

Harmonization Of Inter-Institutional Authority In Eradicate Corruption

Agus Salim, Aswanto, Muhadar, Syamsuddin Muchtar

Abstract: Nowadays the agenda of corruption eradication have been undertaken by various institutions such as the judiciary, the police, the Corruption Eradication Commission and other bodies related to the corruption eradication. The type of research used in this study is normative-jurisdiction and empirical-jurisdiction. To obtain the necessary data in this study, the researcher conducted library research as a reference in some libraries are quite representative. Results shows that the effectiveness of corruption eradication that conducted by regulatory authorities in order to combat corruption has not been implemented maximally, because each institution as a subsystem has not carried out an interdependent relationship both vertical and horizontal nature. If we expect the eradication of corruption can be implemented optimally, it is recommended that the coordination between law enforcement agencies in the integrated criminal justice system is necessary to build their common vision, interpretation and perception in the implementation of the duties for the institution authorized to eradicate corruption.

Index Terms: Authority, Corruption, Criminal Justice System

1 INTRODUCTION

Corruption is widespread in society. Its progress continues to increase from year to year, both of the number of cases and the amount of state financial loss. Uncontrolled corruption will be catastrophic not only to the national economic life, but also the life of the nation in general. Based this, needed an extraordinary law enforcement (*extraordinary approach*) through the establishment of a legal entity which has broad authority; independent and free from any authority in eradicate corruption, which the implementation is done optimally, intensive, effective, professional and continuously. Until now, the agenda of corruption eradication have been undertaken by various institutions such as the judiciary, the police, the Corruption Eradication Commission and other bodies related to the corruption eradication. But in the fact, there are overlaps in the statutory provisions related to the investigation. This is apparent in Act No. 30 of 2002 concerning Corruption Eradication Commission that specifically authorizes the Corruption Eradication Commission to combat corruption, but on the other hand, the Act No. 2 of 2002 concerning the Police, article 14 which states that the police have the authority to conduct investigations against all types of crime, include corruption. For the overlapping authority as described above, there should be positive steps were immediately taken to correct or create legislation to regulate this issue. To address this problem, the object of study is related to harmonization of inter-institutional authorized to conduct corruption investigations in an effort to overcoming the high rate of corruption in Indonesia.

2. METHOD OD THE RESEARCH

The type of research used in this study is “normative-jurisdiction” and “empirical-jurisdiction”. The normative-jurisdiction is conducted qualitatively by focusing on the library research. Through literature study, data and information can be extracted in accordance with the principles of rational, critical, objective and impersonal, whether it sourced from the primary legal materials, secondary, or tertiary. Furthermore, the empirical-jurisdiction, this approach is quantitative. To obtain the necessary data in this study, the researcher conducted library research as a reference in some libraries are quite representative. Moreover, the researcher empirically conducted research at the Corruption Eradication Commission in Jakarta, Indonesia. The method used in analyzing the data, namely, the entire secondary data was analyzed qualitatively and describe descriptively.

3. RESULTS AND DISCUSSION

3.1 The Investigation Authority of Corruption by Police and Prosecutors

The establishment of a special institution to address the Corruption in Indonesia is actually not a new one. However, the establishment of a special institution with such broad authority, in addition to conducting investigations, and prosecution in corruption cases, noteworthy as an aspect of reform in the law and the criminal justice system in Indonesia. The political will to establish such specialized institution cannot be separated from the initial consideration to overcome the corruption eradication that cannot be implemented optimally. Law enforcement agencies were there, who had been assigned the duty and authority to address the corruption has not been functioning effectively. While, corruption itself has such place in society, and has been conducted in a systematic and widespread, and thus perceived to have violated the social and economic rights in the communities, as part of human rights. As a result of corruption in such a way, including corruption among law enforcement itself there are doubts or even distrust and apathy of society towards the effective functioning of the criminal justice system of Indonesia in eradicate corruption. Criminal justice is a process in which there are multiple agencies or law enforcement agencies and their apparatus is working together in accordance with the duties and authority. Therefore, criminal justice can be understood as a process involving activities or activities of the

