

Prosecution of Criminal Offense of Corruption through the Corruption Eradication Commission's Authority in Indonesia's National System

Satria Ferry¹, Faisal A.Rani², Edy Purnama³, Muhammad Saleh⁴

¹PhD Student at Faculty of Law Syiah Kuala University,

²Main Supervisor Syiah Kuala University,

³Supervisor Syiah Kuala University,

⁴ Supervisor Syiah Kuala University, Indonesia.

Abstract: The purpose of this study is to review of further development concerning the Corruption Eradication Commission's authority to prosecution of criminal acts of corruption as affirm in Article 6 Paragraph 3 of Law of the Republic of Indonesia Number 30 of 2002, in conducting law enforcement operations the corruption eradication commission follows the main Indonesian anti-corruption laws, namely Law Number 31 of 1999 as amended through Law Number 20 of 2001 on The Eradication of Corruption. In another side, there have the same authority and obligations in Article 30 sub article (1) paragraphs a, d, and e of the Law of the Republic Indonesia Number 16 of 2004 on the Attorney of the Republic of Indonesia. These authorities has created 'overlapping or dualism in prosecution of criminal acts of corruption. In sum, the authority of Corruption Eradication Commission has been 'neglected' the *dominus-litis* and the *een on deelbaar* principles in the Attorney institutions, considering these commission as the counter-partner only. Based on this, there is need for further review regarding the consequences of the authority of the Corruption Eradication Commission in the prosecution of corruption crimes..

Keywords: Authority, Investigation, Prosecution, Corruption Eradication Commission, Attorney Institutions, and Criminal Offense of Corruption.

I. INTRODUCTION

The Indonesian Corruption Eradication Commission was established in 2003. Established this commission to combat the extraordinary crime of corruption in Indonesia, which is rampant, systemic, and affecting the lives of practically everyone in the country. During the crises, there was a sense that drastic measures were needed to tackle corruption, which contributed to the country's difficulties. - Historically that the impetus to create Corruption Eradication Commission was the economic crises during 1997, which subsequently also led to the downfall of President Soeharto.

Corruption Eradication Commission is independent from the executive, legislative, judiciary and any other powers. Financially, Corruption Eradication Commission is audited by the Indonesian Supreme Audit Board and should be responsible to the public. In doing the tasks, this commission has the authority to supervise and coordinate with the Attorney General Office as well as the National Police in handling corruption cases. Mochammad Jasin, as a former Commissioner, vice chairman, Corruption Eradication Commission, provides that Corruption Eradication Commission has the authority to investigate. This authority is broad because this commission can investigate any public official for corruption, including members of parliament, judges and even the military. Although Corruption Eradication Commission can investigate members of the military, it can't prosecute members of the military. Corruption Eradication Commission has to date already succeeded in convicting several members of Parliament and officials in the Judiciary, as will be elaborated in the next session. It can say that this commission essentially has all the investigative powers of a law enforcement agency. It can conduct wiretaps on suspects, examine their bank account and tax records, as well as freeze their assets, issue hold orders and make arrests.

As mentioned earlier, with the existence of the authority of the Commission to prosecute corruption crimes when examined the provisions of Article 1 paragraph 7 Criminal Code is the task of the prosecutor and the prosecutor is the Attorney General (as prosecutor). This gives rise to the impression of Indonesia has two institutes in the field of handling the prosecution of corruption crimes are owned by the prosecution in accordance with its function and the Commission in the field of corruption (Ermansjah Djaja, p.227).

According to what have said above, the substantive (or material) absence of contradiction between norms is a consequence of the requirement of the absence of epistemological contradiction; it relates to the theoretical

(descriptive) understanding of the norms in the formal sense. A “monistic” construction is the only possible formulation of the relationship of normative systems among themselves in terms of legal theory. A system (in the strictest sense of the word) can therefore only be understood as the sum of the universal norms which are implied in all subsystems, i.e. on which the validity of the systems is founded (Dahniar, 2017, p.2)

This study is designed to answer the following questions: 1] Do Corruption Eradication Commission's authority has been accordance with legislation? and, 2] Will the prosecution of criminal offense of corruption through the corruption eradication commission's authority contradiction with the principles of *dominus-litis* and the *een-on-deelbaar* in the Attorney institutions?

Data for the study were collected through two major sources: primary legal materials, secondary, and tertiary. Also, the data obtained by doing library research, such as the documents, textbooks, journals, theories, laws and regulations, articles, scientific writings that have anything to do with the problem under the study. Data analysis was done qualitatively through the efforts in finding meaning or concepts contained in the law material (conceptualization) and then describe and explain the results of theoretical research perspective thought of the experts and analysis of the authors.

The researcher made a systematic classification and description of the content related to the existence of the Commission's authority to prosecute corruption of cases according to predetermined categories and as well made replicable and valid inferences to the message content of the secondary data to their context. The overall data were at first subjected to scrutiny in order to ascertain their veracity. After ascertaining the data to be genuine, they were then synthesized and interpreted. Data were analyzed using qualitative method. Through this method the researcher will find the new concept concerning the implementation of the authorities between Corruption Eradication Commission and the Attorney according their duties.

II. REVIEW OF RELATED LITERATUR

2.1 The Relation of Law and State

In the 1945 Constitution, provides that the Unitary State of the Republic of Indonesia based state of law (*Rechtstaat*) and not authoritarian country/state power (*Machtstaat*). Demands that an independent judicial authority has a solid foundation which at least can we read in the minutes of the making of the 1945 Constitution. As we know that there some law-making such as, Soekarno, Hatta, Supomo, and Yamin has acknowledges the importance of independent judicial power, although there are some differences in perspective about place and layout of judicial authorities. In sum, ideals to bring independent judiciary in line with the explanation of 1945, the independent Indonesian state is a state of law not state power.

The development concept of law can't be separated from the popular understanding, because in the end the law that regulate and restrict the power of state or government is defined as the law made on the basis of powers and popular sovereignty. The concept of state law as adopted by Indonesia, always upholds the legal system which ensures legal certainty and protection of the rights of the people. The behavior of law enforcement officers and also the bureaucratic apparatus must always be based on the rules of the existing legislation and accountable both to the Lord, the people and also to the law itself. This thing was affirmed by Dahniar through her research who states that many laws in Indonesia are not in line with the family principles-this principle is still a mere illusion. The family principle should not only be written in the constitution, but it also has to be understood by every component of the state. In addition, in the preamble of the Law of the Republic of Indonesia number 39 of 1999, provided that the nation of Indonesia as a member of the United Nations to assume moral and legal responsibility to uphold a high and carry out the Universal Declaration of Human Rights established by the United Nations and various other international instrument which have been accepted by the Republic of Indonesia. The same thing can found also in Part I of Law of the Republic of Indonesia number 26 of 2000 of the Human Right Court. (Dahniar 2017, p.1)

There are three main issues that bear on the problem when considered as one of analytic jurisprudence first the relation between the existence of a law and its efficacy; second the distinction between making a new law and applying an existing one; and three the relation of law and the state. Together these issues determine the answer to the problem of identity. Although each one of them engaged the mind of some of the legal philosophers who discussed the problem of identity, failure to consider all three partially accounts for the fact that no satisfactory solution to the problem has been found. This part is an examination of the three issues.

The identity of the system is found in the criterion or set of criteria that determines which laws are part of the system and which are not. Some proposed answers to the problem of identity are well known; perhaps the best known are: A law is part of a legal system if and only if it was enacted directly or indirectly by the sovereign of that system (Austin), or if and only if it is authorized by the basic norm of the system (Kelsen), or if and only if it ought to be recognized according to the rule of recognition of the system (Hart). These three philosophers were not concerned with the material unity of legal systems. They did not think that the unity of the system depends on the content or spirit of its laws, or on the traditions and practices of its most important legal

institutions. Instead, they hoped to formulate a test that would enable them to determine whether any two laws belong to the same legal system or not.

The relation of law and state affects the two distinct aspects—scope and continuity of the problem of identity. Every state—by which is meant a form of political system and not a juristic person—has one legal system that constitutes the law of that state, and every municipal legal system is the law of one state. Since, then, the identity of a legal system is bound up with that of the state the law of which it is, the relation between law and state necessarily affects the problem of scope. So too, since an end to the existence of a state is the end of its legal system, and since a law that is not a law of the state is not part of its legal system, the problem of continuity is similarly affected by the relation of state and law (Joseph Ra, 1971, p.812)

In many legal systems the term "state" or its equivalent is used to designate a certain legal person recognized in law as having certain duties, powers, and rights, and as acting through certain organs. This legal concept of the state should be clearly distinguished from the political concept of the state as a form of political system; only the latter is relevant to the problem of identity. Hans Kelsen (1945, p. 181-207) claimed that the concept of the state can be explained only in legal terms. That is, the concept of a legal system must be explained first; from it naturally flows the explanation of the concept of a state, for a state is but a (municipal) legal system. - No social facts, no social norms that are not relevant to the explanation of law have any relevance to the theory of the state.

