

# **Sentencing Trend Monitoring Report 2023**

Indonesia Corruption Watch

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# SENTENCING TREND MONITORING REPORT 2023

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## INTRODUCTION

Indonesia's efforts in combating corruption are weakening. According to data from Transparency International, Indonesia's score in the Corruption Perception Index (CPI) stagnated in 2023. Evidently, Indonesia's CPI score reached only 34 and the country lost its position in the global ranking from 110th to 115th. In fact, Indonesia has been maintaining a similar score in the past decade. Indonesia's score in the Rule of Law Index, one of the determinants of CPI, also stagnated from 2022 to 2023. Indeed, the government's agenda of eradicating corruption, and especially law enforcement against corruption, must be revamped.

The many other names of the crimes of corruption – such as extraordinary crime, a serious crime, and a white-collar crime – hints to their nefarious effects. Not only because corruption often involves public officials, but because the impacts of this crime on the victims (namely the people) directly affect all dimensions of life – the economy, social, and human rights. Therefore, Indonesia's legal structure, its provisions, and legal culture must undertake a greater role to close the loopholes that have been giving way to the commission of this crime. This intention, however, is difficult to realize with feeble law enforcement, and one that is increasingly favoring criminals.

Stakeholders' support and the synergy among law enforcement authorities in eradicating corruption have also deteriorated. For example, in the past decade, there has not been any substantial policy and legislative support from both the government and the Parliament. Instead of passing the Bill on Asset Confiscation, Bill on Cash Transaction Restriction, or amending the Law on the Eradication of the Crimes of Corruption, the legislature proceeded with amending the Law on the Corruption Eradication Commission and the Law on Corrections and passed the new Criminal Code. As the result, the ever-challenging pursuit of recovering considerable state losses due to corruption, continued prevalence of bribery, the weakening of the Corruption Eradication Commission (KPK), the continued facilitation of convicts in corruption crimes, and the light sentences imposed in corruption cases are only likely to increase in the future.

The legal politics setback is hand in hand with the leadership of former president Joko Widodo, even though the "Nawacita" (the political commitments made during the 2014 general election) expressly mentions that law enforcement efforts were going to be reinforced with the introduction of anti-corruption values. The pending bills, which should strengthen Indonesia's corruption eradication, are also not new bills – they have been on the table for at least the past ten years. They are also demanded not only by the people, but also

by law enforcement authorities, since the current laws are not potent enough in creating the desired deterrence.

There are similar challenges found at the end of the law enforcement process, namely the trying of defendants. Often, the sentences imposed by the panel of judges fail to give justice, especially to the aggrieved, whether it is the state or the community. For example, the principal punishments (*pidana pokok*) are egregiously light as reflected in the terms of imprisonment and amount of fines. Meanwhile, the supplemental punishments, such as compensation payable (*uang pengganti*) and deprivation of certain rights, are also not proportional to the significant harm caused by this crime. As a result, there is no cease in corrupt practices, whilst the state continues to suffer from financial damages and the hard work of law enforcement authorities (the police, the public prosecutors, and the KPK) is undermined. At this point, the judicial institution's commitment to combating corruption and to serve justice for the victims has become increasingly questionable.

The legal process that the state apparatuses carry out, from pre-investigation, investigation, prosecution, to court hearings, should keep deterrence effects in mind. Deterrence in this sense should not be achieved by avoiding modern criminal approaches, such as restorative or recovery approach; instead, deterrence can be created by leveraging the law optimally to prevent the crime from recurring. Investigators and prosecutors should be encouraged to also pursue money laundering offense, maximize asset tracing methods on the proceeds of crime, utilize the additional punishment of compensation payable, and to ensure that the defendants, if found guilty, are given harsh punishments as the means to strengthen law enforcement against corruption.

It is against this background that the Indonesia Corruption Watch issues its annual Sentencing Trend Monitoring Report. This document contains the results of our team's monitoring of corruption trials during the reporting year across all courts of the first level, appellate, and court of cassation and judicial review. Our analysis elucidates the judicial performance of two institutions, namely the public prosecution service under the Attorney General's Office (AGO) and the Supreme Court. The Supreme Court's performance was examined based on, among others, their sentencing transparency, while the AGO's performance was examined through the decisions of their prosecutors in selecting the articles to pursue in their indictments and the eventual sentencing from the judges.

Nevertheless, our annual findings have not offered a promising glimpse toward law enforcement. We have consistently found light punishments against offenders reflected in the prosecutors' sentencing recommendations and the eventual judgement. Additionally, asset

recovery efforts have been difficult; in fact, Indonesia has continued to incur more and more losses as the judicial authority fails to sentence offenders with compensation payable. This report intends to provide a comprehensive picture to the public about the status of law enforcement against corruption in Indonesia. This report is also expected to provide lessons learned and a reflection for the stakeholders.

## WRITING METHODOLOGY

This Sentencing Trend Monitoring Report 2023 report covers the timeline from January 1, 2023, to December 31, 2023. Following the development in the Supreme Court's directory system, our data collection sources also changed. In previous years, ICW had to rely on the Case Information System hosted by any individual court. In 2023, ICW was able to fully rely on the judicial directory system of the Supreme Court that administers court ruling documents. Having a primary source ensured that the collected information was credible and valid.

There are several issues that ICW wishes to highlight in this 2023 report. First, ICW attempts to build a general profile of corruption cases that were brought to trial throughout 2023. We have mapped out several information items, namely total number of cases, total number of defendants and their professional background as well as average age. Additionally, we highlight judicial administration practices, namely the administration of ruling documents in the said directory. Secondly, with respect to indictment, ICW has studied the articles pursued by prosecutors. Through this exercise, we were able to identify the specific types of corruption crimes that were predominant in 2023.

Third, we focus on prosecution – the charges brought, the primary principal punishment (imprisonment and fines) and supplemental punishment (compensation payable and deprivation of certain rights) imposed, and sentencing disparity between defendants. In our review of indictments, we expound the perspective of prosecutors, as the representative of the Indonesian government, in litigating for justice. Fourth, we analyze the punishment that judges imposed on the defendants. In this section, readers can see how judges, through their decisions, bring about deterrent effects. Similar to our analysis on indictments, these effects were examined through principal and supplemental sentencing. This section also discusses the implementation of penal measures, regarded as the panacea to reducing sentencing disparity. In addition, the analysis of judges' sentencing demonstrates their perspective on the corruption crimes perpetrated by the defendants.

Fifth, we have prepared a dedicated chapter on the appellate court and the Supreme Court in hearing cassation and judicial review applications. Our analysis, however, is limited to the principal and supplemental sentencing imposed at these courts, and how their sentencing compared to the sentencing in the lower court. In other words, we investigated whether the appellate court and the Supreme Court have been handing harsher punishments or instead reducing the punishments of the lower court. Sixth, we studied the amount of state losses

due to corruption in 2023. We also compared this value with the compensation ordered by the court as supplemental punishment.

In studying the indictment and sentencing, ICW also elaborated the different types of custodial punishment and categorized them into light (0-4 years of imprisonment), moderate (5-10 years of imprisonment, and severe (above 10 years imprisonment). This area is important to examine, as it allows ICW to compare and demonstrate the sentencing trends between years of reporting.



## GENERAL NOTE

Beyond the indictments and sentencing in court, our sentencing trend monitoring also considers some general information. This section discusses judicial administration function, the number of cases and the number, age, as well as professional background of defendants.

### I. Judicial Administration

The considerations paragraphs of Law Number 14 of 2008 state that the right to information is a part of human rights. It also expressly states the commitment to disclosing information is one of the traits of a democratic country. Information disclosure is believed to be the platform for public scrutiny, allowing citizens to actively play a part in keeping their government in check. The judicial institutions are part of the government, and therefore the public has the right to information regarding trials that are declared as an open proceeding.

With respect to information disclosure, the Supreme Court has issued Chief Justice Decree Number 2-144/KMA/SK/VIII/2022 concerning Public Information Service Standards in Court. The decree, especially the section on Information Mandatory to be Available and Accessible at All Times, stipulates that all rulings, both that are final and legally binding and rulings that can still be appealed, must be published and accessible by the public. This stipulation is noteworthy, as it exhibits the Supreme Court's commitment to fulfill the right to information.

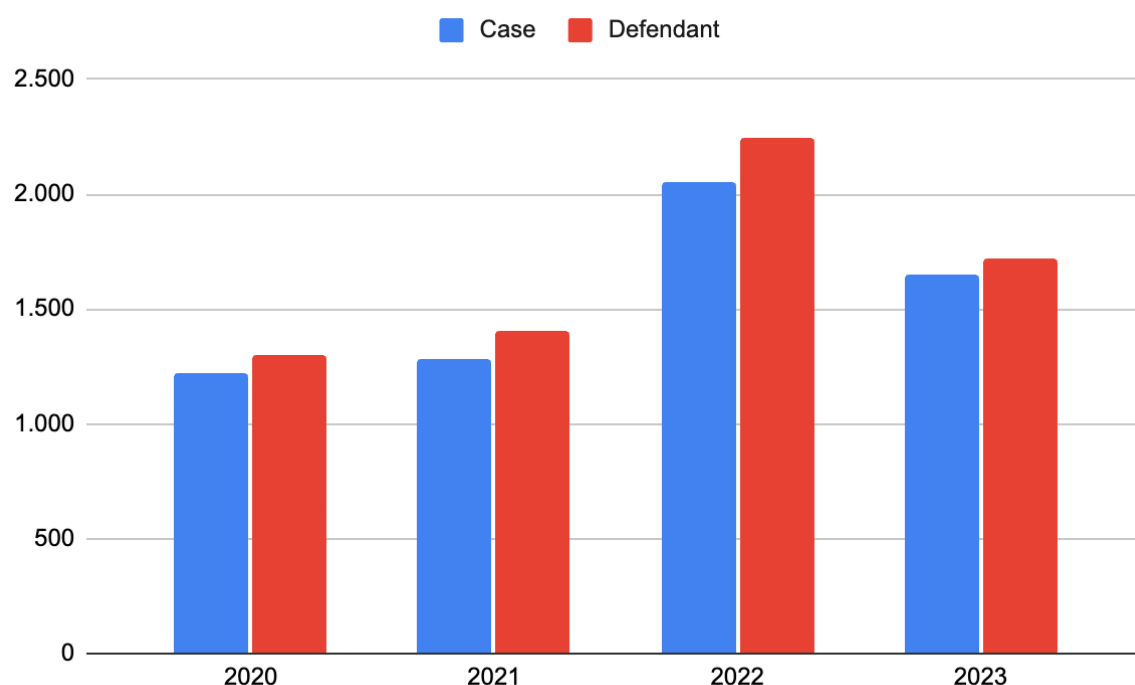
However, our monitoring for this report encountered challenges with the information disclosure practice in the Supreme Court, especially in terms of accessing verdict documents. There are two main issues that we identified. First, some rulings are not available in the case directory system. This is a long-standing problem that appears to have never been resolved. According to the Supreme Court, this problem reflects the delayed administrative process of the lower court. Going forward, the Supreme Court needs to establish a deadline for the lower court to upload their ruling document to the directory. If necessary, the Supreme Court should design a penalty mechanism to punish courts for non-compliance. The second issue is the content of the document; the uploaded document is typically only the decree (*penetapan*) and not the complete ruling. It is difficult for researchers to obtain complete information on trials – the indictment, sentencing demands, judge considerations, and the verdicts.

## 2. Number of Cases and Defendants

Our monitoring generally covers all judicial levels: first instance court, second instance court, and the court of cassation and judicial review. This year, we collected 1,649 rulings and identified a total of 1,718 defendants. These numbers, however, were lower than last year's monitoring where ICW collected 2,056 rulings.

ICW's monitoring this year focused on lower-court proceedings, considering that appellate and cassation and judicial review proceedings are likely to have been covered in our previous reports.

The following figure shows the number of cases and the number of defendants by year of monitoring:



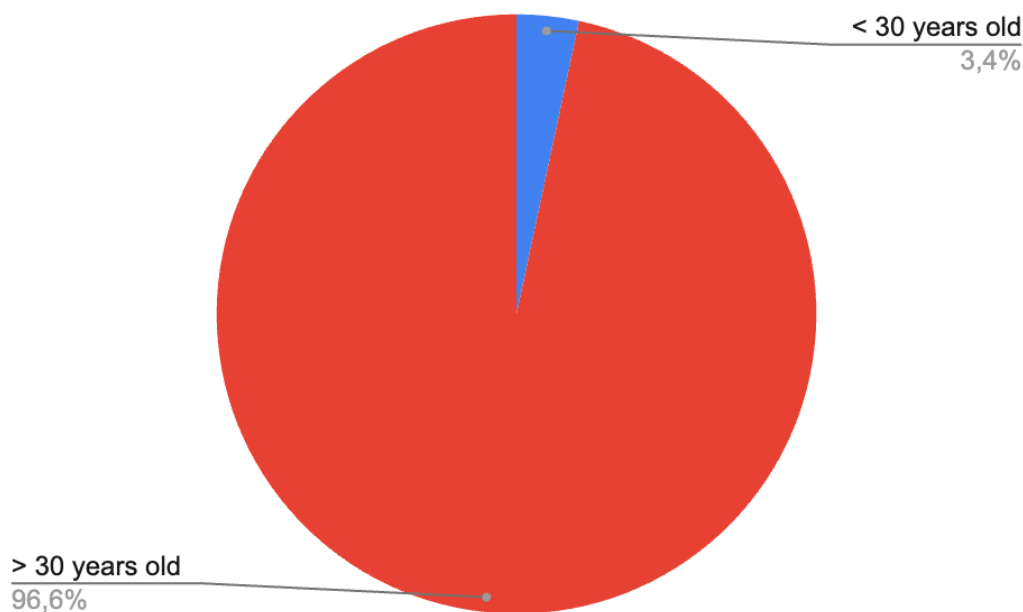
The decrease in the number of monitored cases was contributed by the Supreme Court's efforts in promoting compliance among courts to upload their rulings to the directory system. As discussed, there are many rulings that were not uploaded, and where documents are available, the contents were incomplete, adding to the challenges in data collection and analysis.

## 3. Age of Defendants

ICW was able to collect general information on the defendants, including their age. The public would be able to observe the average age of individuals who were found, beyond

reasonable doubt, guilty of corruption. Of a total of 898 defendants, we were able to identify the ages of 895 defendants, while the remaining were defendants from the private sector.

Our findings show that the average age of defendants in 2023 was 48 years old. Article 1 number 1 under Law Number 40 of 2009 defines youth as Indonesian citizens between the ages of 16 and 30 years old. We can therefore categorize the defendants into two major groups of youth (30 defendants) and older adults (865 defendants).

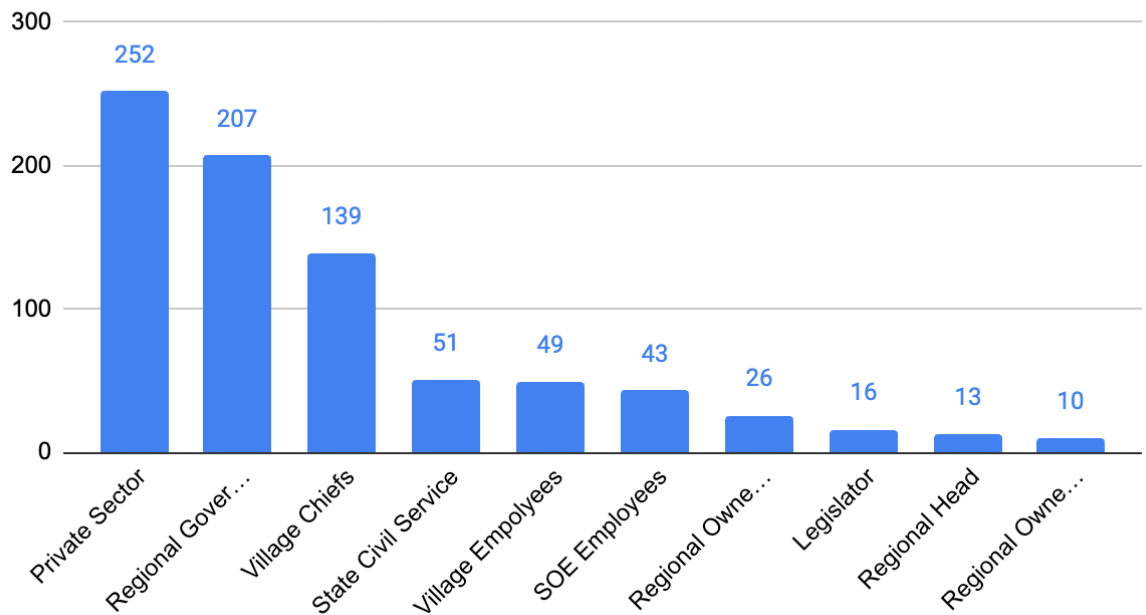


The youngest defendant, according to ICW's findings, is 22-year-old Rici Sadian Putra who worked as a private security officer in the Maradua branch office of PT Bank Sumsel Babel. His corruption caused the state to incur a loss of IDR 389 million. The oldest defendant was 75-year-old Fazwar Bujang, President Director of PT Krakatau Engineering from 2007 to 2012 and who caused IDR 6,7 trillion in state losses.

#### **4. Professional Background of Defendants**

By occupation, our 2023 monitoring found that the defendants mostly came from either the private sector, local government offices, or village governments, specifically village chiefs. This was similar to previous year's data. The number of defendants monitored this year was lower than 2022, however, this could be contributed by our scope of monitoring that focused on lower-level courts instead of courts of all levels as in previous years.

## Professional Background

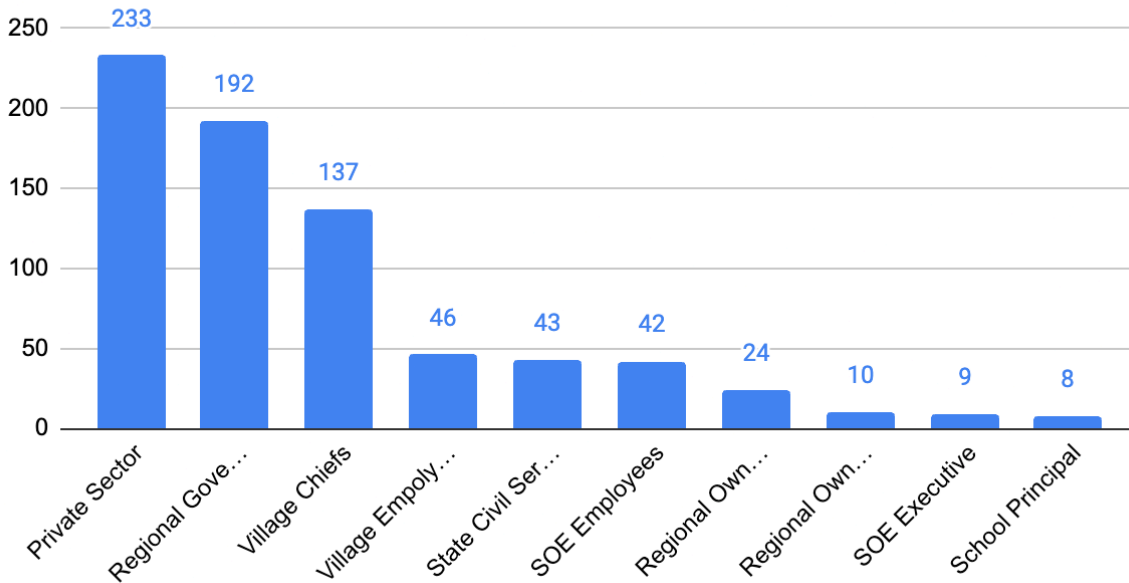


The above figure suggests areas of interest. First, corruption cases that involved private-sector individuals or business owners were predominant in 2023. This finding is unique; in the past five years, the private sector cluster consistently ranked second or third. Second, it shows how the corruption in local government bureaucracy is deeply concerning. This leads to questions on the role of inspectorates, especially in exercising their supervisory and corruption prevention functions.

