



## Broaden The Authority of The Corruption Criminal Act Courts in Order to Eradicate Corruption, Colusion and Nepotism

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### Abstract

Seriousness in eradicating KKN as a whole and not only focusing on eradicating corruption alone is in line with the regulations regarding collusion and nepotism in the Law on the Implementation of Clean and KKN-free Government. In the legislation, collusion and nepotism are formulated as criminal acts whose perpetrators are threatened with criminal sanctions. This means that collusion and nepotism are actions that are prohibited by the law. Indonesia has a Special Court to hear corruption cases, but these courts do not have the authority to try criminal acts of collusion and nepotism. The formulation of the problem raised in this paper is 1) What is the urgency of determining the court that is authorized to adjudicate criminal acts of collusion and nepotism? 2) What is the legal policy that should be related to the authority to adjudicate criminal acts of collusion and nepotism? The research method used is normative legal research. The results of the study indicate that although juridically, the crime of collusion and nepotism should be tried in the general court, in this case the district court, in practice, the crime of nepotism has been tried and decided at the Corruption Court at the Class IA Bengkulu District Court in Decision Number 61/Pid. Sus-TPK/2016/PN.Bg. Therefore, it is necessary to clarify what court is authorized to adjudicate criminal acts of collusion and nepotism. The legal policy that related to the authority to adjudicate criminal acts of collusion and nepotism should be to expand as a step to strengthen the comprehensive eradication of KKN, if these steps are not taken, it is important to revoke the provisions for criminal acts of collusion and nepotism contained in the Law on the Implementation of Clean and KKN-free Government to ensure legal certainty .

### A. Introduction

Corruption damages the legitimacy of government leading to a loss of public support and trust for government institutions. The United Nations as an international institution also considers corruption as a common enemy of all nations that must be fought. It is proved by the presence of the *United Nation Convention Against Corruption (UNCAC)* in 2000. The UNCAC Preamble states:

Concerned about the seriousness of

problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law

Corruption is also one of the main enemies in Indonesia. The difference is that the terminology of corruption is usually accompanied by collusion and nepotism (KKN). According to Abdullah, KKN is an act that can

only be found within the scope of organizations such as companies, political parties, and the state<sup>1</sup>. Indonesia is no exception, which is undermined by KKN in various lines and sectors of government. The memorable moments of corruption eradication in Indonesia occurred back in the 1998 reformation era. People who were already fed up with various practices of Corruption, Collusion and Nepotism (KKN) in the New Order regime, were fond of echoing the spirit of reform and eradicating KKN in all areas of government. This is reflected in Article 4 MPRRI Decree Number XI/MPR/1998 which states:

Efforts to eradicate corruption, collusion and nepotism must be commenced firmly against anyone, whether state officials, former state officials, their families, and their cronies as well as private parties/conglomerates including former President Suharto while still paying attention to the principle of presumption of innocence and human rights.

Prevention and eradication started thoroughly by activating various layers, one of which is law enforcement. Legal instruments and infrastructure were also established. The laws and regulations enacted during the reform era related to the eradication of KKN include Law No. 31/1999 on the Eradication of Corruption Crimes and Law No. 28/1999 on the Implementation of a Clean and KKN-free Government.

Entering the new millennium, the spirit of eradicating KKN continues with the establishment of the Corruption Eradication Commission (KPK) and the Corruption Court through Law Number 30 of 2002 concerning the Corruption Eradication Commission. In the middle of the journey, the Constitutional Court (MK) through the Constitutional Court Decision Number 012-016-019/PUU-IV/2006 dated December 19, 2006 stated that the provisions of Article 53 of Law no. 30 of 2002 against the 1945 Constitution (UUD 1945). As a follow up of this decision, Law Number 46 of 2009 concerning the Corruption Court was enacted.

1 Taufik Abdullah, "Corruption, Collusion and Nepotism (KKN): A Cultural Approach," in *Exposing Corruption, Collusion and Nepotism in Indonesia* (Yogyakarta: Aditya Media, 1999), 9.

The legal instrument to eradicate corruption, according to the author, is quite complete with the existence of a special law that regulates, a special ad hoc institution tasked with conducting investigations and prosecutions (in this case the KPK), to a special court established by law. The next question is what about collusion and nepotism?

