



# Implementation of Corruption on Law Enforcement in the Criminal Justice System in Indonesia

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## Abstract

The increase in criminal acts of corruption has brought disasters not only to the life of the nation and state in general, but also can cause various weaknesses in the lives of future generations. For this reason, strict, consistent and non-discriminatory law enforcement is needed for corruptors. However, law enforcement in the Criminal Justice System in Indonesia is still unable to carry out maximum law enforcement against corruption perpetrators, because there are still some weaknesses and problems, judging from the regulatory aspects there are still overlapping arrangements, the quality of the judiciary still needs to be improved because it has not been able to create justice in the public, the monitoring system of the performance of law enforcement officials related to corruption law enforcement still needs to be improved because it is not yet integrated, while the sanctions given are still considered to be not optimal so that it does not cause a deterrent effect to the perpetrators, so that in the future it is expected to change, reform and increase in Criminal Justice System in Indonesia.

**Keywords:** Law Enforcement, Corruption, Criminal Justice System

## INTRODUCTION

The criminal justice system is a system created in such a way as to regulate law enforcers in upholding the law, both sourced from formal law and material law. In the opinion of Prof. Muladi, the criminal justice system is a network of justice that uses criminal law as its main means, both material criminal law, formal criminal law and substantial institution must be seen in a social framework or context. Its too formal nature if based only for the sake of legal certainty will lead to injustice (Muladi, 1995: 4).

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Romli Atmasasmita said that the criminal justice system as a *law enforcement*, then contained in the legal aspects that emphasize the operationalization of laws and regulations in an effort to tackle crime and aim to achieve legal certainty (certainly). On the other hand, if the criminal enforcement law (Muladi, 1995: 8; 18). However, this notion of the criminal justice system is seen as part of the implementation of social defense related to the goal of realizing the welfare of society, then the criminal justice system contains social aspects that emphasize usefulness (expediency) (Atmasasmita, 2010: 4). The ultimate goal of the criminal justice system in the long term is to realize the welfare of the community which is the goal of social policy in the short term, namely to reduce the occurrence of crime and recidivism, if this goal is not achieved, then it can be ensured that the system is not functioning properly (Zaidan, 2015: 116).

In eradicating corruption, it is not easy because corruption has existed since time immemorial, so in its eradication it needs special handling. Corruption is not only a legal problem but has become an economic, cultural and political problem. The increase in criminal acts of corruption has brought disasters not only to the life of the nation and state in general, but also can cause various weaknesses in the lives of future generations. For this reason, strict, consistent and non-discriminatory law enforcement is needed for corruptors.

Corruption is inversely correlated with the level of community income which is a symbol of a country's economic development. Thus, corruption is related to the Government of the State (Public Office). Viewed from this angle, corruption is a deviation from the norms that apply to someone who serves the Government of the country. The essence of corruption lies on one side on the use of power or authority contained in an office, and on the other hand there is an element of gain (gain) or profit, both in the form of money or not money (Kasim, 2008: 7).

Firm, consistent and non-discriminatory law enforcement is very important for the realization of the pillars of justice and legal certainty, which can bring benefits to the community in the form of a deterrent effect, so that it can prevent someone who wants to commit corruption and the growth of public trust in law enforcement efforts and strengthened support society towards law enforcement agencies and apparatus (Waluyo, 2007: 627-628).

If you look at the data presented by the Attorney General's Office and the Corruption Eradication Commission on the eradication of corruption that they have committed, corruption is a crime that can be said at the lowest point and has taken root, so that eradication requires seriousness and very strong handling.

A khir these days there is a serious problem in law enforcement in Indonesia where the official Provincial Prosecutor who had been arrested by Corruption Eradication Commission with allegations of corruption made by the

Assistant General Criminal High Court DKI that ultimately it is up to the Attorney General of the Republic of Indonesia has actually been violating the laws and regulations so it needs to be studied more deeply about the problem.