- Agus Salim, is a lecturer at UKI Paulus and currently completing Doctoral Program (DR) at Graduate School, Hasanuddin University, Makassar, Indonesia. Tel./Fax: +62-85242136442. E-mail: agusslm.ukip@gmail.com
- Aswanto, Muhadar, Syamsuddin Muchtar, Lecturer at Faculty of Law, Hasanuddin University, Makassar, Indonesia. Tel./Fax: +62-411-587219

criminal justice agencies. Activities within the process itself are a gradual and sustained activity that starts from the activities of investigation, prosecution, inspection at the trial, and ends with the judge's decision. The sustainable activities were performed by different law enforcement agencies are administratively and structurally. The activity of investigation is conducted by the police and judiciary by the prosecutor. While, at the trial conducted by the court, and the enforcement activities carried out by the penitentiary. Nevertheless, functionally the law enforcement agencies are one another as an integral part and must cooperate within the framework of system; the criminal justice system. The criminal justice process in Indonesia for decades is characterized by the dualism of investigative authority. In general, statute laid investigative authority to the police, so that in practice the term "single investigator" emerges. This means that the police are only law enforcement authorized to conduct an investigation in any criminal. Article 6, paragraph (1) of Criminal Code determines investigators are (a) the State Police of the Republic of Indonesia; (b) certain civil servants who were given special authority by law. Meanwhile, the law still recognizes the existence of investigation authority on the special criminal of judiciary under the provisions of a special criminal law itself. The juridical foundation is the provisions of Article 284 paragraph (2) Criminal Code that specifies:

Within two years after the legislation is enacted, it is against all cases apply provisions of this law, with the exception for a while about the specific provisions of criminal procedure as mentioned in certain laws, until there is an amendment and/or no longer valid.

On the basis of the provision of special criminal laws (e.g. corruption laws), the judiciary considers investigative authority against corruption is a monopoly its institution. The dualism of investigative authority arises implications in the practice of law enforcement against corruption. The police assume that the institution also has the authority to investigate the corruption. Meanwhile, the judiciary assumes that investigation duty for all corruption is the authority of its institution. Elwi Danil (2011) propound an example as implication intended among others in the verdict of District Court Sungai Penuh No.45/Pid/B/ 1989 PN.SPN dated 6 January 1990 in corruption cases on behalf Nasrun Yazid bin Abu Yazid. In the District Court's verdict and then enforced by the Supreme Court's decision No.604/K/Pid/1990 dated 10 November 1994, the judge declared the indictment of public prosecutor cannot be accepted. As for the consideration of the judges to arrive at a decision as it was for official report, the police investigators concluded that the case referred to a specific criminal. The official report cannot be used by public prosecutors to draft indictments, because according to the provisions of Article 284 paragraph (2) Criminal Code, the police investigators are not authorized to investigate special criminal. As the consideration of the judges above, one thing important to be noted as a juridical fact, that just due to its authority, investigations between police and prosecutors led to a defendant who has been convicted of corruption can be punished. The conviction is to formalize and rigid, in addition to create injustice, also inhibits the process of criminal case (Prinst, 2002). Functionally, conflicts and attraction such investigative authority, the writer illustrate the tendency to put forward ways of thinking that are agency-centric. Such ways of thinking is

clearly not desired, and may damage the operation of criminal justice as a system. In addition, ways of thinking that are agency-centric been enough to give a description that the conception of "integrated criminal justice system" have not been implemented in the criminal justice process, because the desired concept is the creation of close cooperation between the subsystem of criminal justice itself. In the context of integrity of the criminal justice process should be avoided independent attitude which can damage the work or the process of criminal justice as a system. That independence occurs when a subsystem considers that other subsystem as a separate environment, so that they would not work together as a system. They merely pay attention or thinking about work or the result of their own institutions without regard to how the influence of their institution on the work or result of other institution. Such attitudes referred to as agency-centric and fragmentary, that undesirable in the conception of "integrated criminal justice system". The image of unity in the implementation of criminal justice system according to Sudarto (1980) must be a silk thread to search all phases of the criminal case investigation since the beginning until the end of criminal course by defendant. Therefore, the law enforcement agencies as an independent body administratively, but functionally they must describe the image of unity. It can be concluded that the integration in the criminal justice system should be reflected in the principle of unity in the unity of diversity towards a common goal, namely overcoming the crime, especially corruption (Lubis & Scott, 1985). The collision between various law enforcement agencies, as described above, may be said to have occurred a phenomenon that significantly coloring the criminal justice process in Indonesia. The phenomenon should be recognized, because each agency is administratively and institutionally stands alone. Therefore, each agency has a way to work or on their own method in implementing its duties and authority in accordance with applicable regulations.