The eradication of corruption cannot be separated from the eradication of collusion and nepotism. In fact, eradicating KKN from the national economy is an important aspect of reform. A concrete example is when the Coordinating Minister for the Supervision of Development and Empowerment of State Apparatuses of Indonesia issued a Circular Letter of the Coordinating Minister for Wasbang Number 79/MK. Waspan/6/1999 on January 11, 1999 which provides guidelines for eradicating KKN<sup>2</sup>.

The importance of Eradicating KKN as a whole and not only focusing on eradicating corruption alone is in line with the regulations regarding collusion and nepotism in the Law on the Implementation of Clean and KKN-free Government. In the legislation, collusion and nepotism are formulated as criminal acts whose perpetrators can be criminally charged. This means that collusion and nepotism are actions that are prohibited by law.

There is one judge's decision that punishes the defendant with a criminal act of nepotism. In the Decision of the Corruption Court at the Bengkulu Class IA District Court Number 61/Pid.Sus-TPK/2016/PN.Bgl. Judges of the four indictments of the Public Prosecutor (JPU), which consist of:

1. Article 2 paragraph (1) Jo. Article 18 of the Corruption Eradication Law in conjunction with Article 55 paragraph (1) of the 1st Criminal Code (Primair)
2. Article 2 paragraph (1) Jo. Article 18 of the Corruption Eradication Law in conjunction with Article 56 paragraph (2) of the Criminal Code (Subsidiary)
3. Article 3 Jo. Article 18 of the Corruption

2 Coordinating State Minister for the Supervision of Development and Empowerment of State Apparatus of the Republic of Indonesia, "Eradication of Corruption, Collusion and Nepotism from the National Economy," nd,

Eradication Law in conjunction with Article 55 paragraph (1) of the 1st Criminal Code (More subsidiary)

4. Article 3 Jo. Article 18 of the Corruption Eradication Law in conjunction with Article 56 paragraph (2) of the Criminal Code (More subsidiary) Or
5. Article 1 point 5 Jo Article 5 point 4 jo. Article 22 of the Law on the Implementation of a Clean and KKN-free Government

The court's ruling stated:

1. Declaring that the Defendants Murman Efendi, SH, MH bin Ismail are proven legally and convincingly based on the law guilty of committing crimes of collusion, corruption and nepotism as stated in the second indictment
2. Sentencing the Defendant for his fault with imprisonment for 2 (two) years and a fine of Rp. 200,000,000....."

The decision did not last long, because it was annulled by the Supreme Court Decision Number 2291K/PIDSUS/2017 which considered the crime to be qualified as a criminal act of corruption, not nepotism<sup>3</sup>. According to Article 6 of Law/46/2009, the Corruption Court is only authorized to examine, hear, and decide cases of 1) criminal acts of corruption, 2) money laundering crimes whose original crime was corruption and/or 3) crimes involving criminal acts of corruption. expressly in other laws is determined as a criminal act of corruption. So that the court for corruption crimes should not have the authority to adjudicate collusion and/or nepotism.

in this legal considerations, in accordance with Number 61/Pid.Sus-TPK/2016/PN.Bgl, the judge directly chose the prosecutor's second indictment which referred to the criminal act of nepotism, with the following considerations:

Considering, whereas the indictment submitted by the public prosecutor is drawn up in the form of an alternative indictment,

with the indictment drawn up in such an alternative form, therefore the panel will determine in advance the most appropriate indictment with the facts of the trial;

Considering, that after the panel has considered all the facts at trial, both in the form of case files as well as statements of witnesses and examination of evidence, the panel believes that the most appropriate indictment to the facts of the trial is the second indictment.

According to the author, the verdict is a positive thing from the perspective of eradicating KKN in general, but juridically there are legal loopholes that must be corrected so that these actions do not conflict with existing laws and regulations. Based on the descriptions above, the author is interested in writing an article entitled "Authority Expansion of the criminal acts of Corruption Courts in order to Eradicate Corruption, Collusion, and Nepotism.

Based on the descriptions above, the author will analyze the formulation of the problem raised in this paper: 1) What is the urgency of determining the court that is authorized to adjudicate criminal acts of collusion and nepotism? 2) What is the legal policy that should be related to the authority to adjudicate criminal acts of collusion and nepotism?

## B. Method

This research is a normative juridical research. Peter Mahmud Marzuki (2014) in Aditya (2019) argues that approaches in legal research can be carried out, among others, by statute approaches, conceptual approaches, case approaches, comparative approaches and historical approaches<sup>4</sup>. The approach used in this research is the statute approach and a case approach.