Third, corruption in villages has become an epidemic. In total, 190 defendants came from this category, combining village chiefs and village apparatuses. This number is high, and this category has also been persistently identified in previous monitoring reports. It also indicates that the evaluation and supervision of village fund transfers by the government have been underwhelming. Fourth, there was a low number of defendants who were politically exposed persons and prosecuted in 2023. From the regional head and legislator clusters combined, we identified just 29 public officials. Law enforcement authorities should be able to intensify its investigation into public officials, making it the forefront of combating corruption.

Furthermore, ICW identified the professional background of defendants who were investigated and prosecuted by the KPK and by AGO prosecutors. The figure is as follows.

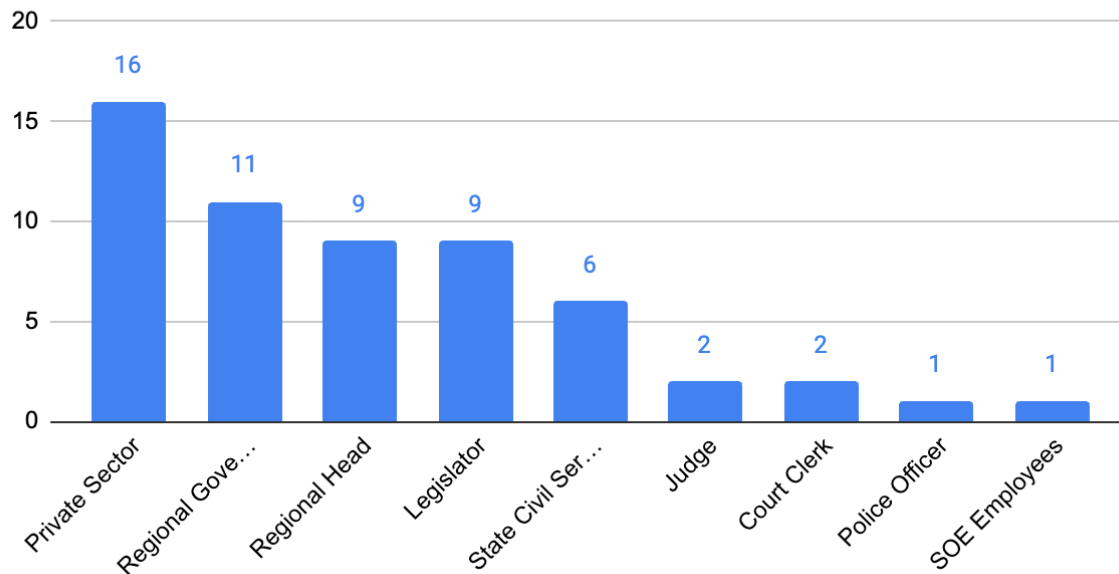
## Defendants' Professional Background - AGO as the Prosecuting Agency



A persistent issue in the AGO that was identified in previous monitoring reports is again present in 2023, namely the low rate of prosecution by the AGO against public officials. The AGO has been focusing more on prosecuting private sector employees, civil servants, and village apparatuses. The KPK exhibits this similarly low rate, and our data show that the KPK prosecuted just 11 public officials, consisting of 4 heads of regions and 7 members of the parliaments (MPs).

Nevertheless, the AGO's actions to dismantle corrupt practices in government-owned enterprises, namely national level state-owned enterprises (SOEs) and local SOEs, are laudable. In total, the AGO investigated and prosecuted 85 SOE-related defendants. On the other hand, there were only a handful of defendants with law enforcement background – a total of 3 defendants. In the corporation cluster, the AGO was ahead of the KPK, prosecuting a total of 3 corporate firms.

## Defendants' Professional Background - KPK as the Prosecuting Agency

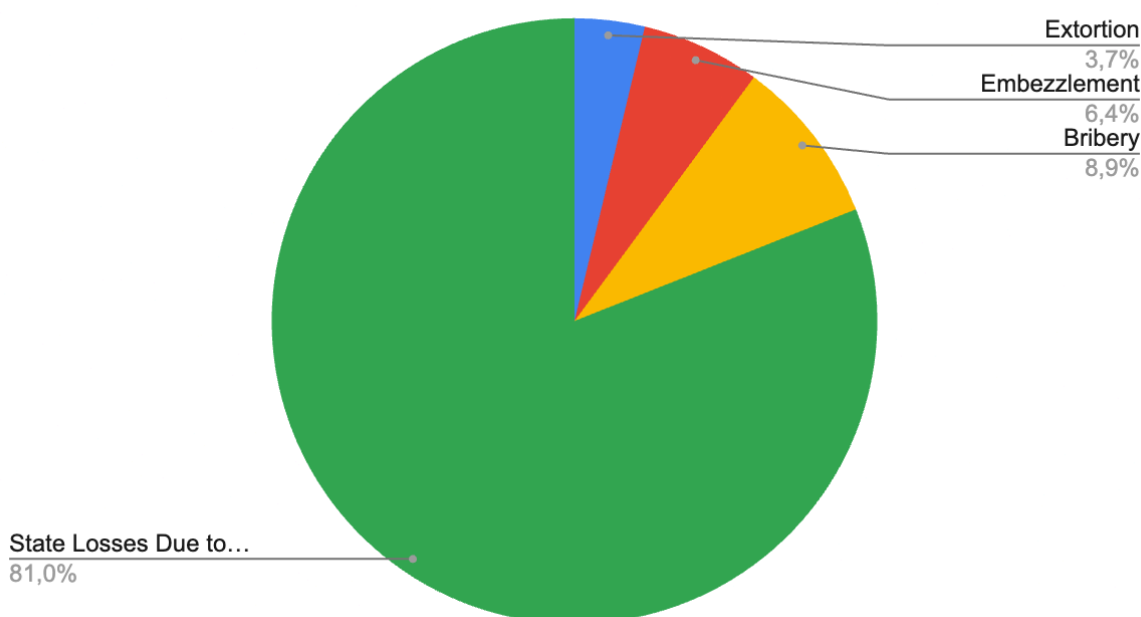


As the agency that is mandated to coordinate corruption eradication efforts, as outlined in the KPK Statute, the performance of the KPK could have been more optimal. The figure above suggests the KPK has been operating only in the periphery of political corruption. The agency also had a low number of public officials investigated, namely 18 individuals, combining regional heads and MPs. Nevertheless, the agency is notable for investigating and prosecuting 2 Supreme Court justices, especially since the Supreme Court has been recently perceived to be enjoying impunity.

## CORRUPTION INSTANCES BY ARTICLES IN INDICTMENTS

Article 182 paragraph (4) of the Criminal Procedural Code expressly states that, aside from the argumentation on evidence, the indictment letter is one of the key adjudication instruments for the judges. An indictment letter is therefore crucial in any trial. Additionally, the content of indictment, especially the articles, can help us identify the types of crime committed by a defendant. For the purpose of this monitoring, ICW studied the articles that prosecutors used in their indictment letters to prosecute corruption cases in 2023.

### Articles Used in Indictments

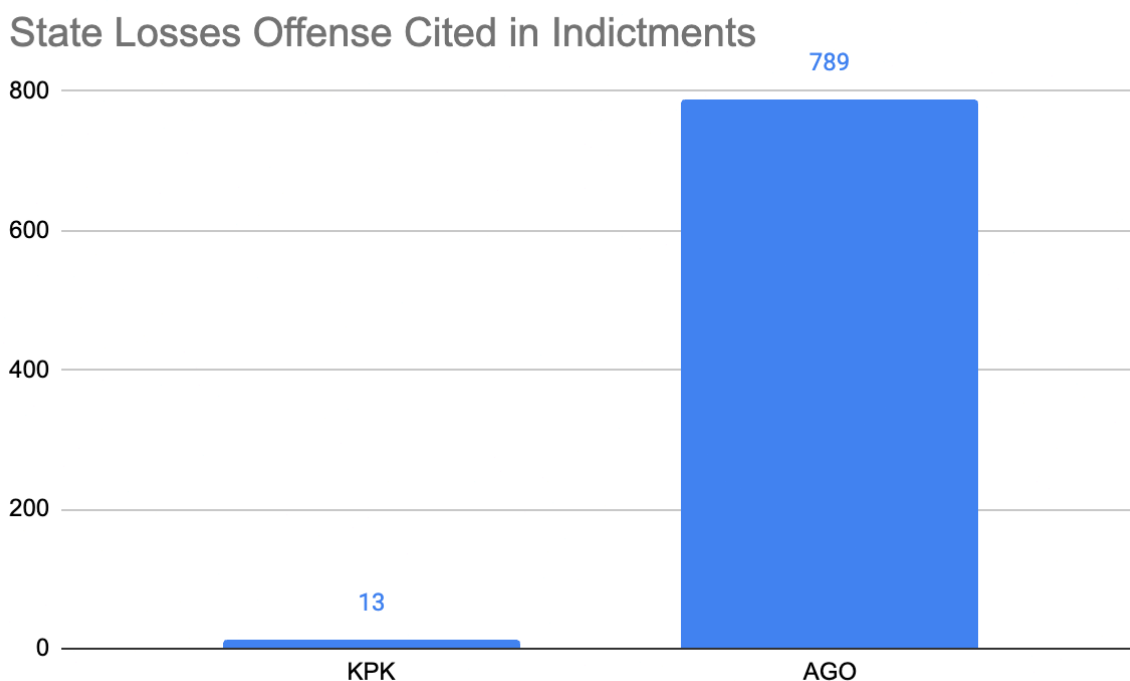


There are 7 types of corruption crimes that are defined in the Law on the Eradication of Corruption Crimes (henceforth Anti-Corruption Law) and six of them were brought up in 2023 indictments – leaving only fraudulent practices (*perbuatan curang*). In addition, the article on obstruction of justice was also used in corruption cases. Stipulated under Article 21 of the Anti-Corruption Law, six defendants were indicted with obstruction of justice.

In 2023, the predominant offense cited in indictments was state economic losses due to unlawful enrichment. Here we found another persistent issue regarding the punishments stipulated in Article 2 and Article 3. These articles have been problematic since the law was formulated, as they exhibit significant sentencing disparity between public officials and regular citizens as legal subjects. Article 3, which pursues public officials, carries a minimum imprisonment of one year. In contrast, under Article 2, the same offense committed by regular citizens is punishable with a minimum imprisonment of four years.

There have been calls of amendment to the stipulation on state losses, but this call may have proved futile with the promulgation of Law Number 1 of 2023 on Criminal Code that includes state losses offense to replace Articles 2 and 3 in the Anti-Corruption Law. However, instead of addressing sentencing disparity, the new Criminal Code increases the minimum imprisonment terms of public officials to the same terms of regular citizens. Specifically, Article 2 in Anti-Corruption Law is amended to Article 603 in the Criminal Code (where the terms of imprisonment are reduced by 2 years to minimum 2 years) and Article 3 is amended to Article 604 (terms of imprisonment increased to minimum 2 years from minimum 1 year).

Investigating and prosecuting the offense of state economic losses is a highly complex task and is unique compared to other types of corruption crimes. The typical method used so far is known as “case building”, which demands advanced investigative skills. To prove that a defendant has indeed caused economic losses to the state, the investigators will have to establish not only that a crime has taken place, but also to trace the losses. Other offenses, such as bribery, extortion, and gratifications, are relatively less complex as the investigation may rely on re-tracing the flow of money to the defendant. Our monitoring indicates that the AGO outperforms the KPK in their investigation into financial losses of the state, as shown in the following figure:



The gratification offense, raised only a handful of times in indictment letters, is also worth analyzing. ICW’s monitoring revealed that of a total of 898 defendants, the prosecutors only

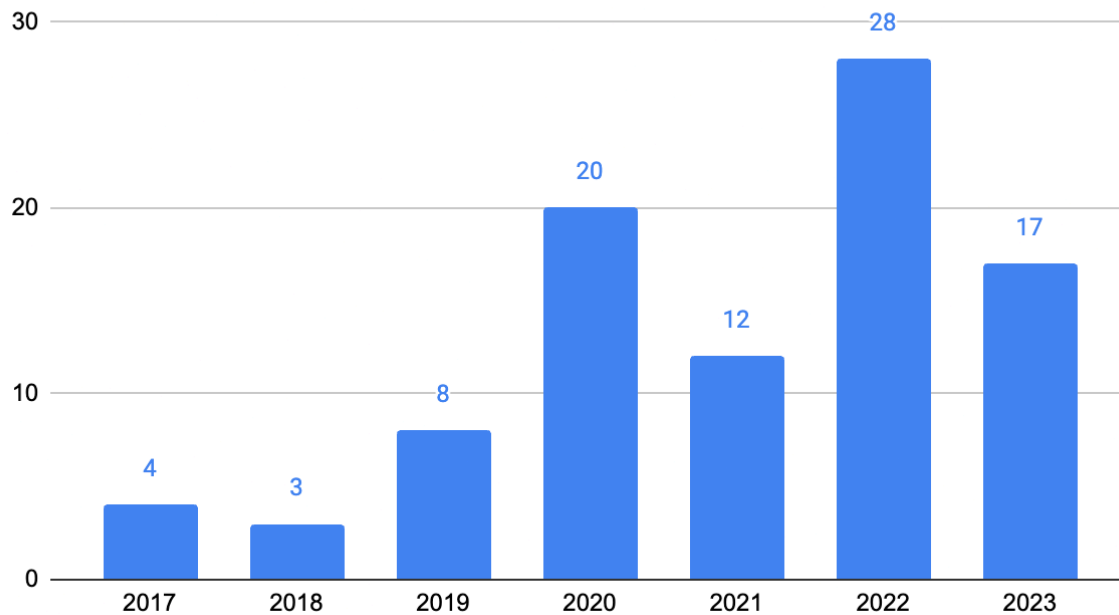


levied gratification charges against 19 of those defendants, although from an investigation perspective, this offense is relatively more straightforward.

First, investigators can coordinate with the Indonesia's Financial Intelligence Unit (PPATK) to examine the transactions associated with a suspect during the time the crime is allegedly taking place. Where income and spending irregularities are present, the source of income is potentially gratification. If the suspect is a public official, investigators can compare the FIU's report with the suspect's asset declaration. This line of investigation can lead to suspect being charged with gratification offense. Secondly, Article 12B of the Anti-Corruption Law recognizes the burden of proof reversal. If the defendant fails to explain the origins of their assets that are suspected as illicit proceeds of gratification, the state may confiscate the assets.

It is common knowledge that the crime of corruption is often accompanied by other economic-motivated crimes, such as money laundering. The prerequisites to charge a suspect with this offense is also relatively uncomplicated – where the elements of concealing or transferring illicit proceeds are present, the suspect can be charged with the articles under Law Number 8 of 2010 on Money Laundering (henceforth Anti-Money Laundering Law). This law empowers investigators and prosecutors by recognizing, among others, the follow the money approach and burden of proof reversal. It also stipulates heavier sentences than the Anti-Corruption Law. However, and in consistency with our previous monitoring, articles in the Anti-Money Laundering Law are rarely utilized by the prosecutors. In 2023, just 17 defendants stood indicted for money-laundering. This number is even lower than 28 defendants in 2022. The following figure shows the trend of money-laundering indictment:

## Money Laundering Offense in Indictments



The following table provides more information on money-laundering indictments throughout 2023:

No	Case No.	Defendant	Occupational background	Prosecutor's Agency	Money Laundering Charges
1	49/Pid.Sus-TPK/2021/PN Jkt.Pst	Benny Tjokrosaputro	Commissioner, PT. Hanson International Tbk	Attorney General's Office	Article 3
2	54/Pid.Sus-TPK/2023/PN Jkt.Pst	Anang Achmad Latif	President Director, Telecommunications and Informatics Accessibility Agency (BAKTI), Ministry of Communication and Informatics	Attorney General's Office	Article 3
3	65/Pid.Sus-TPK/2023/PN Jkt.Pst	Irwan Hermawan	Commissioner, PT. Solitech Media Sinergy	KPK	Article 3

4	63/Pid.Sus-TPK/2023/PN Jkt.Pst	Galumbang Menak Simanjuntak	President Director, PT Mora Telematika Indonesia	Attorney General's Office	Article 3
5	1/Pid.Sus-TPK/2023/PN Jkt.Pst	Budi Tjahjono	Marketing Director, PT. Jasindo Insurance and President Director, PT. Jasindo Insurance	KPK	Article 3
6	7/Pid.Sus-TPK/2023/PN Jkt.Pst	Prayitno Wind	Former Director of Audit and Collection at the Director General of Tax	KPK	Article 3
7	62/Pid.Sus-TPK/2022/PN Jkt.Pst	Surya Darmadi	Owner of PT Banyu Bening Utama, PT Seberida Subur, PT Panca Agro Lestari and PT Palma	Attorney General's Office	Article 3
8	15/pid.sus-tpk/2023 PN JKT	PT Bangun Era Sejahtera	Representing PT Bangun Era Sejahtera	District Attorney's Office	Article 3
9	18/PID. SUS-TPK/2023/P N PBR	Muhammad Syahrir	Head of National Land Agency's (BPN) Regional Office of North Maluku Province and Head of BPN Regional Office of Riau Province	KPK	Article 3
10	11/PID. SUS-TPK/2023/P N SRG	Ady Muchtadi	Head of BPN Office, Lebak Regency	High Prosecutor's Office	Article 3
11	12/PID.	Deni Edi Risyadi	Non-Civil Servant	High	Article 3

	SUS-TPK/2023/P N SRG		Employee, Lebak Regency BPN Office	Prosecutor's Office	
12	19/PID. SUS-TPK/2023/P N SRG	Nurhasan Kurniawan	PT BRI Employee at Jakarta Regional Office 3	High Prosecutor's Office	Article 3
13	20/pid.sus-tpk/2 023 Pn Bjm	Achmad Rizaldy	Civil servant	-	Article 3
14	49/Pid.Sus-TPK/ 2023/PN Bdg	Sunjaya Purwadisastra	Regent of Cirebon 2014-2019	KPK	Article 3
15	36/Pid.Sus-TPK/ 2022/PN Dps	I Ketut Budidarsa	Director, PT. Duta Karya Perkasa	High Prosecutor's Office	Article 3 and Article 5
16	20/Pid.Sus-TPK/ 2023/PN Kdi	Mirza Herizandy	Head of PT. BPD Wawonii Sub-Branch Office	District Attorney's Office	Article 5
17	17/Pid.Sus-TPK/ 2023/PN KDI	Teguh Sulistiono	Self employed	District Attorney's Office	Article 5

Several items can be analyzed from the table. First, compared to the KPK, the AGO's prosecutorial service plays a more prominent role in pursuing corruption crimes that involve money-laundering element. The KPK, as the coordinator of corruption eradication efforts, should be setting the example for other law enforcement authorities in pursuing the defendants' assets and to deprive them of their wealth by raising money-laundering articles in indictment. Second, the investigation into and prosecution of individuals who benefit, but are not directly involved, in the crime (known as the "passive" actor) is seldom carried out. At a glance, the connection between the active and passive actors seems straightforward: where an active actor is present, by default the passive actor must also be present. Yet, the fact that the beneficiaries of this crime are rarely held accountable suggests that money-laundering investigation remains unable to shed light on this crime to the fullest extent. According to the law, however, these beneficiaries can be charged with Article 5.