Some theorists saw this as a reason for regarding those laws as part of the legal system, and Bentham maintained that all commands that are enforceable in law are laws of the sovereign. Hart (1961, p.92-120) maintained in *The Concept of Law* that all the rules that the courts have a duty to apply are laws of the system. Furthermore, the significant intervention of the government on judicial independence in Indonesia that happened in the era of Guided Democracy under the President Soekarno and in the era of the New Order government under President Soeharto has been questioned by many scholars recently. This question actually has been a hot issue in 1972 (Lev Daniel.S, 1972). The given concerns did not only relate with the implementation process of judicial power including rules making and judicial judgment, but it also related with other administration decisions aspects including finance and organizational rules (Pompe, 1996). In order to achieve these goals, an organization of state was composed along with the related institutions, with the classification and restrictions of duties, such as the Supreme Court as affirmed in Article 24 paragraphs (1) and (2) of 1945 Constitution, provides that Judicial Authority is done by a Supreme Court and other Judicial institution by law, and the composition and powers of Justice institutions were regulated by law. Also it can found in Article 25.

2.2 Judicial System in Indonesia

The judiciary is a sub system of the bureaucratic system of power in any form and classification. The existence of bureaucratic power is part of the state power which is formed from social life or in groups to achieve a high level when the people and groups become unity. Therefore, in the public-state, it is obvious and clear about their country borders, the people who live in it and the government who was entrusted to organize and manage their shared needs (Faisal A. Rani, 2009, p.1). To take care of and manage the shared needs become in an orderly and peacefully, so, a constitution is drafted in a state. The most important substance in the constitution is the guarantee of human rights, the establishment of a basic state structure and the limitation of duties and restrictions of state (Sri Soemantri cited by Faisal A. Rani)

In most legal systems courts have authority to settle at least some of the disputes to which there is no clear solution in the laws of the system. Courts have a duty to apply the laws of the system when they are applicable and to exercise discretion in order to decide (partially) unregulated disputes to which the laws do not provide a clear answer or where the courts have power to change the law. By the rule of precedent this exercise of discretion often amounts to the creation of new laws. The courts' discretion to decide unregulated disputes may be absolute or guided. They may be guided by law as to the manner in which discretion should be exercised. The law may, for example, direct judges to act on the rule that they think best for such cases, or to render a decision that would be the best from the point of view of the parties to the present dispute, or direct the courts to consult their conscience or the writings of moralists. Such instructions may be given in a statute, but they may also exist only in the practice of the courts. According to M. Yahya Harahap (2005, p.91) that whether the function of the trial examination process conducted by the General Prosecutor and the judge declared that the defendant "wrong", and "convict him/her" is successful or not, highly depends on the "result of investigations from the Police" Therefore, in the criminal justice system contained a systematic motion of the supporting subsystems, namely the police, prosecution, courts and correctional institutions/prisons, as well as the Advocate as a whole and constitute is a unity try to transform the inputs into outputs that being purpose of the criminal justice system. Based on the framework of the principle, activity of the implementation of *criminal justice system* is a "joined-function or collection of function" and legislators, police, prosecutors, courts, and prisons, and related institutions, which exists both-within or outside the government. The main purpose of the combined functions in the framework of criminal justice is to enforce, to execute (run) and to decide the

criminal law. Sidik Sunaryo (2004, p.210-220), states that a judicial system that is commonly used, always involves and includes a sub-system with the scope of each criminal justice process as follows:

1. **The Police** (the mechanism of control through the pre-judiciary)

The main task to receive the reports and complaints from the public when there is a criminal action, screening the cases that qualify for submission to the prosecutor, reporting the results of the investigation to prosecutors, and guarantee the protection of the sides involved in the criminal justice process.

The authority of police institution as stipulated in Article 30 paragraph (4) of the 1945 Constitution that National Police of the Republic of Indonesia as the state's instrument to maintain the public security and orderliness shall be assigned to protect, serve the public, and reinforce the law.

2. **The Attorney** (the control of mechanism through the pre-justice/pre-trial)

The basic tasks is filtering the cases that qualified for being brought to court, prepare the prosecution file, Prosecute and carry out court decisions.

3. **The Court** (the control of mechanism through the efforts of ordinary and extraordinary laws)

Obligated to uphold the law and justice, protect the rights of the accused, witnesses and victims in the criminal justice process; check the cases efficiently and effectively, give a fair verdict and based on law, and prepare the public areas for the trial so the public can participate in and make an assessment of the judicial process.

4. **The Correctional Institution** (the control of mechanism through the Judge of supervisor)

Serves to execute a court decision that is imprisoned, to ensure that the rights of prisoners are protected, to keep adequate conditions in the institution to run the punishments of the criminals, try to improve inmates, and preparing inmates back into society

5. **Lawyer/law advisor** (the control of mechanism through the court)

Obligate to defending the client by keeping the client's rights met in the criminal justice process

According to Indrianto .Seno Adji (2001, p. 49) divides there are four institutions that carry out the criminal justice system, namely the Police institute, the Prosecution institute, the Judiciary institute, and the Penitentiary, and there also have four components of the criminal justice in power sub systems, such as, the power of investigations, the power of prosecution, the power of prosecute and convict, and the last the power of the criminal execution. (Banda Nawawi A, 2011, p.15). The authority of law enforcement agencies about is the authority of attribution which comes from the 1945 Constitution and Law.

Therefore, as a part of the sub-system of power within a state, the judiciary should also use the basic principles how to make the system of state power become good and suitable by keeping on fighting and to create a guaranty of law enforcement and justice. Good governance approaches to corruption are not limited to legal initiatives in the form of multilateral anti-corruption instruments or broader legislative efforts. There are less formalistic and more flexible options available.

2.3. The Theory of Power Separation related the Corruption Eradication Commission's Authority

Commitment to the importance of an independent judicial power was shown in the elucidation of the 1945 Constitution. The commitment is very important for the realization of the concept of rule of law, in which the free trial will give citizenship to a legal certainty and legal justice. Free judiciary can only be realized in the absence of the state intervention in the judicial process. However, more fundamentally it is in the absence of government interference in the administration and organization of judicial power itself. Two things are a test to what extent the officials executing judicial authority can run the judicial function in a fair, honest and impartial (Muhammad Asrun, 2015, p. 9-10)

Selection of the theory of separation of powers is associated also with the concept of checks and balances, as this study will look at how far the implementation of judicial power without interference from the executive and legislative powers. The separation of powers is in addition raises the hope that one branch of power will not intervene other branches of power, but also at the same time how much of the power can be a counterweight to the other two branches of state power. For example, the executive power to interfere with the judiciary and/or the corruption eradication commission's authority with the attorney.

According to Montesquieu as cited by Faisal A Rani (2009, p.2-3), state that the separation of powers have three categories, as presented in the following:

1. The legislative power, (laws-making);

2. The executive power, (law-implementing); and

3. The judicial power, the judicial authority in performing its duty, is free from interference and influence of other power including the government as a holder of executive power.

Muhammad Asrun, (2015) as a lecturer at the law faculty and chairman of the graduate legal studies program, university of Pakuan, Bogor, West Java, states that separation of powers among the three branches of power is viewed as absolutes by Montesquieu. There is a very strong opinion in Indonesia that the Constitution of 1945 only about separation of powers in a formal sense, since the 1945 Constitution is not about the

separation of powers in the material. This opinion is supported on the division of powers in state institutions, namely the House of Representatives, Government, Supreme Court, Supreme Audit Board and the Supreme Advisory Council. But apart from the above-mentioned debate, the independence of the judicial power as a logical consequence of the separation of powers is recognized as a necessity in a country, because the independence of judicial power is one of the pillars of state law. That is, the separation of judicial power from the other two branches of power still needs to be done, namely by way of holding a law that guarantees the independence of judicial power and guarantee more specifically in the Constitution of 1945.

Discussion on the independence of the judicial power can also be released from a theoretical debate about an independent judicial authority itself. Barriers to implementations of the independent judicial power has a rationale, namely the lack of constitutional basis of freedom and all independent justice system (Lubis, 1999) Articles 24 and 25 of the 1945 Constitution, and was too vague and second explanation shall not describe the principles of freedom and judicial power.

The vagueness paced allowed the birth of another interpretation of that intended by the makers of the 1945 Constitution is another. Lubis interpretation was apparently can be seen from the presence of Article 11 of Law Number 14 of 1970. The former Chief Justice Purwoto Gandasubrata (1996) has the same opinion with Lubis, namely Article 24 and Article 25 of the 1945 Constitution as well as the explanation doesn't explicitly regulate judicial authority. Therefore, he suggested the importance of the further elaboration of the second chapter, which should not reduce and limit the powers of the judiciary and reinforce its position equal to the power of the state government.

Even if there are differences of opinion among legal scholars, they share similar views that the presence of independent judicial power is a necessity in a state of law. Relating to debate all the independent judicial power early, the political scientists have long advocated the separation of powers among the executive, legislative and judiciary powers. Montesquieu, one of the leading thinkers in the middle (the middle ages), recommends the application of the theory of separation of powers as stipulated in the Trias Politica (Sri Soemantri, 1993, p.186). Montesquieu said that the power of the executive, judiciary and legislative powers separately either on duty or on the appliance power supplies runs it.