The approach to legislation in this study examines the following laws and regulations:

- a. 1945 Constitution of the Republic of Indonesia

<sup>3</sup> Admin, "Jampidsus Holds P3TPK Task Force Orientation, About Optimizing Collusion and Nepotism Crimes," Pji.Kejaksaan.Go.Id, last modified 2020, accessed September 18, 2021, <http://pji.kejaksaan.go.id/index.php/home/news/1196>.

<sup>4</sup> Zaka Firma Aditya, "Romantisme Sistem Hukum di Indonesia: Kajian atas Kontribusi Hukum Adat dan Hukum Islam terhadap Pembangunan Hukum di Indonesia," *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 8, no. 1 (2019): 40.

- b. Law of the Republic of Indonesia Number 8 of 1981 regarding Criminal Procedure Code.
- c. Law of the Republic of Indonesia Number 28 of 1999 regarding State Administration that is Clean and Free from KKN.
- d. Law of the Republic of Indonesia Number 31 of 1999 regarding Eradication of Criminal Acts of Corruption as last amended by Law Number 20 of 2001.
- e. Law of the Republic of Indonesia Number 48 Year 2009 regarding Judicial Power.
- f. Law of the Republic of Indonesia Number 46 Year 2009 regarding Corruption Court.

The case study approach in this research examines the Corruption Court Decision at the Bengkulu Class IA District Court Number 61/Pid.Sus-TPK/2016/PN.Bgl and the Supreme Court Decision Number 2291K/PIDSUS/2017. The statutory provisions and court decisions studied will be analyzed to formulate answers to the formulation of the problems in this article.

## C. Result and Discussion

### 1. The Urgency of Deciding the Courts with Authorities to Trial Crimes of Collusion and Nepotism.

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a state of law. The 1945 Constitution of the Republic of Indonesia does not describe the rule of law model that is used officially in the government system. Popular concepts of the rule of law include the *rule of law state* and the *state law state rechtstaat*. *Rechtstaat* has an administrative character, while the *rule of law* has a judicial character. According to Hadjon, as quoted by Muntoha, *Rechtstaat* leads to positivism, where the law is deliberately formed by legislators, on the one hand the *rule of law* pivots on the dominant role of the judiciary<sup>5</sup>.

<sup>5</sup> *Rechtstaat* version of the state of law Muntoha, *Indonesia's State of Law After the Amendment of the 1945 Constitution* (Bantul: Kaukaba, 2013), 8–9.

are as follows:

- a. Human Rights Protection
- b. Division or separation of powers to guarantee human rights
- c. Government by law
- d. The existence of a state administrative court<sup>6</sup>.

According to AV Dicey, the concept of a *rule of law state* consists of 3 (three) elements, namely:

- a. *Supremacy of law*, which means that arbitrariness is not allowed so that people can only be punished if they violate the law
- b. Equality before the law
- c. Guarantee of the implementation of human rights through laws and court decisions<sup>7</sup>

From the two popular views above, Indonesia implicitly embodies all the elements of the rule of law above and combines them. To ensure the implementation of human rights through court decisions, a judicial institution is needed. Judicial institutions in Indonesia are known as judicial power. Article 1 number (1) of the Republic of Indonesia Law Number 48 of 2009 states that the judicial power is:

The power of an independent state to administer the judiciary to enforce law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the State of Law of the Republic of Indonesia.

Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states:

*Judicial power is exercised by a Supreme Court and judicial bodies under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and by a Constitutional Court.*

<sup>6</sup> Constitutional Court, *Educational Module for the State of Law and Democracy* (Jakarta: Center for Pancasila and Constitutional Education of the Constitutional Court, 2016), 12; Dani Muhtada and Ayon Diniyanto, *Fundamentals of State Science* (Semarang: BPFH Unnes, 2018), 89.

<sup>7</sup> Constitution, *State Law and Democracy Education Module*, 11; Muhtada and Diniyanto, *Fundamentals of State Science*, 89.