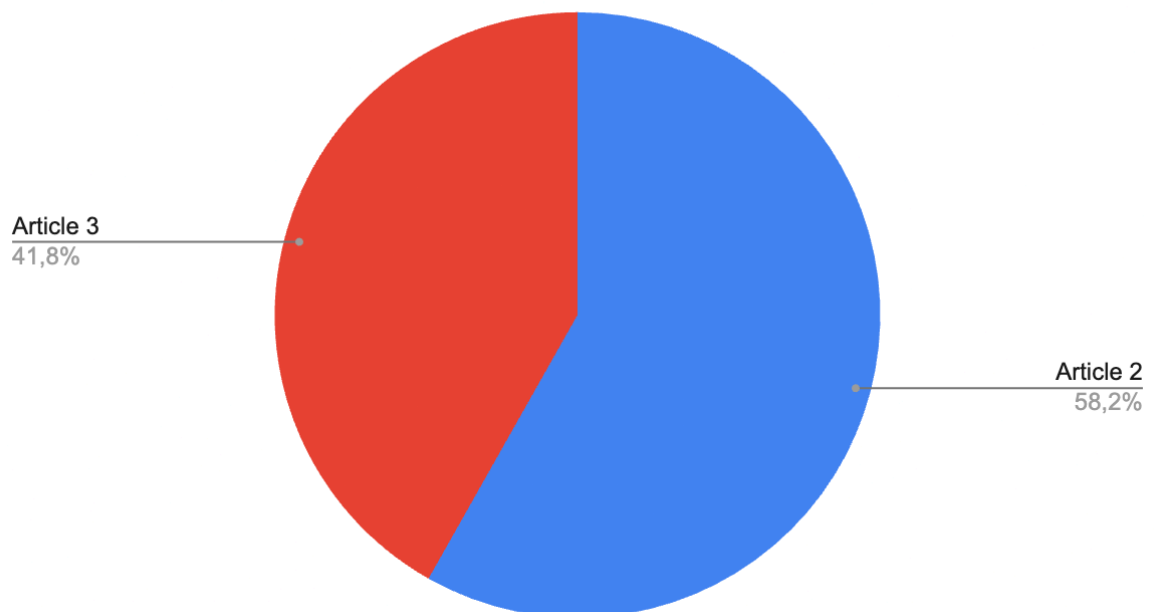
## MAPPING OF INDICTMENTS

The reading of the indictment is one of the most pivotal junctures in any court hearing. An indictment letter not only represents the prosecutor's efforts to bring a defendant to justice, but also demonstrates to the public the view of the state regarding a crime – specifically corruption crimes. Recognized as an extraordinary crime, the offender should be punished severely. Beyond that, the prosecution's indictment strategies are crucial, especially since the Anti-Corruption Law contains several stipulations that suggest sentencing disparity. Moreover, considering that corruption is an economic-motivated crime, this report highlights the efforts to recover state losses through supplemental punishment, such as compensation payable. Other than that, we also look at other types of punishments, such as fines, the degree of punishment's severity, revocation of certain rights, and other demands that are deemed controversial.

### I. Articles in the Anti-Corruption and the Anti-Money Laundering Laws

As discussed in the previous chapter, our mapping exercise of indictment letters shows that the state loss offense was predominant in 2023. The following figure shows which article of the law that is associated with state losses is raised most frequently by the prosecutors as the basis of their indictment. It is important to understand this pattern, since it will affect the sentencing and the disparity of sentencing.

State Losses Offense Cited in Indictments



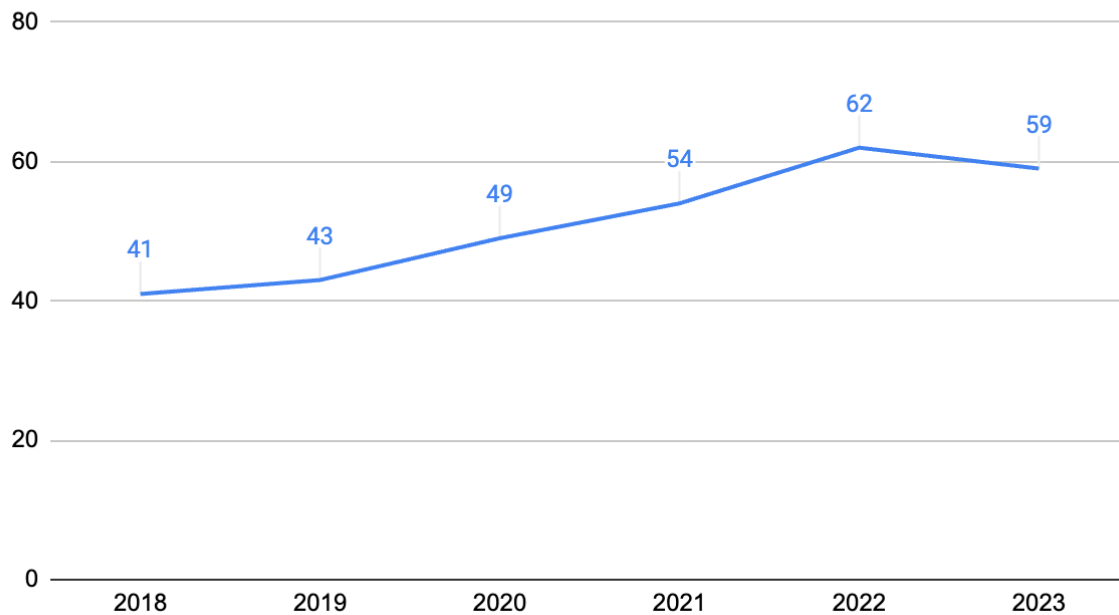
As shown, prosecutors mainly utilize Article 2 instead of Article 3, and this is appreciated. This implies that prosecutors are pursuing the greatest minimum term of imprisonment according to Article 2, namely four years. In money-laundering, consistent with the indictment, there were 17 defendants that were charged with this crime. The issue does not lie with the demands of the prosecution, but in the indictment letter, since sentencing demands can never be raised without the articles cited in the indictment letter.

## **2. Average Sentencing Demands**

Indonesia's positive law recognizes several types of punishments stipulated in Article 10 of the Criminal Code. There are principal sentences (capital punishment, imprisonment, fine, detention [*kurungan*], and alternative detention [*tutupan*, applicable only in cases where an offense is committed on the basis of "honorable intention"] and supplemental punishments (deprivation of certain rights, confiscation of certain assets, and public announcement of the sentence). For the crimes of corruption, Article 18 of the Anti-Corruption Law recognizes compensation payable as a form of punishment. This section elaborates the demands of prosecutors by the type of penal measures.

According to ICW's monitoring on 898 defendants who were tried at the first-level court throughout 2023, the average term of imprisonment demanded by the prosecutors is 4 years 11 months. Earlier, this report specifies three categories of imprisonment by degree of severity, namely light (below 4 years), moderate (4 to 10 years), and severe (over 10 years). Based on these indicators, the average term of imprisonment requested in 2023 is moderate. The following figure shows the trend of prosecutors' demands within the scope of ICW's monitoring.

## Sentencing Demand Trend by Year



The figure above shows a decline in sentencing demands in 2023 compared to 2022. Notwithstanding the complexities of a trial, it appears that the public prosecution has refrained from recommending heavier sentences for defendants in corruption cases. With respect to other principal sentences, such as fines, ICW finds that the average amount of fine imposed on the defendants was merely IDR 236,297,312 (two hundred thirty-six million two hundred thousand ninety-seven and three hundred and twelve rupiah). This amount is meagre compared to the number of defendants, 898 in total.

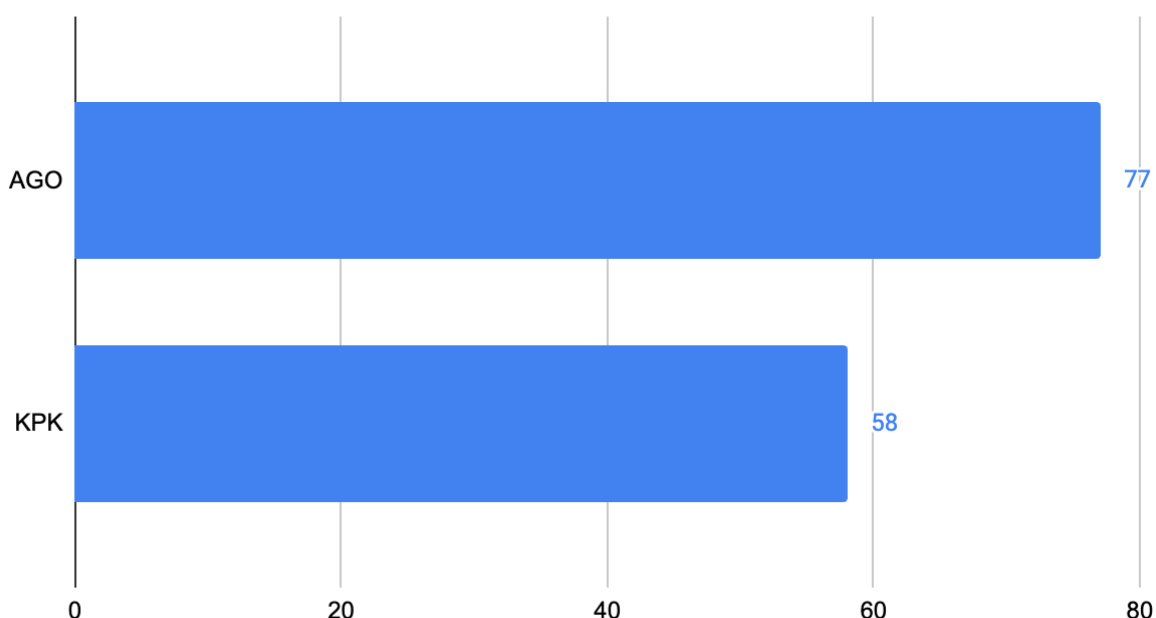
Article 18 of the Anti-Corruption Law stipulates supplemental sentence, i.e. *uang pengganti*, or the compensation payable for the assets gained from corruption. The article stipulates that the judges may order the convicted person to pay compensation and if they are unable to do so, their assets – associated to their crimes or otherwise – will be confiscated. Moreover, if their asset value is less than the value of compensation payable, the convicted person will be required to serve an additional prison term. This additional term is crucial to somewhat compel the criminal to return their illicit proceeds. Interestingly, the additional term of imprisonment does not have a minimum nor maximum threshold, implying that the duration of this punishment will follow the duration of the principal sentence.

ICW investigated the role of the public prosecution service in levying substitute imprisonment term against every defendant who is recommended to be imposed with compensation payable. ICW's monitoring reveals that the average additional imprisonment term demanded in 2023 was 2 years and 2 months. Given this short duration, it will be

challenging for the substitute imprisonment to be a powerful instrument to compel convicted corruptors to pay their compensation in full.

The data on average sentencing demands can be further broken down by the public prosecution institution, namely KPK and the AGO. This can be a measure of effectiveness and commitment of law enforcement authorities in pursuing conviction in corruption crimes. Based on ICW's monitoring, of the total 58 defendants charged by KPK prosecutors, the average prison term demand is 6 years and 5 months. There is a substantial gap between this number and the average imprisonment term sought by AGO prosecutors; of the total 817 defendants, PPS officers demanded just 4 years and 10 months imprisonment on average.

### Average Prison Term Demanded (in month)



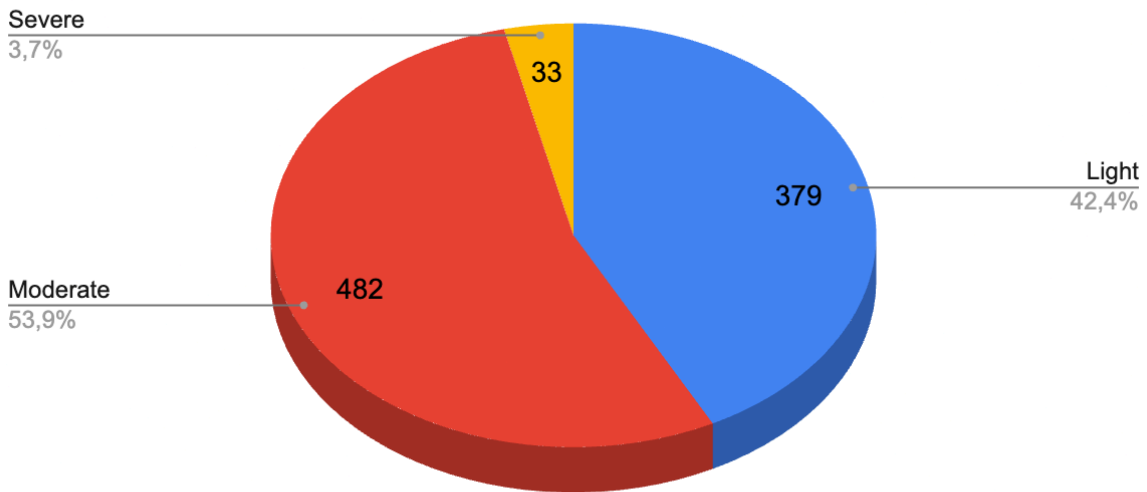
Additionally, our monitoring also breaks down sentencing demands by type of the defendant's professional background. We focus on just two groups of occupation for the purpose of our analysis, namely politically exposed persons/PEPs (MPs and heads of regions) and civil servants. We argue that a defendant's public position should be considered by the prosecutor as an aggravating factor as stipulated by Article 52 of the Criminal Code. In the PEPs category, of 29 defendants, their average recommended sentence was 6 years and 1 month imprisonment. Meanwhile, in the civil servant category, of 256 defendants, the average recommended sentence was 4 years and 7 months imprisonment.



### 3. Sentencing Demands by Degree of Severity

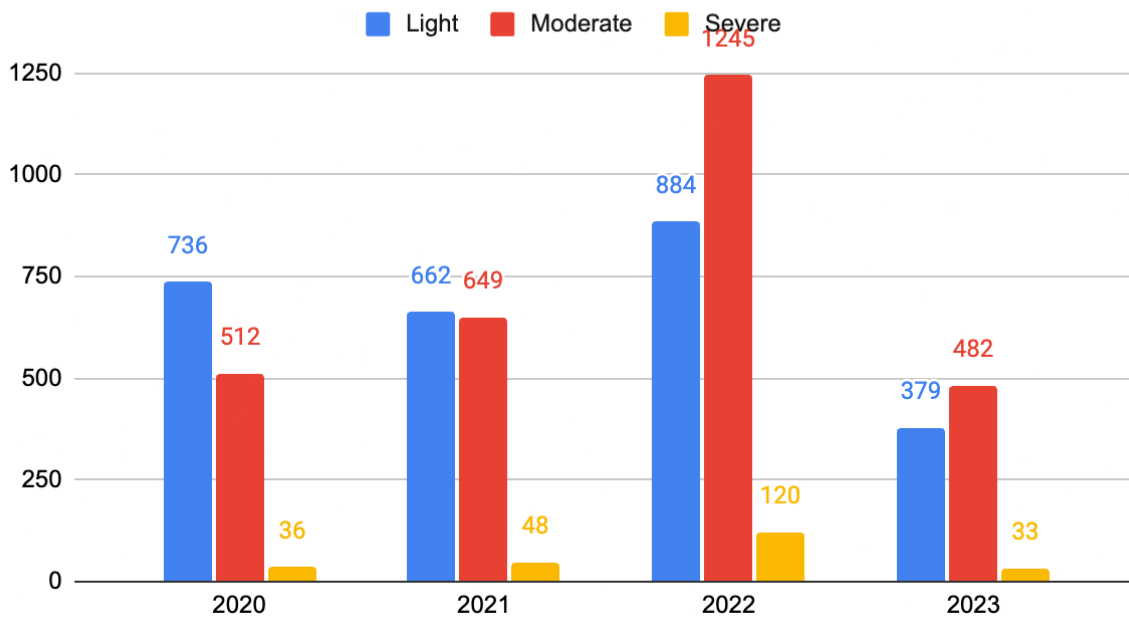
As mentioned in the previous section, ICW categorizes the sentencing into three groups by degree of severity, namely light (under 4 years), moderate (4 to 10 years), and severe (over 10 years). The following figure shows this trend in 2023:

Sentence Category



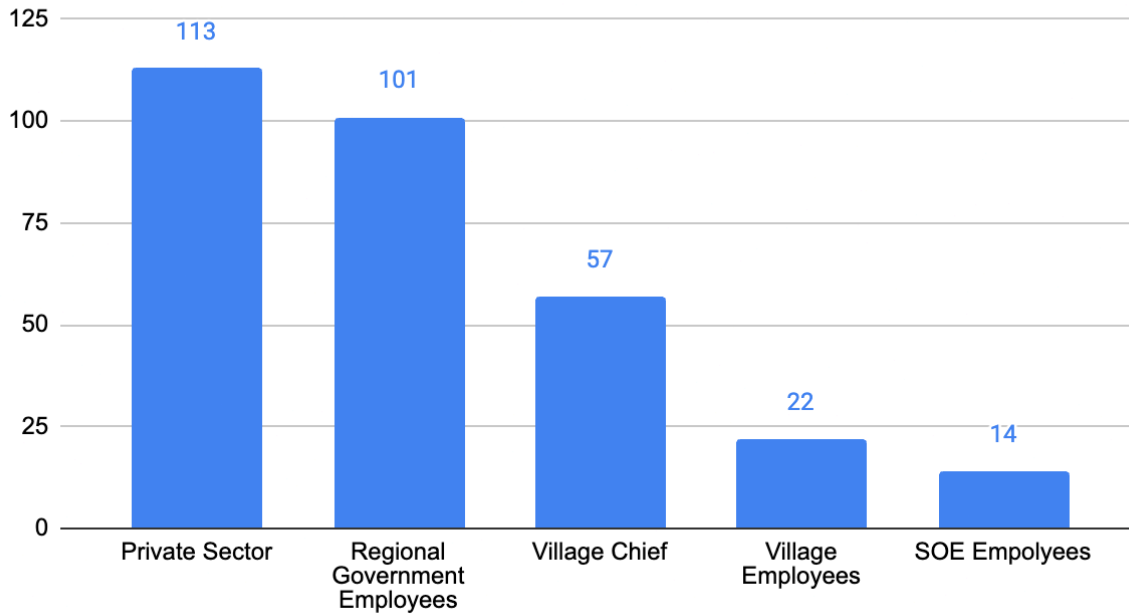
From the figure above, it is clear that there is room for stronger sentences to be pursued. The proportion of light sentencing demand remains significant; conversely, severe sentences account for very little. The following figure shows sentencing trend by its degree of severity in the past four years:

## Sentence Severity



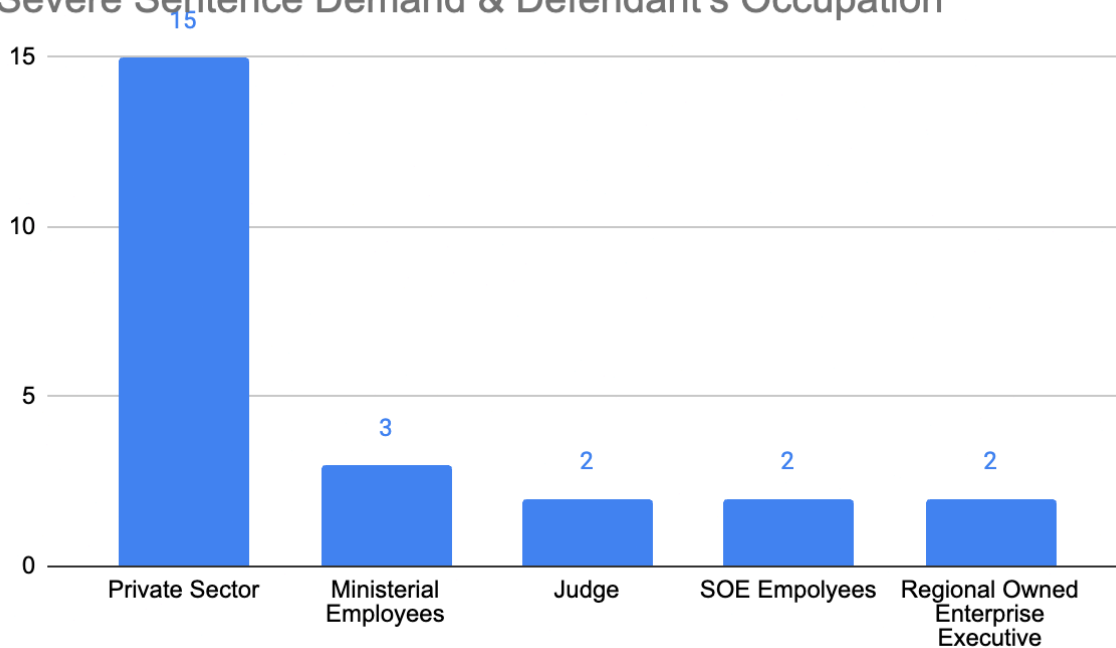
The data on moderate sentencing demand in 2023 suggests that the prosecutors have room to improve. Furthermore, there were only 33 defendants who faced severe sentence demands in 2023, the lowest compared to the previous years of monitoring. ICW also examined the occupational background of the defendants and matched them with the severity of their sentencing recommendation. This analysis is helpful to understand whether a defendant's occupational background, which can be used to aggravate their indictment, is utilized against public officials or against private citizens.

