

**REVIEW ARTICLE**

# CRIMINAL ACCOUNTABILITY FOR CORRUPTION ACTORS IN THE FORM OF CONCURSUS REALIST

Redentor G. A. Obe<sup>1</sup>✉, Indah Sri Utari<sup>2</sup>

<sup>1</sup> Postgraduate Program, Master of Laws, Universitas Negeri Semarang, Indonesia

<sup>2</sup> Department of Criminal Law, Faculty of Law, Universitas Negeri Semarang

✉ redentorobe58@gmail.com

## CITED AS

Obe, R.G.A., & Utari, I.S. (2020). Criminal Accountability for Corruption Actors in the Form of Concurus Realist. *Journal of Law and Legal Reform*, 1(2), 325-332. DOI: <https://doi.org/10.15294/jllr.v1i1.35451>

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## ABSTRACT

The purpose of this study is to describe and analyze the criminal liability arrangements for the perpetrators of corruption in the form of concurrent acts, finding juridical reasons to the extent to which corruption in the form of concurrent acts can be justified. This research method uses a qualitative approach with normative juridical law design. Data collection techniques using library research Subjects library research law faculty of Semarang State University. Data analysis techniques: (1) presentation, (2) data reduction, and (3) collection and verification. The results of the study: (1) the form of criminal liability from the perpetrators of corruption in the form of a joint act is to follow the criminal procedure in the Criminal Code by dropping the absorption system which is made worse by the regulation contained in the Constitutional Court's decision in the results of the criminal chamber meeting of the Supreme Court of the Republic of Indonesia Tangerang No 10 concerning the application of concursus teachings precisely in the parallel act of corruption. Conclusions of the study that the doctrine of concursus results of the criminal chamber meeting of the Supreme Court of the Republic of Indonesia Tangerang has a legal basis that serves as a guideline or legal basis so that the action does not go outside the lines of statutory provisions in the implementation of decision making in imposing penalties for the perpetrators of acts corruption in the form of a parallel act.

Keywords: *Corruption, Concurus Realist, Criminal Law, Criminal Accountability*

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## INTRODUCTION

Corruption is one part of the special criminal law (*ius singulare, ius speciale or bijzonder strafrecht*) and the positive legal provisions (*ius constitutum*) of Indonesia, which are regulated in the Law of the Republic of Indonesia Number 31 of 1999 as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption Crimes. When elaborated, corruption has certain specifications that are different from general criminal law, such as deviations in procedural law and regulated material intended to minimize the occurrence of leakage as well as deviations to the country's finances and economy.

Corruption is a form of crime that is carried out systematically and well organized and is carried out by people who have an important position and role in the social fabric of society. Therefore, this crime is often called a white-collar crime or white-collar crime. In practice, corruption which has been arranged in such a neat way, the mode of crime and its quality makes corruption difficult to express, so that in its eradication efforts it can no longer be carried out "normally", but, "demanded in extraordinary ways" (extra-ordinary enforcement).

In criminal law, recognize the crime that is called concurrent or commonly called concursus. As is known Concurus is divided into three forms, namely idealist concursus, continued concursus and realist concursus. The legal basis for concursus regulation can be found in articles 63-71 of the Criminal Code (KUHP) but in this case the author will discuss more about corruption in the form of concurrent acts (Concurus Realists).

Realist concursus can be interpreted as a comparison of more than one action (Charlie. Rudyat -,: 127). This is corroborated by the opinions of (Laden Marpaung, 2005: 32), he said that the concurrent action (concurus realist) occurs when someone at the same time realizes some actions. whereas according to concursus realist experts is a parallel act that is not the same type and the act is independent in nature that violates criminal provisions in the form of a crime or violation of an act that has not yet been sentenced.

From some of the above meanings, it can be seen that to determine a criminal act included in a parallel act or concursus realist is not an easy case, especially in corruption which in eradication requires extraordinary handling. On the basis of that thought, then the problem can be drawn about how the form of accountability of perpetrators of corruption in the form of concurrent acts? Whereas in the criminal act of corruption based on its background it does not yet regulate corruption in the form of concurrent acts in this case concursus realist, and how is the juridical reason to what extent the criminal acts of corruption in the form of adjustment are adjusted through the Criminal Code whereas in criminal law the laws apply the special one will override general law (*lex specialis derogate legi generalis*).