According to Asshiddiqie, there is a difference between the Supreme Court (MA) and the Constitutional Court (MK). The Supreme Court has a function as a court of *justice*, while the Court tends to function as a court of *law*.<sup>8</sup>

The Supreme Court is the culmination of the judicial process in the general courts, religious courts, military courts and state administration courts. The classification of the 4 (four) courts is related to the jurisdiction or adjudicating authority. According to Harahap, as quoted by Widiastiani, clarity of jurisdiction or authority to adjudicate is needed so that there is clarity on which court is appropriate to adjudicate a case or dispute that arises.<sup>9</sup>

The function of judicial power must be independent. According to Suparto, there are two independences that must be maintained in the judiciary, namely internal independence and external independence. Internal independence means that judges should not be influenced by their peers, either horizontally or vertically and from their personal interests. Meanwhile, if a judge asks for an opinion from a fellow judge, that opinion must not be in the form of an instruction or an order. External independence is defined as the judge's freedom from influence or intervention that comes from outside the judiciary, whether from the press, public pressure, political parties or executive institutions.<sup>10</sup>

All the independence that is owned by the judiciary is not unlimited. This is explained in Article 3 paragraph (2) of the Law on Judicial Power which states that all interference in judicial affairs by other parties outside the jurisdiction of the judiciary is prohibited, except in matters as referred to in the 1945 Constitution of the Republic of Indonesia.

8 Usman Rasyid, Fence M. Wantu, and Novendri M. Nggilu, *Faces of Indonesian Judicial Power: Juridical Analysis of Constitutional Court Decisions and A Contrario Supreme Court Decisions* (Yogyakarta: UII Press, 2020), 5.

9 Usman Rasyid, Fence M. Wantu, and Novendri M. Nggilu, *Faces of Indonesian Judicial Power: Juridical Analysis of Constitutional Court Decisions and A Contrario Supreme Court Decisions* (Yogyakarta: UII Press, 2020), 5.

10 Suparto, *The State of Law, Democracy, and Judicial Power* (Jakarta: Bina Karya, 2019), 132.

The regulation regarding Collusion and Nepotism is contained in the Law on the Implementation of a Clean and KKN-free Government. Article 1 number 4 of the Law on the Implementation of a Clean and Free Government of KKN states that collusion is an agreement or cooperation against the law between State Organizers or between State Organizers and other parties that harm other people, the community, and or the state. Article 1 number 5 of the Law on the Implementation of a Clean and Free Government of Collusion and Nepotism states that nepotism is every act of a State Organizer against the law that benefits the interests of his family and/or cronies above the interests of the community, nation and state.

According to Djamil, as quoted by Yanggo, some actions can be considered as collusion, including bargaining for profit, manipulation of processes or bureaucratic chains, forcing a decision in an inappropriate way, for example by using *katabelece*<sup>11</sup>, threatening subordinates or juniors who do not want to comply with the request. or take advantage of networks in the government or bureaucracy to extract wealth in an unhealthy manner<sup>12</sup>. Furthermore, acts of nepotism can be in the form of actions that prioritize family or closest people within the scope of government or even in the economic sphere, such as in the recruitment of positions or in the selection of tender winners<sup>13</sup>.

According to Syed Husein Alatas, as quoted by Adi Toegarisman, Nepotism is one of the typologies of corruption, namely corruption of kinship (*Nepolistic corruption*). (*Nepolistic corruption*) consists of two forms, namely:

- a. Illegal appointment of friends or relatives to hold positions in government

11 cover letters from officials for certain matters, popularly used by officials to request special facilities or treatment for themselves, their families, or colleagues that should not be intended for this.

12 Huzaemah T. Yanggo, "Corruption, Collusion, Nepotism and Bribery (KKNS) in the View of Islamic Law," *Tahkim* IX, no. 1 (2013): 6.

13 Big Indonesian Dictionary Online, "Ne.Po.Tis. Me," *Big Indonesian Dictionary (KBBI) Online* (KBBI Online, nd), accessed September 26, 2021, <https://kbbi.kemdikbud.go.id/entri/nepotism>.

- b. Actions/treatments that prioritize in the form of money or other forms, to relatives, in a way that is contrary to existing regulations<sup>14</sup>.

Collusion and nepotism are criminal acts, so law enforcement for the alleged perpetrators of these acts will go through a system called the criminal justice system. Chamelin, as quoted by Amin, explained that in Indonesia there are 5 sub-systems of criminal justice, namely the police, prosecutors, courts, correctional institutions and advocates<sup>15</sup>. In an integrated criminal justice system, the court is the last institution that must be carried out and decide a case, including criminal acts of collusion and nepotism<sup>16</sup>.

