

Building an Integrity System for Erading Corruption in the Indonesian Criminal Jurisdiction System

By

Joko Sasmito

Sultan Agung Islamic University

Email: Jokosasmito112233@gmail.com

Abstract

The purpose of this study is to analyze and find: first, the system of eradicating corruption in Indonesia's current positive law; second, the Indonesian government's strategy to eradicate corruption in the future; and third, the concept of Integrity System to eradicate corruption in investigations conducted by the Prosecutor's Office, Police and KPK in Indonesia. The research method used is normative juridical law research using a statutory and conceptual approach. The results of the study concluded first, the system of eradicating corruption in Indonesia's positive law currently places the KPK as the leader, causing disharmony among law enforcement; second, the Indonesian government's strategy to eradicate corruption in the future can be carried out through an integrity system within the kpk, police and prosecutors; third, the concept of integrity system of corruption in the investigation by the Prosecutor's Office, Police and KPK is carried out by establishing an Integrity Court, this integrity system should be able to position these three institutions into an independent Anti-Corruption Agency.

Keywords: Integrity System, Corruption Eradication, Indonesian Criminal Justice System.

Introduction

Corruption is a type of crime that tends to increase and is very difficult to detect because it concerns cooperation with other parties and is very entrenched. Although it has been strictly regulated in Law No. 31 of 1999 jo Law No. 20 of 2001 on The Eradication of Corruption Crimes (TPK Law), but Agustina¹ explaining that the eradication of corruption is not an easy matter, corruption has been rooted, spread, infected, and practiced systemically. Moreover, law enforcement efforts have not been optimal in eroding corruption.

Corruption as an extraordinary crime is a form of crime that has systemic aspects (systematic crime), organized (organized crime), locus reach and tempus delik widespread, causing harm and misery in the community, involving many parties from both public and private officials.²

Until now, corruption investigations in Indonesia have been conducted by the Corruption Eradication Commission (KPK), police and prosecutors. The three institutions have the authority to investigate corruption. The difference is the basis of its implementation, namely, the Police and Prosecutors in the investigation based on kuhap, while the KPK in the investigation is not only based on kuhap, but also Law No. 30 of 2002 on the Commission for the Eradication of Corruption Crimes (hereinafter called the KPK Law) jo. Law No. 10 of 2015 concerning the Establishment of Government Regulation In lieu of Law No. 1 of 2015

¹ Gemalia Agustina, "Structural Understanding of Investigative Audit Practices at BPK-RI Representative Offices in Surabaya (Corruption Case Studies)", article in the Journal of Economics and Business, Vol. 8, No. 3, 2010, p. 44

² La Niasa, "Corruption Eradication In The Perspective Of Criminology", article in the International Journal of Scientific & Technology Research, Volume 5, No. 07, 2016, p. 125

concerning Amendments to Law No. 30 of 2002 concerning the Commission for the Eradication of Corruption Into Law (hereinafter referred to as the KPK-Perubahan Law) and the Corruption Crime Act.

In carrying out the same authority that is investigating corruption crimes, the three institutions structurally have no direct relationship and are responsible for their respective performance, the Police is responsible to the Police Chief, the Prosecutor's Office is responsible to the Attorney General and the KPK is responsible to the leadership of the KPK. This shows that unless the results of hand-catching operations (OTT), each institution conducts its own handling and investigation within the scope of its institution. For example, the police will handle its members involved in corruption crimes, as well as the prosecutor's office and kpk will conduct its own examination for its employees affected by corruption cases.

Seeing its such nature, the law of corruption crime event is double, because in addition to referring to the provisions of the event in the TPK Law as *lex specialist*, also oriented to KUHAP as *lex generalist*. In the event of the need for cooperation between the Police, Prosecutors and KPK, it can apply equally to determine the handling of corruption crimes. This is stipulated in Article 3 paragraph (1) of the Memorandum of Understanding between the Corruption Eradication Commission, prosecutors, and police Number: SPS-97/01-55/03/2017, Number: KEP-087/A/JA/03/2017, Number: B/27/III/2017 dated March 29, 2017.