## METHOD

This study uses qualitative methods in a phenomenon that functions to more easily understand phenomena that occur in society that are not yet widely known. A qualitative approach which means that the presentation of research data is analyzed and presented descriptively. The core of the general principles that underlie the representation of symptom units that exist in human life, or analyzing the patterns that arise from socio-cultural phenomena by using the culture in society to get a picture of the patterns that apply. These patterns are analyzed again using objective theory (Ashofa 2013: 20-21).

This type of research is normative juridical legal research. This type of legal research is carried out by examining library materials or secondary data as a basic material to be examined by conducting a search of the regulations and literature relating to the problem under study (Soekanto, 1986: 52). Legal research legally means that research refers to existing literature studies or secondary data used, namely the 1945 Constitution, the Criminal Code, the Law Number 8 of 1981 concerning the Criminal Procedure Code, the Law of the Republic of Indonesia Number 31 of 1999 as amended and supplemented with Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption Crimes. This research is descriptive because this study is intended to provide as detailed data as possible about how the provision of penalties and criminal liability from perpetrators of corruption in the form of concurrent acts (Concurus Realists). Then the validity of the data is done by examining its credibility using triangulation techniques (Sugiyono, 2010)

# CONCURSUS REALIST ON CORRUPTION CRIME

## I. DEFINITION OF CRIMINAL ACTS OF CORRUPTION IN THE FORM OF REALIST CONCURSUS

### A. Definition of Concursus Realist

In criminal law, we are familiar with comparative or commonly called concursus. According to Utrecht said that to state the existence of a combination, the conditions of that combination must be considered. The conditions of the combination include:

- a. There are two or more criminal acts committed
- b. That two or more criminal acts have been committed by one person (or two people in terms of participation)
- c. Whereas two or more of these criminal acts had not yet been tried
- d. That two or more criminal acts will be tried at the same time (Utrecht E, 1958: 17).

In general, concursus is divided into three forms, namely idealist concursus, continued concursus and realist concursus and the legal basis for concursus arrangements can be found in articles 63-71 of the Criminal Code (KUHP). Furthermore, by Mr. J. E. Jonkers said that in terms of togetherness togetherness is a provision regarding criminal application. There are 4 (four) systems implemented in this case, namely:

- a. The absorption system is only the toughest rule of law implemented.
- b. Sharpened absorption, the most severe criminal rules carried out added a little 1/3 above the maximum sentence.
- c. A pure cumulation system, that is, a crime without reduction.
- d. A cumulative system without softening, there are several penalties that are imposed, but the total time of all penalties is the longest with a portion (one third)" (Jonkers J. E, 1987 : 206).

But at this time the author only focuses on cases of corruption in the form of concurrent acts or commonly referred to (Concursus Realists). Concourse of realist understanding in Indonesian is commonly referred to as (concurrent action) while in Dutch is usually referred to as *Meerdaadse Samenloop*. The basis of the realist concursus is regulated in Articles 65 - 71 of the Criminal Code. In this realist concursus, the Criminal Code recognizes three forms of comparison, namely:

- a. Concurrent crime that is threatened with similar crimes
- b. Concurrent crime that is threatened with crimes that are not the same
- c. Comparable violations with each criminal stand alone.

From these three forms of realist concursus, the punishment system used is different from one another (Arwan Sakidjo and Bambang Poernomo, 1990: 169).

## B. The responsibility of perpetrators of corruption in the form of Realist Concurus System

### 1) *Criminal Imposition Concurus Realis*

The criminal conviction system in concursus itself has a variety - it is seen from the several criminal provisions of a defendant who have violated several criminal acts according to the type of concursus itself.

This is different from the realist concursus, namely the realist concursus in the Criminal Code recognizes 3 forms of incarceration, including:

- a. Concurrent crime threatened with similar crimes
- b. Concurrent crime that are threatened with similar crimes
- c. Concurrent of violations with each criminal stand alone.

