

# Reflection toward Reversed Verification System of Indonesian Corruption Acts

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**Abstract-** This study reviews 2 main issues. First, the meaning of corruption in Indonesia based on Law No. 20/2001 on the Amendment of Law No. 31/1999 on the Eradication of Corruption (Corruption acts law). Second, a reflection toward reversed verification system of Indonesian corruption acts. This normative study uses a legislative approach undertaken through an assessment of all written legal rules relating to the subject. This study provides to answers 2 principal issues. First, the meaning of corruption in the articles of Corruption Act which starts with the word "every person", which is given the meaning of an individual or including a corporation. Meanwhile, corporation means a collection of well-organized persons and/or assets, both legal entities and non-legal entities. Thus, corporations can be subject to a corruption case. Second, the rule of law in Indonesia determines, the reverse verification system in the settlement corruption is limited and balanced. That is, the defendant has rights and obligations, which is entitled to prove that he did not commit an act corruption and must provide information about all his property.

**Index Terms-** Reflection, Reversed Verification System, Criminal Court System, Corruption Acts, Corruption Acts Law.

## I. INTRODUCTION

Corruption is an extraordinary crime regardless the social status of society. Anyone can get caught up in corruption. For example, the Public Prosecutor (JPU) of the Corruption Eradication Commission (KPK) read the corruption case indictment of e-ID card (e-KTP) procurement on Thursday, March 9<sup>th</sup>, 2017. In the indictment letter, there are 23 names of members of the House of Representatives Called involved in projects worth more than Rp 6 trillion. During the investigation, KPK has called hundreds of witnesses and elements of the House members. In accordance with the indictment, most of the DPR members have received hot money from the e-ID card project. There are 14 members and former members of DPR have returned the money to KPK, The amount about Rp 30 billion.

As matter of fact, e-KTP procurement project conducted during the Gamawan Fauzi (Minister of Home Affairs) allegedly harm the state finance of Rp 2 trillion more. In fact, the total value of the project is Rp 6 trillion. Allegedly, one-third of the value of the project has flowed into several parties (Habibi, 2017). If the 23 members of the People's Legislative Assembly were proven to be corrupt, then this shows that the crime of corruption does not recognize the person's social life, educational background, or religious background.

Discussing the criminal act of corruption, we can see the results of a survey in 2006 done by PERC (Political and Economic Risk Consultation Ltd) based in Hong Kong, which again put Indonesia as the first number on the most corrupt country in Asia (Ginting, 2006). This is a negative achievement in Indonesian law enforcement. Corruption is a very serious problem that must be addressed immediately. Corruption or better known as KKN (Corruption, Collusion, and Nepotism) in addition to causing losses in terms of state finances is also a moral disease that destroys the nation's moral life that must be immediately found the resolution.

In the contrary, the officials who have a high salary and have had all the facilities and wealth also misuse the power they have to acquire wealth proportionally. The development of corruption is marked by the leakage in the use of state/regional budget each year.

In the state administration, the development of corrupt acts since the 1960s to date has never ceased. In fact, increasing. The classification of corruption in the 1960s known as "wet position" is no longer relevant, because corruption has also hit the private sector, even bribes often starting from this sector (Romli, 2017). The habit of giving and accepting promises such as bonus or tribute among the people on a large scale, whether or not it has systematically marbled the prevailing social values and norms, and has grown a permissive attitude in the middle of our society, the attitude of the people who let something or things that should not be done because it is against the prevailing social norms.

Generally, KKN is done by those who have the power and financial ability, by using their power, intentions, and opportunities, they make a profit and use facilities that are not his rights. One of the popular statements has been made by a British statesman, Lord Acton, "*The power tends to corrupt, absolute power corrupts absolutely*".

In the other words, there are 4 corruption forms that characterize the outstanding structure, namely:

- 1) Shortcut corrupt, embezzlement of state money proposed to political gain or exploit businessman who want the issuance of the certain change laws.
- 2) Tribute corrupt, form of corruption that is possible because of strategic positions, such as project bubbles, employee selection, and the selection or selection of civil servants.
- 3) Tender corrupt, abusing of power aimed to get projects, facilities, or other conveniences.
- 4) Marketing Corrupt, related to security assurance, protection, and the affairs of internal turmoil and external factors.