The court which has the authority to adjudicate criminal acts is the general court. This is in accordance with the function of the general court in Article 25 paragraph (2) of the Law on Judicial Power which states that the general court has the authority to examine, hear, and decide on criminal and civil cases. In addition, the Law on Judicial Power also gives the authority to establish special courts within the scope of general courts. Special courts are formed to examine, hear, and decide only certain cases, one of which is the court for corruption.

The popular KKN terminology as a unit in the public sphere is not directly proportional to its enforcement in law enforcement. Courts for criminal acts of corruption that are formed, normatively, do not have the authority to try criminal acts of collusion and nepotism. The Corruption Court is only authorized to adjudicate 1) criminal acts of corruption, 2) criminal acts of money laundering whose original crime is a criminal act of corruption and/or 3) criminal acts that are expressly determined in other laws as criminal acts of corruption.

In the explanation of Article 6 of Law/46/2009, what is meant by criminal acts of corruption are criminal acts as regulated in the Law on the Eradication of Criminal Acts of Corruption. Money laundering is a crime regulated in the Law on Money Laundering.<sup>17</sup>For the part of a crime that is expressly stipulated in another law as a criminal act of corruption, the law only states that it is quite clear.

Being sufficiently clear does not mean closing the space for interpretation of the provision, but opening the door of interpretation as long as it is in accordance with applicable academic rules and must be based on the existing laws and regulations. As far as the author's investigation, the definition of a criminal act of corruption is also regulated in the Law on the Implementation of a Clean and KKN-free Government. Unfortunately the definition in the law only states that corruption is a criminal act as referred to in the laws and regulations governing corruption, but the law distinguishes between corruption, collusion and nepotism.

This can be interpreted from the different definitions of corruption, collusion and nepotism contained in the general provisions of the law. So, legally, collusion and nepotism cannot be tried in the corruption court, because collusion and nepotism are not included in the scope of corruption.

Based on *the principle of ius curia novit*, there is no case that cannot be tried by the court. This is confirmed in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states:

*Courts are prohibited from refusing to examine, try, and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it.*

Collusion and nepotism can still be tried through the general court. This is in accordance with the function of the general court in Article 25 paragraph (2) of Law/48/2009 which states that the general court has the authority to examine, hear, and decide on criminal and civil cases. In contrast to criminal acts of corruption that are tried through

<sup>17</sup> Now regulated in Law No. 8 of 2010

<sup>14</sup> M. Adi Toegarisman, *Eradication of Corruption in the Efficiency Paradigm* (Jakarta: PT Kompas Media Nusantara, 2016), 43.

<sup>15</sup> Erham Amin, *Position of Criminal Expert in Determining Corporations as Legal Subjects in Wetland Forest Fires* (Borneo Development Project, 2020), 9.

<sup>16</sup> Eman Suparman, "Judicial Corruption and KKN in Indonesia," *Padjadjaran Journal* 1, no. 2 (2014): 221.

a corruption court, crimes of collusion and nepotism are tried through a district court.

The crime of collusion and nepotism must go through the stages of the criminal justice system in general, namely from the investigation, prosecution, judicial institutions and institutions implementing the criminal decisions. Article Law Number 8 of 1981 (KUHAP) states that investigators consist of the National Police and Civil Servant Officers (PPNS). The investigator institutions authorized to investigate criminal acts of collusion and nepotism are the National Police, the Attorney General's Office and the Supreme Audit Agency (BPKP).<sup>18</sup>The authority of these 3 (three) institutions to be authorized as investigators of criminal acts of collusion and nepotism stems from the provisions of Article 18 paragraph (3) of the Law on the Implementation of Clean and KKN-free Government which states:

*If in the results of the examination by the Investigating Commission found indications of corruption, collusion, or nepotism, then the results of the examination shall be submitted to the competent authority in accordance with the provisions of the prevailing laws and regulations, for follow-up.*

In the explanation of this article, the competent authorities are BPKP, the Attorney General's Office, and the Indonesian **National Police**. Then proceed to the prosecution stage by the Indonesian Prosecutor's Office, followed by a trial at the competent district court.

The Corruption Court at the Bengkulu Class IA District Court in Decision Number 61/Pid.Sus-TPK/2016/PN.Bgl should not have the authority to try charges related to the criminal act of nepotism. This is because the criminal act of nepotism is not within the authority of the Corruption Court as regulated in

18 Article 18 paragraph (3) of the Law on the Implementation of a Clean and KKN-free Government states that if the results of the examination by the Investigating Commission find indications of corruption, collusion, or nepotism, the results of the examination shall be submitted to the competent authority in accordance with the provisions of the prevailing laws and regulations. to be followed. In the explanation of this article the authorized agencies are BPKP, the Attorney General's Office, and the Indonesian Police

Article 6 of the Corruption Court Law.