Indeed the desire to uphold the independent judiciary in line with the spirit contained in Article 24 and Article 25 of the 1945 Constitution Explanation of Article 24 and Article 25 states that: "Judicial Power is an independent power, meaning that regardless of the influence of government power. In this connection it must be held collateral in the Act on the position of the judges." The provision of the two articles of the 1945 Constitution prohibits the branches of state power to influence and power in the form any way. The statement shall be construed to imply that either-condition, shape, and structure, including the administrators, the judges must be governed by the Constitution and the organic law on the Supreme Court.

The internal arrangement within the Supreme Court is also required in order to clear settings judicial duties, authority and supervision of the judge in the trial of internal judges. Researchers suggested that the internal arrangement of the first set in the form of a code of conduct, then compiled in the Charter of bodies of judicial power. However, academicians argued that the code of conduct should be drawn up in the form of legislation so that their application can have a strong legal basis, including in terms of sanctions against violators.

In article 10 of the Law number 14 of 1970 on the Principles of Judicial Power, as amended through Law Num. 4 of 2004, include the Law Num.48 of 2009 on Judicial Power, states that In Indonesia have four the Justice of the Court, namely: General Court, State Administrative Court, Military Court, and Religious Court. - General Court and the State Administrative Court which directly serves the interests of the people in general and have relationship with absolute protection of human rights technical, organizational, administrative and financial should be placed directly under the authority of the Supreme Court, while the Religious and Military institutions specifically have jurisdiction over a particular class of people, technically under the Supreme Court, but organizationally, administratively and financially under the authority of the Department concerned (Luhut Pangaribuan & Paul S. Bolts, 1989).

III. DISCUSSION

3.1 Definition of 'Corruption' and 'Bribery'

3.1.1 Corruption

There are as many definitions as there are many countries and institutions dealing with the problem of corruption. In some cases, definitions may be determined by the focus of a particular institution. For instance the United Nations Development Programme in its report on Fighting Corruption to Improve Governance, defined corruption as the misuse of public powers, office and authority for private gain through bribery, extortion, influence, peddling, nepotism fraud, speed, money or embezzlement.

For instance, the Zambia Anti-Corruption Commission defines corruption under its Act of 1996 (No:42) as the soliciting, accepting, obtaining, giving, promising or offering of gratification by way of a bribe or other personal temptations of inducement or the misuse or abuse of a public office for private advantage or benefit.

The Malawi Corrupt Practices Act defines corruption as soliciting, accepting or obtaining, or to the giving, promising or offering of a gratification, by way of a bribe or other personal temptation, enticement or inducement. While the IMF donors in 1996, states that corruption can have consequences significantly decelerate economic growth. On the other hand, the Zimbabwe Prevention of Corruption Act defines a corrupt practice as if any agent corruptly solicits, accepts, obtains, agrees to accept or attempts to obtain from any person a gift or consideration for himself (herself) or any other persons as endowment or reward for doing or not doing, or for having done or not done any act, in relation to his (her) principal's affairs or business (Ganizani Gwai, 2002, p.1)

Furthermore, from the enforcement point of view, corruption is a contract. It is an informal contract because it is illegal-no court in the world will uphold it if there is a problem with its enforcement. On the contrary, a properly operating court would process corruption as a criminal offence. This very specific feature of corruption as an illegal contract generates its substantial transaction costs, the most important of which are: finding the counterpart, formulating the contract (particularly taking into account all foreseeable and unforeseeable contingencies), monitoring the contract, and enforcing the contract. This is not to say that standard legal contracts are free of transaction costs. This is to say that due to the illegal nature of the corruption contract, its transactions costs are multiplied. The transaction cost feature of corruption is of great relevance and must be taken into account when the consequences of corruption are analyzed.- Corruption is definitely an unproductive, and sometimes even a destructive activity (Baumol cited by Boris, 2002, p.7)

A few words on the ethical aspects in defining corruption should be added. For an overwhelming majority of people corruption is something morally unacceptable; it is the evil that should be fought because its very existence is against basic moral principles. The analysis of corruption which follows is morally neutral. The issue of morality is irrelevant to the considerations in this document. In that sense Tanzi's definition of corruption is morally neutral (in Boris Begovic, p.3).

In addition, a 2005, judgment by the Dutch Supreme Court ('Hoge Raad') reflects a similar view on where to draw the line between corrupt and non-corrupt acts: it held correctly that gifts made "in order to establish and/or maintain a relationship with that public official with the aim being to obtain preferential treatment" should be seen as corruption (I.Peci & Siema, 2010, p.114). at another time, based on these case, Johnson & Sharma (1997, p, 254) provides that a non-exhaustive list of types of corruption may give an idea of the breadth of the phenomenon:

- ✓ Bribery and graft (extortion and kickbacks)
- ✓ Kleptocracy (stealing and privatizing public funds)
- ✓ Misappropriation (forgery, embezzlement, misuse of public funds)
- ✓ Non-performance of duties (cronyism)
- ✓ Influence peddling (favour brokering and conflict of interest)
- ✓ Acceptance of improper gifts ("speed" money)
- ✓ Protecting maladministration (cover-ups and perjury)
- ✓ Abuse of power (intimidation and torture)
- ✓ Manipulation of regulations (bias and favouritism)
- ✓ Electoral malpractice (vote buying and election rigging)
- ✓ Rent seeking (public officials illegally charging for services after creating artificial shortage)
- ✓ Clientelism and patronage (politicians giving material favours in exchange for citizen support)
- ✓ Illegal campaign contributions (giving unregulated gifts to influence policies and regulations)

From the above definitions it is clear that the various definitions of corruption seem to offer a *carte blanche* or blanket definition in a desperate attempt to be all-embracing of this scourge called corruption. These definitions to a large extent give luminous picture of the various enemies any anti-corruption activist is likely to confront: those soliciting, receiving, accepting, giving, obtaining, offering, promising, abusing power or authority, being tempted or induced and their culprits, etc.

In summary, the various definitions of corruption give a general understanding of corruption as any conduct, action or behavior that departs from legitimately established laws, procedures and practices.

3.1.2 Bribery

Based on the formulation of corruption substances in the United Nations Convention Against Corruption, it can be understood that the arrangement of corruption law material are not formulated specifically about gratification. Observing the formula above, it can be concluded that gratification were formulated in Law Number 31 of 1999 on Corruption Eradication in Indonesia is the interpretation of elaboration of bribery

substance. Elements of such actions are bribery and gratification elements in Indonesia Corruption law. Therefore, the limitation of different between bribery and gratification becomes blurred or unclear.

Bribery crime in the formulation of the United Nations Convention against Corruption is always followed by the key elements, namely:

1. Act or refrain from acting in the execution of his official duties;
2. Trading in influence;
3. Misappropriation of influence;
4. Abuse of functions;
5. Trading in influence; and
6. Illicit enrichment

The mention of gratification specifically known since the enactment of Act No. 20 of 2001 on Amendments to the Law Number 31 of 1999 on the Corruption Law. The law provides for the obligation of public servants or state officials to report to the Corruption Eradication Commission any gratification associated with the position and contrary to the duties or obligations of the recipient. If the gratification that considered as bribery is not reported to the Corruption Eradication Commission, then there is a risk of violation of the law both in the realm of administrative or criminal. - A gift becomes a gratification as bribe if related to the position and contrary to the obligation or duty of the recipient (Corruption Eradication Commission, 2015, p. 9). On the crime of bribery, there is a meeting of mind between the giver and recipient of bribes, and the recipient has malicious intent when money or goods are received.

Based on the report of the CoE's Criminal Law Convention on Corruption states that bribery is the most well-known form of corruption, though it is only one type. While the concrete wording of the definition differs slightly, it is generally defined as the offering, promising or giving, or the request or receipt, by any person, directly or indirectly, of any undue advantage to or by any public official, for himself or for anyone else, to act or refrain from acting in the exercise of his functions. Most international instruments use the term "corruption" in their title, though the focus lies (sometimes exclusively) on bribery.

3.2 Corruption related with the arm's-length principle

According to Vito Tanzi as cited by Boris Begovic (1995, p.2) that the corruption is the intentional non-compliance with the arm's-length principle aimed at deriving some advantage for oneself or for related individuals from this behavior.

There are some basic elements of this definition, among other:

1. Element deals with the arm's-length principle as it requires that personal or other relationships should play no part in the economic decisions that involve more than one party. Equal treatment of all economic agents is essential for a well-working market economy. Bias towards particular economic agents definitely violates the arm's-length principle and fulfills a necessary condition for corruption. If there is no bias, there is no corruption;
2. There must be some advantage for the individual who commits a violation of the arm's-length principle; otherwise, there is no corruption. Violating impartiality may sometimes represent racism, but it is not corruption.