Meanwhile, according to R. Soesilo, he further divided the realist concursus in detail namely:

- a. Crimes  
Crimes between crimes of the same type or not of similar types in Articles 65 and 66 of the Criminal Code
- b. Crime - Violation  
Crime - violation contained in article 70 of the Criminal Code.
- c. Violations  
The criminal offenses contained in article 70 bis Criminal Code (R. Soesilo, 1991: 86)

### 2) *Concurus realist criminal prosecution system on criminal acts of corruption*

Law of the Republic of Indonesia Number 31 of 1999 as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption. In general, this law has divided the classification of criminal acts of corruption into seven (7) sections namely:

- a. Harms the country's finances / state economy: article 2 and article 3
- b. Bribery: articles 5,6,11,12. a, b, c, d, and article 13
- c. Violations in office: articles 8, 9, 10. a, b, c
- d. Extortion: article 12. e, f, g
- e. Fraudulent deeds: article 7 (1), a, b, c, d, 7 (2), 12. h
- f. Conflict of interest in procurement: article 12. i
- g. Gratuities: article 12 b, jo 12 c

The seven classifications in preventing corruption have been compiled with very critical thoughts, but in the development of science it still feels incomplete because of frequent corruption that escapes the law. One of the shortcomings of this law is to ensnare perpetrators of corruption in the form of concurrent acts (*concurus realis*) because in the law on eradicating corruption, it does not yet clearly stipulate the criminal acts which must be accounted for by perpetrators of corruption in the form of concurrent acts, whereas in The Criminal Code regulates corruption in the form of concurrent acts which in the system of imposing a sentence is used by an Sharpened Absorption system, with the most serious criminal threat added by 1/3

above the maximum sentence. whereas the principle of criminal law applies special laws that will override general laws (*lex specialis derogate legi inferior*).

## II. JUDICIAL JUDGEMENT CONCERNING CONCURSUS REALITS ON CORRUPTION CASE

### A. Results of The Criminal Chamber Meeting of The Republic of Indonesia Supreme Court in Tangerang

On March 8 to March 10, 2012, in the results of the criminal chamber meeting of the Supreme Court of the Republic of Indonesia, Tangerang succeeded in formulating various problems which became a controversy in criminal law. One of them is a solution in dealing with corruption in the form of concurrent acts (Concursus Realists) as describe on Table 1 as follows.

Table 1  
Result Meeting concerning Concursus Realist

No	Problem	Solution
1	Application of the Concursus / Samenloop Doctrine	
2	Verdict Inspection Process: a. In the First Level: Proven Corruption b. At the Appeal Level: Proven Corruption Crime c. At the Cassation Level: Proven criminal acts of Corruption and Money Laundering, with 2 (two) criminal forms at once, Namely: 1. Corruption Crime = 6 Years 2. Money Laundering = 6 years Total punishment = 12 years	
3	Legal Issues: a. How is the application of the law regarding concursus / samenloop teachings if the case is categorized / seen as a combination of actions with concursus realist teachings	If in a case the Defendant is charged with a cumulative indictment, and more than one indictment is proven, then a criminal conviction must not exceed the maximum threat of the heaviest crime plus 1/3 of the heaviest criminal

Source: Indonesian Supreme Court, edited by Author

From the above table, it can be concluded that the solution in dealing with cases of corruption in the form of concursus realist is to use the system adopted in the Criminal Code

## B. As far as the Juridical Arguments can be justified corruption in the form of Concursum Realists

The argument for the justification of corruption in the form of *concursum realis* is based on the results of the criminal chamber meeting of the Supreme Court of the Republic of Indonesia Tangerang precisely on No. 10 on March 8 to March 10, 2012 precisely in the legal issues in the case of concurrent cases marked by criminal disparities in corruption cases in the process of examining decisions at the first level, appeal and cassation and have obtained a solution regarding the application of the law regarding *concursum/samenloop* teachings which are categorized /seen as a combination of actions with *concursum realist* teachings that still follow the penal code pattern adopted in the Criminal Code regarding an enhanced absorption system with the heaviest criminal added to 1/3 of the heaviest punishment itself without exceeding the heaviest criminal itself.

## CONCLUSION

This paper concludes that in the form of responsibility of the perpetrators of corruption in the form of a parallel act in the results of a criminal chamber meeting of the Supreme Court of the Republic of Indonesia Tangerang on March 8 to March 10 in 2012, has determined that the punishment that must be given is the most severe crime plus 1/3 of the heaviest criminal provided that it does not exceed the threat of the heaviest criminal itself. Juridical reasons to the extent that the criminal act of corruption in the form of concurrent adjustments through the Criminal Code is to follow the results of the criminal chamber meeting of the Supreme Court of the Republic of Indonesia Tangerang on March 8 to March 10 of 2012, precisely in sequence number 10 regarding *concursum* teachings with solutions to handling them in terms of Corruption in the form of a joint act of corruption has been determined following the pattern of the Criminal Code on Sharpened Absorption.

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