The failure of law enforcement can be rooted in the non-operation of the system or obstruction of one component of the criminal justice system in carrying out its role, starting from the investigation, prosecution, examination in court and in the implementation of his own criminal. Likewise, law enforcement against corruption perpetrators which is currently still felt by the community of law enforcement is still not in line with expectations both in terms of the examination from the level of investigation, prosecution, examination at trial until the imposition of sanctions and the implementation of the crime.

## RESEARCH METHOD

The Writing Method in this paper uses the Literature Study method. According to M. Nazir in his book entitled "Research Methods" stated that what is meant by: "Literature study is a data collection technique by conducting a study of the review of books, literature, notes, and reports that are related to problem solved." (Nazir, 2003: 27).

## RESULTS AND DISCUSSION

The formation of laws and legislation also in practice not ensure the implementation of effective law enforcement. The asynchronous regulation condition becomes one that can be grouped into as according to Atmasasmita (2013: 170):

1. The substance of the legislation is incomplete and there are still weaknesses (loopholes) so that it gives an opportunity to abuse the authority of the law enforcement apparatus.
2. The substance of the laws and regulations overlap, giving rise to differences in interpretation between law enforcement officials, thus providing an opportunity to spay the laws and regulations in cases of conditions of interest.
3. There is a substance of the legislation that still puts the interests of the government too big beyond the interests of the wider community.
4. There is still no firmness about the difference between the executive, judicial, and legislative functions.
5. National and state awareness and responsibility in producing the products of laws and regulations, and enforcing the law are still very weak, and these weaknesses emerge as a chain of weaknesses in the fields of social, cultural and political development that have been carried out for more than half a century the Republic of Indonesia was established.

Related to the independence of the criminal justice system which is integrally carried out with a systemic approach with structuring policies in the field related to structuring the legal substance, structure or legal institutions and legal culture. The substance of the law made at the policy stage of legislation is poorly designed or irrational when viewed from the perspective of criminal policy. Problems at this stage of the legislation policy will certainly affect the application and execution stages of the legal regulations that have been made (the application and execution will also certainly be greatly influenced by the legal structure and culture) (Waskito, 2018: 300).

In law enforcement there are several factors that will affect its enforcement including:

- a. Regulations on Corruption in the criminal justice system in Indonesia.
- b. The State of Indonesia is a State that upholds the law as mandated by the constitution, which contains the main principles in the administration of the state and government that fulfill the requirements as a constitutional state in the body of the 1945 Constitution as stated by Mastra Lba in Busroh (2017: 632-634):
  - 1) The Government of the State is based on the law as referred to in Article 1 paragraph (3) of Chapter I of the 1945 Constitution of the Republic of Indonesia which was passed on November 10, 2001, that "the State of Indonesia is a State of Law"
  - 2) The rule of law adopted in the 1945 Constitution is a degree of equality before the law. This can be seen in Article 27 paragraph (1) of the 1945 Constitution which reads: "All citizens are at the same position in law and government, and must uphold the law and government with no exception".
  - 3) The rule of law is freedom and independence of the position of judicial power from the influence of the government and its guarantee for the position of judges in the Law. Judicial power in Indonesia is carried out by 2 (two) state institutions, namely the Supreme Court and the Constitutional Court. In Article 24 B of the 1945 amendment, the third amendment states that "the Independent Judicial Commission has the authority to propose the appointment of a Chief Justice and has other powers in order to maintain and uphold the honor, dignity and behavior of judges".
  - 4) The protection of the rights and freedoms of citizens. This can be seen in the first thoughts of the Explanation of the Preamble of the 1945 Constitution and Article 27 paragraph (2), (3), Article 28, Article 28 (A), 28 (D), 29 and 31 of the 1945 Constitution.

- 5) There is a principle that every government regulation is based and firmly rooted in higher-level legislation.

Whereas by declaring it in the Indonesian constitution which explicitly states that Indonesia is a rule of law, everything is regulated and codified in the Statutory Regulations, namely as a basis for law enforcement.