In practice, the provision does not work as it should. An example of overlapping investigations in sim simulator cases, there is a dualism of investigation between kpk and police. The two parties are both investigating the same case but in the implementation of the investigation the police do not want to submit to the KPK Law, thus causing a conflict of investigation authority between the two institutions.

When viewed from the hierarchy of legal structures in Indonesia, the hierarchical structure of the Indonesian legal system is regulated by Article 7 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, the structure of the Indonesian legal system is :

1. Constitution of the Republic of Indonesia year 1945;
2. Accuracy of the People's Consultative Assembly;
3. Law/Government Regulation Replacement Law;
4. Government Regulations;
5. Presidential Regulation;
6. Regional, Provincial, and
7. Municipal Regulations

Based on the legal structure in Indonesia above, it is clear that SKB, Prosecutors, Police and KPK do not include the laws and regulations in Indonesia. Therefore, the SKB cannot override the KPK Law, which is clearly a legislation with a second hierarchy after the 1945 NRI Constitution.

Problem

Based on the description above, two things will be explored more deeply as follows:

- A. how the system of eradicating corruption in Indonesia's current positive law?
- B. how the Indonesian government's strategy to eradicate corruption in the future?

Discussion

The System of Eradicating Corruption in Indonesia's Current Positive Law (Ius Constitutum)

The legal politics of the establishment of anti-corruption institutions in Indonesia originated from the constitutional mandate as stated in the Decree of the Indonesian People's Consultative Assembly No. XI/MPR/1998 on Clean and Free State Organizers of Corruption, Collusion and Nepotism. Based on the mandate, the Government followed up the establishment of Law No. 28 of 1999 on Clean and Corruption-Free State Operators, Collusion and Nepotism as well as the TPK Law mandating the establishment of kpk. The establishment of kpk institutions is not intended to take over the task of eradicating corruption from existing institutions. The explanation of the Law mentions kpk as a trigger mechanism, which means to encourage or as a stimulus so that efforts to eradicate corruption by pre-existing institutions become more effective and efficient.³

Institutions that have the authority in eradicating corruption in Indonesia are the Police, KPK and Prosecutors. In its course kpk was given the authority to take over the investigation conducted by the police and prosecutors. If you look at the task and authority of the KPK is very large it can be concluded that this KPK has the main control in order to eradicate corruption. The problem arises is the same authority as the police and prosecutors regarding investigations that also have the authority to investigate corruption crimes, so that the potential to cause overlap of authority.

Reviewed from the perspective of elements of the legal system from Friedman, especially against elements of the structure that concerns institutional, the law enforcement agencies criminal corruption in this case is the Police, KPK and Prosecutors. According to Lawrence M. Friedman, elements of the legal system are described as follows: (i) the institutional order and performance of institutions); (ii) substance (legal material); (iii) legal culture.⁴ In order to improve the effectiveness of law enforcement in the eradication of corruption, the improvement of the position and role of elements of the legal structure or law enforcement agencies in accordance with their respective duties, functions, and authorities must be accelerated the improvement of its capabilities and judicial authority accompanied by efforts to foster the attitude of law enforcement officials who have expertise, honesty, firm, fair, clean, and authoritative.

The issue that often arises is concerning human resources (HR), during this time considered the professionalism of law enforcement officials. The law is considered to still not meet the expectations of the justice-seeking community, as evidenced by many people who feel that justice is neglected by law enforcement officials. In addition, kpk through the KPK Law has been given special authority to conduct investigations, investigations, and prosecutions at once. Furthermore, with Law No. 2 of 2002 concerning the State Police of the Republic of Indonesia, the Police force is also given authority in investigations and investigations, but not to prosecute. The authority in the KPK and the Police, is expected to synergize efforts to eradicate corruption in a more progressive manner, but it has implications for public accountability and ambiguity of authority that ultimately leads to authority disputes and conflicts of interest that are actually based only on sectoral selfishness of law enforcement officials. In fact, if it is restored to the nature of the authority of the KPK and the Police who

³ indy Rizka Tirzani Koesoemo, "The Existence of the Corruption Eradication Commission (KPK) in Handling Corruption Crime Investigation and Prosecution", article in *Lex Crimen* Vol. VI, No. 1, 2017, p. 63.