To the first basic element, there are two additional necessary conditions for corruption, or rather conditions that must be fulfilled for observed bias to be specified as corruption. The first condition is that the bias must be intentional-accidental violation of the arm's-length principle because of, for example, imperfect information, doesn't represent corruption-"non-compliance with the arm's-length principle". And for other element, it's mean that deriving some advantage, or seizing some benefit for the corrupted economic agent, can have different forms. It is a rather widespread notion that corruption is receiving money (this form of corruption is most often called bribery), but similar gain can imply expensive gifts or various favors returned.

Olken.B, (2009, p.950-964) provides that this may account for the relatively low correlation between perceptions and actual corruption, since people must make an inference about the aspects of corruption they cannot perceive-which end up being where the bulk of corruption is usually hidden. He also shows that individual characteristics, such as one's education, have much more power in predicting perceived corruption than actual corruption itself. If a perception survey has different compositions of respondents evaluating different projects (or countries/states), this could create systematic biases in the use of perception; and given this, it is not surprising that most of the corruption occurs by inflating quantities.

These types of biases could create problems in macro-level perception indices as well (Benjamin & Pande, 2011, p.5) they explained it through this example, namely, after the fall of Soeharto in 1998, many commentators perceived that corruption in Indonesia became worse. The commonly stated view was that any players at both the local and the national level started demanding bribes, and their failure to coordinate their bribe-taking behavior resulted in a higher total level of bribes. The worsening of perceptions of corruption was captured by the Transparency International Index-measured on a scale from 0 (highly corrupt) to 10 (highly

clean)-which fell from a value of 2.0 in 1998 to 1.7 in 1999, and stayed at the same level in 2000. This may well have been the case, but another explanation is that the fall of Soeharto's dictatorship resulted in a much freer press which was newly able to report on allegations of corruption, which it did. It is therefore possible that perceptions of corruption rose even though actual corruption fell. For these types of reasons, economists have been moving to more direct measures of corruption whenever possible.

In addition, there is an alternative definition of corruption frequently used by the World Bank Economic Development Institute in its National Integrity System country studies that specifies or defined corruption as an abuse of entrusted power by politicians or civil servants for personal gain. Through these definition, Boris Begovic (2005, p.2) as a professor of economics at the university of Belgrade's school of law, also as a Vice President of center for liberal-democratic studies/international private enterprise-economic, states that "this definition considers the cause of corruption in public authority and its abuse, and links corruption to the state, its activities, state intervention on the market and the existence of the public sector. In other words, the use of this definition excludes the possibility of corruption in the private sector, and it focuses exclusively on corruption in the public sector. This definition is consistent with the beliefs of Nobel Prize laureate Gary Becker that "if we abolish the state, we abolish corruption.

The problem with the alternative definition is that not all abuses of public office are corruption. Some of them are straight forward theft, fraud, embezzlement, or similar activities, but definitely not corruption. If a senior governmental official simply illegally appropriates a sum of money from the budget without providing any service or favor to anyone, that is not corruption, it is a crime, but of another kind. It is socially unacceptable, but it is still not corruption, i.e. corruption is not the only thing that is socially unacceptable and illegal, or corruption as a violation of social and local economy rights as an extraordinary crime, the eradication measures can no longer be done "as usual" but "demanded by extraordinary enforcement (Andi Mulyono, 2017, p.435).

Extortion is something that provides intentional non-compliance with the arm's-length principle, but since there is no advantage for the victim of extortion (a judge or a prosecutor, for example) a violation of this kind is not corruption. It is important to distinguish between corruption and other illegal activities because factors of corruption and policies to fight corruption usually are or can be quite distinctive from factors and policies against other types of illegal activities.-higher quality governments adopt better transparency laws (Benjamin A. Olken & Pande 2011, p.31)

III. THE AUTHORITY OF INVESTIGATION IN CRIMINAL OFFENSE OF CORRUPTION

According to Article 15 paragraph (e) of the Law number 30 of 2002 concerning for Commission for the Eradication of Criminal Offense of Corruption, states that in the course of performing its tasks and authority, the Corruption Eradication Commission holds on to principles of legal certainly, transparency, accountability, public interest, and proportionality-These all principles that have been affirmed in Article 5. Through the difference of language, it can found also in Part II, Article 8 paragraph (4) of the Law number 16 of 2004 concerning the Republic of Indonesia Attorney, states that in implementing its duties and authority, the Attorney must always acts under the law by observing religious norms, modesty, decency, and must dig up and uphold the values of humanity living in society, and always maintain the honor and dignity of his profession.

Both this regulations should based on the Convention against Corruption, that in order to fight corruption, the Corruption Eradication Commission and the Attorney shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system. In accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies. Furthermore, the investigator of Indonesian National Police are given authorities as coordinator and investigation supervisory, as defined in Article 7 paragraph (2) of Law Number 8 of 1981 on Procedure of Criminal. The third of investigators - the police, judiciary and the Corruption Eradication Commission are given the authority to investigate criminal such as gratification, each is given authority as coordinators, supervisors and controllers. Thus, the system of coordination between institutions that built does not have a strong legal foundation, and can give rise to multiple interpretations which resulted disharmonious and not synergetic in the coordination of inter-institutions.

4.1 The Authority of Investigation in Criminal Offense of Corruption

To police investigators, prosecutors and the Corruption Eradication Commission, there are also some institution of civil servant investigators are authorized to handle the interrogation of criminal related to the field of duty or legislation on which the respective law. There are some investigative institutions which according to existing legislation is given the authority to conduct investigations.

In practice, it is possible to avoid overlapping of authority, especially in complex cases associated with some legislation. In the absence of a particular institution that integrates the distribution of authority in the investigation process, the mechanism of coordination and supervision in the investigation process was very difficult in practice. Each investigator often operate on their own and thus potentially creating conflicts among investigators itself due to the overlap of authority.

4.1.1 Police Investigator

Pursuant to Article 14 sub paragraph g of Law number 2 of 2002 on the Indonesian National Police, state that the Indonesian National Police assigned to conduct investigations and inquiries to all parties in accordance with the criminal law procedure and other legislation.

The process of corruption handling by police investigators using procedure as a case of common criminal, which is based on the Criminal Procedure Code (Said Karim, et al, 2008, p. 208-213). Any investigation conducted by the Police always followed up with a Notice of Commencement of Investigation to the public prosecutor, and then public prosecutor conduct pre- prosecution, to examine the completeness of case files, both formal and its material and to give instructions.

Under the terms of Law number 8 of 1981 on Criminal Law Procedure which is some formal provisions applicable in general, the Indonesian National Police is the institution that given the responsibility of management in the investigation of crime. Therefore, for synergy and harmonization of criminal investigation system, then all institutions of the investigator should be in a system of coordination and under the supervision of the Indonesian National Police Investigator.

4.1.2 Attorney Investigator

The provisions of Article 1 paragraph (1) of Law number 16 of 2004 regarding the Attorney of the Republic of Indonesia determined that prosecutors were functional which is authorized by this law to act as a public prosecutor and the executor of court decisions that have acquired the force of law and other authority under Law. The Attorney of the Republic of Indonesia as a state institution of government that implements state power in the prosecution must be free from the influence of government power and other.

Attorney as a public prosecutor in a criminal case must know clearly all work to be done investigator from the beginning until last things to be done by law. Attorney will account for all of treatment of the accused began to suspect investigated, then examined his/her case, then arrested, and finally whether the prosecution conducted by the attorney is valid and correct or not according to the law, so it's really a sense of justice are met (Evi Hartati, 2007, p. 32). While, Faisal Salam (2001, p. 138) states that the authority of attorney as investigation controller defined in the provision of Article 35 paragraph (a) of Law number 16 of 2004 on the attorney is unclear because few considerations: The Attorney General has the duty and authority to set and control the policy of law enforcement and justice within the scope of duties and authority of the attorney.

The enactment of Law number 8 of 1981 on Criminal Law Procedure abdicates the authority of investigation of attorney agencies and fully handed over to the Police. With the enactment of the Criminal Code, the authority of investigation is only charged to the Police as a single investigator. However, with the provisions of Article 284 paragraph (2) still allow other investigator beside police that is attorney to conduct an investigation for certain crime perpetrators, including corruption.

4.1.3 The Corruption Eradication Commission Investigator

The Corruption Eradication Commission 17 is the state institute in conduct its duties and authorities are independent and must be free from any influence, it is similar to other institutions have the authority to carry out duties and its objectives. In outline, the authority of the Corruption Eradication Commission in Law number 30 of 2002 on the Corruption Eradication Commission can concluded with the details; the authority as duties of the Corruption Eradication Commission, the rights to exercise authority, the authority relating to technical implementation of duties and others. The duties and authority of the Corruption Eradication Commission as gratification investigator in Article 6 paragraph (1) sub paragraph of Law number 30 of 2002 on the Corruption Eradication Commission as follows: conduct an inquiry, investigation, and prosecution of corruption. The authority of investigation by the Corruption Eradication Commission is special investigative procedures were given authority to the Corruption Eradication Commission. However, the special authority override the general procedure set forth in the provisions of the criminal law procedure, that is in Law number 8 of 1981 on Criminal Law Procedure. It is as defined in Article 38 paragraph (2) of Law number 30 of 2002 on the Corruption Eradication Commission, that:

1. All authorities related to inquiry, investigation, and prosecution as stipulated in Law number 8 of 1981 on Criminal Law Procedure applied also to investigators, and public prosecutors at the Corruption Eradication Commission; and

2. The provisions referred to in Article 7 paragraph (2) of Law number 8 of 1981 on Criminal Law Procedure doesn't apply to the corruption investigator as defined in this Law.