Corruption is the deprivation of people's economic and social rights by a small number of individuals or groups in

society. From this, it can be seen also how KKN describes the low and the moral decay of a person. On the other hand, with such position, they should be a public figure and guide for the people. As a result, the right of the people to be protected and prospered is hampered and further away from expectations.

On the other hand, the classic problem always faced in practice is that law enforcement officers have difficulty in terms of proof of a person, whether or not they have committed a corruption act. In practice, criminal law enforcement officers find the difficulty and trouble to determine and look for evidence concerning the alleged corruption. On the other hand, the prosecutor, as the public prosecutor, is obliged to have valid evidence and be admitted to the proceedings in accordance with the indictment, so as to ensnare the perpetrator. On the other hand, the perpetrators of corruption, are very good at hiding the wealth obtained from the corruption and in many ways they are evasive from the indictment.

during corruption case development, criminal law enforcement officers use reverse verification system in solving the corruption acts. That is, the defendant is burdened with the obligation to prove her innocence. The prosecutor just filed an indictment. Furthermore, the defendant himself must prove if he is innocent or his actions are not criminal acts of corruption.

Based on the description as mentioned above, this study would focus on 2 subject matter, that is:

- A. How is the meaning of the formulation of criminal acts in Indonesia according to Law No. 20/2001 regarding the Amendment of Law No. 31/1999 concerning the Eradication of Corruption?
- B. How does the reflection toward reverse verification system of Indonesian corruption acts?

## II. RESEARCH METHOD

This is a normative research by using legislation approach, which is done through the examination of all written legal regulations relating to the subject matter discussed and argued theoretically based on the concept of criminal law.

This research formulated based on 3 legal materials. First, the primary legal material in the form of positive law, namely legislation relating to the subject matter. Second, secondary legal material which includes books or other literature in criminal law and criminal procedure law and research results relating to this study. Third, tertiary legal material, ie the results of previously published research.

Legal material data processed by categorization as a selective class of law material classification. All legal materials are grouped according to universally determined, meticulous, and strict criteria agree with the subject matter. The next step is to analyze the legal material and be presented in a descriptive-analytic way, namely to examine concepts that include legal notions, legal norms and legal systems related to this research.

### I. DISCUSSION

#### A. *The Sense of Indonesian Corruption Cases*

The corruption cases generally can be interpreted as an activity which is a manifestation of the actions of corruption in

the sense of all power or influence attached to a person who acts appropriately to enrich themselves or others or an agency that harms the state finance or economy. A corruption case could be seen from various aspects, namely literal, political, sociological, economic, and cultural.

Literally, corruption comes from the Latin "*curruptio*" derived from the word "*corrupter*". From the Dutch "*corruptie*" it is taken over into Indonesian "Korupsi (Corruption)" which means rottenness, ugliness, depravity, dishonesty, bribery, immoral (Prakoso & Suryati, 1986). Meanwhile, based on general public thought, corruption is an act related to the state finances that are illegally owned or haram (Leden, 1992). In addition, the law on combating corruption provides a broader understanding, that is, actions that are detrimental to state finances and which make government officials run ineffective, inefficient, unclean, and unprestigious.

Dealing with the statements above, it can be said that Corruption is a social symptom everywhere. History provided that almost every country is faced with the problem of corruption. It is no exaggeration if the notion of corruption is always evolving, depending on the changes and demands of the times and about the problem of how to overcome it. If corruption had once occurred in the private sector and government agencies, then corruption has now expanded to legislative and judicial institutions. Corruption is no longer done only by an employee whose salary is not sufficient for his family for a month but corruption has become a pervasive disease spread almost in all social walks.