Provisions governing corruption in the Indonesian criminal justice system are Law No. 31 of 1999 concerning Eradication of Corruption, which was amended and supplemented with Law Number 20 of 2001, hereinafter referred to as the law on corruption eradication. Then Article 43 of the the law on corruption eradication mandates the formation of the Corruption Eradication Commission no later than 2 years after the promulgation of the 1999 the law on corruption eradication. free from the influence of any power in carrying out its duties and authority in the prevention and eradication of the corruption (Sukmareni, 2018: 165).

The current legislative / legislative policies do not yet support the Criminal Justice System, the Criminal Law Enforcement System and the Integrated Judicial Power System in the Field of Criminal Law integrated is implemented in 4 sub-systems of power, namely investigation, prosecution, criminal prosecution/imprisonment, and the power of execution/implementation of crime. In fact in criminal procedural law in Act No. 8 of 1981 concerning the Book of the Law Criminal Procedure Code (KUHAP) The power of investigation and prosecution carried out by the police and prosecution is not yet independent (Arief, 2007: 33-37).

This can be seen in the corruption's investigative authority currently in 3 institutions, namely the police agency, the prosecutorial agency and the Corruption Eradication Commission, each of which is given by law. Police Investigators based on Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as KUHAP) and Law Number 2 of 2002 concerning Police (hereinafter referred to as the Police Law). Prosecutors' investigations based on the Criminal Procedure Code, Law 16 of 2004 concerning the Prosecutor's Office (hereinafter referred to as the Prosecutor's Law) and Law No. 28 of 1999 concerning Eradicating Corruption, Collusion and Nepotism and Law No. 8 of 2010 concerning Money Laundering.

Corruption Eradication Commission based on Law No. 30 of 2002 concerning the Corruption Eradication Commission (hereinafter referred to as the Corruption Eradication Commission Law), It turns out that in its implementation it raises several problems, which are considered to be able to hinder the acceleration of eradicating criminal acts of corruption, including 1) different interpretations of their respective authority over investigating criminal acts of corruption, 2) the desire of the parties to protect colleagues who are

indicated to commit criminal acts of corruption, 3) lack of coordination among the 3 institutions that are authorized to conduct corruption investigations itself. It appears that overlapping arrangements regarding corruption investigations must be addressed so that they no longer cause problems in the implementation of corruption investigations to front of it (Sukmareni, 2016: 902).

Likewise with judicial power according to Law Number 4 of 2004 which replaces Law No. 14 of 1970 in conjunction with Law Number 35 of 1999, because it places more emphasis on the notion of judicial power in the narrow sense. This can be seen in the editorial of Article 1 which states:

"Judicial Power is the power of an independent State to organize justice to uphold the law of justice based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the Republic of Indonesia's Law State"

The above understanding puts forward the notion of judicial power identified with the power of justice or the power of judging, in the form of the power to enforce law and justice in judicial bodies. This understanding is in line with the understanding in Article 24 of the 1945 amendment of the third amendment (November 9, 2001), which states that:

1. Judicial power is an independent power to administer justice to uphold law and justice;
2. Judicial power is exercised by a Supreme Court and the judicial body that is subordinate to it in the environment

Many parties who have become convicted of corruption escaped from the clutches of the law even after struggling with the law. Even if some of them were convicted, the number was relatively very small. Then what is sad is that sanctions against those few are relatively very mild, not in accordance with the actions carried out. It is important to note that although it is mild, not all of them immediately carry out their laws for various reasons. The reality illustrates as if what happened was *with law there is no other*, the opposite of Mc Iver's opinion which says that "*without law there is no order, and without order men are lost, not knowing where they go, not knowing that they do*". Things like that would certainly invite dissatisfaction of the majority of the community, so that they would become more inclined to voice improvement in the worsening situation. The people really dream of immediate change (Nitibaskara, 2007: 8-9).