Related to the existence of investigation by the Corruption Eradication Commission, it interesting to observe considerations of the judge in the decision on the case number 36/Pid.Prap/ 2015/PN.Jak/Sel.

Based on consideration of the judge mentioned above, it can be understood that the judge in interpreting the provisions of the law do not just use grammatical interpretation alone in interpreted the word of case of law as the everyday sense, but also judges using teleological interpretation as interpretation of the purpose of law by law maker. In this case, the judge to try to understand the will or intent contained in the formulation of article purpose by the maker. In addition, the judge also uses a systematic interpretation by looking the provisions of Corruption Act as one element in the criminal law system; therefore, the Act must not conflict with other both horizontally and vertically. The consideration of judge about the existence of Corruption Eradication Commission investigators are sourced from police officers who had been dismissed as police investigators, reinforce the belief that the legality of the Corruption Eradication Commission investigators can affect the legality of legal products in the form of administrative and investigation actions and investigations conducted by the Corruption Eradication Commission investigators.

Correspondingly, when observe the implementation of duties for the third of law enforcement agencies above, the handling of corruption associated with the gratification, can be ascertained that the Corruption Eradication Commission is a body of investigation, investigator and prosecutor are very prominent and optimized to eradicate gratification in law enforcement for corruption cases. The granting of authority to the police officers, prosecutors, and the Corruption Eradication Commission to investigate corruption cases did not cause corruption diminish but that seems on the surface is the pull of authority between the institutions that impact on the delay of the law enforcement process. For example, in some district court of Indonesia ever happened a corruptor acquitted because the judge considers that the competent institution to investigate is prosecutor not police consequently corruptors were released.

IV. RESPONSIBILITY WITHIN MAIN BODIES OF THE CORRUPTION ERADICATION COMMISSION

(Broad Power)

The Corruption Eradication Commission was created following the era of President Suharto, who ran Indonesia as a *clepto-crazy* from 1967 until his resignation in 1998. While laws enabling police and prosecutors to pursue corruption cases were passed in 1999, the Corruption Eradication Commission was designed to be a robust investigatory panel. The Corruption Eradication Commission is independent from the executive, legislative, judiciary and any other powers. Financially, this broad is audited by the Indonesian Supreme Audit Board and should be responsible to the public.

In the Chapter IV of the Law Number 30 of 2002, the organization of structure of the Corruption Eradication Commission is composed of:

1. Five-commissioners to act as the leaders of the Corruption Eradication Commission;
 - a. The Leaders of the Corruption Eradication Commission are to be structured in this manner:
 - the Chairman of the Corruption Eradication Commission, who is also a member of the Commissioners;
 - four Vice chairman, each a member of the Commissioners,
 - b. The leaders of the Corruption Eradication Commission are public indictors and prosecutors; and
 - c. The leaders of the Corruption Eradication Commission are the highest holders of responsibility at the Corruption Eradication Commission's actions.
2. A team of Advisors composed of five-members.
 - The leaders of the Corruption Eradication Commission perform their task collectively
3. Corruption Eradication Commission's Staff to conduct task.

While the existing structure is still running, while it is walking, there will be some changes to the organizational units in accordance with the results of evaluation of processes and performance results as well as the difficulties experienced in the implementation of tasks and coordination in the field.

The Corruption Eradication Commission Leaders shall command four Deputies, namely: The Deputy of Prevention, The Deputy of Legal Actions and Service, The Deputy of Information and Data, The Deputy of Internal Monitoring and Public Complains.

The Deputy of Prevention shall command these Directorates:

- The Directorate of Inventorizations and Checks on Reports on the Wealth of Government Executives;
- The Directorate of Gratification;
- The Directorate of Public Education and Service;
- The Directorate of Research and Development.

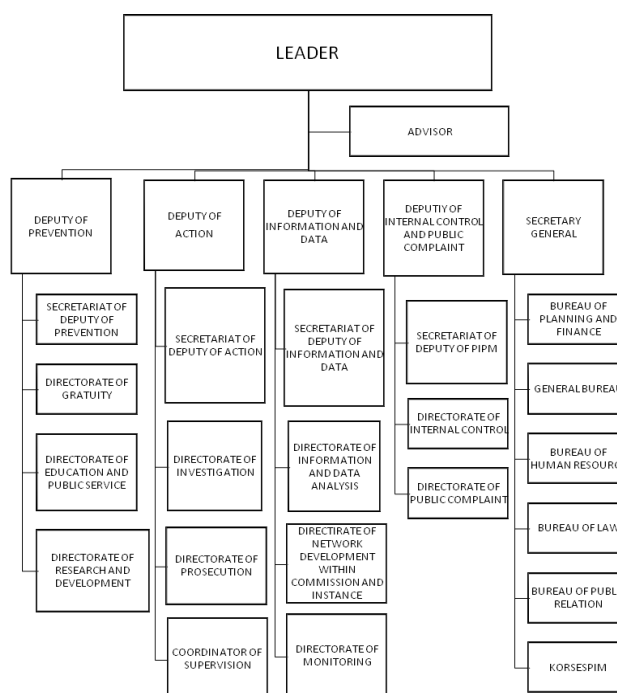
The Deputy of Legal Actions shall command these Directorates:

- The Directorate of Investigations;

- The Directorate of Indictments; and
 - The Directorate of Prosecutions.
- The Deputy of Information and Data shall command these Directorates:
- The Directorate of Information and Data Processing;
 - The Directorate of Fostering Networks between Commissions and Institutions; and
 - The Directorate of Monitoring.
- The Deputy of Internal Monitoring and Public Complaints shall command these Directorates:
- The Directorate of Internal Monitoring;
 - The Directorate of Public Complaints

The Corruption Eradication Commission's organizational structure (main bodies) more before an evaluation can be viewed on the figure below.

Figure: Main Bodies of the Indonesian Corruption Eradication Commission



In doing the tasks, the Corruption Eradication Commission has the authority to supervise and coordinate with the Attorney General Office as well as the National Police in handling corruption cases. As mentioned earlier, the corruption eradication commission has the authority to investigate. This authority is broad because this commission can investigate any public official for corruption, including members of parliament, judges and even the military. Although commission can investigate members of the military, it cannot prosecute members of the military. This commission has to date already succeeded in convicting several members of Parliament and officials in the Judiciary, as will be elaborated in the next session, also essentially has all the investigative powers of a law enforcement agency. It can conduct wiretaps on suspects, examine their bank account and tax records, as well as freeze their assets, issue hold orders and make arrests.

To the capacity building, the Corruption Eradication Commission has also learned much from international cooperation and correspondence with many fellow anti-corruption agencies in the South East Asian, East Asian and South Pacific regions, such as the Malaysian Anti Corruption Commission; the Thai National Counter Corruption Commission; the Philippine Ombudsman; the Hong Kong Independent Commission Against Corruption; the New South Wales Independent Commission Against Corruption; and the Singapore Corrupt Practices Investigation Bureau. Cooperation ranges from law enforcement activities in anti-corruption, training activities, as well as dialogues in corruption prevention.

The Corruption Eradication Commission also continues to improve the transparency of how public officials conduct their affairs by increasing the compliance of Wealth Reporting, as well as the effectiveness with which such reports are examined and confirmed. Other than this, the Corruption Eradication Commission's continuing dedication to monitor gratuity (the giving of gifts to public officials which sets a precedent to corruptive behavior down the road, or given in the interest of maintaining corruptive relations) further supports the Corruption Eradication Commission's push for transparency in the interest of prevention.