According to the author, the interpretation of the panel of judges which considers that the court for criminal acts of corruption has the authority to adjudicate criminal acts of nepotism can be understood as a progressive step for the panel of judges to interpret the elements of the criminal act of nepotism which have several similarities with the criminal act of corruption. However, if it is interpreted in a formal juridical manner, of course it cannot be justified. Therefore, it is necessary to clarify what court has the authority to try criminal acts of collusion and nepotism.

## 2. Legal Policy on the Authority of the Court of Corruption, which should be in the context of eradicating KKN

According to the KBBI, policy is defined as:

*"a series of concepts and principles that become the outline and basis of a plan in the implementation of a job, leadership, and way of acting (about government, organization, and so on); a statement of ideals, goals, principles, or intentions as a guideline for management in an effort to achieve goals; direction"*<sup>19</sup>.

Policy can also be synonymous with political terms, so the terms legal policy and legal politics can be used interchangeably. According to Sudarto, as quoted by Kenedi, legal politics are activities that are planned to form good regulations and are in accordance with certain conditions or situations and can express values in society to achieve the expected goals<sup>20</sup>. Based on the definition of the policy, according to the author, legal policy is a series of policies taken to determine the expected direction, form and/or legal conditions.

According to Najih, as quoted by Ariyanti, the criminal law policy is one part of the national law/politics which consists of criminalization policies, sentencing policies, criminal court policies, law enforcement policies, and administrative policies<sup>21</sup>. According

19 Big Indonesian Dictionary Online, "Ke.Bi.Jak.An," *Big Indonesian Dictionary (KBBI) Online*, <https://kbbi.kemdikbud.go.id/entri/policy>.

20 John Kenedi, *Criminal Law Policy in the Indonesian Law Enforcement System* (Bengkulu: Pustaka Pelajar, 2017), 5.

21 Vivi Ariyanti, "Law Enforcement Policy in the

to Lilik Mulyadi, criminal law policies can be interpreted as activities aimed at forming criminal regulations that are in accordance with current and future conditions ( *ius constituendum* )<sup>22</sup>.

In eradicating collusion and nepotism, law enforcement efforts are important to be regulated in such a way that effective and efficient law enforcement against collusion and nepotism can be created. From the previous description, it is known that the estuary of a case is the court, including cases of criminal acts of acollusion and nepotism. One of the conditions that are expected in law enforcement for the crime of collusion and nepotism is the establishment of a court that can adjudicate criminal acts of Corruption, Collusion and Nepotism (KKN) in an integrated manner.

According to the author, criminal acts of collusion and nepotism should be eradicated in line with the eradication of corruption. To adjudicate criminal acts of collusion and nepotism should also be able to use legal institutions that are used to adjudicate criminal acts of corruption, in this case the court of criminal acts of corruption.

*First* , corruption is related to the eradication of collusion and nepotism. According to Mukartono, collusion and nepotism are criminal acts that precede corruption, so law enforcement against collusion and nepotism is expected to indirectly prevent corruption<sup>23</sup>. *Second* , the elements of criminal acts contained in the main article of the Law on the Eradication of Criminal Acts of Corruption and criminal acts of collusion and nepotism have substantial similarities and similarities. *Third* , legal certainty. With the similarity of elements and substantial similarities, it is hoped that there will not be a condition where a defendant is charged with using Article 2 or Article 3 of the Corruption Eradication Law and proven in a court of corruption, it can actually be proven to have committed a cri-

iminal act of collusion or nepotism through a district court. .

The acts of collusion and nepotism in this law are criminalized, but the only legal subjects that can be ensnared are state administrators. Article 21 of the Law on the Implementation of a Clean and KKN-free Government states:

Every State Administrator or Member of the Investigating Commission who commits collusion as referred to in Article 5 point 4 shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 12 (twelve) years and a minimum fine of Rp. 200,000,000, - (two hundred million rupiah) and a maximum of Rp. 1,000,000,000, - (one billion rupiah).