3.2 The Authority of Corruption Investigation by the Corruption Eradication Commission

Act No. 31 of 1999 mandates to the lawmakers to establish a commission to eradicate corruption assigned the duty and authority to investigate and prosecution of corruption. The presence of a special body to eradicate corruption is part of the reform demands to eradicate corruption institutionalized at all levels of society and state institutions. Therefore, corruption is no longer classed as ordinary crimes but has been an "extraordinary crime". Based on that, its eradication can no longer be done by ordinary means and through law enforcement agencies that have so far, but should be done in an extraordinary way. This means that conventional law enforcement methods has proved a failure and sterility, and thus required the existence of a special independent body to eradicate corruption. There are several models of anti-corruption commission applied by some countries that success to build a respectable commission, namely: A model gives the anti-corruption agency to monopolize authority to inquiry, investigation, and prosecution. A model that puts the anti-corruption agency as an institution that has a coordinative and supervisory authority, including the authority to conduct an inquiry, investigation, and prosecution. A model of anti-corruption agency has the authority to inquiry and investigates, while the prosecution authority remains with the judiciary. As the transparency society of Indonesian, we expect that the

commission established a special independent body, as well as anti-corruption bodies that are in some other countries such as the “Independent Commission against Corruption (ICAC)” in Hongkong. The Corruption Eradication Commission in Hongkong (ICAC) is a special independent body. ICAC is an anti-corruption body that most potent in combat corruption in a developing country like Hongkong. Therefore, the ICAC is always used as a reference and is considered prestigious. ICAC was established on 15 February 1974 based on the “Independent Commission against Corruption Ordinance (Chapter 204)”, and is headed by the commissioner. Together with the Hongkong peoples, the ICAC has a strong commitment to fight corruption through effective law enforcement, education and prevention to help maintain Hongkong are fair, equitable, stable and prosperous. This is the mission of ICAC, which was then further developed into a prevention strategy known as the “three pronged strategies”, namely: 1) effective law enforcement, 2) prevention of corruption, and 3) community education. In addition to the ICAC, the Malaysian Anti-Corruption Agency can also be recorded as an anti-corruption agency which is quite successful in eradicating corruption. Therefore, the Ministry of Justice and Human Rights of the Republic of Indonesia in order to establish the Corruption Eradication Commission set Anti-Corruption Agency (BPR – Badan Pencegahan Rasuah) as one objects of comparative study. BPR has enough long institutional history. It is established in 1967 under the Prime Minister Office. The strength of this institution is supported by a strong legitimacy in leadership figure. A society that is clean, professional, and honest based on the systems and procedures that are free from corruption as a mission of BPR. The legal basis for the establishment of an independent commission to conduct the eradication of corruption contained in Article 43 of Act No. 31 of 1999 which: No more than 2 (two) years since this law came into force, established the Corruption Eradication Commission; The commission referred to in paragraph (1) have the duty and authority to coordinate and supervise, including conducting an inquiry, investigation, and prosecution in accordance with the provisions of the legislation in force; Membership of commission referred to in paragraph (1) is composed of government representatives and the public; The provisions concerning the establishment, organizational structure, work procedures, responsibilities, duties and authority, as well as the membership of the commission referred to in paragraph (1), (2), and (3) are regulated by law; As the provisions of article 43 of Act No. 31 of 1999 above, it can be noted that the Corruption Eradication Commission (abbreviated KPK – Komisi Pemberantasan Korupsi) is not solely intended as an institution is given the authority to conduct investigations and inquiry, but also to prosecute against corruption. In addition, the commission is also given the authority to coordinate and supervise all institutions authorized to eradicate corruption. The extent of commission’s authority, which include prosecutorial authority, the commission feared that later would become a frightening “monster”, which can perform “abuse of power with impunity”. We do not expect that the authority of commission has “extra judicial powers” that can be used as a means to abuse of authority, if it is linked to the condition of our legal culture that is not fully supported.