VI. THE GOVERNMENT INSTITUTIONS AND STATE AGENCY AUTHORITY IN

Prosecution of Criminal Offense of Corruption

6.1 The Republic of Indonesia Attorney's Authority (Government Institution-Article 2)

Related to the above description, Jeffrey provides that people are already on the streets supporting the Corruption Eradication Commission, because they know it is a bastion against corruption in a country where corruption hurts ordinary people, but how the Republic of Indonesia Attorney's authority?. It seen that these authority is an urgent issue. For these issue President the Republic of Indonesia states "we should work together on eradicating corruption in the [natural resources] sector –it could lead to eradicating corruption for good"

The authority of criminal acts prosecution in criminal justice system of Indonesia is done by the judiciary of Indonesian Republic which is stated in Article 30 of the Law number 16 of 2004 on the Republic of Indonesia Attorney, considering that:

a. The prosecutor is a functional official authorized by law to act as a public prosecutor and the execution of a court decision that has obtained permanent legal force and other authority under the law.....,The public of Prosecutor is a Attorney who is authorized by this Act to prosecute and enforce judges; ...,and Prosecution is the act of the public prosecutor to delegate the case to the competent district court in respect of and in the manner prescribed in the Criminal Procedure Code by request to be examined and decided by the judge in the court; (see, Article 1 Paragraphs 1 to 3)

b. The Attorney General of the Republic of Indonesia hereinafter referred to in this Law as the government institution that exercises state power in the field of prosecution and other authorities under the law (Article 2 Paragraph 1); and

c. Implementation of the state power referred to in Article 2, shall be conducted by the Attorney General's Office, the High Prosecutor's Office, and the Public Prosecutor's Office (Article 3)

The Corruption Eradication Commission acknowledged through the Article 51 paragraphs (2) and (3) of the law of the Republic of Indonesia number 30 of 2002, concerning for Commission for the Eradication of Criminal Offense of Corruption, states that a general prosecutor tasked with the function of prosecuting criminal offense of corruption, include for all intents and purposes a general prosecutor. Its mean that the Corruption Eradication Commission has been acknowledged the Attorney's authorities as affirmed in Article 1 paragraphs (2) and (3) of the Law of the Republic of Indonesia number 16 of 2004 concerning the Republic of Indonesia Attorney. But in another side, in paragraph (1) of Article 51, the Commission states that a general prosecutor is appointed and dismissed or terminated by the Corruption Eradication Commission. This authority is very contrary to Article 8 sub paragraphs (1) and (2) of the Law 16 of 2004, that the prosecutor is appointed and dismissed by the Attorney General, and in carrying out its duties, the prosecutor acts for and on behalf the state and is responsible according to the hierarchical system.

According to Larry J. Siegel and Joseph J. Senna (2007, p.28) looking at the criminal justice system as follows: "Criminal justice may be viewed or defined as the system of law enforcement, adjudication, and correction that is directly involved in the apprehension, prosecution, and control of those charged with criminal offenses"

Under the provisions of Article 35 of the Law Number 16 of 2004 on the attorney states that the Attorney General has the duty and authority to: a) establish and control of law enforcement and justice policies within the scope of duties and authority of the prosecutor; b) streamline the process of law enforcement provided by law. It's clearly that the Corruption Eradication Commission have no the authority upon the real authority within the Attorney's authority in prosecution of criminal offense of corruption.

6.2 The Corruption Eradication Commission's Authority (State Agency-Article 3)

Historically, in 1950s, six institutions have been established to combat corruption. These institutions just keep silent (no-action), it because they only focused on law enforcement. While the Corruption Eradication Commission's much more take actions to fight against corruption cases (for the government officials who took legally the asset of the state). The agency not only probes and prosecutes corruption cases, but also has the power to conduct warrantless wiretaps, freeze financial transactions, impose travel bans, and detain suspects, which it has frequently done.The Corruption Eradication Commission is the commission for the eradication of the crime of corruption as intended in Law Number 30 of 2002 on the Commission for the Eradication of Criminal Offense of Corruption. And a Government Official is a government official as intended in Article 2 of Law Number 28 of 1999 Regarding Government Officials Who are Innocent and Free of Corruption, Collusion, and Nepotism; Law Number 30 of 2002 Regarding the Commission for Elimination of the Crime of Corruption; Law Number 12 of Regarding the General Election of 2003; Law Number 32 of 2004 Regarding Regional Government; and other relevant laws and regulations. (Article 1, Paragraphs (1) and (2) of the Decision Number KEP/07/IKPK/02/2005 on the Directive of the Corruption Eradication Commission of the Republic of Indonesia)

Article 6 of the Law number 30 of 2002, provides that the Corruption Eradication Commission is tasked with:

a. Coordinating with authorized institutions to eradicate corruption;

- b. Supervising authorized institutions in their activities of eradicating corruption;
- c. Conducting investigations, indictments, and prosecutions against criminal acts of corruption;
- d. Preventing criminal acts of corruption; and
- e. Monitoring the governing of the State.

In addition, the Article 7 explaining that in performing its task of coordination as outlined in Article 6 paragraph a, the Corruption Eradication Commission is authorized to:

- a. Coordinate investigations, indictments, and prosecutions against criminal acts of corruption;
- b. Implement a reporting system for the purposes of eradicating corruption;
- c. Request information on acts with the purpose of eradicating corruption from relevant institutions;
- d. Arrange opinion hearings and meetings with institutions authorized to eradicate corruption; and
- e. Request for reports from relevant institutions pertaining to the prevention of criminal acts of corruption.

In performing its task of supervision as outlined in Article 6 paragraph b, the Corruption Eradication Commission is authorized to conduct surveillance, research, and studies on institutions whose tasks and authority are relevant in the fight against corruption, as well as on institutions that perform public service. The process of handing over proceedings to the Corruption Eradication Commission as outlined in the previous sub-article (3) of the Article 8, should be carried out by formulating and signing a hand-over statement so as to ensure that all the tasks and authority of the Police or the Prosecutor's Office will fall to Corruption Eradication Commission during the hand-over event.

The process of taking over an indictment or a prosecution process will be carried out by the Corruption Eradication Commission should the following conditions prevail: a report by a member of the general public about an act of corruption has been ignored; the processing of the corruption case goes on for too long or is delayed without a valid reason; the handling of the corruption case had been manipulated so as to protect the corruptor; the handling of the corruption case is itself mired by corrupt acts; the corruption case has been hampered by executive, legislative, or judicial interference; or any other circumstances where the Police or the Prosecutor's Office is unable to carry out the case responsibly and adequately.

As affirmed in Articles 3 and 4 that the Corruption Eradication Commission as the State agency that will perform its duties and authority independently, free from any and all influence, and also this agency is formed with the primary purpose of improving the effectiveness and efficiency of efforts to eradicate criminal acts of corruption. In the implementing this articles, it can found in the explained of the Article 8 paragraphs (1) and (2) that the Corruption Eradication Commission is authorized to take over an indictment or a prosecution process against a corruptor that is at that time being performed by the Police or the Prosecutor's Office, and should takes over an indictment or a prosecution process, the Police or the Prosecutor's Office is obliged to hand over the suspect along with all the case files and other documents and evidence within 14 working days, since the date the request from the Corruption Eradication Commission was received.

Specifically, the Corruption Eradication Commission is obligated to:

- a. Provide protection to witnesses or whistle-blowers providing reports and information regarding corrupt acts;
- b. Provide information to members of the general public who needs assistance in procuring, or have provided help for the KPK in obtaining data relating to the results of KPK's prosecutions;
- c. Construct a yearly report and convey it to the President, the Parliament, and the State Auditor;
- d. Uphold the oath of office; and
- e. Perform its tasks, authority, and responsibilities according to the principles outlined in Article 5.

The Corruption Eradication Commission's authority, it can found also in Article 11 as outline in Article 6 paragraph c, such as, authorized to conduct pre-investigation, investigations, and prosecutions against corruption cases, which reads:

- a. Involve the law enforcement officers, state officials, and others parties who are in connection with criminal acts of corruption committed by law enforcement officers or state officials or government executives;
- b. Attracts the attention which disturbs of the community; and / or
- c. Inflict the financial loss of the state at least 1,000,000,000.00 IDR (one billion rupiahs)

Another restriction for the KPK is during running the duty and authority, the KPK was not authorized to create a warrant termination of the investigation and prosecution of corruption crimes (Theodora Yuni Shahputri, 2010)

VII. THE CORRUPTION IN INTERNATIONAL LAW PERSPECTIVE

7.1. Implementation United Nations Convention against Corruption

The United Nations Convention against Corruption (UNCAC,-adopted by UN.GA-Res.58/4/UN.Doc.A/58/422) is the first truly global anti-corruption treaty, outlining a "common language" (R. Hofmann, 2006) for the anti-corruption movement. It was adopted by the UN General Assembly on 31 October 2003 and was opened for signature in Merida, Mexico on 9-11 December 2003. The UNCAC entered into force two years later, on 14 December 2005. The high number of signatories and ratifications reflects the broad international consensus on the Convention. This consensus was not only shared among States, but also among the

international private sector and civil society. The adoption of the United Nations Convention against Corruption will send a clear message that the international community is determined to prevent and control corruption. It will warn the corrupt that betrayal of the public trust will no longer be tolerated. It means that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential. Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, such as, civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective as affirmed in paragraph 4 of Article 5 of the Convention against Corruption, it can be found also in the preamble of this convention. Chapter II on preventive measures is predominantly phrased in non-mandatory terms and leaves substantial scope to State Parties to choose concrete implementation measures. Nevertheless, the Convention requires State Parties to adopt measures (without imposing a detailed one-size-fits-all implementation) in a wide range of areas: State Parties must set up anti-corruption bodies, establish appropriate procurement systems, strengthen the integrity of the judiciary, take measures to prevent private sector corruption, promote the active participation of civil society and institute a comprehensive regulatory regime for banks and other financial institutions to prevent money-laundering (see, Articles 6 to 14). These specific provisions are preceded by the *chapeau* paragraph of Article 5, which requires States to adopt comprehensive and coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. The basic thrust of this general provision is the requirement of good governance. The Article 5 of the Convention against Corruption aims at the practical implementation of the preventive measures corruption eradication, which reads:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavor to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

7.1.1. Corruption and Good Governance

As one author (A. Gillespie, 2004, p.103), states, “*Good Governance has become the catch-cry of the international community*”. It is not necessary to provide a full-fledged definition of good governance for the purposes of this contribution (J. Wouters & C. Ryngaert, 2004, p.69-104). It is clear, however, that corruption undermines specific values that are encompassed by the concept of good governance, such as transparency, accountability and the rule of law (N. Meiseil & J. Ould Aoudia, 2008, p.1159-1151). International anti-corruption instruments frequently refer to those good governance values (B. Pereira, 2008, P.53-77).