As is the case recently in Indonesia, corruption has been committed by a law enforcement apparatus, in this case the Jakarta Public Prosecutors Assistant Criminal official who has been arrested by the Corruption Eradication Commission for allegedly committing a criminal act of corruption. Later it was

handed over to the Indonesian Attorney General's Office. As for the Corruption Eradication Commission, the authority is given by the law on corruption eradication. Based on article 6 of the law on corruption eradication, the task is to conduct an investigation, investigation and prosecution of corruption. Article 11 of the Corruption Eradication Commission Law further limits that the authority of the Corruption Eradication Commission to investigate, investigate and prosecute is limited to criminal acts of corruption which:

1. Involving law enforcement officials, State administrators and other people who are related to corruption criminal acts committed by law enforcement officials or State administrators.
2. Getting attention that disturbs the community and / or.
3. Concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah).

Indirectly in the law on corruption eradication weakens itself, which means equality before the law does not exist or is often known as the principle of “*equality before the law*”.

Then if it is seen that the Court that has the authority to settle corruption according to the Indonesian Criminal Justice System is the Corruption Court, as the only court authorized to settle corruption. Corruption Courts are special courts located in the General Courts in every district/city capital, except for special areas in the capital city of Jakarta, which are located in every District Court. Whereas corruption conducted by Foreign Citizens constitute the jurisdiction of the Corruption Courts in the Central Jakarta District Court.

The problem is that the procurement of this special court is very slow, so that before the Corruption court is available, the corruption case examination is carried out in the relevant District Court, because the Corruption Court is still in the area of the General Courts. This might be caused by several limitations owned by the government.

In addition, in law enforcement conducted by Corruption Court judges. If seen various cases of the principle of legal certainty does not exist, because the principle of certainty is not only in a written rule contained in the law but also in law enforcement, in this case the judge is a criminal act of corruption. In various cases, there are different decisions in each hammer panel of judges. We often encounter that the same offense is corruption which has an impact on state losses, but the decision is different. It could be that the loss of the country is a little heavy punishment, and could be mild punishment because it is an influential person in Indonesia. Even more severe was sentenced to be free, which recently was the case of Syarifudin.

Then for the death penalty that has been regulated in Article 2 paragraph (2) of the law on corruption eradication, it is actually quite good, but there are no

judges who consider it as a maximum crime, so that it will become a criminal factor for other people to commit the same crime (Dahwir, 2017: 648-649).

Weak regulation and supervision of law enforcement especially judges is a very big problem for the Indonesian people. Even though the judge has violated the code of ethics or violated the crime. In a decision of a judge that has been inkracht or has permanent legal force it cannot be canceled.

The last is punishment, the weak punishment system, namely prison confinement, makes Corruption Prisoners receive special attention, one of which is Gayus Halomoan Tambunan, Setya Novanto who can travel and even go abroad at will. The existence of prison officers who are not responsible for the incident makes the perpetrators of corruption do not have a deterrent effect. Even the rights that are not necessary, namely the reduction in prison terms and so on so that the punishment is not in accordance with what the judge has tried in court so that things like this should be minimized so that it needs to be regulated in such a way that legal certainty can be enforced so as not to occur errors in the criminal justice system in Indonesia.

In law enforcement in Indonesia Particularly in handling Corruption Acts, despite having experienced changes many times, it can be ascertained far from ideal in law enforcement because there are various factors including political factors.

Corruption practices are truly detrimental to the country's finances and economy, while existing laws and regulations are no longer effective in eradicating criminal acts of corruption which continue to be binding and increasingly complex. (Ramelan, 2007: 47-48).

Facing the fact that very concern, it takes consistency Government in the reduction and prevention of corruption, which must be made real and thorough in the process of law *enforcement* in Indonesia. Amid the efforts of National Development in various fields, the aspirations of the people to eradicate corruption and various other forms of irregularities have also increased. This, of course, cannot just happen if it is not supported by the existence of a state that is clean and free of KKN. For this reason, efforts to prevent and eradicate corruption need to be intensified and intensified while still upholding human rights and the interests of society.