3.3 The Effectiveness of Corruption Eradication in Indonesia

In the provision of positive law in Indonesia today, there are several institutions/commissions to handle corruption both in their capacity as an investigator, prosecution and investigation at the court (General- and Ad-Hoc Courts of Corruption). Functionally, the collision of authority to investigate, it describes the tendency toward the agency-centric. Such way of thinking is clearly not desired, and may damage the criminal justice as a system. In addition, a way of thinking that is agency-centric has enough to describes that the conception of “integrated criminal justice system” have not been implemented in the criminal justice process, because the desired concept is the creation of a close cooperation between the subsystem of criminal justice itself. In the context of integrity, the criminal justice process should be avoided independent attitude which can damage the work or criminal justice process as a system. That independence occurs when a subsystem assumes other subsystem as a separate environment, so that they would not work together as a system (Roy, 2016). They merely pay attention or thinking about work or the work of their own institutions without regard to how the influence of the institution works on the work of other agencies. Such attitudes that is referred to as agency-centric way of thinking and fragmentary, and undesirable in the conception of “integrated criminal justice system”. This is accord to the opinion of the Prosecutor Joko, SH., MH as Section Head of Special Crime of State Attorney of Makassar (6 July 2014 interview). He said that normatively, Police, Judiciary and the Commission are merely conduct legislation to investigate the corruption in order to eradicate corruption, but functionally always conflicts and pull investigative authority and way of thinking that are agency-centric. This method is clearly undesirable and this can inhibit the work or process of criminal justice as a system. The collision of the investigation, agency-centric way of thinking clearly does not support efforts to eradicate corruption and consequently the effectiveness of integrated anti-corruption cannot be expected maximally. Even though normatively regulated corruption eradication in an integrated manner, it is obviously not effective because it is constrained by functional, structural and administrative. The image of unity in the process of the criminal justice system should be a silk thread to search all phases of the criminal case investigation since the beginning until the end of criminal course by defendant. Therefore, the law enforcement agencies as an independent body administratively, but functionally they must describe the image of unity. It can be concluded that the integration in the criminal justice system should be reflected in the principle of unity in the unity of diversity towards a common goal, namely overcoming the crime, especially corruption. The collision between various law enforcement agencies, as described above may be said to have occurred a phenomenon that significantly coloring the criminal justice process in Indonesia. The phenomenon should be recognized, because each agency is administratively and institutionally is stands alone. Therefore, each agency has a way to work or on their own method in implementing its duties and authority in accordance with applicable regulations. The situation become so not-conducive in the applicable legal culture, which law enforcement officers do not have a common vision and perception in implementing the provisions of the applicable law, so that each has its own view of their duties. Sometimes, it is possible that the legal culture is defeated by other factors

outside the law. And also with the weak of judiciary and police legislation formulation, which tend to overlap (collision) in formulating investigative authority. To minimize the possibility of such collisions, theoretically need to consider three-pronged approach in the criminal justice system as proposed by Romli (1996) normative, administrative and social approach. Normative approach is an approach that view four law enforcement agencies (police, judiciary, courts, and correctional institutions) as the implementing agency of legislation in force, so the four apparatus is an integral part of the law enforcement system. There are 2 (two) things that must be done simultaneously in order to eradicate corruption, as repressive and preventive efforts.