In the other words, corruption can be viewed from a sociological, political, economic, and cultural point (Sukarton, 1986). Sociologically, Syed Husein Alatas (1986) views nepotism as corruption, the appointment of relatives, friends or political colleagues to public offices regardless of their services or consequences to public welfare. However, in Law No. 3/1971, nepotism is not included in offense formulation. Concerning the sense of nepotism specifically had regulated in Law No. 28/1999 on the Implementation of a Clean Country from Corruption, Collusion, and Nepotism.

Whereas, From a political point, corruption is a disturbing factor and reduces the credibility of the government, especially among educated and young people. Then, from an economic point of view, corruption is one of the high-cost economic factors that are very harmful to the state and society. Finally, from a cultural point of view, corruption severely damages the morals and character of our people who actually have noble values. (Husein, 1986)

In Indonesia, corruption is regulated in Law No. 20/2001 on Amendment to Law No 31/1999 on the Eradication of Corruption (Corruption acts law). As stated in Chapter II of Article 2, corruption is defined as "Every person who unlawfully commits an act of enrichment of himself or another person or a corporation that may harm the state's finances or the economy of the country."

The corruption acts Law (UU Tipikor) also extends the teaching of its unlawful nature either formally or materially. The unlawful nature means an act judged as a criminal offense concerning the laws and regulations (as a form of nature against the law in formal or *formeelwederrechtelijkid*) also the fact that

itis adisgraceful act in the social life as well as the contrary to the sense of justice Society.

UU Tipikor contains 30 forms of corruption cases spread over 13 articles, those are, Article 2, Article 3, Article 5 paragraph (1) letter a, Article 5 paragraph (1) letter b, Article 5 paragraph (2), Article 6 paragraph (1) letter a, Article 6 Paragraph (1) point b, Article 6 paragraph (2), Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter c, Article 7 paragraph (1) letter d, Article 7 Paragraph (2), Article 8, Article 9, Article 10 Sub-Article a, Article 10 letter b, Article 10 letter c, Article 11, Article 12 letter a, Article 12 letter b, Article 12 letter c, Article 12 letter d, Article 12 letter e, Article 12 letter f, Article 12 letter g, Article 12 letter h, Article 12 letter i, Article 12 B jo. Article 12 C, and Article 13.

These 30 forms of corruption cases can basically be classified into 7 types, namely:

- 1) Corruption related to state finances, contained in Articles 2 and 3.
- 2) Corruption related to bribery, contained in Article 5 paragraph (1) a, Article 5 paragraph (1) letter b, Article 13, Article 5 paragraph (2), Article 12 letter a, Article 12 letter b, Article 11, Article 6 paragraph (1) letter a, Article 6 paragraph (1) letter b, Article 6 paragraph (2), Article 12 letter c, and Article 12 letter d.
- 3) Corruption related to post office embezzlement, as provided for in Article 8, Article 9, Article 10 letter a, Article 10 letter b, and Article 10 letter c.
- 4) Corruption related to extortion, contained in Article 12 letter e, Article letter f, and Article 12 letter g.
- 5) Corruption related to fraud, contained in Article 7 paragraph (1) letter a, Article 7 paragraph (1) letter b, Article 7 paragraph (1) letter c, Article 7 paragraph (1) letter d, Article 7 paragraph (2), And Article 12 letter h.
- 6) Corruption related to a conflict of interest in some procurement contained in Article 12 letter i.
- 7) Corruption related Graft, contained in Article 12 B and Article 12 C.

UU Tipikor also regulates other types of criminal acts related to corruption. Such types of offenses are provided for in Article 21, Article 22, Article 23, and Article 24. The forms of criminal offenses include 6 kinds, namely:

- 1) Block the corruption case investigation, contained in Article 21.
- 2) Do not giving information or giving false information, contained in Article 22 and Article 28.
- 3) The bank that does not provide the account information of the suspect, contained in Article 22 and Article 29.
- 4) Witnesses or experts who do not provide information or give false information, contained in Article 22 and Article 35.
- 5) The person which holding the office secret, but not give any information or provide false information, contained in Article 22 and Article 35.
- 6) Witnesses who open the complainant identity contained in Article 24 and Article 31.