## Light Sentence Demand & Defendant's Occupation



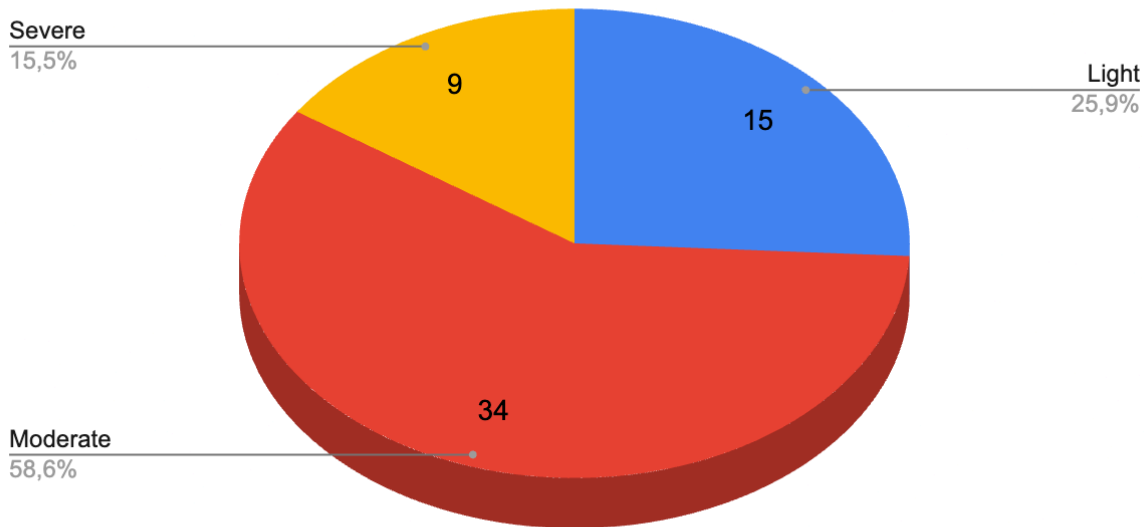
Our findings show that prosecutors have not been utilizing Article 52 of the Criminal Code, which counts a defendant's public official background as an aggravation. As evidenced by the data, civil servants in regional governments were primarily recommended for light sentences. Moreover, while the number is not significant, there were seven defendants from the PEP category that were also recommended for light sentences. This implies that a defendant's background as a public office holder, and let alone a regular civil servant, currently holds no weight in their sentencing recommendation.

## Severe Sentence Demand & Defendant's Occupation



In 2023, the number of prosecuted judges was low, and this alone may warrant criticism. Nevertheless, they were recommended for severe sentences. This is in line with the specificities of a jurist, which are stipulated under Article 6 of the Anti-Corruption Law. This article expects harsher punishments against a judge who is involved in the crimes of corruption. Notably, our monitoring found other types of severe punishment against judges who became defendants in corruption cases, namely capital punishment and life imprisonment. Benny Tjokrosaputro was recommended for the death penalty, while Surya Darmadi was recommended for life in prison.

Similarly, we broke down sentencing categories by the institution of the prosecutors, i.e. KPK and the AGO to look at the sentencing trend from an institutional perspective – especially the KPK that, by statute, is the leading agency in corruption eradication efforts.

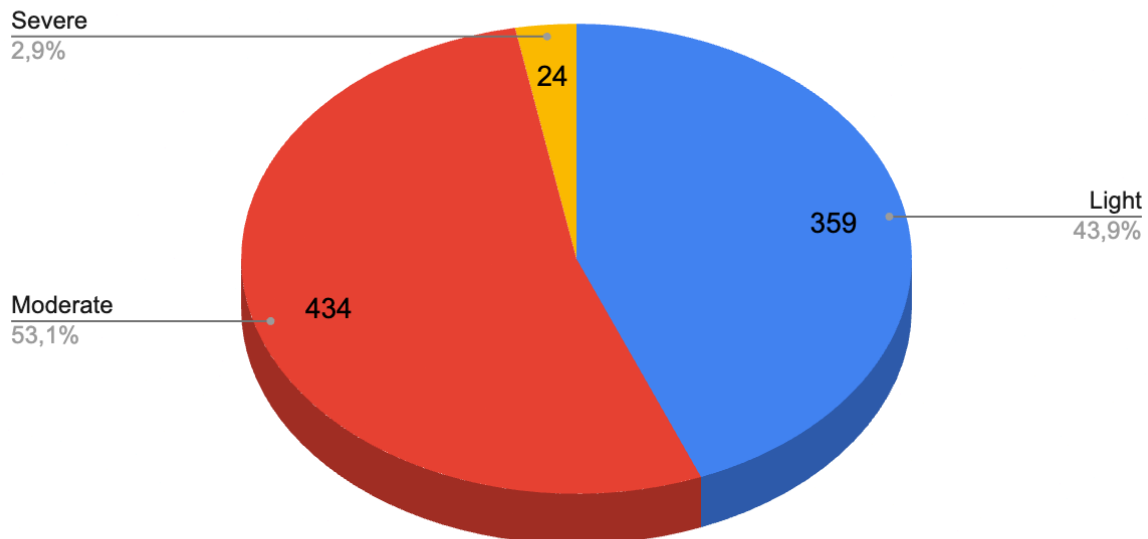


The figure above shows that the KPK has scope to improve its performance as the focal point in combating corruption. In the context of serving as a trigger mechanism, the KPK should be leading the example for other prosecutors to seek heavy sentences against the defendants. The following table provides further details on corruption cases prosecuted by the KPK.

No.	Case No.	Defendant	Occupation	Demanded Prison Term
1	52/Pid.Sus-TPK /2023/PN Sby	Sahat Tua P. Simandjuntak	Deputy Chair of the East Java Provincial Parliament	12 years
2	23/Pid.Sus-TPK /2023/PN Bdg	Sudrajad Dimiyati	Supreme Court Justice	13 years
3	74/Pid.Sus-TPK /2022/PN Jkt.Pst	John Irfan Kenway	Director, PT Diratama Jaya Mandiri	15 years

The table above indicates that the KPK has taken the appropriate approach in their sentencing recommendation, especially considering the defendants' professional background. It was appropriate that Simandjuntak and Dimiyati, once an MP and a Supreme Court justice,

respectively, were recommended for severe imprisonment term. Meanwhile, Kenway came from the private sector, yet his crime not only caused billions of rupiah in state losses but was also connected to the national defense infrastructure. The recommended 15-year prison term was therefore a suitable punishment for his crimes.



Similarly, AGO prosecutors demanded mostly moderate imprisonment term. However, compared to the KPK, the number of defendants who were demanded for severe prison term was higher under the AGO prosecution. The AGO performance also improved compared to previous monitoring where, based on our observation, light sentences were initially predominant.

No.	Case No.	Defendant	Occupation	Prison Term Demanded
1	33/Pid.Sus-TPK/2022/PN Dps	Nyoman Arta W	Head of Customary Financial Service Provider (LPD), Anturan Customary Village	18.5 years
2	9/Pid.Sus-TPK/2023/PN Jap	Johannes Rettob	Head of Transportation, Communication,	18.5 years

			and Informatics Office of Mimika Regency	
3	20/Pid.Sus-TPK/20 23/PN Jkt.Pst	Thomas Anthony	Managing Director, Eurasian Technology Holdings PTE	18.5 years

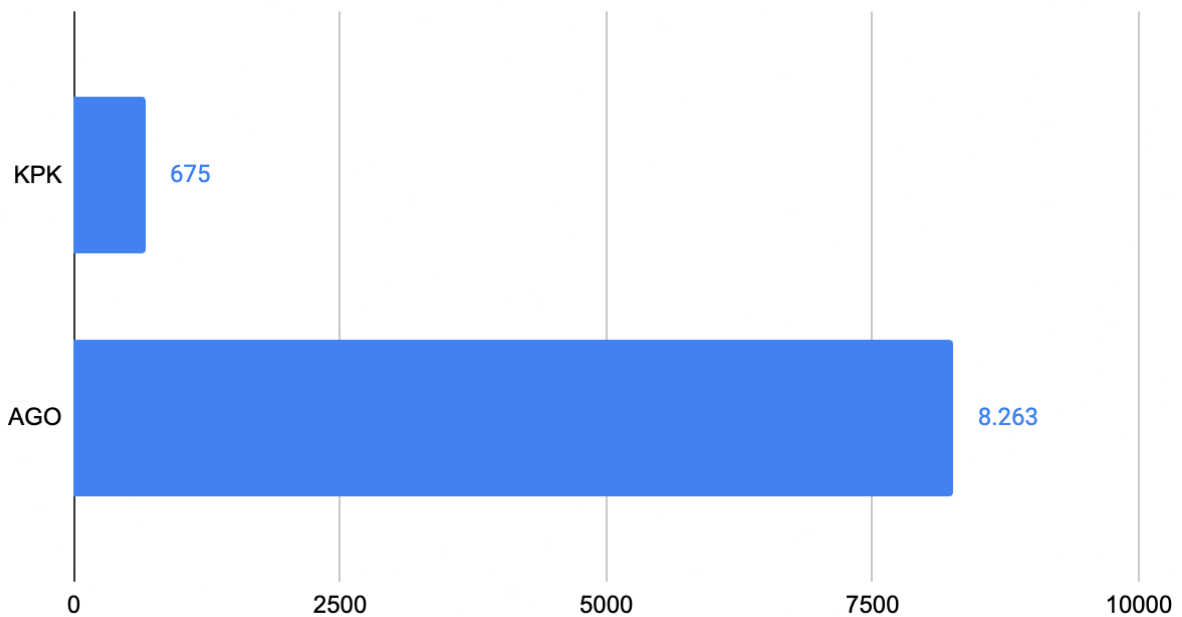
#### 4. Compensation Payable

The sentence of compensation payable is believed to be an effective deterrent instrument for criminals convicted in corruption crimes. The root of corruption is often economic motivation, therefore sentences that are in the same vein of confiscating illicitly gained assets should be pursued and strengthened. The legal basis is available to be utilized, namely under Article 18 of the Anti-Corruption Law. Article 18 authorizes law enforcement officers to impose compensation payable if the case of irregular accumulation of wealth. This report therefore also captures the sentencing of compensation payable from the perspective of prosecution. This report presents three aspects of data, namely the total amount of compensation demanded in 2023, the origin of demand from either KPK or AGO prosecutors, and three of the largest amounts of compensation demanded.

Based on our monitoring, of the total 866 cases tried in 2023, and a total of 898 defendants, the demand for compensation totaled to IDR 84,345,307,640,677 (eighty-three trillion three hundred forty-five billion three hundred and seven million six hundred forty and six hundred seventy-seven rupiah). This total amount was associated with a total of 611 defendants that prosecutors demanded to be punished with Article 18 of the Anti-Corruption Law.

The following figure indicates compensation payable demand by agency, namely KPK and AGO.

## Compensation Payable Demanded (in billion IDR)



Given the significant difference between the total number of defendants prosecuted by the KPK and the AGO, a direct comparison cannot be drawn. Nevertheless, the figure suggests that it was the AGO that exercised stronger efforts to pursue the recovery of state losses due to corruption, by recommending compensation payable to punish the defendants. Going forward, insofar as illicit profits are concerned, compensation should be pursued in any corruption cases – and any form of corruption, e.g. corruption that causes state losses and bribery – as afforded by Article 17 of the Anti-Corruption Law.

The following table details the sentence of compensation payable, focusing on the largest amounts, in 2023, as demanded by AGO prosecutors:

No.	Case No.	Defendant	Occupation	Prosecutor's Agency	Compensation demanded
1	61/Pid.Sus-TP K/2022/PN Jkt.Pst	Stanley MA	Senior Manager Permata Hijau Group	Attorney General's Office	IDR 868 billion
2	49/Pid.Sus-TP K/2021/PN Jkt.Pst	Benny Tjokrosaputro	Commissioner, PT. Hanson International Tbk	Attorney General's Office	IDR 5.7 trillion



3	62/Pid.Sus-TP K/2022/PN Jkt.Pst	Surya Darmadi	Owner, PT Banyu Bening Utama, PT Seberida Subur, PT Panca Agro Lestari and PT Palma	Attorney General's Office	IDR 73 trillion
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The following table details the sentence of compensation payable, focusing on the largest amounts, in 2023, demanded by KPK prosecutors:

No.	Case No.	Defendant	Occupation	Prosecutor's Agency	Compensation demanded
1	51/Pid.Sus-TP K/2023/PN Jkt.Pst	Bambang Kayun	Head of the Criminal Enforcement and Human Rights Section, National Police Legal Division	KPK	IDR 57.1 billion
2	12/Pid.Sus-TP K/2023/PN Bdg	Stevanus Kusnadi	President Director, PT Pancamulti Niaga	KPK	IDR 84.2 billion
3	74/Pid.Sus-TP K/2022/PN Jkt.Pst	John Irfan Kenway	Director, PT Diratama Jaya Mandiri	KPK	IDR 177 billion

The large sums of compensation demanded by prosecutors indicate two critical issues. First, it affirms the prosecutors' role, as representative of the state and victims, in pursuing the maximum recovery of the stolen assets. Second, this demand marks the end of the process to prove the crime, and an attempt to convince the judges about the significant damages due to corruption.

## 5. Disparity in Sentencing Demands

In any crime case, and especially in a corruption case, disparity on how different cases is handled is likely to occur. This is because each corruption offense is unique in terms of its modus operandi, perpetrators' involvement, and impacts of the crime. Indeed, if public officials, whether those holding public offices or law enforcement officials, are involved in a corruption crime, and if the crime causes significant damages, it is only logical that the perpetrators are given severe punishments. In reality, however, we often see the contrary. Frequently, there is disparity in the recommended sentences between smaller and larger-scale corruption cases. This section discusses the disparity that we found in our monitoring of corruption trials in 2023.

With regards to the law enforcement agency's commitment, the AGO is noteworthy for its initiative to issue an internal prosecution guideline. ICW's data show that the AGO issued the Attorney General's Circular on the Guideline of Criminal Prosecution of the Crimes of Corruption in 2010. In contrast, the KPK has never issued a similar document, even though it has maintained its claim since 2021 that its own draft is being finalized. As an agency that is expected to lead the example in eradicating corruption, KPK has been rather lagging behind in recognizing the problem of sentencing recommendation disparity.

Furthermore, the AGO has updated its guideline in 2019. The newer version was issued as Guideline Number 1 of 2019 on the Criminal Prosecution of the Crimes of Corruption. It contains several themes, including the classification of imprisonment and fines applicable for the charges of causing economic losses to the state, substitute imprisonment, and deprivation of certain rights. The Guideline goes beyond stipulating the prosecution of individual citizens; it also provides rules on how to prosecute corporations. According to the guideline, any sentencing recommendation should be based on three considerations, namely the act of crime, condition of the defendant, and impacts of the crime.

While the AGO's efforts to minimize disparity are commendable, we see there is room to expand the Guideline to also cover other types of corruption crimes. Disparity in sentencing demands is also found in the crimes of bribery, extortion, and gratification. Currently, both the 2010 and 2019 versions of the Guideline cover just the crime of corruption that causes economic losses to the state (Articles 2 and 3 of the Anti-Corruption Law). Moreover, the Guideline may also set out rules to consider a defendant's occupational background as an aggravating factor. Aside from public officials, defendants' backgrounds in law enforcement or being a PEP must be treated as aggravation.

No.	Case No.	Defendant	Occupation	Prison term demanded	State losses	Article
1	7/pid.sus-tpk/2023 Pn Bjm	M Firman Jauhari	Supervisory Consultant, CV Mandiri Cipta Pratama	4 years	IDR 1.6 billion	Article 2
2	131/Pid.Sus-TPK/2022/PN Smg	Rendra Zegita	Manual laborer	6 years	IDR 500 million	Article 2
3	50/Pid.Sus-TPK/2023/PN Bdg	Kurniawan	Head of Karyasari Village, Cibalong District, Garut Regency	4 years	IDR 161 million	Article 2
4	16/PID. SUS-TPK/2023/P N PBR	Harianto	Head of Senderak Village	4 years	IDR 4.2 billion	Article 2
5	35/Pid.Sus-TPK/2022/PN Dps	Sri Wahyuni	Private Sector	1.5 years	IDR 4.8 billion	Article 3
6	12/Pid.Sus-TPK/2023/PN Bna	Teuku Husaini	Director of BUMG Bahtera Maju Krueng Raya	2 years	IDR 87 million	Article 3
7	28/Pid.Sus-TPK/2023/PN Bdg	Mila Karmila	Operational Manager at CV Citra Sarana Grafika (CV CSG)	1.5 years	IDR 19.7 billion	Article 3
8	10/PID. SUS-TPK/2023/P N PBR	Nathanael Simanjuntak	Director, PT. Multi Karya Pratama	2 years	IDR 1.4 billion	Article 3

It is clear from the table above that disparity in sentencing demand continues to be prevalent. For example, by amount of losses caused, defendant Firman Jauhari in case number 1 might merit a heavier imprisonment term than defendant Rendra Zegita in case

number 2. The table, however, showed that a criminal that caused hundreds of millions of rupiah in losses received a heavier sentence compared to the former, who caused billions of rupiah in losses. A similar comparison can be drawn between case number 3, defendant Kurniawan, and case number 4, defendant Harianto. Both were village chiefs, and the latter caused a significantly higher amount of losses, yet Harianto's recommended prison term was the same as Kurniawan's. This kind of disparity – where a crime with a greater impact is punished with a lighter or equal sentence as a crime with a lesser impact – surely affects the sense of justice of the defendants and the victims.

