, the KPK (Corruption Eradication Commission), the Financial Transaction Reports and Analysis Center (PPATK), the Supreme Audit Agency (BPK), the Financial and Development Supervisory Agency (BPKP), the Judiciary which

8 Laurensius Arliman S, *Penegakan Hukum dan Kesadaran Masyarakat*, Sleman: Penerbit Deepublish, 2015, page.248.

9 Haswandi, Pengembalian aset tindak pidana korupsi pelaku dan ahli warisnya menurut sistem hukum Indonesia, *Jurnal Hukum dan Peradilan*, Vol. 6, No. 1, 2017, page.163.

10 James F. Pade, Perlindungan Hak Asasi Manusia (Ham) Terhadap Tersangka Tindak Pidana Korupsi Oleh Penyidik Kejaksaan Dalam Proses Penyidikan, *Lex Administratum*, Vol. 5, No. 8, 2017, page.43.

11 Rinda Nur Afifah, Rekonseptualisasi Undang-Undang No. 20 Tahun 2002 Tentang Pemberantasan Tindak Pidana Korupsi: Analisis Relevansi Hukuman Pidana Mati di Masa Pandemi Covid-19, *Jurnal Anti Korupsi*, Vol. 12, No. 1, 2022, page.66.

12 Saldi Isra, Yuliandri, Feri Amsari, Hilaire Tegnau, Obstruction of justice in the effort to eradicate corruption in Indonesia, *International Journal of Law, Crime and Justice*, Vol. 51, No. 1, 2017, page.72-83

has authority in terms of prevention, Supervision and Law Enforcement of Corruption Crimes. As well as the active role of people who care in terms of supervising an ongoing legal issue, it is handled until the process of imposing criminal sanctions that have permanent legal force.

Research on law enforcement in acts of corruption has been carried out by Arianus Harefa which was discussed in the *Panah Keadilan* journal. The current research equation with previous research is to discuss law enforcement against criminal acts of corruption.¹³

This paper in this research aims to find out the eradication of criminal acts of corruption in the harmonization of law enforcement officials with other institutions so as to create legal certainty and justice for all parties and find out the extent of the effectiveness of the law and to find out the extent of the effectiveness of the law, the first thing that can be measured is " extent to which the rule of law is complied with or not complied with, especially by law enforcers.

B. RESEARCH METHODS

This study used a qualitative research method, which is a descriptive method and uses a lot of analysis using data sources. Sources of data in this study came from primary data sources, namely laws and regulations, and secondary data sources in the form of books, and scientific works in the form of articles in journals. In analyzing the research, the researcher uses the library study method, namely by studying and analyzing problems with various sources from books, as well as other scientific articles.

C. RESULTS AND DISCUSSION

1. The Harmonization of Law Enforcement in Handling Corruption Crime Cases

If a country already has a corruption problem that has become a special concern, it will have a huge impact on national development goals.¹⁴ The process of prevention, eradication and mandatory law enforcement must be based on government institutions that are strong, have integrity and are loyal to the state for the process of law enforcement. In addition, law enforcement also refers to the active role of the criminal justice system where in the process of law enforcement there must be an active role of institutions, prosecutors, judges and correctional officers.¹⁵

With the presence of the active role of the community and supported by seriousness and loyalty, it is hoped that corruption crimes can be suppressed massively and optimally because the law enforcement process must be able to eliminate a crime related to corruption and must

13 Arianus Harefa, Problematika Penegakan Hukum Pidana Mati Pada Tindak Pidana Korupsi Dalam Perspektif Perlindungan HAM. *Jurnal Panah Keadilan*, Vol. 1, No. 2, 2022, page.99.

14 Giulia Mugellini, Jean-Patrick Villeneuve, Monitoring Sustainable Development Goals And The Quest For High-Quality Indicators: Learning From A Practical Evaluation Of Data On Corruption, *Sustainable Development Journal*, Vol. 29, No. 6, page.1257-1275

15 Chaerudin, Et.all, *Strategi Pencegahan Dan Penegakan Hukum Tindak Pidana Korupsi*, Cet. Kedua, Bandung, PT. Refika Aditama, 2009, page.57

be sustainable because otherwise it will become an acute problem and create a negative culture in terms of the order of people's lives. Law enforcement, especially eradicating crime, must not be delayed because the crime itself will control us and destroy what exists, if we do not prevent and eradicate it quickly.¹⁶