Good governance approaches to corruption are not limited to legal initiatives in the form of multilateral anti-corruption instruments or broader legislative efforts. There are less formalistic and more flexible options available. In the context of aid, for example, donors can exert additional caution when recipients of aid money intend to buy high-tech products for which there are only a handful of producers, as this more easily allows for corruption. In post-conflict settings where adequate state institutions are not yet installed, donors could prevent the immediate inflow of substantial aid. For another example, Ch. Cheng & D. Zaum (2012, p.1-25) states that in such environments, donor countries also often focus on democratization and the rapid organization of elections. However, those who profit most during the conflict presumably have the means to buy votes. Often donors have to rely on the few local partners that remained active during the conflict. The limited choice of local partners to implement immediate aid programmes further diminishes the possibility to sanction corrupt partners. They add also that there is no evidence that countries that actively implement anti-corruption measures actually receive more aid from international donors. The fight against corruption should therefore not exclusively be focused on transnational or even domestic legal instruments. A better yardstick to measure countries' commitment to fight corruption on the ground is how countries use the tools already at their disposal (such as procurement and aid instruments) to implement their anti-corruption rhetoric.

7.1.2. Corruption and Human Rights

As far as the link between human rights and corruption is concerned, the International Council on Human Rights Policy distinguishes between direct human rights violations through corruption, indirect violations, and remote violations.³⁴³ A straightforward example of the first category is a party to a court dispute bribing a judge with a view to obtaining a favorable judgment, thereby putting the opposing party at a disadvantage. The latter party could reasonably argue that the act of bribing violated his right to a fair trial, as enshrined in Article 14 ICCPR. For example is the existence of a *de facto* requirement to pay user fees for services which are supposed to be freely available, such as education-which in the latter instance violates the right to education, and etc. In sum that the corruption affecting human rights. The International Covenant on Civil and Political Rights requires a state party to respect and to ensure to all individuals within its territory and subject to its jurisdiction their international human rights. It also affirmed in Article 2 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights 1966 states that each State party to the present Covenant undertakes to take steps, individually and through international assistance and co - operation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures (Dahniar, 2017, p.65)

In the same line, Martine Boersma & Hans Nelen (2010, p.51-90) states that a remote human rights violation through corruption may consist of the rigging of an election which results in police repression of demonstrations, resulting in the violation of protesters' rights to life and physical integrity. Hovering between indirect and remote violations is the adverse impact of embezzlement on the public funds available for realizing, and in particular "fulfilling", (economic and social) human rights.

Recently, the eradication of corruption is no longer just a national issue for a country only, but has become an international problem involving many countries. Corruption has become a transnational crime whose eradication requires cooperation from various countries. The condition was confirmed in the United Convention against Corruption, which states: "Convinced also that the globalization of the world's economic has led to a situation where corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential."

More generally, it is arguable that any act of corruption violates the principle of non-discrimination / right to equality, as enshrined in Article 26 ICCPR, in that the very essence of an act of corruption is that it unjustifiably favors the corrupting person over other similarly situated persons. At the same time, it should be noted that the fight against corruption may come with its own human rights problems, as it may put the presumption of innocence into jeopardy. This may occur when the law requires that the individual provide a satisfactory explanation of his high standard of living-thus effectively shifting the burden of proving an offense at least in part from the law-enforcement agencies to the individual.

VIII. CONCLUSION

Based on the foregoing, it is concluded that the Corruption Eradication Commission acknowledged through the Article 51 paragraphs (2) and (3) of the law of the Republic of Indonesia number 30 of 2002, concerning for Commission for the Eradication of Criminal Offense of Corruption, states that a general prosecutor tasked with the function of prosecuting criminal offense of corruption, include for all intents and purposes a general prosecutor. Its mean that the Corruption Eradication Commission has been acknowledged the Attorney's authorities as affirmed in Article 1 paragraphs (2) and (3) of the Law of the Republic of Indonesia number 16 of 2004 concerning the Republic of Indonesia Attorney. But in another side, in paragraph (1) of Article 51, the Commission states that a general prosecutor is appointed and dismissed or terminated by the Corruption Eradication Commission. This authority is very contrary to Article 8 sub paragraphs (1) and (2) of the Law 16 of 2004, that the prosecutor is appointed and dismissed by the Attorney General, and in carrying out its duties, the prosecutor acts for and on behalf the state and is responsible according to the hierarchical system. It's means that the position of the Prosecutor has a central role (as a sector through the monism of theory). It is not independent of the prosecutor authority in terms of determines whether a case can be filed to the trial or not. The authority to determine whether a case can be continued or not based on valid evidence is *Dominus Litis* owned by Indonesian prosecutor.

The legal system concerned contains two types of ultimate laws: laws of one type directing the Police, the Attorney (Prosecutor), and the Courts which laws to apply within their authorities, those of the other type guiding their discretion in deciding unregulated disputes. Laws of the first type are laws of recognition, laws of the second type are ultimate laws of discretion, and both impose duties on the courts. But laws of recognition oblige them to apply certain laws, leaving them no choice which laws to apply.

Laws of recognition are thus deprived of part of their uniqueness. They are still the only ultimate laws that necessarily exist in every legal system, but they are not the only ultimate laws that can exist in a system. Moreover, the distinction between applying an existing law and applying a new one is seen to be more a

difference of degree than of kind. This fact, together with the fact that in practice it is often difficult to decide whether in a particular case (such as prosecution of criminal offense of corruption) a new law was created or an old one applied, doesn't mean that the distinction can't be drawn or that it is unimportant. Every legal system rests on its ultimate laws, which commonly means on a set of ultimate laws of recognition and discretion.

REFERENCES

Journal Papers

- [1] A.Gillespie, Good Governance, Corruption and Vote-Buying in International Forums, *INY.B. Inte'l L*, 103, 2004.
- [2] Andi Mulyono, The Investigation of Gratification Crime an Analysis of Criminal Law Enforcement in Indonesia, *International Journal of Advanced Research*, ISSN 2320-5407, *Intl J Ady Res* 5 (2) 433-440, 2017
- [3] Boris Begovic, *Corruption: Concepts, Types, Causes, and Consequences*, published by the Center for International Private Enterprise, Washington DC, 2005
- [4] Dahniar, Gross Violation of Human Rights in Aceh: Patterns of Violence through the Indonesian Government's Policy, *International Organization of Scientific Research-Journal of Humanities and Social Science (IOSR-JHSS)*, Vol.22, Issue 5, Ver. I (May-2017), pp.19-40, e-ISSN: 2279-0837,p-ISSN: 2279-0845, PP. 19-40, DOI: 10.9790/0837-2205011940.
- [5] Johnson and Sharma, (referring to) G.E. Caiden and N. Caiden's article *Administrative Corruption in Public Administration Review*, 1997
- [6] Joseph Raz, *The Identity of Legal Systems*, *California Law Review*, Vol.59, Issue 3,*Cal.L.Rev.*795, DOI: 10.15779/Z382X88, May 1971
- [7] Faisal A. Rani, *Fungsi dan Kedudukan Makamah Agung sebagai Penyelenggara Kekuasaan Kehakiman yang sesuai dengan Paham Negara Hukum*, Syiah Kuala University Press, Banda Aceh, 2009
- [8] Larry J Siegel and Joseph J. Senna, *Essential of Criminal Justice*, USA. Thomson Learning, 2007
- [9] Muhammad Asrun, *The Crisis of Judicial Independent in Indonesia under Soeharto Era*, *Scientific Research Journal (SCIRJ)*, Vol. III, Issue VIII, August 2015 6 ISSN 2201-2796
- [10] Olken, B, *Corruption Perceptions vs Corruption Reality*, *Journal of Public Economics* 93, (7-8):950-964, 2009
- [11] Pande,R and Olken B, *Governance Review Paper: JPAL Governance Initiative*, Abdul Latif Jameel Proverty Action Lab, 2011
- [12] Peci, I and Siema, *Corruption and Legal Certainty: the Case of Albania and the Netherlands-Implementation of the Criminal Law Convention on Corruption ia a Transitional and Consolidated Democracy*, 6 *Utrecht Law Review* 1, 2010-144
- [13] Said Karim Mispanyah, Harustiati, A., and Moein Irwansyah, *Justice in Grating Remission for Corruption Prisoners (A Review of Indonesian Criminal Justice System)*, *International Journal of Scientific & Technology Research*, 4 (11): 208-213
- [14] Ch. Cheng and D. Zaum, *Corruption and post-conflict peace building*, in Ch. Cheng and D. Zaum (eds.), *Corruption and post-conflict peace building – Selling the peace?*, Routledge, 2012