The formulation of a corruption case in the articles of Corruption Law (UU Tipikor), begins with the word "every person", which is given the meaning of an individual or including

a corporation. Meanwhile, a corporation is a collection of well-organized persons and/or assets, both legal entities and non-legal entities. Thus, corporations can be subject to corruption acts.

#### B. Reflection toward Reversed Verification System of Indonesian Corruption Acts

Every corruption act that destroys the livelihood of the people is a violation of the human rights of about 200 million people of Indonesia. Thus, it is not surprising when the demand for a thorough investigation prosecutes and punishes the severity of the corrupt loudly voiced. In fact, some people have suggested the corruptor be sentenced to death, so that other do not the same acts in the future.

Dealing with this, the government and law enforcement officers are required to be alert and responsive to the problems faced. However, in principle, law enforcement agencies in action must have a foundation, because with that capital the perpetrators (corruptor) can be brought before the law and get the punishment accordingly.

The eradication new types of corruption committed by those who are classified as *white collar crimes* which affecting the social welfare should use sophisticated legal means to protect the widespread human rights. It is not surprising if priority is given to the handling of corruption, as stated in Article 25 of Corruption Law:

"The investigation, prosecution, and examination at the hearing immediately submit copies of the court proceedings in a corruption case preceded by another case for immediate process". Similarly, relating to the legal tool to ensnare the corruptors constantly had been changed. The changes in tackling the corruption by forming kinds of rules show how complicated the corruption cases are. Corruption has a veiled pattern of behavior and has political or state, economic, legal, financial, social, and cultural goals.

Since 1971, Indonesia has had a positive law to eradicate corruption, namely Law No. 3/1971 on Eradication of Corruption as set forth in the State Gazette No. 19/1971 and enacted on 29<sup>th</sup> March 1971. The Act Replacing Law No. 24 Prp. 1960 on Investigation, Prosecution, and Corruption case which is considered less effective as a tool to tackle the corruption growth.

Broadly speaking and based on its chronology, the development toward corruption reform in Indonesian legislation is as follows:

- 1) Presidential Decree No. 40/1957, dated 14<sup>th</sup> March 1957 *jo* *Regeling op de staat van oorlog van Beleg* (St. 39-582 jo 40-79 in 1939) on the Emergency of War, gave rise to regulations; Prt / PM-08/1957, dated 9<sup>th</sup> April 1957 on Corruption Eradication, Prt / PM-08/1957, dated 1<sup>st</sup> July 1957, on Ownership of Property, and Prt / PM-001/1957, dated 1<sup>st</sup> July 1957, on Confiscation and Deprivation of Goods.
- 2) Presidential Decree No. 225/1957 dated 17<sup>th</sup> December 1957 *jo* Law No. 74/1957 *jo* Law No. 79/1957 on Hazardous Condition, gave birth to the Ruling Rule of the Central Army Chief Staff No. Prt/Perpu/031/1958 dated 16<sup>th</sup> April 1958 *jo* Regulation of the Rulers of Naval Chiefs Staff No. Prt/ZI/1/7 dated 17<sup>th</sup> April 1958

on Investigation, Prosecution and Inspection of Criminal Acts and Property Ownership.

- 3) Government Regulation in Lieu of Law No. 24/1960 dated 9<sup>th</sup> June 1960 *jo* Law No. 1/1961 dated 1<sup>st</sup> January 1961.
- 4) Law No. 24 Prp 1960 dated 1<sup>st</sup> January 1961 on Investigation, Prosecution, and Corruption Criminal Investigation.
- 5) Law No. 3/1971 dated 29<sup>th</sup> March 1971 on Corruption Eradication.

the next period, Corruption is followed by the issuance of various regulations that indicate the government effort regarding corruption cases, such as:

- 1) TAP MPR XI/MPR/1998 on the implementation of a clean country from corruption, collusion, and nepotism.
- 2) Law No. 31/1999 on the eradication of corruption.
- 3) Law number 28/1999 on the implementation of a clean country from corruption, collusion, and nepotism.
- 4) Government rules No. 65/1999 on the procedures for examination of the assets of state operators.
- 5) Government rules No. 19/1999 on the combined team for the eradication of corruption.
- 6) Government rules No. 71/2000 on procedures for the implementation of the role of the community and the granting of awards in the prevention and eradication of corruption.
- 7) Law No. 20/2001 on the amendment toward law No. 31/1999 on the eradication of corruption.
- 8) TAP MPR No. VIII/MPR/2001 on the recommendation of the Policy direction of corruption eradication and prevention.
- 9) Presidential Decree No. 73/2003 on the establishment of the selection committee about the candidate for corruption eradication commission (KPK).
- 10) Presidential Instruction No. 5/2004 on the Acceleration toward Corruption Eradication.

In addition, there is still much legislation regarding the efforts to eradicate corruption. In its development, although it has often changed and perfected, in fact, the laws and regulations are not functioning optimally and do not meet the social expectations. In the new order period, anti-corruption laws are practically non-functional and effective. Corruptors can still move freely and breathe with relief for their actions by enriching themselves and their group.

Actually, what is going on with Indonesia law?, Hopefully still as William Shakespeare discloses, "*The law had not been dead, though it had slept*" (the law was not dead, even though he had slept, and if still sleeping the most appropriate is waking him up.). (Ali, 2001)

The classic problem always faced in corruption acts is the difficulty law enforcement officers in verification process, whether or not they have committed a criminal act of corruption. In practice, criminal law enforcement officers find it difficult to determine and look for evidence of alleged corruption. On the other hand, the prosecutor, as the public prosecutor, is obliged to have valid evidence and be admitted to the proceedings in accordance with the indictment, so as to ensnare the perpetrator. On the other hand, the perpetrators are very good at hiding the

wealth obtained from the corruption and in many ways they are evasive from the indictment.

The verification comes from the word "verify/proof", which, according to Soebekti (1980), the things construed as appropriate to assure the truth of a proposition or position. The evidence is defined as an act (things and so on) to prove. While, Sudikno Martokusumo (1981) stated that verification is to provide sufficient grounds to the judge who examines the case concerned to provide certainty about the truth of the proposed event. Furthermore, Andi Hamzah (1986) defines verification as a process of how the evidence is used, proposed or maintained, in accordance with applicable law of procedure.

In the other hand, there is no formal legislation on the understanding of the evidence. However, as a reference to what is meant of evidences, Andi Hamzah provides restrictions that the evidence in criminal cases, namely goods on crime done (offense-object) and goods with offense done, the tools Used to conduct offense, such as state money used (corruption) to buy a private home, then the house is a proof or a result of offense.

The judge in searching for and putting the truth to be judged against the decision in the criminal case under consideration shall be based on the provisions evidence as specified in law in a limitation manner as defined in Article 184 (1) of the Criminal Procedure Code. That is, judges should not diverge or define other evidence, other than those specified in the law. The composition of the evidence as set forth in Article 184 paragraph (1) of the Criminal Procedure Code is hierarchical in nature, which means to indicate the existence of the putting nature of the composition. Hari Sasongko and Lily Rosita stated, from the sequence mentions the tools of evidence can be concluded that the proof in criminal cases more emphasis on witness testimony. (Sasongko & Rosita, 1995)

Previously, in Article 3 of Law No. 3/1971 on the Eradication of Corruption, it was stated that the prosecution of corruption was carried out in accordance with the prevailing provisions, simply not specified otherwise in this law. This Article can be interpreted that if the law does not regulate separately, Article 137 of the Criminal Procedure Code can also be applied to the prosecution of corruption. That is, in the prosecution of corruption is the authority of the General Prosecutor (JPU). The prosecutor in filing the lawsuit must be accompanied by sufficient evidence since the consequence of insufficient evidence will result in the defendant being dismissed free (Article 191 of the Criminal Procedure Code).

On the other hand, as implied in Article 37 of Law No. 31/1999 concerning the Eradication of Corruption, the defendant has the right to prove that he/she does not commit a criminal act of corruption, The public prosecutor still have the authority to provide reversed evidence and shall prove that the defendant is guilty of a corruption act. Thus, the reverse verification system in Dutch is "*omkering van het bewijs*" or in English known as "*shifting the burden of proof*". This reverse verification system is not commonly applied in the proving of criminal offenses in general.