Discussions about law enforcement are always related to the elements of the legal system, namely legal substance (rules), legal structure (law enforcement) and legal culture (society). In analyzing a problem regarding the eradication of corruption in Indonesia, according to Elwi Danil, he views that the problem of corruption in Indonesia does not lie in the absence or lack of substantive and structural instruments, but lies in aspects of legal culture which have not been able to be developed and fostered properly. Therefore, in the context of upholding the rule of law, the development of a legal culture must pay more attention.¹⁷

In general, in Indonesia there are four main components of law enforcement agencies, namely consisting of state apparatus such as the police, judges and prosecutors, lawyers, state administrators and the public. Therefore the enforcement of the legal process must be synchronized with a professional attitude, integrity which is based on the basic attitude, namely the morals of law enforcement officials themselves as a profession through professional education according to their abilities.¹⁸

To realize the idea of law enforcement in handling corruption cases, there are several factors that can influence both directly and indirectly. This has adopted the thoughts of Lawrence M Friedman "Regarding the legal system and legal politics which include: legal substance, legal structure, and legal culture. These three things can also be used as a study to look at the factors that influence law enforcement."¹⁹

In relation to the direction of eradicating corruption in the future, the laws and regulations regarding law enforcement apparatus must be harmonized, especially with regard to 2 (two) matters. First, the duties and functions of the investigation. The more investigators/investigations of corruption, the better in the task of eradicating corruption, because one institution alone will not be able to carry out investigations on

16 Baharudin Lopa, *Kejahatan Korupsi dan Penegakan Hukum*, Jakarta, Penerbit Buiku Kompas, 2001, page.30

17 Mohamad Hidayat Muhtar, Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum, *Jambura Law Review*, Vol. 1, No. 1, 2019, page.85.

18 Zaenudin Ali, *Filsafat Hukum*, Cet 1, Jakarta, Sinar Grafika, 2006, page.124

19 Chaerudin, *Et all, Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi*, Jakarta, Refika nAditama, 2009, page.59

corruption considering that the area is very broad and can even be said to be unlimited, as Article 31 paragraph (2) of the PPTPK Bill.²⁰

Harmonization among law enforcers who have authority in handling corruption cases. The Corruption Eradication Commission, the Attorney General's Office and the Police are required by laws and regulations to be able to create optimal conditions, so that they can handle these cases optimally. There are clear provisions in laws and regulations that give authority to the Corruption Eradication Commission, the Attorney General's Office and the Police to carry out actions such as investigations, investigations and prosecutions in eradicating corruption.²¹

Harmonization of laws and regulations also needs to be carried out in relation to the authority to investigate corruption. Currently there are three institutions authorized to investigate corruption cases, namely the police, the prosecutor's office and the Corruption Eradication Commission. So that each institution does not feel that it has the most right to investigate corruption cases, especially those that occur within its own institutions and to avoid tensions between institutions, it is better to make a rule: if corruption occurs within the police, the Corruption Eradication Commission has the right to investigate; if it occurs at the Corruption Eradication Commission, the prosecutor has the right to investigate; and if it occurs at the prosecutor's office, the one entitled to investigate is the Corruption Eradication Commission. Rules like this are needed so that the legal process is truly aimed at upholding law and justice, not for other purposes, let alone protecting the real perpetrators of corruption.²²

The condition of disharmony between law enforcement officials in handling criminal cases, especially the legal mafia has actually received the attention of the clergy. The problem of harmonization of law enforcement between law enforcement institutions is one of the central issues that requires immediate improvement. Moreover, between law enforcement agencies, constructive communication is absolutely necessary for the effectiveness of eradicating corruption.²³

One example of harmonization of law enforcement in enforcing the law on corruption in Indonesia is the Attorney General's office and the Corruption Eradication Commission (KPK). The Attorney General's Office's efforts to achieve harmonization are through coordination with

20 Samuel Mangapul Tampubolon, Peran Pemerintah Dalam Upaya Pemberantasan Korupsi Kaitannya Dengan Undang-Undang No. 32 tahun 2004, *Lex et Societatis*, Vol. 2, No. 6, 2014, page.142.

21 Sedy Pratama Firdaus, dan Muhammad Ghifari Fradhana Bahar, Konsepsi Penegakan Hukum dalam Pemberantasan Korupsi di Masa Pandemi COVID-19 sebagai Perlindungan terhadap Hak-Hak Masyarakat Terdampak, *Jurnal Anti Korupsi*, Vol. 3, No. 1, 2021, page.69.

22 Winasya Pricilia Sumeng, Efektivitas Kepatuhan Pidana Mati dalam Pemberantasan Tindak Pidana Korupsi di Indonesia, *Lex Et Societatis*, Vol. 7, No. 12, 2020, page.52.