Satjipto Rahardjo also gave sharp criticism to the criminal justice system, especially to the court institutions by emphasizing that the court turned into a market that trades decisions, often tarnished its own dignity, and with corruptors it became parasite" (Susanto, 2012: 120).

A justice system like this will have an adverse effect when not properly managed, because crime is a social conflict that must be resolved wisely and comprehensively. Sandra Kaufman in her article entitled "*decision making and*



*conflict management*" (translation) asserted that if the conflict was not managed properly, then the conflict would have a negative impact on individuals, agents and constituents it serves. The minimum impact is that resources will be used in vain and can cause huge costs. The bad impact is that individual and organizational conflicts become dysfunctional and destroy organizational services (Kaufmann in Parsons, 2008: 492).

In line with this thinking, Romli Atmasasmita gave the view that the "*due process model*" is based on several values, one of which places individuals as a whole and primary in the judicial process and the concept of limiting formal authority is very concerned about the combination of stigma and loss of independence which is considered to be a deprivation of a person's human rights which can only be done by the state. The judicial process it is seen as *coercive* (pressing), *restricting* (limiting), and *demeaning* (me lowered dignity). Judicial processes like these must be controlled so that their use can be prevented to the optimum because power tends to be misused or has the potential to place individuals in the coercive power of the state (Atmasasmita, 2010: 13).

If we look closely at the objectives to be achieved by the criminal justice system, which is "resolving every criminal case based on the applicable laws and regulations for the sake of creating order and legal certainty", then obviously this system has been effective. However, if we look at the methods implemented, the justice system implemented in Indonesia is far from being efficient. This can be understood from the view of Satjipto Rahardjo who said:

"Law enforcement in Indonesia in carrying out the criminal justice system is still at the level of" how the law is actually carried out ", even though it should be at the level of" how the law should be carried out" (Atmasasmita, 2010: 13).

When connected with the understanding of the criminal justice system as previously stated, that this system basically adheres to the principle of effective and efficient. The fact is that this system only fulfills the principle of effectiveness, namely the achievement of the goal of resolving the case, but it does not pay attention to the value of substantive justice as desired from the ideas or ideas (*in-put*) as one of the other requirements of a system.

Related to the implementation of criminal justice through the penal performed by the criminal justice system, it was necessary reorientation of the criminal policy, in view of the criminal policy aimed at providing social protection (*social defence*) in order to generate public welfare (*social welfare*).

There are several settlement concepts that have been offered from several previous researchers, which generally depart from the concept to a restorative

justice (*restorative justice*). Muladi once offered the consensus model to replace the consensus model. According to Muladi the consensus model is a settlement model that uses dialogue between disputing parties (Lasmadi, 2011: 2). Likewise offered by Luhut MP Pangaribuan who proposed the Lay Judges concept which emphasizes community participation in the criminal justice system (Pangaribuan, 2009: 2).

From the various descriptions above, if all things can be fulfilled by law enforcement officials by carrying out in accordance with what is in the laws and regulations, the ideal law enforcement can be resolved, but there are various factors that influence the enforcement of law which becomes law is not ideal again.

## CONCLUSION

The pattern of law enforcement in the Indonesian Criminal Justice System is still not able to carry out maximum law enforcement against corruptor, because there are still some weaknesses and problems, seen from the regulatory aspect there are still overlapping arrangements, the quality of the judiciary still needs to be improved because it has not been able to create justice in society , the monitoring system of the performance of law enforcement officials related to corruption still needs to be improved, while the sanctions provided are still considered to be not optimal so that it does not cause a deterrent effect on the perpetrators. Future or ideal patterns of law enforcement against corruptor are expected to lead to changes, reforms and improvements in various aspects above, such as regulatory reform, independence of the four sub- Indonesian Criminal Justice System , improving the judicial supervision system and providing maximum and heavier sanctions. to the perpetrator so that it has a deterrent effect both for the perpetrator and for other communities.