No.	Case No.	Defendant	Occupation	Recommended prison term	Bribe received /paid	Article
1	71/PID. SUS-TPK/2022/P N SRG	Suhendi	Secretary of Cikupa Village	2 years	IDR 24.6 million	Article 11
2	56/pid.sus-tpk/2022 Pn Pal	Michael Andersen Tampoma	Civil servant at BPN Palu City	3 years	IDR 5 million	Article 11
3	132/Pid.Sus-TPK /2022/PN Smg	Mukti Agung Wibowo	Pemalang Regent 2021 - 2026	8.5 years	IDR 6.6 billion	Article 12
4	48/Pid.Sus-TPK/2023/PN Sby	R. Abdul Latif Amin Imron	Bangkalan Regent 2018-2023	9 years 4 months	IDR 575 million	Article 12
5	68/Pid.Sus-TPK/2022/PN Jkt.Pst	LM. Rusdianto Emba	Self employed	3 years 6 months	IDR 3.4 billion	Article 5 paragraph (1)
6	108/PID. SUS-TPK/2022/P N MKS	Jusieandra Pribadi Pampang	President Director, PT Bumi Abadi Perkasa	3 years 6 months	IDR 48.3 billion	Article 5 paragraph (1)

As shown, disparity in sentencing demands is present not only in the crime causing state losses, but also other types of corruption crimes such as bribery. Defendant Suhendi, for

instance, was recommended for a lesser prison term than defendant Michael, even though Suhendi took a much larger amount of bribe money than Michael. Similarly, defendant Mukti received bribe money of over IDR 6 billion, yet he was recommended for a lesser prison term than defendant Abdul Latif – despite both having the same occupational background as municipal leaders. Unlike Suhendi and Michael, Mukti and Abdul Latif were indicted with Article 12 of the Anti-Corruption Law. Disparity is also found in cases where the bribe givers were tried. Indicted with Article 5 paragraph (1), Rusdianto and Jusieandra were recommended for the same prison term – the bribes they paid were in the amount of IDR 3.4 billion and IDR 48.3 billion, respectively.

No.	Case No.	Defendant	Occupation	State losses	Fine	Article
1	16/PID. SUS-TPK/202 3/PN PBR	Hariato	Head of Senderak Village	IDR 4.2 billion	IDR 50 million	Article 2 paragraph (1)
2	11/PID. SUS-TPK/202 3/PN MKS	Alexander Aman	Former Head of Lembang Butang Village, Tana Toraja Regency 2013 - 2019	IDR 364 million	IDR 50 million	Article 2 paragraph (1)
3	20/pid.sus-tp k/2023 Pn PTK	Razali Bustam	Director, PT Malabar Mandiri	IDR 2.1 billion	IDR 50 million	Article 3
4	31/Pid.Sus-TP K/2023/PN Plg	Abdul Mukti	Director, CV. Hutama Mukti	IDR 20 million	IDR 50 million	Article 3
5	69/Pid.Sus-TP K/2023/PN Sby	Suwaji	Regional Coordinator of East Java Province, Social Forestry Movement Team	IDR 36 million	IDR 50 million	Article 11
6	67/Pid.Sus-TP K/2023/PN-S by	Cariadi	Chief Executive of Tambaksari Village Land Redistribution	IDR 420 million	IDR 50 million	Article 11

There is also disparity in the amount of fines demanded by the prosecutors. As part of the principal sentence, other than imprisonment, a fine may be imposed and is expected to be proportionate to the crime committed by the defendant. This monitoring captured several court rulings and the significant disparity in the recommended fines between cases. Defendant Harianto, for instance, was charged with causing state losses amounting to billions of rupiah. His recommended fine was just IDR 50 million, or the lowest amount of fines according to the law. This amount was the same with the recommended fines for defendant Alexander, who was found guilty of causing state losses amounting to IDR 364 million. We also highlight the cases of Razali and Abdul – both coming from the private sector. Razali was imposed with a IDR 50 billion fines for causing IDR 2.1 billion in state losses, while Abdul was also imposed with the same amount of fines for causing IDR 20 million in state losses. Indeed, there is glaring disparity that may harm the sense of justice.

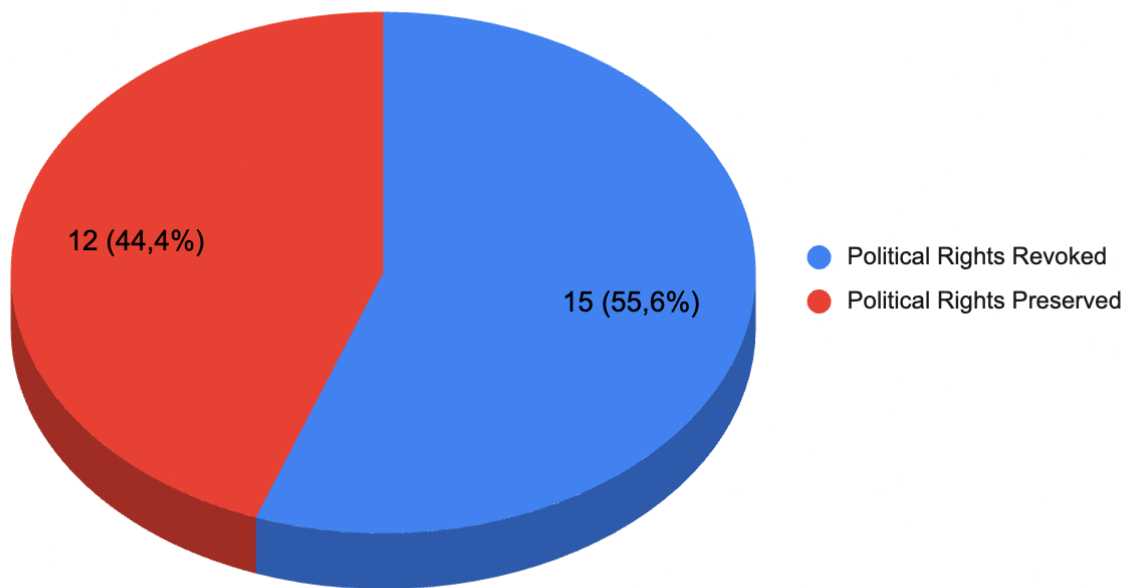
No.	Case No.	Defendant	Occupation	Compensation Payable	Substitute Prison Term	Article
1	No. 38/Pid.Sus-TPK /2023/PN Sby	Nurkholis	Head of Ngulan Wetan Village	IDR 50 million	2 years	Article 2 paragraph (1)
2	85/Pid.Sus-TPK /2022/PN Jkt.Pst	Budi Suchaeri	Director, PT Carita Boat Indonesia	IDR 11.8 billion	1 year	Article 2 paragraph (1)
3	116/PID. SUS-TPK/2022/ PN MKS	Azwar Anas Singer	Director, PT Teknik Eksakta	IDR 28 million	1 year	Article 3
4	69/Pid.Sus-TPK /2023/PN Jkt.Pst	Taufik Hendra Kusuma	Finance Director, PT Waskita Karya	IDR 5.6 billion	1 year	Article 3
5	69/Pid.Sus-TPK /2023/PN Sby	Suwaji	Social Forestry Community Movement Team	IDR 36,4 million	1 year	Article 11
6	56/pid.sus-tpk/ 2022 Pn Pal	Michal Andersen Tampoma	Civil Servant of BPN Palu City	IDR 551 million	1 year	Article 11

The Anti-Corruption Law provides an avenue for law enforcement officers to act on behalf of the state and pursue the recovery of economic losses by compelling offenders to pay a certain amount of compensation or by imposing them with an additional prison term as substitute for non-payment. By maximizing the term of imprisonment, the offender should be forced to choose between paying the compensation in full or face additional prison time. However, this deterrent effect is rarely seen, as our data suggest. Moreover, disparity in sentencing recommendation continues to appear in the recommendation of substitute prison term. Ideally, the length of substitute prison term is proportionate to the amount of compensation, where a higher amount should merit longer prison term.

## **6. Deprivation of Certain Rights**

To create deterrent and dissuasive effects, prosecutors can combine different types of sentencing, both from principal and supplemental sentences. One of the sentences that the judges can impose, or described in the indictment, is the deprivation of certain rights – a type of supplemental sentence according to Article 10 of the Criminal Code. In the crimes of corruption, perpetrators are often public officials or politically exposed persons. Deprivation of certain rights as a punishment is therefore important to protect the public from problematic political candidates in an election.

This section provides data from our findings on deprivation of certain rights, especially political rights, as an additional sentence. We will also present the data that show how prosecutors, both from the AGO and the KPK, have been using this punishment.



There are two conclusions to draw from this figure. First, the prosecutors have not been optimally exercising the deprivation of political rights against corrupt public officials who were tried in 2023. In fact, there is a significant percentage of public officials (44%) who maintained their political rights. Secondly, this punishment has been mainly used by KPK prosecutors – a finding that should be considered as a point for the attention, correction, and evaluation of the AGO.

To gain a broader view, the following table presents several cases where the defendants were politically exposed persons, yet the prosecutors, in their indictment letter, never demanded for the defendants to be deprived of their political rights.

No.	Case No.	Defendant	Occupation	State losses / bribe received	Public Prosecutor
1	132/Pid.Sus-TPK/2022/PN Smg	Mukti Agung Wibowo	Pemalang Regent 2021 - 2026	IDR 6.6 billion	KPK
2	44/PID. SUS-TPK/2023/ PN PBR	Muhammad Adil	Meranti Islands Regent, 2021 -2026	IDR 17,8 billion	KPK
3	19/pid.sus-tpk/	Erry	MP, West	IDR 22 billion	KPK



	2023 Pn PTK	Iriansyah	Kalimantan Parliament		
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The table above shows the lack of common understanding among public prosecutors in handling a corruption case that has a political element. The three defendants in the table had abused their positions to enrich themselves through illegal means. Given that they gained office through public elections and the people's mandate, their crime should merit the deprivation of certain rights as part of their punishments – specifically the right to be elected. This is to maintain the integrity of the electoral system and ensure that the public is protected from problematic candidates.

## 7. Problematic Sentencing Demands

ICW's monitoring captured several problematic sentencing demands. These cases had aggravating elements, such as the defendants' occupational background, the amount of bribe or economic damages caused, and the article used in the indictment. However, in these cases, the public prosecutors recommended light sentences relative to the crime.

Case No.	Defendant	Occupation	State Losses / Bribe	Articles in Indictment	Prison Term Demanded	Public Prosecutor
25/Pid.Sus-TP K/2023/PN Tpg	Ilyas Sabli	Regent of Natuna, 2011-2016	IDR 7.7 billion	Article 2 paragraph (1)	4 years	AGO
31/Pid.Sus-TP K/2022/PN Kdi	Tamrin Tamin	Acting Director of PDAM in South Buton	IDR 4.2 billion	Article 3	1.5 years	AGO
57/Pid.Sus-TP K/2023/PN Smg	Sodik Ismanto	Secretary of the Pematang Regency Parliament	IDR 100 million	Article 5	1.5 years	KPK
174/Pid.Sus-TP K/2022/PN	Adib Makarim	Deputy Chairman of	IDR 140 million	Article 12	4 years	KPK

Sby		the Tulungagung Regency Parliament				
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The table above shows that a defendant's professional background is rarely considered as an aggravating factor by prosecutors under the AGO and the KPK. Defendant Ilyas Sabil, for example, was a public office holder, namely the Municipal Head of Natuna. Despite his background, and the billions of rupiah in losses that his crime caused, he received the minimum sentence recommendation (4 years). Similarly, defendant Tamrin Tamin, former Director of PDAM (water company) who illicitly gained IDR 4.2 billion, was recommended for just 1.5 years imprisonment.

Meanwhile, defendants Sodik Ismanto and Adib Makarim – both were MPs in their local parliaments, were involved in bribery. While the bribe they received did not amount to billions of rupiah, their public position should aggravate their case. However, KPK prosecutors opted to demand light sentences in both cases.

## **MAPPING OF SENTENCES**

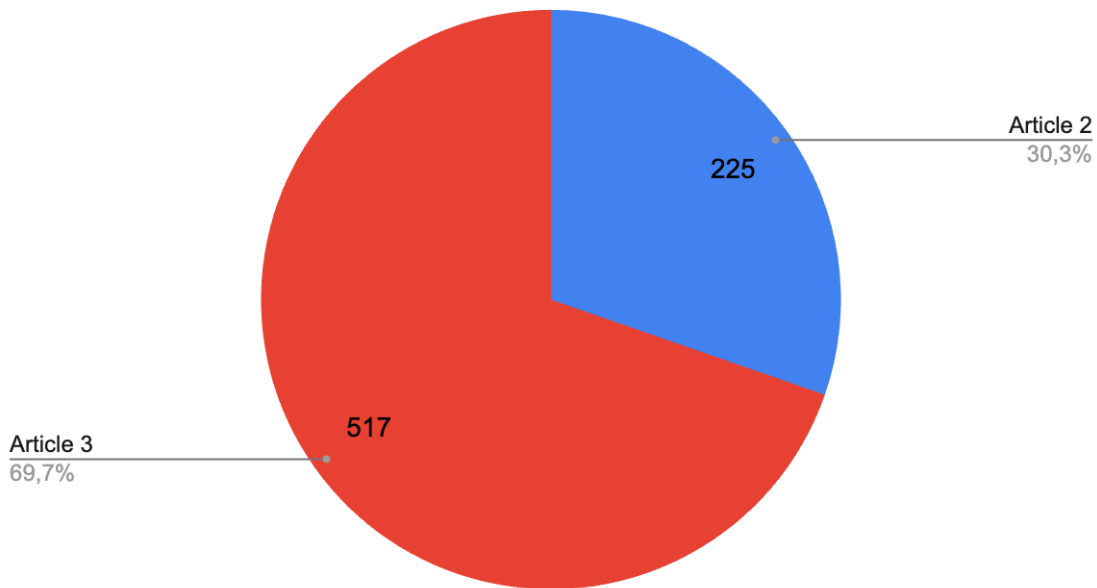
The sentence delivered by a full-bench panel of judges in a criminal trial is the determinant factor of whether justice has been served – not only for the defendants, but also for Indonesia. Guided by the principle, or perhaps a jargon, of zero tolerance towards corruption, and given the fact that the perpetrators of corruption crimes are often public officials, the sentences handed to the defendants should create a deterrent effect. Considering the increasing prevalence of corruption throughout Indonesia, the country requires a collective effort from all stakeholders – including the judiciary institution – to eradicate corruption. The continuation of light sentences will only hinder the public's aspiration to get rid of corruption.

This report will illustrate the trend of sentencing in 2023. The result of our monitoring will show and serve as a yardstick of the anti-corruption commitment of the judiciary institution. Our analysis brings forward several findings, including the articles used in the sentences, the average punishment terms, the degree of severity of the punishments, fines and compensation, deprivation of certain rights, the variety of acquittals and discharges, the average term of substitute imprisonment, sentencing disparity, and problematic sentencing.

### **I. The Use of Articles of the Anti-Corruption and the Anti-Money Laundering Laws**

This section reviews the use of the articles in the Anti-Corruption Law, focusing on the crime of causing state losses. We have identified this article as the most frequently used by law enforcement authorities to prosecute perpetrators. As discussed in the earlier chapter, this section will also investigate the number of defendants who were charged with this crime, specifically under Article 2 and Article 3. This issue is important, as the sentence terms carried by the articles are significantly different. Moreover, we also analyzed the changes between the articles used in the prosecutors' indictment and the eventual sentencing by judges.

## State Losses in Rulings



The figure above shows that judges have been using Article 3 more frequently than Article 2. Consequently, this decision lowers the severity of a sentence. The indictable offense described under Article 3 carries a minimum prison term of 1 year, while Article 2 offense carries a minimum sentence of 4 years imprisonment. From the prosecutorial perspective, the prosecutors' decisions were noteworthy as most of their indictments cited Article 2. However, based on our monitoring, the underlying article of the sentencing of around 214 defendants diverged from the prosecutors' recommendation, from Article 2 to Article 3.

With respect to the Anti-Money Laundering Law, the judges sentenced just 13 defendants of money laundering. Similar charges were brought against four other defendants, but the judges did not agree with the prosecutors' demands. The judges' selection of articles in sentencing, combined with the low number of indictments that cited money laundering offenses, illustrate the judges' lack of priority in pursuing money laundering crimes. The following table shows the defendants who were eventually not sentenced for money laundering, even though they had stood indicted for the crime.

Case No.	Defendant	Occupation	State Losses / Bribe	Anti-Corruption Court
65/Pid.Sus-T PK/2023/PN Jkt.Pst	Irwan Hermawan	Commissioner, PT. Solitech Media Sinergy	IDR 1.1 billion	Jakarta

63/Pid.Sus-T PK/2023/PN Jkt.Pst	Galumbang Menak	President Director, PT Mora Telematika Indonesia	IDR 8 Trillion	Jakarta
15/pid.sus-t pk/2023 PN JKT	PT Bangun Era Sejahtera	Corporation	IDR 52 billion	Jakarta

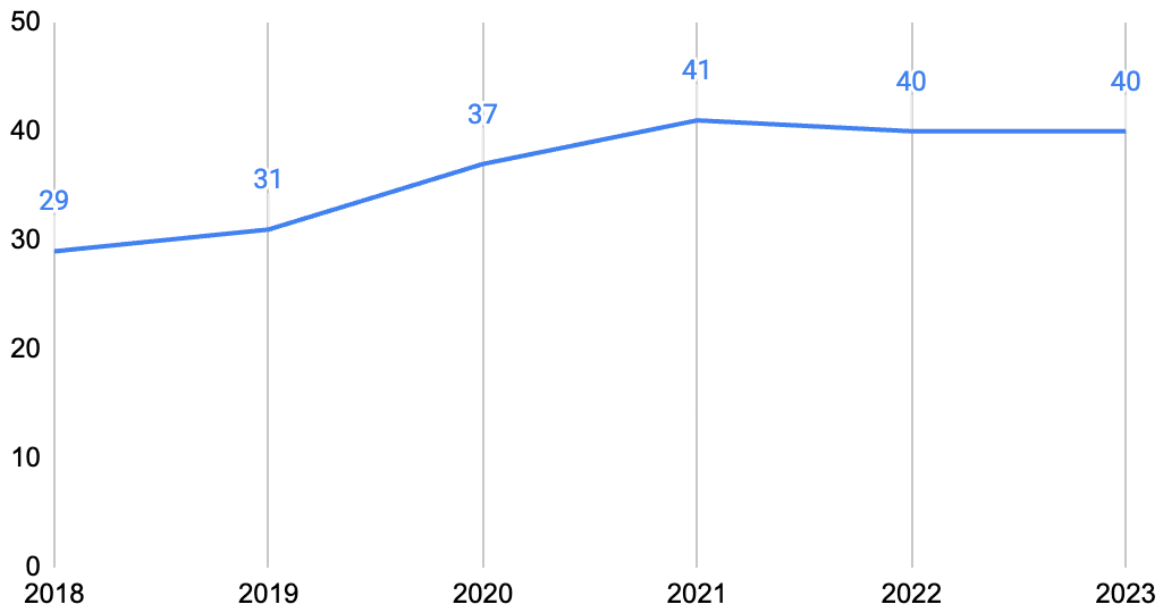
## 2. Average Sentence Term

In recent years, there has been a shift in the criminal sentencing regime from retributive to a more restorative approach. Nevertheless, in corruption crimes, both imprisonment and asset recovery efforts need to take place simultaneously. This section focuses on the trend of imprisonment and fines as the principal sentencing in 2023 that we were able to capture for the purpose of this report.

We monitored 866 cases that were tried in the specialized Anti-Corruption Court, presenting a total of 898 defendants. By calculating the total terms of imprisonment stated in all rulings, we found that the defendants received an average of 3 years and 4 months of prison term. This is the same as 2022 average, implying that there is no improvement between the years. In fact, using ICW's classification of punishment severity – light, moderate, and severe – the punishments in 2023 were, on average, light.

The following figure shows the trend of imprisonment by year of monitoring.