23 Wahyu Widodo, Menciptakan Komunikasi Konstruktif Antar Lembaga Penegak Hukum, Presiden dan KPK Dalam Rangka Pemberantasan Korupsi yang Efektif dan Efisien, *Jurnal Hukum*, Vol. 30, No. 2, 2014, page.1445.

the KPK in handling corruption cases. While the efforts made by the Corruption Eradication Committee to realize this harmonization, apart from coordinating with the prosecutor's office, the KPK also supervises and reviews cases handled by the prosecutor's office. Furthermore, the KPK held a coordination meeting with the Attorney General's Office to discuss strategies for eradicating corruption.

2. The Effectiveness of Law Enforcement against Corruption Crimes

In the perspective of law enforcement, the element of the use of law is closely related to the effectiveness of the law and the validity of the law, which provides an imperative basis that the law is binding and must be enforced by law enforcers. Legal effectiveness means that a person (including law enforcers) must act in accordance with legal norms and those norms must be applied.²⁴

Indonesia as a rule of law requires law enforcement in all aspects, including law enforcement in the field of corruption that occurs throughout the territory of Indonesia. In essence, law enforcement actually lies in the factors that might influence it, as is the case with the exercise of the authority of police investigators in handling corruption cases, of course there are influencing factors. According to Soerjono Soekanto, the factors that influence the effectiveness of law enforcement are; legal factors, law enforcement factors, facilities factors, community factors and cultural factors.²⁵

Soerjono Soekanto that in essence the problem lies in the factors that might influence it. First, the legal factor itself, which in this paper will be limited to statutory regulations; second, law enforcement factors, namely the parties that make up and apply the law; third, the factor of facilities or facilities that support law enforcement; fourth, community factors, namely the environment in which the law applies or is applied; and fifth, cultural factors, namely as a result of work, creativity and taste based on human initiative in social life. The five factors mentioned above are closely related to each other, because they are the essence of law enforcement, and also a benchmark for the effectiveness of law enforcement.²⁶

When talking about the extent of the effectiveness of a law, we must first be able to measure the extent to which the rule of law is obeyed or disobeyed. If a rule of law is obeyed by most of the targets

24 Sabian Usman, 2009, *Dasar-Dasar Sosiologi*, Yogyakarta, Pustaka Belajar, page.12

25 Abdul Muttalib, Efektivitas Penegakan Hukum terhadap Penyidikan Tindak Pidana Korupsi oleh Kepolisian Daerah Sulawesi Selatan, *Jurnal Al Hikam*, Vol. 1, No. 1, 2017, page.55.

26 Ade Paul Lukas, Efektivitas Pidana Pembayaran Uang Pengganti Dalam Tindak Pidana Korupsi (Studi Putusan Tindak Pidana Korupsi di Pengadilan Negeri Purwokerto), *Jurnal Dinamika Hukum*, Vol. 10, No. 2, 2010, page.89.

that are the target of obedience, it will be said that the rule of law in question is effective.²⁷

The effectiveness of law enforcement must pay attention to 2 (two) very important things, namely the first is the legal factor and the second is the law enforcement factor. This means that in addition to the legal factors that must be good, law enforcement officers must also be able to act professionally and proportionally in handling cases of corruption.²⁸

Therefore, to find out the extent of the effectiveness of the law, one must first be able to measure "the extent to which the rule of law is complied with or not complied with", especially by law enforcers. In line with this, Achmad Ali is of the opinion that in general the factors that influence the effectiveness of legislation are professional and optimal implementation of the roles, powers and functions of law enforcers, both in explaining the tasks assigned to them and in enforcing laws. -the invitation.²⁹

3. The Harmonization of the Application of Criminal Sanctions for Corruptors based on Act No. 31 of 1999 and Act No. 8 of 2010 in Law Enforcement against Perpetrators of Corruption Crimes

The imposition of criminal sanctions against corruptors should be accompanied by the thought that what has been done by these corruptors has seriously injured the public's sense of trust in someone who is given a position and authority in using the budget provided by the government to realize the national program and what has been done by corruptors is very has a negative effect on national development goals to provide a sense of well-being and increase community production.³⁰

As a result of the increasing progress and development of world information technology and the effects of globalization on the financial sector (Banking), it has become a separate loophole for financial sector crime, namely the emergence of the Crime of Money Laundering. In general, ML can result in financial control difficulties, reduced state revenues and increased state financial risks so that in the end it can be concluded that the harmonization of corruption laws and money laundering laws is urgently needed because in addition to eradicating the original crime, deep corruption it is felt that the law enforcement process is difficult to expect with the harmonization of laws to be used as a

27 Yan Patmos, Penegakan Pasal Tindak Pidana Pencucian Uang Dalam Rangka Pencegahan Dan Pemberantasan Korupsi, *Journal of Law and Policy Transformation*, Vol. 2, No. 2, 2017, Page.122.