⁴ Lawrence M. Friedman, *A History of American Law*, Simon and Schuster, New York, 2013, p. 1

both want to eradicate corruption, it can be done jointly by helping each other and strengthening institutions for the same purpose. If what happens is the opposite, namely fighting each other's cases, then there will be obstacles to investigation in the field that lead to the failure of prosecution of a crime of corruption, and it will be difficult to determine which institution should be responsible for the failure and how to be held accountable to the public.

In establishing the governance of law enforcement agencies for corruption in Indonesia, it is necessary to approach check and balances, which is an approach that emphasizes the existence of interconnected relationships and mutual restrictions between the organs of state power as determined by the constitution. Kpk, Police, and Prosecutors should be aligned and supervise each other to synergize their authority in eradicating corruption. This can be done through understanding synergisticity, namely awareness will strengthen each other's institutions for the same purpose by cooperating harmoniously based on mutual trust, respect and openness based on legislation. In addition, it also prioritizes effectiveness and efficiency by maximizing its tasks and functions.

In addition to the police, KPK also has a relationship with the prosecutor. This relationship is because the KPK also has the authority to prosecute. The task of prosecution has been the domain of the prosecutor. Article 30 paragraph (1) a Law No. 16 of 2004 concerning Prosecutors states, that the Prosecutor's Office has the duty and authority to prosecute criminal fields. Of course, as an institution that also has the authority to prosecute, kpk needs personnel from prosecutors to prosecute.

Based on the discussions that have been stated above, it can be concluded that the system of eradicating corruption in Indonesia's current positive law (*ius constitutum*) that puts kpk as the leader in the eradication of corruption actually causes disharmony among law enforcement between kpk, police and prosecutors. This shows that the strategy of eradicating corruption in Indonesia is still not effective and optimal, which as a result is that corruption continues to occur in Indonesia with an increasingly massive situation.

Strategy for Handling Corruption In the Future (Ius Constituendum)

It is clear that corruption is one form of deprivation of the people that should be without corruption the people can live more prosperously. Precisely because of corruption, the welfare of the poor is trapped in poverty. In fact, poverty is still a big challenge that must be faced by the people of Indonesia. Huguette Labelle stated, that "in the midst of decades of progress of countries that have successfully spawned anti-corruption laws and regulations, corruption still limits millions of people in poverty".⁵

Indonesia already has quite a lot of laws and regulations related to corruption. However, the eradication of corruption in Indonesia prioritizes the aspect of crackdown (*ex post facto*) compared to the prevention aspect (*ex ante*). In addition to the above key strategies, the Government of Indonesia also makes special efforts to eradicate corruption, among others through: (1) bureaucratic reforms that emphasize openness, equal opportunity and transparency in the recruitment of civil servants, contracts, retention and promotional processes including remuneration and training; (2) reform of the procurement sector of goods and services which is the most vulnerable sector with corrupt practices; (3) establish laws and regulations on anti-

⁵ Abd. Rachman A., "Policy Analysis and Educational Strategy for Anti Corruption in Indonesia and Singapore", article in the International Journal of Asian Social Science, Vol. 5, No.11, 2015, p. 612-613

money laundering; and (4) Extradition treaties with several countries, among others, with Malaysia (1975), Philippines (1976), Thailand (1978), and Singapore (2007).⁶

Based on previous discussions Indonesia is still facing problems and obstacles of law enforcement including aspects of coordination between agencies, especially in the criminal justice system. This is because each law enforcement agency carries out different duties and responsibilities in accordance with applicable regulations, namely Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Law No. 48 of 2009 on The Power of Justice and Law No. 46 of 2009 on Corruption Criminal Courts, KPK-Perubahan Law and Law No. 02 of 2002 concerning the Police of the Republic of Indonesia.