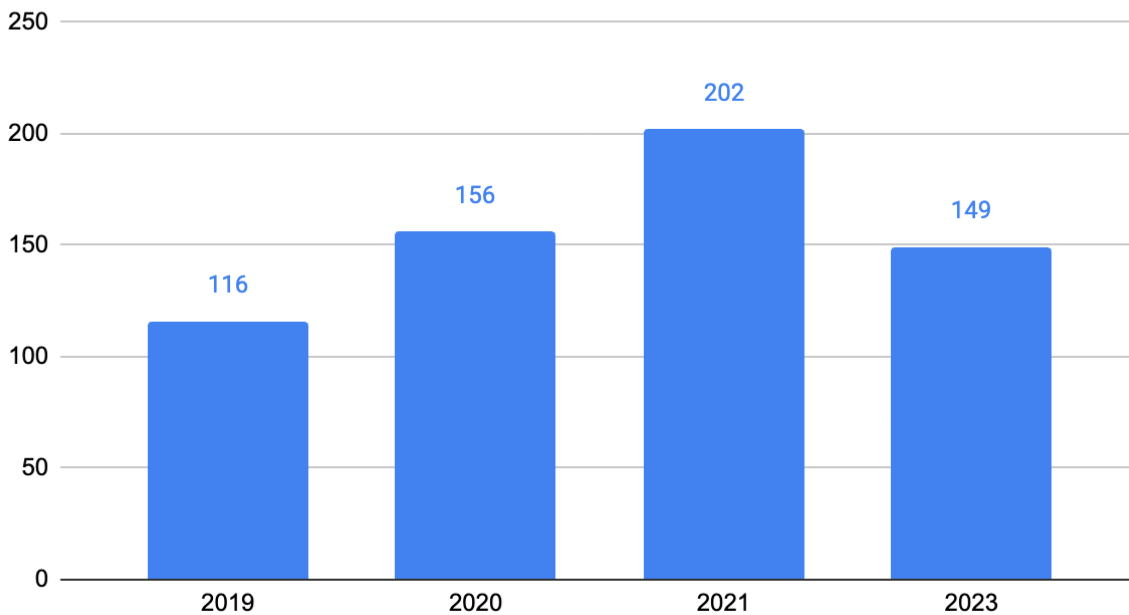
## Imprisonment Sentence by Year



In addition to imprisonment, as discussed, we also monitored the fines imposed by judges. While fines are not utilized as an instrument to recover damages due to corruption, imposing fines can be a vehicle of deterrence. It is in fact a punishment against a defendant's commission of a crime. Normatively, fines are categorized as a principal sentence according to Article 10 of the Criminal Code.

Of the total 830 trials where the judges accommodated fines, our monitoring calculated that the total fines imposed was IDR 149,310,000,000 (one hundred forty-nine billion three hundred and ten million rupiah). On average, this sum translates to IDR 180 million fines per defendant. The following figure presents a year-to-year comparison of fines.

## Fines Imposed (in billion IDR)

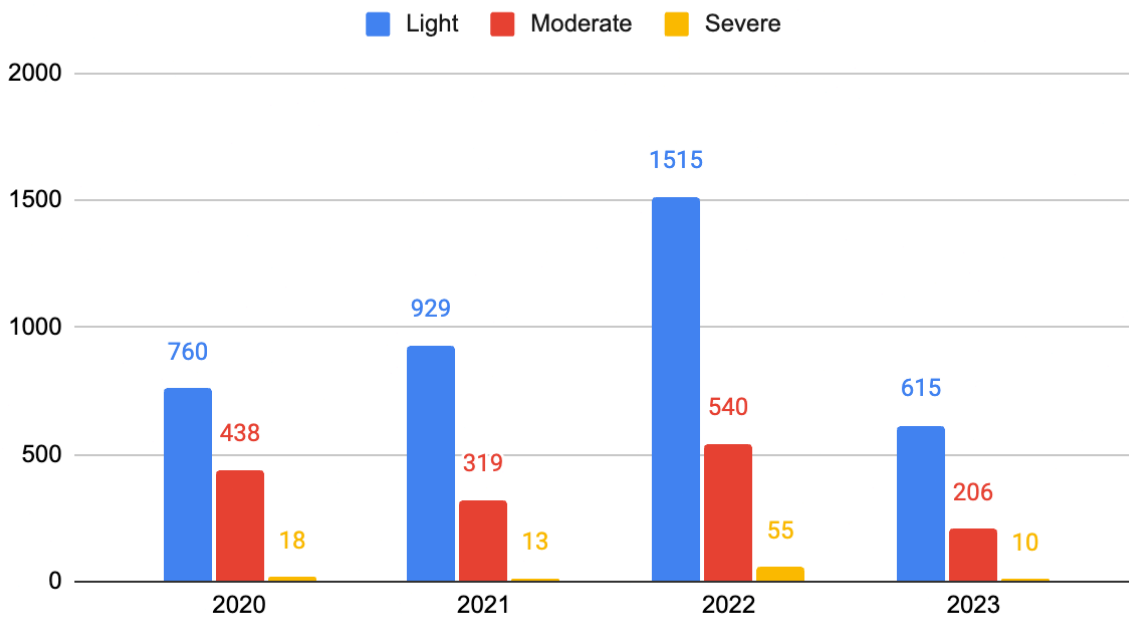


The figure shows a decline in the amount of fines imposed from 2021 to 2023. It indicates room for improvement in terms of the value of the fines. Corruption and money laundering are both economic crimes, yet the consequences of those crimes that the respective laws afford are significantly different. The Anti-Money Laundering Law enables judges to sentence up to IDR 10 billion of fines, while the Anti-Corruption Law only affords a maximum of IDR 1 billion of fines. Moreover, our monitoring reveals that only 12 defendants were imposed with the maximum amount of fines that the laws provide.

### 3. Severity of Punishment

As reviewed in the earlier chapter, our analysis classifies the degree of sentencing severity into three categories: light (under 4 years prison term), moderate (between 4 and 10 years), and severe (over 10 years). By analyzing the pattern of sentencing, report users will be able to ascertain whether the judges' decisions have satisfied the sense of justice and created deterrence. Below, based on our analysis, we present the sentences by their classification and comparing them with the defendants' professional background. Later, we also discuss about the propensity of courts to impose only light sentences on the defendants of corruption cases.

## Sentence Category in 2023

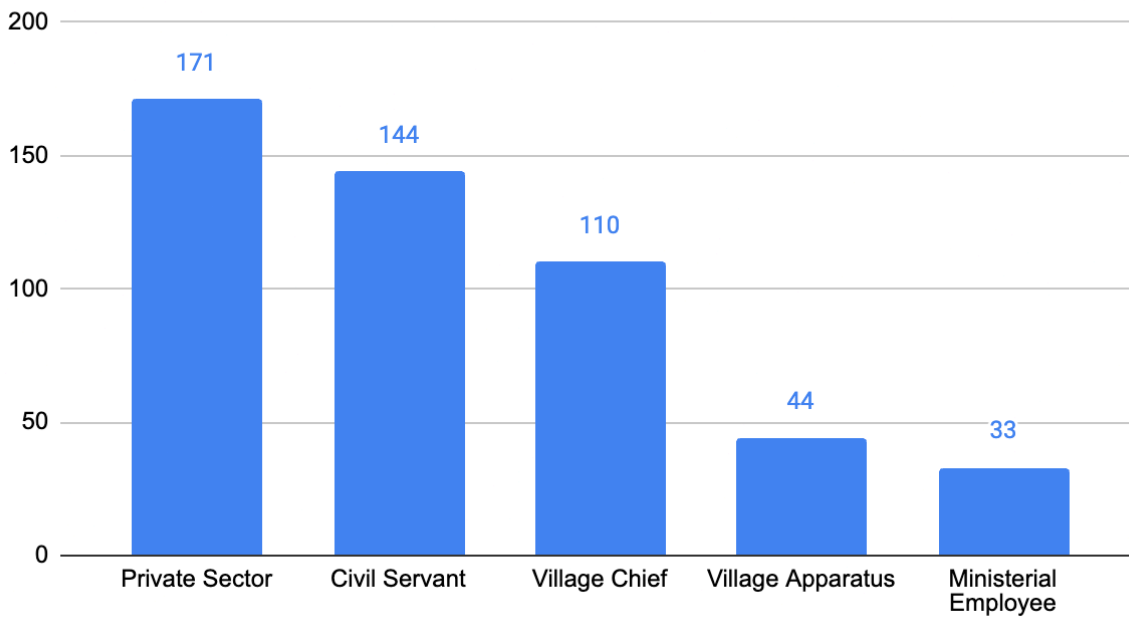


The figure above clearly shows that judges tend to hand light sentences to the defendants. In 2023, the most severe punishment was handed to only ten defendants. This trend has practically persisted since 2020. The observation that the judiciary is somewhat permissive to corrupt practices is likely true.

This monitoring also considers the professional background of the defendants who received light sentences to assess whether their occupation or titles had ever been considered as an aggravating factor by the judges that presided over their case.



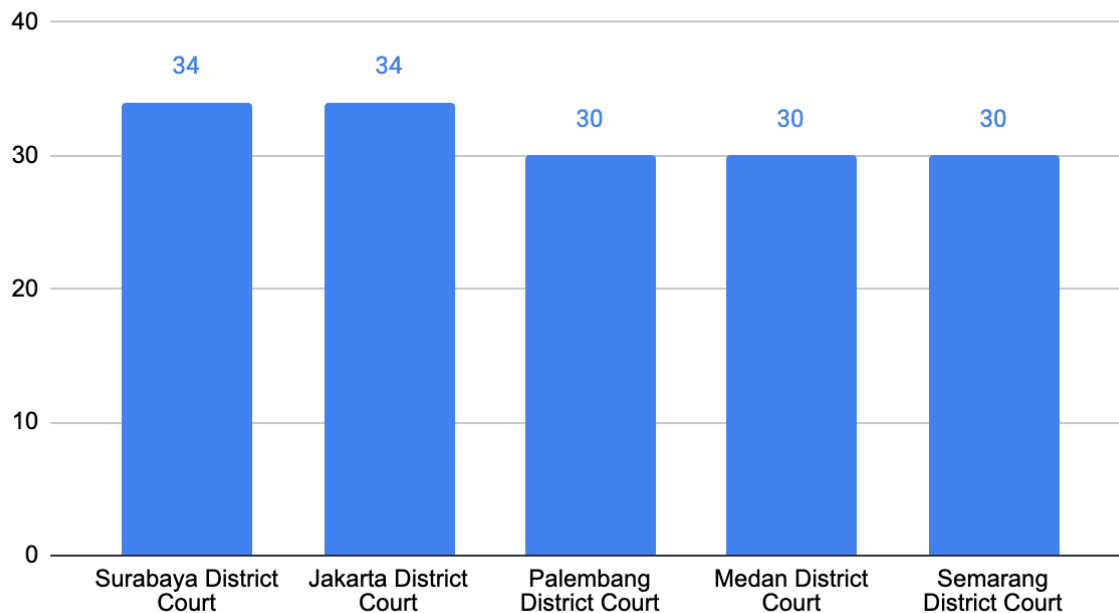
## Sentence Category - Defendant's Occupation



Civil servants accounted for the second largest group of defendants with 144 defendants coming from this background. It would be reasonable for the judges to consider this background as an aggravating factor, given that they had held public positions, as stipulated under Article 52 of the Criminal Code. However, this article has been consistently overlooked, resulting in light sentences imposed on defendants with civil service background.

Additionally, light sentences are grouped by court, as shown in the following figure.

## Light Sentence by the Issuing Court

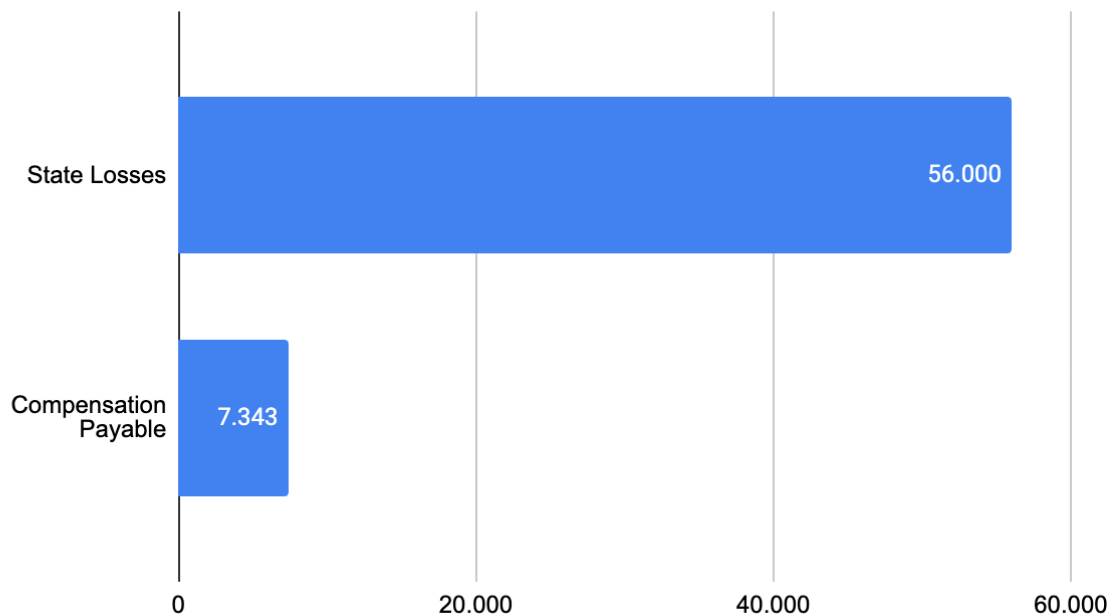


It is interesting to note the five district courts (*pengadilan negeri/PN*) that frequently imposed light sentences in 2023. In 2021, the Anti-Corruption Court in Surabaya, Palembang, and Medan were also the courts that dispensed light sentences against defendants in corruption cases. While each case is unique, this finding should draw the attention of the Supreme Court and bring about attempts to ensure that the sentences had been the results of objective considerations.

### 4. Compensation Payable and Substitute Imprisonment

The crimes of corruption are harmful to the state and to the people. To recover the losses, the law provides an avenue to be utilized by law enforcement authorities, which is to demand the defendant to pay compensation. Stipulated under Article 17 of the Anti-Corruption Law, compensation payable as a punishment can be recommended not only for the crime of causing economic damages to the state, but also every other instance of corruption specified in the law – including bribery. This section discusses the judges' efforts to minimize state losses by sentencing their defendants with a supplemental punishment of compensation. Furthermore, we will also analyze the substitute prison term that judges may also impose.

## Compensation Payable vs State Losses (in billion IDR)



There is a substantial gap between the value of compensation and the value of losses due to corruption, which suggest that sentencing practices have not improved. The severity of punishments do not appear to be an issue from the retributive perspective, as imprisonment terms were light on average; on the other hand, the efforts to recover the losses have been generating poor results. Moreover, it is important to note that compensation payment may not be executed immediately – this monitoring is also limited to trials in the first-level court. In many cases, defendants opted to serve substitute imprisonment, a decision that for a defendant may be more appealing as it only provides additional prison term but does not require any payment.

This monitoring investigates cases where the maximum supplemental punishments were imposed, as shown in the following table.

Case No.	Defendant	Occupation	Compensation Ordered	Court
66/Pid.Sus-TPK/2022/PN Jkt.Pst	Bety	President Commissioner, PT Sinergi Millenium Danatama Sekuritas	IDR 43 billion	Jakarta District Court
15/pid.sus-tpk/2023 PN JKT	PT Bangun Era Sejahtera	Corporation	IDR 52 billion	Jakarta District

				Court
1/Pid.Sus-TPK/2023/PN Dps	I Nyoman Agus Arya	Head of LPD of Badung Regency	IDR 56 billion	Denpasar District Court
12/Pid.Sus-TPK/2023/PN Bdg	Stevanus Kusnadi	President Director, PT Pancamulti Niaga Pratama	IDR 84 billion	Bandung District Court
49/Pid.Sus-TPK/2021/PN Jkt.Pst	Benny Tjokrosaputro	Commissioner, PT. Hanson International Tbk	IDR 5.7 trillion	Jakarta District Court

Imposing compensation payable as a punishment, as shown in the table above, is a welcomed decision. In the context of corruption crimes, the punishment cannot rely on custodial measures alone; measures to recover the losses must also be pursued. By law, Article 18 of the Anti-Corruption Law provides this avenue. Going forward, compensation payable must be consistently demanded and handed as supplemental punishment for corruption offenses that cause economic losses to the state.

Additionally, our monitoring also captured the compensation demands that were rejected by the judges. This finding suggests the lack of alignment between prosecutors and the judges. The cases are detailed in the following table:

Case No.	Defendant	Occupation	Recommended Compensation Payable	Court
48/Pid.Sus-TPK/2023/PN Kpg	Alfonsius Makur	Head of Representative, PT. Arison Karya Sejahtera	IDR 35 billion	Kupang District Court
51/PID. SUS-TPK/2022/P N PBR	Dewi Farni Dja'far	Notary	IDR 37 billion	Pekanbaru District Court
9/Pid.Sus-TPK/2023/PN Jap	Johannes Rettob	Head of the Mimika Regency Transportation,	IDR 67 billion	Jayapura District Court

		Communication, and Informatics Office		
8/Pid.Sus-TPK/2023/PN Jap	Silvi Herawaty	Director of PT. Asian One Air	IDR 69 billion	Jayapura District Court
61/Pid.Sus-TPK/2022/PN Jkt.Pst	Stanley MA	Senior Manager Corporate Affairs of Permata Hijau Group	IDR 868 billion	Jakarta District Court

It is crucial that prosecutors and judges are on the same page on how corruption crimes should be handled. Otherwise, the mission to recover the losses suffered due to corruption will never be successfully achieved. This mission may require stronger regulatory support from legislative stakeholders by, among others, passing the Asset Confiscation Bill. Many believe that this bill, once promulgated into law, will be a strong stimulus for law enforcement authorities to maximally pursue asset recovery.

## 5. Deprivation of Certain Rights

There are several supplemental sentences that prosecutors and judges can use. Among them is the deprivation of certain rights, specifically political rights of defendants with political background. This monitoring reviews the number of defendants whose political rights were revoked in 2023 trials.

Our monitoring found that there were at least 13 convictions that were followed by deprivation of certain rights as a supplemental sentence. Specifically, 11 defendants were deprived of their rights to be elected, and 2 defendants were deprived of their rights to participate in public tenders. Interestingly, a ruling in one particular case stripped the defendants of their political rights in full. In this case, numbered 21/PID.SUS-TPK/2023/PNJMB, its six defendants were MPs of Jambi Province. The judges' decisions in this case were highly welcomed, and the defendants were deprived of their political rights for the next five years – the maximum number of years that the law allows.

On the other hand, there were also rulings that reduced the number of years where political rights cannot be exercised from the sentence demand. These rulings were unfortunate; the judges should be able to impose a more severe sentence or at minimum the same level of

sentence as the prosecutors demanded with regards to deprivation of political rights. These cases are detailed in the following table:

Case No.	Defendant	Occupation	Recommended years of political rights revoked	Ruling	Court
52/Pid.Sus-T PK/2023/PN Sby	Sahat Tua P. Simandjuntak	Deputy Chairman of the East Java Provincial DPRD	5 years	4 years	Surabaya District Court
88/Pid.Sus-T PK/2023/PN Bdg	Yana Mulyana	Mayor of Bandung for the period 2022 to 2023	3 years	2 years	Bandung District Court

## 6. Acquittals and Discharges

While our monitoring did not examine individual ruling documents issued by courts, it is crucial to try to understand the judges' perspective when rendering their judgement at the end of legal proceedings. In the previous sections, we have discussed the sentences – from imprisonment, fines, to supplemental sentences such as compensation payable and deprivation of certain rights. In this section, we wish to sample the acquittals and discharge judgements. We also analyzed the courts with high numbers of acquittals and discharges and compared them with previous years' records.