28 Rudi Irawan, dan H. Ahmad Syaufi, Kinerja Aparat Penegak Hukum dalam Penanganan Perkara Tindak Pidana Korupsi di Provinsi Kalimantan Selatan, *Jurnal Rechtidee*, Vol. 11, No. 1, 2016, page.30.

29 Achmad Ali, 2010, *Menguak Teori Hukum dan Teori Peradilan*, Vol 1, Jakarta, Kencana, page.375

30 Ahmad Mukhlis Fariduddin, Nicolaus Yudistira Dwi Tetono, Imposition of The Death Penalty for Corruptors in Indonesia From a Utilitarian Perspective, *Integritas: Jurnal Antikorupsi*, Vol. 8, No. 1, 2022, page.1-12

powerful strategy to investigate the flow of funds resulting from corruption which can be used as evidence to strengthen the sanctions given.³¹

By implementing massive pre-emptive, preventive and repressive steps, corruption should not have happened again, but this is still an ongoing problem, so that corruption has created a bad image for the government. Whereas with the passage of time, the obstacles in proving a crime in the process that occurred in court have made it bigger because corruptors always have a cunning nature to destroy evidence, to be able to ensnare them and to impose legal sanctions.³²

There is a provision that the Crime of Money Laundering (TPPU) is a crime that stands alone, in practice it cannot be applied purely. Proof of ML in this case still requires the existence of a criminal act which results in all or part of the assets to be confiscated. Apart from that, it is also very possible that the application of reverse proof by the defendant will actually harm the prosecution process, considering that it is very possible for the perpetrators to show that the source of their unnatural wealth came from business, even though it was the result of engineering with the help of gatekeepers. When a crime can be detected, the main challenge for law enforcement is the aspect of proof.

Facing these conditions, efforts to prevent and eradicate crime developed not only to pursue and punish perpetrators, but also to complement it by: (1) tracing the flow of money (follow the money) proceeds of crime that were "hidden" through Money Laundering Crimes (TPPU); (2) trying to expand the range of detection of a crime and disclosure of beneficiary actors; (3) providing breakthroughs in the aspect of evidence; and (4) breaking the chain of crime by seizing the proceeds of crime.

In a financial crime, including corruption, money or assets can be the main goal for someone to commit a crime. Money or assets resulting from crime are also the blood that supports a crime organization (bloods of the crime). In Indonesia, TPPU has been criminalized since 2002, namely since the enactment of Act No. 15 of 2002 concerning the Crime of Money Laundering dated 17 April 2002. This law was amended by Act No. 25 of 2003 concerning Amendments to Act No. 15 of 2002 concerning the Crime of Money Laundering dated October 13, 2003, and has now been replaced by Act No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU PPTPPU) October 22, 2010.

With the harmonization of the law on corruption and money laundering, it has a very important meaning in ensnaring corruptors with the result in the form of a flow of criminal money resulting from corruption, as well as anyone who enjoys both money and facilities

31 Michael Levi, Evaluating the Control of Money Laundering and Its Underlying Offences: the Search for Meaningful Data, *Asian Journal of Criminology*, Vol. 15, No. 1, 2020, page.301-320

32 Yenti Ganarsih, 2016, *Penegakan Hukum Anti Pencucian Uang dan Permasalahan di Indonesia*, Cet-3, Jakarta, PT. Raja Grafindo Perdasa, page.117.

related to corruption crime existence. Corruption is an extraordinary crime and is included in the category of white-collar crime in which there are special characteristics in the form of crimes where there is very little element of violence because the perpetrators are those who have certain positions in an institution and because of misappropriation of funds that have been budgeted by the state for personal gain.

D. CONCLUSION

Harmonization among law enforcers who have authority in handling corruption cases. The Corruption Eradication Commission, the Attorney General's Office and the Police are required by laws and regulations to be able to create optimal conditions, so that they can handle these cases optimally. Harmonization of laws and regulations also needs to be carried out in relation to the authority to investigate corruption. The effectiveness of law enforcement must pay attention to 2 (two) very important things, namely the first is the legal factor and the second is the law enforcement factor. With the harmonization of the law on corruption and money laundering, it has a very important meaning in ensnaring corruptors with the result in the form of a flow of criminal money resulting from corruption, as well as anyone who enjoys both money and facilities related to corruption crime.

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