Prosecutors in particular, have a central position in law enforcement efforts as one of the subsystems of the criminal justice system in Indonesia. The criminal justice system in Indonesia only knows 4 (four) subsystems, namely: (1) Police, (2) Prosecutors, (3) Courts and (4) Correctional Institutions. The duties and authority of prosecutors in the scope of the judiciary are further affirmed in Law No. 8 of 1981 on Criminal Procedural Law (KUHAP), where the position of prosecutors is a prosecution institution in the criminal justice system. In the case of corruption, prosecutors are given the authority to investigate the case. Prosecutors are considered as the controller of the proceedings because only the prosecutorial institution can determine a case can be delegated to the court or not, in addition to being the only institution implementing criminal verdicts.

In the aspect of investigation and prosecution that was originally the authority of the police and prosecutors seems to have provided opportunities for the unlimited authority of the KPK. However, the division and separation of authorities seems inconsistent and has the opportunity to create a legal vacuum in synergizing the function of cooperation between the KPK and the Police in the context of investigations and investigations, thus impacting on the onset of jealousy in law enforcement agencies that first played a role and the Indonesian criminal system, will also affect the deligitimization process of law enforcement institutions. This is based on the reason that the KPK as a breakthrough institution against the credibility of law enforcement, which to this day is not limited to its enforcement.

Therefore, the formation of kpk in its implementation hit many obstacles. These constraints include, among others, kuhap which regulates that the investigation and prosecution process is the duty of the Prosecutor. However, Article 8 paragraph (2) of the KPK Law stipulates that the KPK is authorized to also take over the investigation or prosecution of perpetrators of corruption crimes that are being carried out by the prosecutor. On the other hand, the Prosecutor's Office also has the authority as the executor of the handling of corruption crimes handled by the KPK, judging by that, the KPK with the Prosecutor's Office will always have a coordination relationship, both in the handling of corruption cases and in terms of execution of cases handled by the KPK, but with the dualism of the authority it becomes a matter that has always been a debate.

Based on the discussions that have been stated above, it can be concluded that the Indonesian government's strategy to prevent corruption crimes in the future (ius constituendum) can be done through an integrity system in the scope of kpk, police and prosecutors. The integrity system between these three law enforcement officers places kpk, police and prosecutors as law enforcement officers in the eradication of corruption that have

⁶ Ibrahim S. Assegal, A Gloomy Picture of the Attempts to Eradicate Corruption: Reflection of the Policies, Laws and Institutions of Corruption Management in Indonesia, 1969-2001, In Richard Holloway, Stealing from the People, 2012, p. 16

the same position and authority synergize with each other, and charged with the responsibility to each institution in a balanced manner so that each institution becomes a supervised party as well as the supervising party as the monitoring party and the monitored party in the eradication of corruption in the future, so that specifically against the three criminal law enforcement institutions corruption occurred check and balances.

Conclusion

Based on the discussions that have been stated above, it can be concluded the following: First, the system of eradicating corruption in Indonesia's current positive law (*ius constitutum*) that puts the KPK as the leader, still causes disharmony among law enforcement. This shows that Indonesia's corruption eradication strategy is still not effective and not optimal; Second, the Indonesian government's strategy to eradicate corruption in the future (*ius constituendum*). The integrity system within the Prosecutor's Office, Police and KPK should be able to position these three institutions into an independent Anti-Corruption Agency. This integrity system emphasizes the existence of check and balances between law enforcement agencies for acting at once, namely as supervisors and supervised, as monitors and monitored, so that a circle of virtues is formed which is a form of horizontal liability (accountability), in which the parties are responsible to the other party horizontally rather than responsible for the hierarchy structure that narrows