Our monitoring found 48 defendants acquitted and 11 defendants discharged from all legal claims in 2023, or totaling to 59 defendants. The following table indicates the courts that issued these decisions.

No.	Court	Number of acquittals/ discharges
1	Jayapura District Court	3
2	Medan District Court	6
3	Pontianak District Court	8
4	Tanjungpinang District Court	9

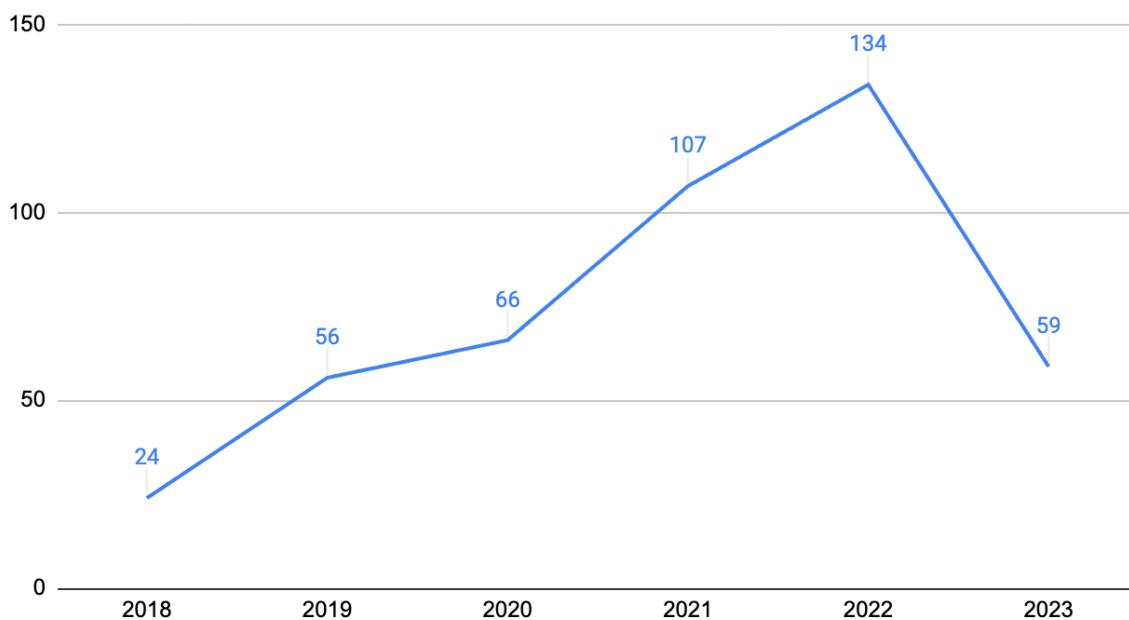
5	Makassar District Court	16
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The high number of acquittals and discharges in certain courts should draw our attention to this matter. First of all, going forward, prosecutors need to ensure that their arguments in courts are sufficiently effective to demonstrate the defendants' involvement in crimes and convince the judges to deliver convictions. Secondly, the supervisory authorities, such as the Judicial Commission, and the law enforcement authorities should devise clear supervisory indicators. Where politically exposed persons sit in trials as defendants, close scrutiny should be exercised to prevent inappropriate rulings.

Makassar District Court has the highest number of acquittals and discharges in 2023, but this was not surprising, as the court has been frequently delivering acquittals and discharges in corruption cases in previous years. We hope that this finding can encourage an evaluation, especially on the structural officers in Makassar District Court to ensure that rulings are independent decisions, and not the result of illegal practices such as bribery.

The following figure presents the trend of acquittals and discharges by year.

Trend of Acquittals/Discharges



The total number of acquittals and discharges this year is lower than several previous years, but we consider that the total 59 acquittals and discharges is high.

## 7. Sentencing Disparity and the Implementation of Sentencing Guideline

Sentencing disparity may be inevitable, considering that each case is unique with their own challenges and complexities. Nevertheless, the failure to minimize this disparity will only lead to more problems with respect to delivering justice, especially when the disparity is considerable in corruption cases where the defendants are frequently public officials. In 2020, the Supreme Court issued a Sentencing Guideline by virtue of the Supreme Court Regulation Number 1 of 2020, which specifically addresses the offense of causing economic damages through corruption. This is a welcomed initiative from the Supreme Court, even though some issues regarding the sentencing of other types of corruption currently remain unaddressed.

This section presents our findings on sentencing disparity. The table below shows disparity in two crimes of corruption, namely causing economic damages (Article 2 and Article 3) and bribery.

Case No.	Defendant	Occupation	State Losses	Sentence	Article
30/pid.sus-t pk/2022 Pn Bjm	Muhni	Head of Kolam Kanan Village	IDR 860 million	4 years	Article 2
12/Pid.Sus-T PK/2023/PN Mtr	Jumayadi	Head of Banyu Urip Village, 2019	IDR 346 million	5 years	Article 2
35/Pid.Sus-T PK/2022/PN Plk	Tumon Abdurahman	Head of Kafuan Village, 2015-2021	IDR 975 million	4 years	Article 2
32/Pid.Sus-T PK/2023/PN Mtr	Then Sujarwadi	Head of Pasir Putih Village	IDR 539 million	5 years	Article 2
29/Pid.Sus-T PK/2023/PN Tpg	Herry Wahyu Muhammad	Head of the Bintan Regency Housing and Settlement Office	IDR 2.4 billion	4 years	Article 2
11/Pid.Sus-T PK/2023/PN	Raden Hendra Taurus	Head of Babakan	IDR 690 million	6 years	Article 2



Mtr		Primary Health Facility			
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Case No.	Defendant	Occupation	State Losses	Sentence	Article
84/Pid.Sus-T PK/2022/PN Jkt.Pst	Eddy Kurniawan	President Director, PT Emco Asset Management	IDR 4.5 billion	1 year	Article 3
51/Pid.Sus-T PK/2023/PN Bdg	Zainal Abidin	Branch Head, PT LKM Karawang Tirtamulya Branch	IDR 1 billion	5 years	Article 3
15/Pid.Sus-T PK/2023/PN Pdg	Yaneman Driesye	Director, PT MAM Energindo	IDR 7.3 billion	1 year	Article 3
16/Pid.Sus-T PK/2023/PN Pal	Sunardi Hongkiriwang	President Director, PT. Trihora Jaya Salakan	IDR 1 billion	5 years	Article 3
77/PID. SUS-TPK/20 22/PN MKS	Ruben Riu Mallisa	Head of To'yasa Akung Village, North Toraja	IDR 900 million	1 year 4 months	Article 3
6/Pid.Sus-TP K/2023/PN Plg	Hepi Hajarol Akbar	Head of Gunung Megang Village	IDR 420 million	5 years	Article 3

The tables above demonstrate the prevalence of sentencing disparity in a variety of court rulings. There is a significant issue in the proportionality between the sentences imposed and the amount of economic damages suffered by the state, which suggests that the Supreme Court needs to increase the dissemination of its internal guideline to all judiciary institutions. Under the principle of proportionality, the larger damages warrant a more severe sentence, and vice versa.

Case No.	Defendant	Occupation	Bribery	Sentence	Article
10/Pid.Sus-TPK/2023/PN Mtr	Anugrahadi Kuswara	Head of the Technical Implementation Unit of the Cakranegara and Sandubaya Regional Market, Mataram City Trade Office	IDR 45 million	1 year	Article 11
56/pid.sus-tpk/2022 Pn Pal	Michal Andersen Tampoma	Civil servant at BPN Palu City	IDR 5.5 million	1.5 years	Article 11
113/PID. SUS-TPK/2022/PN MKS	Gilang Gumilar	Public Relations and General Affairs Staff, Representative Office of the Supreme Audit Board, South Sulawesi	IDR 2.9 billion	5 years	Article 12
77/Pid.Sus-TPK/2023/PN Jkt.Pst	Harno Trimadi	Director of Railway Infrastructure at the Director General of Railways of the Ministry of Transportation	IDR 900 million	5 years	Article 12
87/Pid.Sus-TPK/2023/PN Jkt.Pst	Roni Aidil	Director of PT Kindah Abadi Utama	IDR 9.9 billion	1.5 years	Article 5
68/Pid.Sus-TPK/2022/PN Jkt.Pst	LM. Rusdianto Emba	Self employed	IDR 3.4 billion	3.5 years	Article 5

This monitoring confirms that sentencing disparity occurs not only between decisions regarding the offense of causing economic damages through corruption, but also in bribery cases – both for the sentences imposed on the bribe giver and the bribe recipient. Therefore, the Supreme Court must consider expanding its sentencing guideline to address further sentencing disparity in cases of similar offenses.

As discussed, the Supreme Court indeed has attempted to minimize sentencing disparity through its sentencing guideline. This section aims to evaluate the effectiveness of this guideline, which is binding on all judges. We base our evaluation on the amount of losses and the length of sentence. The Supreme Court Regulation I/2020 specifies several sentencing categories, namely:

1. Minor (maximum losses of IDR 200 million, punishable with minimum 1 year imprisonment)
2. Light (losses over IDR 200 million, punishable with minimum 4 years imprisonment)
3. Moderate (losses over IDR 1 billion, punishable with minimum 6 years imprisonment)
4. Severe (losses over IDR 25 billion, punishable with minimum 8 years imprisonment)
5. Highly severe (losses over IDR 100 billion, punishable with minimum 10 years imprisonment).

The following tables exhibit the mis-implementation of the Supreme Court Regulation I/2020.

### Light Sentence

Case No.	Defendant	Occupation	State Losses	Sentence
80/Pid.Sus-TP K/2023/PN Sby	Edi Santoso	Head of Mundurejo Village, Jember	IDR 242 million	1 year
45/Pid.Sus-TP K/2022/PN Pdg	Ilyas Ismail	Wali Nagari Languang for the period 2014 to 2020	IDR 457 million	2 years
12/Pid.Sus-TP K/2023/PN Pgp	Hendra Apollo	Member of the Bangka Belitung Islands Provincial Parliament	IDR 781 million	1.5 years

### Moderate Sentence

Case No.	Defendant	Occupation	Damages	Sentence
106/PID. SUS-TPK/2022 /PN MKS	Suratman	Director of PDAM Sinjai Regency 2014 - 2020	IDR 2 billion	4 years

20/pid.sus-tpk/ 2023 Pn PTK	Razali Bustam	Director of PT Malabar Mandiri	IDR 2.1 billion	1 year 3 months
9/Pid.Sus-TPK/ 2023/PN Jkt.Pst	Rianto Marbun	Director of PT. Dor Ma Uli	IDR 13.6 billion	5 years

### Severe Sentence

Case No.	Defendant	Occupation	Damages	Sentence
65/Pid.Sus-TP K/2022/PN Jkt.Pst	Edward Seky	Founder/Director of Ortus Holding, Founder of Golden Hill Energy Fund and Founder/Director of Sunrise Assets.Group Limited	IDR 32.7 billion	2 years 9 months
18/PID. SUS-TPK/2023 /PN SRG	Darwinis	Head of Credit Administration Unit of Bank Banten	IDR 58 billion	3 years
17/pid.sus-tpk/ 2023 Pn PTK	Prayitno	PPK West Kalimantan BPPTD Building Construction	IDR 32.5 billion	4 years

### Highly Severe Sentence

Case No.	Defendant	Occupation	Damages	Sentence
11/Pid.Sus-TP K/2023/PN Bdg	Kemas Danial	President Director of the Revolving Fund Management Institution for Cooperatives, Micro, Small and Medium Enterprises	IDR 116 billion	9 years
66/Pid.Sus-TP K/2022/PN	Bety	President Commissioner of PT	IDR 431 billion	4 years

Jkt.Pst		Sinergi Millenium Danatama Sekuritas		
I0/PID. SUS-TPK/2023 /PN SRG	Fazwar Bujang	President Director of PT Krakatau Engineering for the period 2007 - 2012	IDR 6,7 T	5 years

The above tables demonstrate that the implementation of the Supreme Court Regulation I/2020 needs to be improved. The Supreme Court leadership needs to take this into their review and strengthen their dissemination activities and may consider designing penalties for judges who breach the guideline.

## 8. Problematic Sentencing

Article 5 of the Judicial Authority Law mandates judges to consider societal norms before passing sentences on the defendants. The direct victims of corruption crimes are the people; therefore, the punishment should provide the appropriate redress for the damages due to corrupt practices. Justice should be served not only for the defendants, but also the people. Unfortunately, we continue to find questionable rulings that do not seem to serve the interests of the victims. This section reviews sentences that are problematic based on the amount of losses and the defendants' professional background – a more severe sentence is reasonably expected where the amount of damages is greater, and the defendant is a public official

Case No.	Defendant	Occupation	State Losses/ Bribery	Article	Sentence
65/Pid.Sus-T PK/2022/PN Jkt.Pst	Edward Seky	Founder/Director Ortus Holding, Founder of Golden Hill Energy Fund and Founder/Director of Sunrise Assets.Group Limited	IDR 32.7 billion	Article 3	2 years 9 months
I8/PID.	Darwinis	Head of Credit	IDR 58	Article 2	3 years

SUS-TPK/20 23/PN SRG		Administration Unit, Bank Banten	billion	paragrap h (I)	
108/PID. SUS-TPK/20 22/PN MKS	Jusieandra Pribadi Pampang	President Director, PT Bumi Abadi Perkasa	IDR 48 billion	Article 5	2.5 years

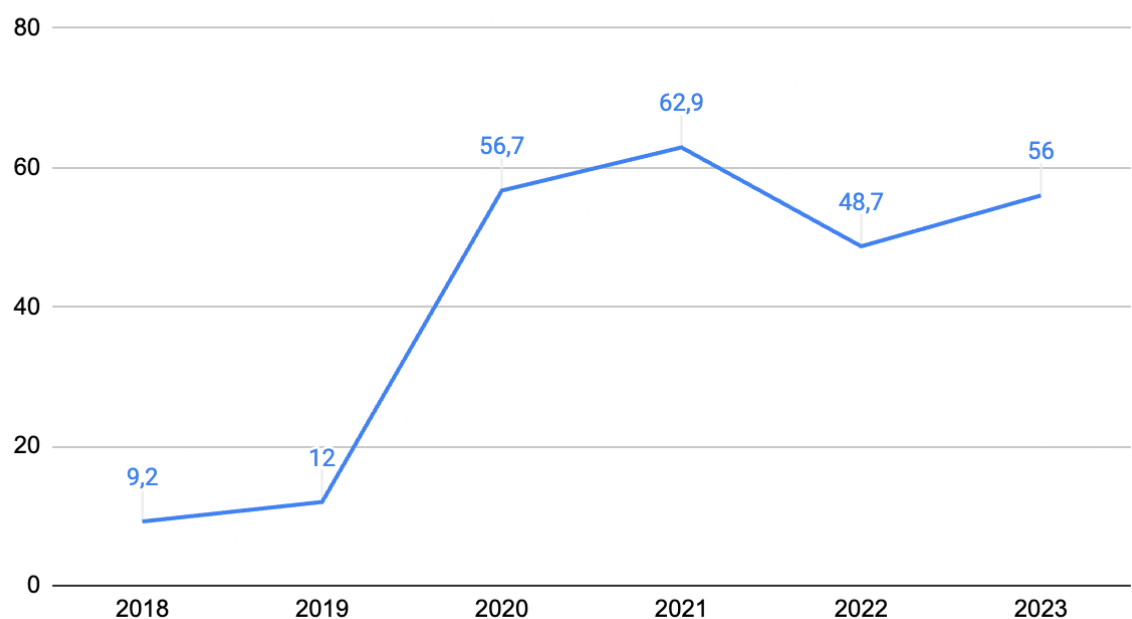
The table above shows that the punishments were disproportionate to the damages caused. Defendants Edward and Darwinis, for example, caused billions of rupiah in losses but were only sentenced to less than 5 years imprisonment, even though the article that they had been charged with allowed for a more severe sentence. Defendant Jusieandra, formerly the top executive of a company, was found guilty of giving IDR 48 billion of bribe and was sentenced to just 2 years and 6 months imprisonment. For this reason, we find these rulings questionable and that the Supreme Court and the Judicial Commission should examine them to prevent problematic sentencing in the future.

## CORRUPTION BY AMOUNT OF LOSSES AND OTHER OFFENSES

The root cause of corruption as a criminal offense is the drive to accumulate wealth. Therefore, in investigating and prosecuting corruption cases, law enforcement authorities need to prioritize asset recovery. Crucially, the financial damages due to corruption is caused not only by the offense of causing public financial or economic damages, but also by other types of corruption offenses, such as bribery, gratification, and extortion. This chapter examines the amount of losses in public finance/bribery/gratification/extortion, annual comparison of losses, high-profile cases that involved considerable amount of losses, and the trend of high-profile case investigation by law enforcement authorities.

According to our monitoring of 2023 corruption trials, the total amount of state losses during the year was IDR 56,075,087,787,308 (fifty-six trillion seventy-five billion eighty-seven million seven hundred eighty-seven thousand three hundred and eight rupiah). This amount increased sharply from 2022. The following figure shows us a year-to-year comparison of state losses.

State Losses by Year (in trillion IDR)



We also identified the amount of money involved in other types of corruption offenses: bribery offense involved a total of IDR 288,167,391,772 (two hundred eighty billion one hundred sixty-seven three hundred ninety-one and seven hundred seventy two rupiah); gratification that amounted to bribery totaled to IDR 124,346,839,098 (one hundred twenty-four billion three hundred forty-six million eight hundred thirty-nine and ninety-eight rupiah); and the total amount involved in extortion was IDR 1,994,978,709 (one billion nine

hundred ninety-four million nine hundred seventy-eight thousand and seven hundred and nine rupiah).

The following table presents the high-profile cases with substantial amount of state losses in 2023.

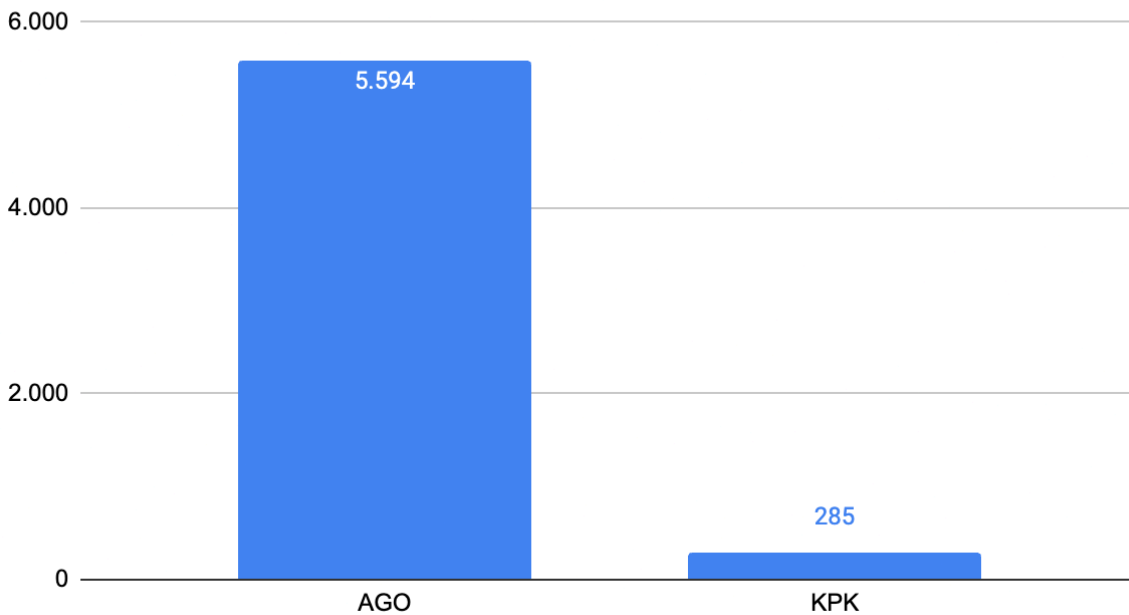
Case No.	Defendant	Occupation	Losses
80/pid.sus-tpk/2023/PN JKT	Moch Rizal Otoluwa	President Director, PT Quarteer Technologies	IDR 236 billion
66/Pid.Sus-TPK/2022/PN Jkt.Pst	Bety	President Commissioner, PT Sinergi Millenium Danatama Sekuritas	IDR 431 billion
49/Pid.Sus-TPK/2021/PN Jkt.Pst	Benny Tjokrosaputro	Commissioner, PT. Hanson International Tbk	IDR 5.7 trillion
10/PID. SUS-TPK/2023/PN SRG	Fazwar Bujang	President Director, PT Krakatau Engineering for the period 2007 - 2012	IDR 6.7 trillion
62/Pid.Sus-TPK/2022/PN Jkt.Pst	Surya Darmadi	Owner of PT Banyu Bening Utama, PT Seberida Subur, PT Panca Agro Lestari and PT Palma	IDR 41 trillion

Our monitoring identified at least three cases that caused trillions in damages. On one hand, the hard work of law enforcement authorities in uncovering the cases was commendable. Nevertheless, in a long-term view, asset recovery efforts must be successfully exercised. Otherwise, Indonesia will not be able to realize the restorative justice approach that it wants to apply to corruption cases.