Article 22 of the Law on the Implementation of a Clean and KKN-free Government states:

Every State Administrator or Member of the Investigating Commission who commits nepotism as referred to in Article 5 point 4 shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 12 (twelve) years and a fine of at least Rp. 200,000,000, - (two hundred million rupiah) and a maximum of Rp. 1,000,000,000, - (one billion rupiah).

According to the author, essentially the elements of criminal acts of collusion and nepotism have similarities with several corruption crimes regulated in the Corruption Eradication Act. The comparison is as follows:

<b>COMPARISON OF ELEMENTS OF ARTICLE 2 SECTION (1) Law on the Eradication of Criminal Acts of Corruption AND ELEMENTS OF THE CRIME OF COLUSION</b>	
Article 2 paragraph (1) of the Corruption Eradication Law	Elements of the Crime of Collusion
Each person unlawfully commit acts of enriching oneself or others who are a corporation which can harm state finances or the state economy	agreement or cooperationunlawfully between State Organizers or between State Organizers and other parties that harm other people, society, and or State

The legal subject that falls within the scope of Article 2 is indeed broader than

Indonesian Criminal Justice System," Juridical Journal 6, no. 2 (2019): 41.

22 Lilik Mulyadi, "Shifting Perspectives and Practices From the Supreme Court of the Republic of Indonesia Regarding Criminal Decisions,"

23 Antara, "Jampidsus Explains the Difficulties of Enforcing Laws on Collusion and Nepotism Cases," *Tempo.Co* .



what is stipulated in the definition of a criminal act of collusion. Collusion can only be imposed on state officials or the examining commission, while the elements in Article 2 paragraph (1) of the Corruption Eradication Law cover everyone. In Article 1 point 3 of the Law on the Eradication of Criminal Acts of Corruption, every person is defined as an individual or a corporation.

The similarity contained in these two articles is that they both have an element of being against the law. The difference in actions in Article 2 paragraph (1) of the Law on the Eradication of Criminal Acts of Corruption and Criminal Acts of Collusion is that if the collusion is sufficient to carry out agreement or cooperation between state officials and/or other parties, while Article 2 paragraph (1) of the Law on the Eradication of Corruption Crimes is any act to enrich others, oneself, or the corporation.

The consequences in Article 2 paragraph (1) of the Law on the Eradication of Criminal Acts of Corruption are detrimental to the state's finances or the state's economy while the consequences in the Criminal Acts of Collusion are something that harms other people, the community and/or the state. Both crimes require the existence of losses, the difference is that losses in the criminal act of collusion are general, while the losses in Article 2 paragraph (1) of the Law on the Eradication of Corruption Crimes are limited.

According to the author, the formulation of losses from this general criminal act of collusion has more complex implications. Unlike the losses in the formulation of Article 2 and Articles of the Law on the Eradication of Criminal Acts of Corruption, which have certain indicators, losses in the crime of collusion require further legal interpretation. There are three things that must be interpreted, namely harming people, society and the state.

In addition, when discussing state losses, of course, it can also be described as state financial losses or the state economy. Therefore, the crime of collusion has a close correlation with the crime of corruption, but the consequences caused by the criminal act

of collusion reach more than just the state's finances and economy.

<b>COMPARISON OF ELEMENTS IN ARTICLE 3 of the Law on the Eradication of Criminal Acts of Corruption and NEPOTISM</b>	
Article 3 of the Law on the Eradication of Corruption Crimes	Elements of the Crime of Nepotism
Each person with the aim of benefiting oneself or others or a corporation, abuse the authority, opportunity, or existing facilities him because of his position or position or the facilities available to him because of his position or position may harm state finances or the state economy,	Every action State Organizer unlawfully benefit the interests of his family and or his cronies above the interests of the community, nation and state

*The legal subjects* that fall within the scope of Article 3 are indeed broader than those stipulated in the definition of the criminal act of nepotism. Nepotism can only be imposed on state officials or the examining commission, while the elements in Article 3 of the Corruption Eradication Law cover everyone. In Article 1 point 3 of the Law on the Eradication of Criminal Acts of Corruption, every person is defined as an individual or a corporation.

The similarity between these two articles is that they both aim to benefit other people/other parties. The difference is that the criminal act of nepotism does not aim to benefit oneself, while Article 3 paragraph (1) of the Corruption Eradication Law can still be imposed on oneself.