1. Repressive corruption eradication

Repressive eradication needs to be implemented through law enforcement are firmly against perpetrators of corruption without discrimination based on the legal principle of equal justice under law. Sociologically, this principle is sometimes not able to function effectively, because the principle of all people are equal under the law, in reality influenced by other conditions, such "who her father." However, this condition should not diminish or stultifying us to eradicate corruption. So, based on this principle, whoever the perpetrator of corruption, it must be examined, prosecuted, adjudicated and sentenced in maximum by applying the principal and additional penalties as stipulated in Act No. 31 of 1999 jo Act No. 20 of 2001. In relation to the law enforcement or repressive efforts, we can follow the way of our neighboring countries such as South Korea who managed to save its country from the crisis of authority and economic by showing to the people that the applicable law firm without discrimination for corruption. Baharuddin Lopa (2001) argues that there are 4 (four) positive things that can be drawn from law enforcement as implemented in South Korea against the corruptors, namely:

- a. Restoring the people's confidence to the government. People will wholeheartedly support the government, because they see the governments do not romped in enforcing the law.
- b. By firmly enforcement action means doing education as well prevention of corruption by government officials themselves.
- c. Can be done save state assets, why? Due to the presence of law enforcement, the state asset that is easily corrupted before decisive action now can be saved for development and welfare.
- d. For investors do not hesitate to invest in Indonesia, because government officials/businessmen in Indonesia will no longer corrupt freely invested capital as a result of decisive government in law enforcement.

The legislation of TPK that valid today, according to the author is enough to eradicate corruption that are repressive, if implemented firmly, earnestly and consequent, because as an emphasis put forward by Andi Hamzah (2005) that the legislation of corruption that we have to contain the ghastly threat of criminal because its punishment is quite heavy, such as lifetime imprisonment and even death penalty, but in reality no one has yet been sentenced to death in spite of the money that was corrupted trillions of rupiah.

2. Preventive corruption eradication

The initial emphasis is the basic principle of corruption eradication as proposed by Andi Hamzah (2005) that repressive action is not the only way to eradicate corruption. So, in addition to the repressive measures to eradicate corruption needed a preventive way, even to achieve maximum results in effort to eradicate corruption, these two basic principles, namely repressive and preventive measures must be implemented simultaneously and integrated. However, preventive measures must take precedence over repressive one. This is in line with the basic principles to eradicate diseases that prioritizes preventive than curative. This principle is based on the motto that it is better to prevent than cure. As explained by the author related to the preventive measure to eradicate corruption will be focused on: socio-economic, cultural and moral factors (Schoorl, 1980). One of causes of the corruption which the researcher suggested in the literature review is socio-economic. This factor is a factor that complicated, because the economic damage can force someone to cheat and corruption. While, on the other hand the economic prosperity can stimulate someone to dishonest in the pursuit of luxury living and sparkly. In the experience in Indonesia, both sides have played a role for the development of corruption. But it must be recognized that the second side is more dominant than the first side. Due to the happening, the second side is more influenced by moral factors, even influenced by lifestyle and consumer luxurious and elite, the socio-economic factors in order to eradicate corruption, the researcher point to the first side (Arofa *et al.*, 2015). It is based on the basic principle that the economic situation is chaotic and poor, poverty and unemployment and educational backwardness can be the driving force someone to commit corruption, especially among public servants who have a chance. Guilt culture in the corruption can be done through education. This should be done in a comprehensive, integrated and simultaneous, both formal and informal. In formal, through Pancasila, religious and other humanities educations, and informally through courses, courses in religious and ethical values of the candidates for civil servants, civil servants, employer and even if possible throughout the community as well as through discipline and exemplary in the family from parents to children, in government and private offices from superiors to subordinates or vice versa. With the education of ethical values, then corruption is not only touched the leaves but the nucleus and roots. According to the researcher, this way that should be promoted nationally. During the religious values and ethics are not placed appropriately in order to eradicate corruption, corruption will certainly lead to a situation of economic insecurity as is the case today. To be success this preventive factor, by civilizing simple lifestyle required active community participation, because corruption eradication is unlikely to be successful if the environment does not support it. In addition to socio-economic and socio-cultural factors, the moral is most decisive and most influential factor in preventive efforts to eradicate corruption. Said that, despite repressive measures had been carried out, and preventive measures on socio-economic and socio-cultural promoted, the result achieved is not maximal and would not encouraging as far as human morals was not aware that the corruption is an act that is harmful and damaging human life even act reprehensible. In other words, mental or moral did not consider corruption as an act that is harmful and damaging human life. In some writings, many