Suggestions

The suggestions that can be put forward are as follows: First, in order for the eradication of corruption in Indonesia to run consistently there needs to be good coordination between the Police, Prosecutors and KPK. In addition, it is necessary to improve human resources in the form of higher education improvement. Second, the government and the House of Representatives are advised to immediately revise Law No. 30 of 2002 concerning the Commission for the Eradication of Corruption and other Laws governing the investigation and prosecution of corruption with the aim of strengthening the handling of the eradication of corruption crimes in order to strengthen the commitment of independence, professional, and accountable. Third, in relation to the integrity system it is recommended that the added legal culture in efforts to eradicate corruption in accordance with the applicable rules and grow the *ketauladanan* of state officials starting from the president, state organizing officials and law enforcement officials themselves. In developing a culture of shame, perpetrators of corruption crimes need to be aired the face of corruptors in the mass media, thus the integrity system will be supported by all components of the nation and law enforcement officials with integrity. Fourth, the development of integrity system patterns between the Prosecutor's Office, The Police and kpk is also carried out by creating an integrity scheme in conducting investigations involving law enforcement officials from each institution. Disclosure of a criminal corruption case involving law enforcement officials from one of the institutions is no longer handled by the original agency, but handled by other agencies, which will eventually be polarized as a circle of virtue with each agency that has a role at the same time, namely as a party that supervises and is supervised, as a party that monitors and is monitored.

References

- 1945 Constitution of the Republic of Indonesia.
Assegal, Ibrahim S., A Gloomy Picture of the Attempts to Eradicate Corruption: Reflection of the Policies, Laws and Institutions of Corruption Management in Indonesia, 1969-2001, In Richard Holloway, *Stealing from the People*, 2012.

Criminal Procedure Code

- Friedman, Lawrence M., *A History of American Law*, Simon and Schuster, New York, 2013.
- Hage, Jaap, *Studies in Legal Logic, Law and Philosophy Library*, Springer, Meta-juridica Department, University of Maastricht, 2011.
- Ismail Khan, Norziaton (2019) Audit committee and audit fees in high regulated firms: moderating role of regulatory oversight / Norziaton Ismail Khan. *Academic Journal of Business and Social Sciences (AJoBSS)*, 3. pp. 1-16. ISSN 2590-440X
- Law Number 10 of 2015 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2015 concerning Amendments to Law Number 30 of 2002 concerning the Corruption Eradication Commission into Law
- Law Number 12 Year 2011 concerning the Formation of Legislative Regulations.
- Law Number 16 of 2004 concerning the Republic of Indonesia Attorney General's Office.
- Law Number 2 of 2002 concerning the Indonesian National Police.
- Law Number 28 of 1999 concerning State Administrators who are Clean and Free of Corruption.
- Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Corruption Eradication.
- Law Number 46 of 2009 concerning Corruption Crime Court.
- Law Number 48 of 2009 concerning Judicial Power.
- Marzuki, Peter Mahmud, *Legal Research*, Kencana Prenida Media, Jakarta, 2011.
- Soekanto, Soerjono, *Introduction to Legal Research*, University of Indonesia Press, Jakarta, 2006.
- Soemitro, Ronny Hanitijo, *Legal and Jurumetric Research Methods*, Ghalia Indonesia, Jakarta, 2008.
- Waluyo, Bambang, *Legal Research in Practice*, Sinar Grafika Publisher, Jakarta, 2001
- Zonyfar, C., Maharina, Zayn, M. & Barack, E., 2020. Student Enrollment: Data Mining Using Naïve Bayes Algorithm. *Journal of Advanced Research in Dynamical and Control Systems*, pp. 1077-1083.
- Zahari, A.I., Said, J. and Arshad, R. (2020), "Organisational fraud: a discussion on the theoretical perspectives and dimensions", *Journal of Financial Crime*, Vol. 27 No. 1, pp. 283-293. <https://doi.org/10.1108/JFC-04-2019-0040>