Substantial similarities are also found in the element of being against the law. The

crime of nepotism explicitly mentions the word against the law while Article 3 of the Law on the Eradication of Corruption Crimes uses the sentence “abusing the authority, opportunity, or facilities available to him because of his position or position or the facilities available to him because of his position or position” which is nothing but another form of elements against the law.

The most basic difference is that in the criminal act of nepotism, there is no need for harm to anything or anyone. Article 3 paragraph (1) of the Law on the Eradication of Criminal Acts of Corruption requires otherwise, where there must be losses to the state or the state economy.

Similar to the crime of collusion, the crime of nepotism requires legal interpretation which has the potential to bring up the dynamics of legal interpretation. the absence of elements that can harm state finances or the state economy in the formulation of the crime of nepotism explicitly does not mean that nepotism does not require a loss.

The element of “benefiting the interests of his family and or cronies above the interests of the community, nation and state”, can implicitly be interpreted as harming the interests of the community, nation and state. Because if we read the elements of the criminal act of nepotism in its entirety, the actions of state officials that benefit the interests of their families and/or cronies must be against the law.

Therefore, according to the author, the act must be detrimental to the interests of the community, nation and state, because it would be irrational if the state forbids a citizen to seek profit if it is done in a legal way and does not harm anyone. In this case, the criminal act of nepotism must be detrimental to other parties, namely harming the community, nation and state, either directly or indirectly. Of course, it is possible that these losses are in the form of financial or state economic losses, which have a close correlation with elements of corruption.

Based on the explanation, it is impor-

tant to expand the authority of the courts for corruption crimes to try criminal acts of collusion and nepotism and this can be followed by changing the nomenclature to the Courts for Criminal Acts of Corruption, Collusion and Nepotism. The legal politics emphasized here is the legal politics of the integration of authority. The integration of this authority is based on the close correlation in criminal acts of Corruption, Collusion and Nepotism.

This integration is expected to change the paradigm of law enforcement in particular, and society in general. The paradigm shift that is expected for law enforcement is to refresh the perspective of law enforcement that collusion and nepotism are also criminal acts that must be tackled and eradicated. The paradigm change that is expected to occur in society with this integration is to refresh and provide understanding to the community that collusion and nepotism are criminal acts that must be avoided and prevented as much as possible. The integration of law enforcement against criminal acts of collusion and nepotism which aims to change the paradigm of law enforcement and the community above is in line with Pound’s opinion that law can be used as a means of eliminating bad or negative habits of society<sup>24</sup>.

This is done as a step to strengthen the comprehensive eradication of KKN, so as not to leave collusion and nepotism behind. In addition, this is supported by the existing practice that there are corruption courts that hear cases of nepotism at the first level. If this step is not taken, it is important to revoke the provisions for the criminal act of collusion and nepotism contained in the Law on the Implementation of a Clean and KKN-free Government in order to create legal certainty to prevent the illustration described above.

#### D. Conclusion

The Corruption Court should not have the authority to examine, try, and decide on criminal acts of collusion and nepotism. Because in a formal juridical manner, it is the general court that has the authority to ex-

<sup>24</sup> H. Yacob Djasmani, “Law as a Social Engineering Tool in Legal Practice in Indonesia,” *MMH* 40, no. 3 (2011): 365.

mine, hear and decide the case. The laws and regulations distinguish between corruption, collusion and nepotism, but materially, there are some similarities in some of their elements. However, in fact, the Corruption Court at the Bengkulu Class IA District Court in its Decision Number 61/Pid.Sus-TPK/2016/PN.Bgl has tried and decided on the crime of nepotism, so it is necessary to clarify what court is authorized to adjudicate the crime of collusion and nepotism.

The legal policy that should be in eradicating KKN is to expand the authority of the courts for corruption crimes to try criminal acts of collusion and nepotism. as a step to strengthen the eradication of KKN in a comprehensive and integrated manner. In addition, this will increase the effectiveness and efficiency of eradicating KKN, both juridically and technically.

## E. Recommendation

The government and the House of representatives must revise Law/46/2009 by adding the authority of courts for corruption crimes to try also crimes of collusion and nepotism.

If this step is not taken, it is important to revoke the provisions for the crime of collusion and nepotism contained in the Law on the Implementation of a Clean and KKN-free Government to prevent a condition in which a defendant is charged with using Article 2 or Article 3 of the Law on the Eradication of Corruption Crimes and proven guilty. in the court of corruption, it can actually be proven to have committed a criminal act of collusion or nepotism through a district court in order to create fair legal certainty.

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