We also identified case handling of the state losses offense by the investigating and prosecuting agency – the AGO or the KPK – as shown in the following figure.



## State Losses (in billion IDR) and the Prosecuting Agency



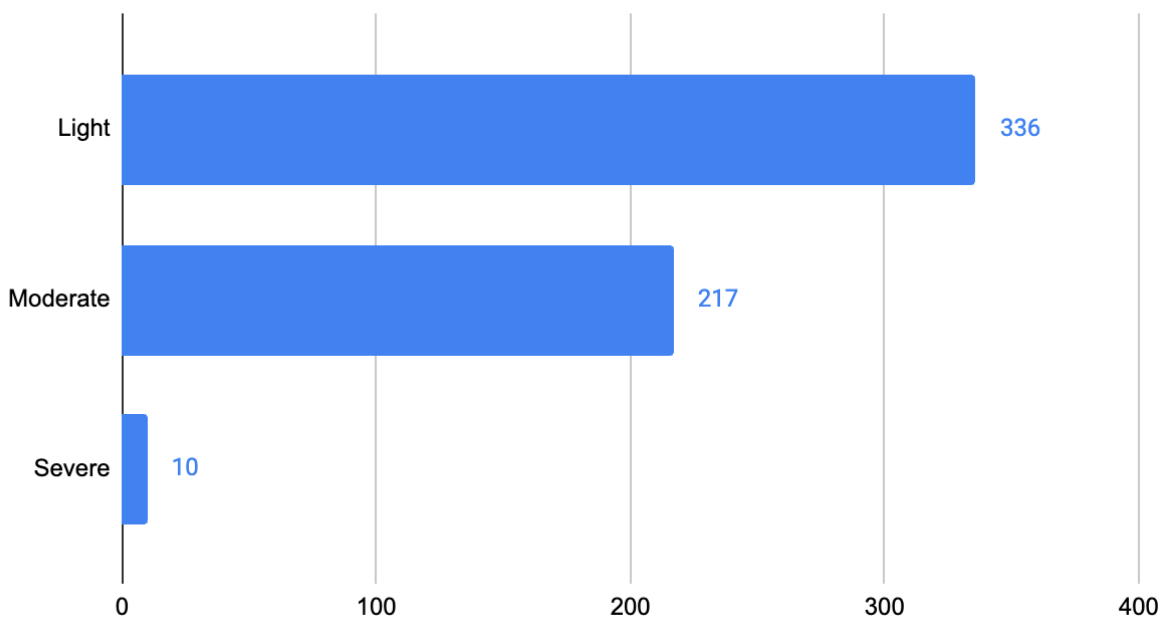
Our data show that the AGO is far ahead of the KPK in their investigation and prosecution of state loss offense. For the KPK, this finding should inform their evaluation and prompt a change to expand their focus from bribery to also include state losses. Having said that, the AGO's investigation and prosecution in fact have not yielded satisfactory success – in handling corruption crimes, success is when the losses can be fully recovered from an active case or from a case where the conviction has been obtained.

## APPELLATE RULINGS

A defendant or the public prosecutor has several options to take in order to obtain a final and legally binding decision. These include appealing their case to the appellate court at the provincial level. This chapter summarizes our findings from the data of appellate rulings that we had obtained. We focus on the average prison term, the categories of punishment, and the comparison between rulings in the district and high courts.

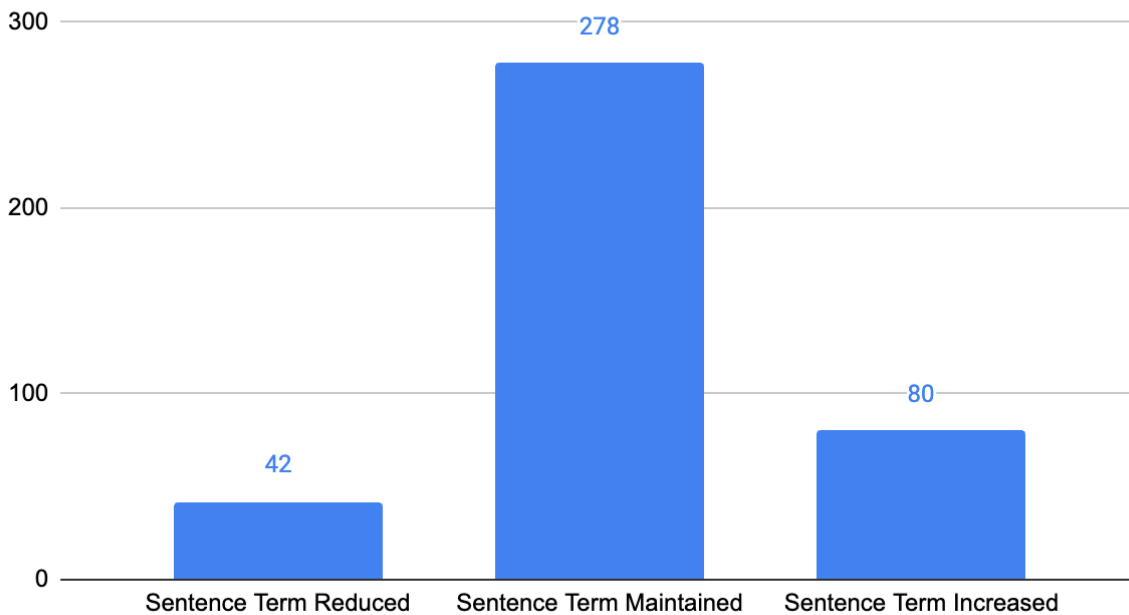
From our data collection, we identified at least 561 appeal hearings, involving a total of 582 defendants. On average, based on all rulings in the appellate court, the defendants received 4 years and 1 month of prison term. By applying the same categories of light, moderate, and severe sentences based on length of imprisonment, we found that the average prison term in the appellate court is lengthier than the first instance court – although they still fall in the light sentence category. The following figure shows the predominantly light sentences rendered in appellate courts.

Appellate Sentence Category



We also examined appellate rulings compared to first-instance rulings. Appellate rulings have three outcome possibilities: the judges can decide to alleviate the sentence, maintain the decision of the lower court, or impose a more severe sentence. The data are presented in the following figure.

## Trend of Appellate Rulings



The figure shows that most appellate rulings in corruption cases confirmed the rulings of the lower court. Our data also show that the number of decisions that aggravated the sentence rendered to the defendants was higher than the decisions that alleviated the sentence. This suggests that the first-level courts might have misjudged the facts of the crime that had been presented to them.

Case No.	Defendant	Occupation	Sentence in the lower court	Sentence in the appellate court
50/PID. SUS-TPK/202 3/PT SBY	Imam Atoillah	Director of CV Rizqy Barcha Consultant	1 year	4.5 years
59/PID. SUS-TPK/202 3/PT SBY	Nurkolis	Head of Ngulanwetan Village	2 years	3 years
36/PID. SUS-TPK/202 3/PT MDN	Nazaruddin Sitorus	Contract Worker in Advanced Construction Work of Tribune A Stadium,	2 years	4 years

		Mandailing Natal Regency		
62/PID. TPK/2023/PT MK	Asriadi	Director, CV Adidaya	1 year	2.5 years
67/PID. SUS-TPK/2023/PT SBY	Cahyo Setyo Nugroho	Former Head of Program Management Unit (UPK), Gerih District	2.5 years	5 years

The table below presents appellate court rulings that alleviated the sentence rendered by the lower court.

Case No.	Defendant	Occupation	Sentence in the lower court	Sentence in the appellate court
6/PID. SUS-TPK/2023 /PT SBY	Toni Wahyudi	Civil Servant of the Situbondo Regency Environmental Service	4 years	2.5 years
8/PID. SUS-TPK/2023 /PT SBY	Siswadi Satya Putra	Civil Servant of the Situbondo Regency Environmental Service	4.5 years	2.5 years
9/PID. SUS-TPK/2023 /PT SBY	Anton Sujarwo	Head of Planology and Environmental Planning, Situbondo Regency	4.5 years	2.5 years
15/PID. TPK/2023/PT MKS	Marthen Sawy	Head of the People's Welfare Section of the	4 years	2.5 years

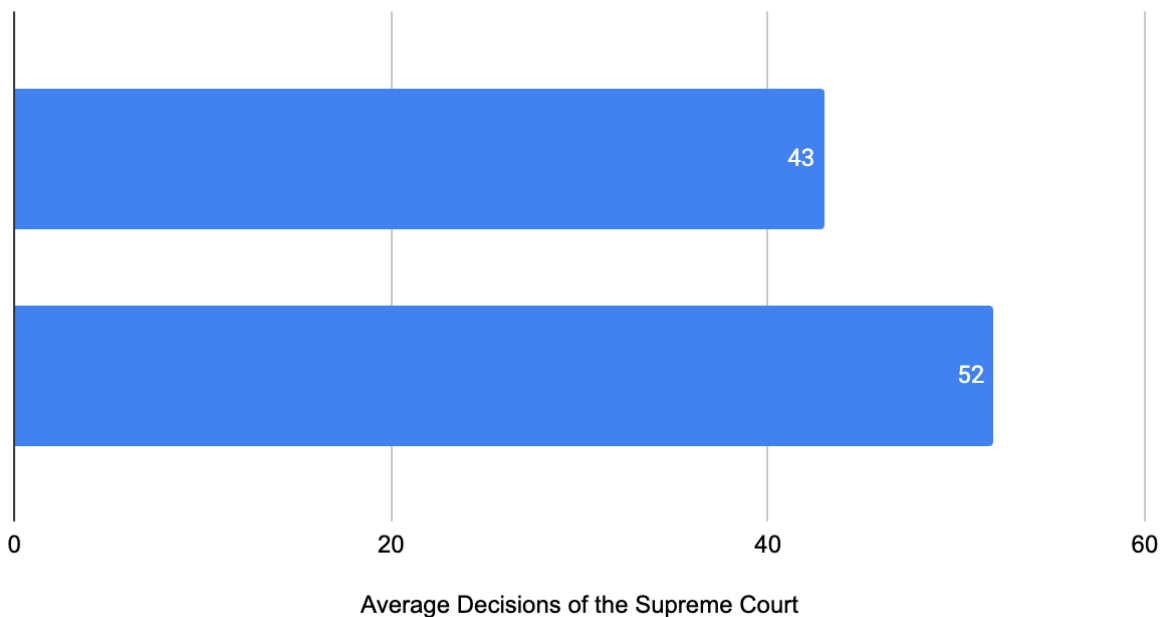
		Regional Secretariat of Mimika Regency		
7/PID. SUS-TPK/2023/PT YYK	Aris Suryanto	Head of Medical and Non-Medical Services of Wonosari Regional Hospital	4 years	1.5 years

## CASSATION AND JUDICIAL REVIEW

In the criminal justice system, the Supreme Court holds the final power to hear cases before issuing legally binding decisions. Additionally, the Supreme Court may also accept judicial review applications as the last resort for justice-seeking offenders. Similar to our discussion in the previous chapter on appellate rulings, in this chapter we also focus on the general profile of Supreme Court rulings and the sentences on average.

Our monitoring identified at least 222 cassation and judicial review decisions from the Supreme Court in 2023, involving a total of 238 defendants. On average, the Supreme Court sentenced the offenders to 4 years and 4 months imprisonment. By length of prison term, the Supreme Court decisions were more appropriate to the crimes compared to the rulings in the lower and appellate courts. Moreover, the average prison term also increased compared to 2022.

### Average Decisions of the Supreme Court



From the data that we collected, we found interesting findings when contrasting the sentence and the amount of losses caused by the offenders. Once again, our findings demonstrate a significant disparity between the amount of damages and the sentences rendered to the defendants, as shown in the following table.

Case No.	Defendant	Occupation	State Losses	Sentence
2068	Kusnadi	Branch Head of PT	IDR107	3 years

K/Pid.Sus/2023		Asuransi Umum Videi, Surabaya	billion	
2403 K/Pid.Sus/2023	Firman Berahima	Former Director of Human Resources and General Affairs of PT Akrindo	IDR 604 billion	4 years

Based on case information, the Supreme Court should have been able to render a more severe sentence to the defendants. The judges could, for example, refer to Supreme Court Regulation 1/2020, which stipulates that causing state losses in the amount of more than IDR 100 billion is punishable to minimum 10 years imprisonment. From our data, however, the judges ruled on less than 5 years imprisonment.

## CONCLUSION

1. The performance of the justice administrative system in 2023, especially the directory of the Supreme Court, is considerably well. The system is easily accessible, and users can conveniently search for rulings using the case category feature. This system can be improved by increasing the availability of new rulings documents.
2. There was a decline in the number of cases and defendants in 2023 compared to previous years. Nevertheless, this does not mean there were less cases tried in 2023; instead, this reflects the delay in making rulings documents available on the Supreme Court's directory.
3. Based on the Law on Youth, the majority of defendants tried in 2023 were over 30 years old.
4. In terms of professional background, our 2023 monitoring found that the private sector accounted for the highest number of defendants, followed by local government employees and village chiefs. The same trend appears when examining the defendants by type of public prosecution service, the AGO and KPK.
5. Of seven categories of corruption crimes in the Anti-Corruption Law, the prosecutors mostly cited state losses in their indictments. Specifically, AGO prosecutors indicted 789 defendants with this offense, and KPK indicted just 13 defendants with the same offense.
6. Of 897 defendants, this monitoring found that only 17 defendants were charged with money-laundering. This finding suggests that law enforcement authorities have not maximized money-laundering articles to recover or confiscate illicit assets.
7. The use of Article 2 is more prevalent than Article 3 in indictments. The indictments that cited money-laundering charges were consistent with the number of indictment letters, namely 17 defendants.
8. On average, the defendants were demanded to serve 4 years and 11 months imprisonment, and 2 years and 2 months imprisonment for substitute prison term.
9. The total fines demanded in 2023 were IDR 236 billion.
10. The AGO was ahead of the KPK in terms of the average prison term demanded. The AGO on average demanded 7 years and 5 months imprisonment compared to KPK's 4 years and 10 months average imprisonment demand.
11. The sentence demanded, by both the AGO and KPK prosecutors, were mostly moderate sentences (482 defendants) and only 33 defendants received severe sentences.



12. The majority of light sentences in 2023 were handed to defendants from the private sector and local government employees.
13. By type of prosecutorial service, both the AGO and KPK prosecutors indicted the defendants mainly with moderate sentences.
14. Prosecutors demanded a total of IDR 83 trillion as compensation payable. AGO prosecutors accounted for most of this recommendation, amounting to IDR 82 trillion, while KPK prosecutors accounted for just IDR 675 billion.
15. Disparity in sentencing demand was prevalent in 2023.
16. Of 27 defendants with political backgrounds, namely heads of regions and MPs, 15 were recommended for deprivation of political rights. This demand was primarily raised by KPK prosecutors.
17. In adjudicating state losses offense, the judges primarily utilized Article 3, instead of Article 2, in their rulings.
18. The average sentence handed in 2023 was 3 years and 4 months imprisonment.
19. Of the total 830 trials, the total fines imposed was IDR 149 billion.
20. In 2023, light prison term was the chief sentence (received by 615 defendants), and just 10 defendants received severe prison term. By occupational background, the light sentence was handed primarily to defendants from the private sector, followed by government employees and village chiefs.
21. Light sentences were prevalent in the specialized Anti-Corruption Court in Surabaya and Jakarta.
22. The total compensation payable sentenced in 2023 was IDR 7.3 trillion.
23. In total, 13 defendants were deprived of certain rights – specifically, 11 were deprived of political rights and 2 defendants lost their rights to participate in public tender.
24. In 2023, 48 defendants were acquitted, and 11 defendants were discharged from all criminal legal claims, making up a total of 59 defendants acquitted and discharged.
25. Makassar Anti-Corruption Court has the highest number of acquittals and discharges.
26. Sentencing disparity continues to be prevalent in 2023. The effectiveness of Supreme Court Regulation 1/2020 has been limited.
27. In 2023, there was a total of IDR 56 trillion in state losses, IDR 288 billion involved in bribery, IDR 124 billion involved in gratifications that amount to bribery, and IDR 1.9 billion involved in extortion.

28. The cases with substantial amount of state losses were primarily handled by the AGO, totaling to IDR 55 trillion, while the KPK prosecuted cases with total losses value of IDR 285 billion.
29. There was a total of 561 appeal hearings, involving 582 defendants. On average, the defendants received 4 years and 1 month imprisonment. Specifically, the appeal sentences were primarily light sentences (336 defendants), and only 10 defendants received severe sentences.
30. The sentences handed in the appellate court were mainly consistent with the sentences in the lower court. Meanwhile, as many as 80 defendants received higher sentences and 42 defendants had their sentences reduced.
31. The average sentence ruled by Supreme Court in the cassation and judicial review hearings was 4 years and 4 months imprisonment.

## **RECOMMENDATIONS**

### **Supreme Court**

1. Improve the performance of the Supreme Court directory by defining a clear timeframe for courts to upload their rulings documents. If necessary, devise administrative sanctions for courts who fail to comply with the timeframe.
2. Evaluate the effectiveness of Supreme Court Regulation 1/2020 on Sentencing Guideline to minimize sentencing disparity.
3. Develop similar guidelines for other types of corruption offenses, such as bribery.
4. Supervisory authorities need to actively scrutinize judges with strong track record of handing light sentences or acquitting the defendants to ensure that their decisions are based on sound ethical and legal principles.

### **Judicial Commission**

1. Monitor corruption trials using certain monitoring indicators to ensure there is no ethical breach.
2. Examine questionable rulings of courts.

### **Attorney General's Office and the KPK**

1. The AGO needs to promote the deprivation of political rights as an instrument to punish defendants with political background as regional leaders or MPs.
2. The KPK needs to expand its focus and increase its prosecution in cases that involve state losses.
3. All public prosecutors need to start considering the aggravating factor stipulated under Article 52 of the Criminal Code in their indictments.
4. The sentencing recommendation guideline issued by the AGO or the KPK needs to include defendants' occupational background as an aggravating consideration.
5. Both the KPK and AGO prosecutors need to consider including money laundering element in their indictment letters and sentencing demands.

### **Government and National Parliament**

1. The Government and the National Parliament need to expedite the issuance of the Asset Confiscation Bill to optimize asset recovery in corruption cases.
2. The Anti-Corruption Law needs to be revised to introduce more severe sentences for offenders.