expressions put forward in relation to the moral role in efforts to eradicate corruption. Syed Hussain Alatas (1982) writes: All factors we have discussed so far would not automatically apply if there is no number of individuals who had a chance for corruption. In the configuration of these factors, the caliber of individual moral concerned is decisive as well as changes and legal in public administration designed to combat corruption will not succeed, if not there are a number of individuals who have a high principle who occupy key positions and vital to the success of the effort. As noted by Syed Hussain Alatas illustrates that human morality that determines the causes of people to corrupt. By itself, if we want to eradicate corruption, moral individuals that were repaired. A detailed description as argued by Mydral who wrote that the causing factors of corruption in the countries of UK, Netherlands and Scandinavia are now different from 200 years ago that promote moral. In this regard, he argues that: "Bad man is greater influence than Bad laws". As described above, it is clear that the role of moral is decisive in preventive efforts to eradicate corruption (Anwary, 2005). When the UK, Netherlands and Scandinavia press corruption by promotes moral, it is becoming an example or model for our country in an effort to eradicate corruption, namely through an efforts of officials to promote morale and citizens moral in general, because the role of moral is more dominant than the role of laws. It is clear that the role of moral is greater in efforts to eradicate corruption. Similarly, the measures that can be taken to civilize something useful in effort to eradicate corruption, namely through education, then an effort to promote morale are determined by the education comprehensively and simultaneously both formal and informal. Here, needed participation for religious leaders to playing an important role and assist the government in implementing educational packages of religious and ethical values.

4 CONCLUSION

Harmonization of the investigation by an agency authorized to conduct corruption eradication in order to combat corruption has not been implemented optimally, because each institution still seem institutional-egocentric in carrying out their respective duties. The effectiveness of corruption eradication that conducted by regulatory authorities in order to combat corruption has not been implemented maximally, because each institution as a subsystem has not carried out an interdependent relationship both vertical and horizontal nature. If we expect the eradication of corruption can be implemented optimally, it is recommended that the coordination between law enforcement agencies in the integrated criminal justice system is necessary to build their common vision, interpretation and perception in the implementation of the duties for the institution authorized to eradicate corruption. To minimize corruption, it is recommended that a minimum punishment against corruptor can be avoided by the judge, because it is not deterrent for corruptor and not to scare potential perpetrators of corruption. Moreover, the minimum punishment actually grows corruption.

REFERENCES

- [1] Alatas, S.H. (1982). *Sosiologi Korupsi*, LP3ES, Jakarta.
- [2] Anwary, S. (2005). *Quo Vadis Pemberantasan Korupsi di Indonesia*, Institute of Socioeconomics and Political Studies People Message (AMRA), Jakarta.
- [3] Arofa, E., Yunus, A., Sofyan, A., & Borahima, A. (2015). Corporate Criminal Liability for Corruption Offences in Indonesian Criminal Justice System. *International Journal of Advanced Research*, 3(8), 246-250.
- [4] Hamzah, Andi. (2005), *Korupsi di Indonesia, Masalah dan Pemecahannya*, PT. Gramedia, Jakarta.
- [5] Lubis, Muchtar and Scott, James C. (1985). *Bunga Rampai Korupsi*, LP3ES, Jakarta.
- [6] Prinst, D. (2002). *Pemberantasan Tindak Pidana Korupsi*, PT. Citra Aditya Bakti, Bandung.
- [7] Roy, S. K. (2016). Consumer Justice: A Symbol of Economic Prosperity and Social Progressiveness. *Hasanuddin Law Review*, 1(2), 170-181.
- [8] Schoorl, J.W. (1980). *Modernisasi*, Terjemahan RG Soehadjo, PT. Gramedia, Jakarta.