Books

- [15] Andi Hamzah (1983), *Pengantar Hukum Acara Pidana*, Jakarta: Ghalia Indonesia.
- [16] B. Pereira, (2008), *Ethique, Gouvernance et Corruption*, 7 *Revue Francaise de Gestion*.
- [17] Bandar Nawawi Arief (2011), *Kapita Selektta Hukum Pidana tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System)*, Semarang: Diponogoro University Press.
- [18] Baumol, W.J. (2002), *The Free-market Innovation Machine: Analyzing the Growth Miracle of Capitalism*, Princeton and Oxford: Princeton University Press.
- [19] D. Curtin and R.A. Wessel (2004), *Good Governance in the European Union: Lesson from National and International Law*, (eds) Schoten Intersentia.
- [20] Ermansjah Djaja, *Memberantas Korupsi Bersama Komisi Pemberantas Korupsi*, *Kajian Yuridis Normatif Undang-Undang No. 31 Tahun 1999 Junto Undang-Undang Nomor 20 Tahun 2001versi Undang-Undang Nomor 30 Tahun 2002*, Sinar Grafika, Jakarta
- [21] Evi Hartati (2007), *Tindak Pidana Korupsi: eds. 2*, Jakarta: Sinar Grafika.
- [22] Faisal Salam (2001), *Hukum Acara Pidana Dalam Teori dan Praktik*, Bandung: Mandar Maju.
- [23] Hans Kelsen (1945), *General Theory of Law and State*.
- [24] Hart, H.L.A (1961), *The Concept of Law*, in *ETHICS and SOCIAL JUSTICE* (1970)
- [25] Indriyanto Seno Adji (2001), *Arah Sistem Peradilan Pidana*, Jakarta: Prof. Oemar Seno Adji, S.H & Co. Law)

- [26] J. Wouters and C. Ryngaert (2004), *Good Governance: Lesson from International Organization*, Schoten, Intersentia.
- [27] Lev, Daniel S, (1972), *Judicial Institutions and Legal Cultural in Indonesia*, Claire Holt, ed, *Culture Politics in Indonesia*, Ithaca, Cornell University Press.
- [28] Sri Soemantri M (1993), *Lembaga-Lembaga Negara Menurut UUD 1945*, Citra Aditya Bakti, Bandung.
- [29] Martine Boersma and Hans Nelen (2010), *Corruption and Human Rights: Interdisciplinary Perspectives*, Antwerp, Intersentia.
- [30], (2010), *Corruption as a Violation of Economic, Social and Cultural Rights: Reflection on the Right to Education*. (eds) Antwerp Intersentia.
- [31] M. Yahya Harahap (2005), *Pembahasan-pembahasan dan Penerapan KUHAP Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta.
- [32] Vinto Tanzi (1995), *Corruption: Arm's-length Relationship and Markets*, u: Fiorentini, G.i Pelzman, S.M (ur): *The Economics of Organized Crime*, Cambridge University Press
- [33] R. Hofmann (ed), *Die Konvention der Nationen zur Bekämpfung, der Korruption: Betrachtungen aus Wissenschaft und Praxis*, Nomos, Baden-Baden, 2006

Papers

- [34] Benjamin A. Olken MIT and Rohini Pande, *Corruption in Developing Countries*, Harvard University, August 2011
- [35] Dahniar, *The Responsibility of State on the Gross Violation of Human Rights through the Settlement of Non International Armed Conflict in Aceh in the Perspective of International Law*. Research-result of Dissertation. Decision of the Rector Number 1934/2015, 25 November 2015, Syiah Kuala University, Darussalam, Banda Aceh, Indonesia, 2017
- [36] Jeffrey Young, *Indonesia's Anti-Corruption Commission Draw Fire*, <http://www.voanews.com/a/indonesia-anti-corruption-commission-draw-fire/2708609.html>, available on April'06,2015
- [37] Gandasoebrata, Purwoto, *Position and function Kekuas aan-Justice According to the 1945 Constitution*, Papers in the Workshop on Position and Function of Justice According to the 1945, Jakarta, March 18, 1996.
- [38] Lubis, T. Mulya. *The freedom and independence of the Justice System: Talk can unrequited*, Paper presented at the Workshop for Independent Format Justice, Clean and Professionals in Indonesia, Jakarta 11-12 January 1999.
- [39] Luhut Pangaribuan and Paul S. Bolts, ed., *Loekman Wiriadinata, Ke-independenan Judicial Power*, Jakarta: Legal Aid Foundation of Indonesia, 1989.
- [40] N. Meiseil and J. Ould Aoudia, "L'insaisissable Relationentre" *Bonne Gouvernance et Développement*, 59 *Revue Economique* 6 2008
- [41] Sidik Sunaryo, *Sistem Peradilan Pidana*, Kegiatan Selektu UMM. Malang, 2004
- [42] Satria Ferry, *The Prosecution Authority of Corruption Eradication Commission*. Research-result of Dissertation, Decision of the Rector Number 1934/2015, 25 November 2015, Syiah Kuala University, Darussalam, Banda Aceh, 2017
- [43] Theodora Yuni Shahputri, *Sinergy KPK, Kepolisian dan Kejaksaaan dalam Pemberantasan Tindak Pidana Korupsi*, MAPPI FH UI, www.pemantauanperadilan.com. Diakses Oktober 2010
- [44] Ganizani Gwai, *Definitions of Corruption*, TakingITGlobal-Paper online publication, Zambia, <http://www.tigweb.org/youth-media/panorama/article.html?ContentID=380>, available on May, 25, 2002.

Others

- [45] *The President of Republic of Indonesia's Statement (Joko Widodo)*, in Jeffrey Young, *Indonesia's Anti-Corruption Commission Draw Fire*, <http://www.voanews.com/a/indonesia-anti-corruption-commission-draw-fire/2708609.html>, available on April'06,2015

Documents

- [46] *United Nations Convention Against Corruption*, adopted by United Nations General Assembly, Resolution 58/4 of 31 October 2003, UN. Doc. A/58/422
- [47] *International Covenant on Civil and Political Rights*, opened for signature Dec, 16, 1966, S. Exec. Doc. E. 95-2 (1978), 999 U.N.S. 171 (entered into force March 23, 1976, id. At S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967)
- [48] *Optimal Protocol to the International Covenant on Economic, Social and Culture Rights*, adopted 10 December 2008, UN General Assembly Resolution A/RES/63/117

- [49] Law of the Republic of Indonesia Number 16 of 2004 on The Attorney of the Republic of Indonesia (State Gazette of the Republic Indonesia Number 67 of 2004)
- [50] Law of the Republic of Indonesia Number 31 of 1999 as amended through the Law Number 20 of 2001 on the Eradication of Corruption.
- [51] Law of the Republic of Indonesia Number 28 of 1999 on the Government Officials who are Innocent and Free of Corruption, Collusion, and Nepotism (State Gazette of the Republic of Indonesia Number 75 of 1999, Supplement Number 3851)
- [52] Law of the Republic of Indonesia Number 30 of 2002 on the Commission for Elimination of the Crime of Corruption (State Gazette of the Republic of Indonesia Number 137 of 2002, Supplement Number 4250)
- [53] Directive of the Corruption Eradication Commission of the Republic of Indonesia, Decision Number KEP.07/IKPK/02/2005 on the Procedures for the Registration, Publication, and Examination of Asset Reports of Government Officials.

Acknowledgements

First I thanks to Allah SWT and Prophet Muhammad SAW, and I, sincerely thanks also to my father Drs. Zainal Abidin (deceased), my mother Ratna, also my parents of my wife, Anwar Zein (deceased) and Rosmala who always support me through their prayers, I would like to thanks to my honey wife Richi Suchi Veronica A.Md, my wonderful sons Yazid Wajdi, Fiqrul Zaki; and I would like to thanks my supervisors Prof. Dr. Faisal A. Rani, S.H.,M.Hum, Prof. Dr. Edy Purnama, S.H.,M.Hum, and Dr. Muhammad Saleh Sjafie, S.H., M.Si; I would also like to acknowledgement to the Head of the Aceh of the High Attorney Raja Nafrizal, S.H.,M.H, Intelligence Assistant Rustam S.H., Coordinator in the field of intelligence A. Kahar Muzakir, S.H., M.H, and M. Kadafi, S.H., the last but not the lest is my partners of the TP4D in the Attorney office of Aceh, include to all my dear friends of Doctoral Program of Law at the Faculty of Law of Syiah Kuala University-especially for the second generation of Doctoral Program, 2014.