Some practitioners and theoretical law argue the application of this reversed proof system is contrary to the presumption of innocence and the principles that state "*nemo prohiben a pluribus defensionibus uti*", meaning that people are not forbidden to deny. Meanwhile, some of the other view

that considering the condition of corruption in Indonesia is very severe, it needs extraordinary handling.

As revealed by former Minister of Justice and Human Rights, Yusril Ihza Mahendra, at this time the corruption cases can no longer be categorized as "ordinary crime", Because it had widespread systematically. Corruption is not only detrimental to the state's finances but has trampled on the social and economic. Because of its extraordinary nature, the prevention of corruption must be done in particular, ie, with the legislation to eradicate corruption which has been exacerbated by a reversed verification system that actually has also been a restriction on the human rights of the accused.(Yusril, 2017)

Corruption Act law implements a limited and balanced reverse verification system, the defendant has the rights and obligations to prove that he is not committing a corruption act and shall be obligated to provide information concerning all his property. This can be seen in Article 28, Article 37 paragraph (1), paragraph (2), and Article 37 A paragraph (1) and paragraph (2) on Corruption Law.

#### Article 28 on Corruption Law

*For the purpose of the investigation, the suspect shall be required to provide information about all of his/her property and property owned by his/her wife, husband, child, and property of any person or corporation that is known and or reasonably suspected of having any connection with the corruption act committed by the suspect.*

#### Article 37 on Corruption Law

- 1) The defendant has the right to prove that he/she has not committed a corruption act.
- 2) In case the defendant can prove that he/she does not commit a corruption act, then the evidence is used by the court as the basis for stating that the indictment is not proven.

#### Article 37A on Corruption Law

- 1) The defendant is obliged to provide information about all of his property and property of his wife or husband, child, and property of any person or corporation alleged to have any connection with the alleged case.
- 2) In the event that the defendant can not prove that the wealth is not equal to his income or the source of his wealth, the information referred to in paragraph (1) shall be used to substantiate the existing evidence that the defendant has committed a corruption act.

The reversed verification system is derived from the word "*Reversal of the burden of Proof*" which is a proof system used for Anglo-Saxon countries and aims to facilitate proof that in terms they are called "*certain cases*" or has special nature. Thus, this reversed proof system is very limited only in certain cases which are very difficult to prove it, so that a system of evidence which is actually contrary to the principle or universal principle of proof. (Adji, 2001)

the eradication of corruption cases should be provided by clear and decisive legislation to facilitate the proof as well as to ensnare the perpetrators of corruption and sanction the hardest. In practice, to ensnare a corruptor is not easy considering the legal

instruments governing corruption still overlap. M. Sholehuddin said the formation of our criminal legislation is often done in haste, so it does not seem to pay attention to the related content material in other legislation. This leads to "*inconsistency*" and even "*overlapping*" among legislations. Such criminal legislation is usually not based on a criminal policy that is targeted and perspective in the context of criminal policies toward corruption. (Sholehuddin, 2006)

### III. CONCLUSION

The meaning of corruption acts was contained in Law No 20/2001 on the Amendment of Law Number 31/1999 on the Eradication of Corruption (Corruption Act law). As mentioned in Chapter II, Article 2, corruption means "*Every person who unlawfully commits an act of enrichment of himself or another person or a corporation that may harm the state's finances or economy.*" The formulation of a corruption act in the articles of the Corruption Acts begins with the word "everyone", which is given the meaning of an individual or including a corporation. Meanwhile, a corporation is a collection of well-organized persons and/or assets, both legal entities and non-legal entities. Thus, corporations can be subject to criminal acts of corruption. In essence, the reversed verification system means the defendant is charged with the obligation to prove his innocence. The prosecutor only filed the indictment. Furthermore, the defendant himself must prove if he is innocent or his actions are not corruption act.

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