## REFERENCES

### A. Books

- Arief, Barda Nawawi. 2007. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*. Jakarta: Kencana Prenadamedia Group.
- Atasasmita, Romli. 2010. *Sistem Peradilan Pidana Kontemporer*. Jakarta : Kencana Prenada Media Group.
- Atmasasmita, Romli. 2013. *Teori dan Kapita Selekta Kriminologi*. Bandung: Refika Aditama.
- Kaufmann, Sandra. 2008. *Public Policy, Pengantar Teori dan Praktik Analisis Kebijakan*. Jakarta : Prenada Media.

- Muladi 1995. *Kapita Selekta Sistem Peradilan Pidana*. Semarang : Badan Penerbit Universitas Diponegoro.
- Nazir, M. 2003. *Metode Penelitian*. Jakarta: Ghalia Indonesia.
- Nitibaskara, Tb Ronni Rahman. 2007. *Tegakkan Hukum Gunakan Hukum*. Jakarta: PT. Kompas Media Nusantara.
- Pangaribuan, Luhut MP. 2009. *Lay Judges & Hakim Ad Hoc, Suatu Studi Teoritis Mengenai Sistem Peradilan Pidana Indonesia*. Jakarta: Papas Sinar Sinanti.
- Sukmareni. 2016. *An Investigation Authority of Criminal Act on Corruption In Criminal Justice System in Indonesia”, The 2nd Proceeding “ Indonesian Clean Corruption in 2020” Comparative Law System of Ptocurement of Goods and Service around Countries in Asia, Australia and Europe*. Semarang : Unissula Press.
- Zaidan, Ali. 2015. *Menuju Pembaruan Hukum Pidana*. Jakarta : Sinar Grafika.

## B. Journals

- Dahwir, Ali. *Rekonstruksi Sanksi Pidana Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi di Indonesia*, Lex Publica, Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia, Volume IV, Number 1, 2017.
- Kasim, Nur M. *Politik Hukum Pemberantasan Tindak Pidana Korupsi Di Indonesia*, Jurnal Inovasi, Volume 5, Number 1, March 2008.
- Lasmadi, Sahuri. *Mediasi Penal dalam Sistem Peradilan Pidana Indonesia*, Jurnal Inovatif, Fakultas Hukum Universitas Jambi. Volume 4, Number 5, 2011.
- Mastra Lba. *Upaya Pencegahan Korupsi Melalui Reaktualisasi Nilai-Nilai Pancasila*, Lex Publica, Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia, Volume IV, Number 1, 2017.
- Ramelan, “*Metode dan Intrepetasi dan Jaminan Kepastian Hukum dalam Pemberantasan Tindak Pidana Korupsi?*”, jurnal legislasi Indonesia, Volume 4, Number 1, 2007.
- Susanto, Anthon F. *Problematika Nalar dan Kekuasaan*, Jurnal Komisi Yudisial, Jakarta: Komisi Yudisial. Volume 5, Number, 2012.
- Sukmareni, *Penegakan Hukum terhadap Tindak Pidana Korupsi menurut Sistem Peradilan Pidana Indonesia*, Jurnal Hukum Pagaruyuang, Volume 1, Number 2, January 2018..
- Waluyo, Bambang. *Upaya Taktis dan Strategis Pemberantasan Korupsi di Indonesia*, Lex Publica,, Jurnal Ilmu Hukum Asosiasi Pimpinan Perguruan Tinggi Hukum Indonesia, Volume IV, Number 1, 2007.
- Waskito, Achmad Budi. *Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi*, Jurnal Daulat Hukum Volume 1. Number 1, 2018.

## Criminal Justice Quotes

“Crime is an attitude learnt overtime and can be as a result of condition of place one has found himself. Crime can be graded, so it's possible environment can affect high class rich and low class poor. Therefore criminal justice system is supposed to be graded as to achieve equity in result.”

**Chidiebere Prosper Agbugba**