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Effectiveness of Law Enforcement on Criminal Acts of Collusion in Government Procurement of Goods/Services in Indonesia Based on Legal Certainty

John Candra Setyawan[1)] & Andri Winjaya Laksana[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: johancandr@gmail.com
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: andriwinjayalaksana@unissula.ac.id

Abstract. *As a result of the 1998 reform, Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism was created, one of which regulates collusion as a criminal act as stated in Article 21, but its implementation is still questionable at the time of the massive practice of evil conspiracy between state/government administrators and state officials or with other parties in this case the private sector in the procurement of government goods/services according to the results of the 2024 Integrity Assessment Survey with the results that 9% of respondents had close relationships with state administrators, 49% of the selection of vendor winners that had been arranged, and 71% of acts of collusion and nepotism. The approach method used in this study is socio-legal research. The specification of the research approach used is descriptive analytical. The sources and types of data used are primary data and secondary data. This study uses observation data collection techniques and literature studies. The results of the study obtained are that the implementation of the law has many obstacles, especially in the government procurement sector, such as the formulation of elements of the crime that are multi-interpretable and there are no clear and firm restrictions on the elements that harm others, society and the state, then the elements of the article that overlap with the crime of corruption, in addition there are doubts among law enforcers in its implementation because it is not clearly determined which law enforcers are authorized to investigate the crime, and there is no legal culture among law enforcers, the private sector, and society in general and there is no political will or criminal law policy of the government in the direction of enforcing the law on the crime of collusion so that only one case handling was found, namely against the defendant an. MURMAN EFFENDI but this was annulled by the Supreme Court Justice in the a quo case, while other cases related to deviations and abuse of authority in the procurement of government goods/services, investigators and public*

prosecutors did not use Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State but used Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption so that it not only resulted in the absence of legal certainty but also had an impact on Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion, and Nepotism being ineffectively implemented by law enforcement officers.

Keywords: *Certainty; Collusion; Crime; Effectiveness; Legal.*

1. Introduction

The Republic of Indonesia is a country based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI). This is to strengthen the provision that sovereignty is in the hands of the people and is implemented according to the Constitution, therefore, as a logical consequence, Indonesia is a country that adheres to the doctrine of rechtsstaat. Rechtsstaat is a legal ideal that was first put forward by Plato and then this idea was emphasized by Aristotle, that good state administration is based on good law. Rechtsstaat aims to limit the actions of the ruler, in this case the government, through laws and regulations that apply in a certain place and time to its people. The doctrine of rechtsstaat can only grow in a country that adheres to democracy. Without a state of law and democracy, all that is present is a totalitarian, absolute, and repressive ideology. Politics becomes the commander, while law is only a tool to maintain power. This form is called machtsstaat or a state based on power alone.

That considering the implementation of the government of the Republic of Indonesia by the President as stated in Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia "The President of the Republic of Indonesia holds the power of government according to the Constitution". Thus, it results in some of the power of government being in the hands of the President, especially in the law enforcement sector. In 2024, a contest for the election of the President and Vice President of the Republic of Indonesia was held with Prabowo Subianto as the President of Indonesia who was elected and inaugurated. President Prabowo Subianto carries the vision of "Together Indonesia Advancing Towards Golden Indonesia 2045. This vision has an explanation in every word. Then President Prabowo has 8 missions (asta cita), namely: Strengthening the ideology of Pancasila, democracy, and human rights (HAM). Strengthening the state defense and security system and encouraging

national independence through self-sufficiency in food, energy, water, creative economy, green economy, and blue economy. Increasing quality employment, encouraging entrepreneurship, developing creative industries, and continuing infrastructure development. Strengthening the development of human resources (HR), science, technology, education, health, sports achievements, gender equality, and strengthening the role of women, youth, and people with disabilities. Continuing downstreaming and industrialization to increase added value domestically. Building from the village and from below for economic equality and poverty eradication. Strengthening political, legal, and bureaucratic reforms, as well as strengthening the prevention and eradication of corruption and drugs. Strengthening the alignment of harmonious life with the environment, nature, and culture, as well as increasing tolerance between religious communities to achieve a just and prosperous society.

Against the ideals that have been crystallized, one of which is President Prabowo's concern for strengthening law enforcement. This is in line with the provisions of Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which regulates "everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law". Thus, the legal consequences are how law enforcement with legal certainty is implemented in the Unitary State of the Republic of Indonesia (NKRI). Law enforcement is aimed at improving order and legal certainty in society. This is done, among other things, by regulating the functions, duties, and authorities of institutions tasked with enforcing the law according to the proportion of their respective scopes, and based on a good cooperation system and supporting the goals to be achieved. The level of development of the society where the law is enforced affects the pattern of law enforcement, because in a modern society that is rational and has a high level of specialization and differentiation, the organization of law enforcement is also increasingly complex and highly bureaucratic. Systematic studies on law enforcement and justice are theoretically declared effective if the 5 pillars of law run well, namely: legal instruments, law enforcement officers, factors of community members affected by the scope of legal regulations or legal structure, cultural factors or legal culture, factors of facilities and facilities that can support the implementation of the law. In Indonesia, traditionally, legal institutions that enforce the law are the Police, the Prosecutor's Office, the judiciary and advocates. Outside of these institutions, there are still agencies that carry out investigative functions, including the Corruption Eradication Commission, and others.

That the law enforcement officers have a very decisive role in the administration of the state to achieve the ideals of the nation's struggle to realize a just and prosperous society as stated in the 1945 Constitution of the Republic of Indonesia. However, along with the changes in several government regimes, there have still been practices of corruption, collusion, and nepotism that are not

only carried out between State Administrators but also between State Administrators and other parties that can damage the joints of community, national, and state life and endanger the existence of the state, so that a legal basis is needed to prevent it. According to the Coordinating Minister for Political, Legal, and Security Affairs (Menkopolhukam) of the Advanced Cabinet for the 2019-2024 period, Mahfud MD, stated that the rampant collusion in Indonesia is due to one of the damages of law enforcement officers and bureaucracy, such as an example of an investor who complained about the difficulty of granting permits to manage projects, especially related to the construction of a battery factory in Padang, the permit has not been issued even though it has been submitted for two years. In the meeting, investors admitted that they had to prepare some money so that their permits would be made easier, if they did not prepare the money then it would be made difficult, on the other hand if they had prepared the money then they would be subject to criminal sanctions. So according to Mahfud MD, dark transactions occur in the midst of law enforcement officers. In addition, ministries and institutions also do the same thing especially in providing services to the community.

That these matters have become the government's concern in order to realize a clean state administration free from corruption, collusion, and nepotism, Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism has been established which also establishes general principles of state administration which include the principle of legal certainty, the principle of orderly state administration, the principle of public interest, the principle of openness, the principle of proportionality, the principle of professionalism, and the principle of accountability. That the establishment of the law is also based on the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism. However, based on the Decree of the MPR, it has implications for the establishment of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. It should be noted that in the formation of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption based on problems that appeared on the surface then caused turmoil in society so that the practice of collusion and nepotism then became the main topic. The community asked for legal reform, especially the formation of laws and regulations governing the eradication of criminal acts of collusion and nepotism on the other hand in the structure of laws and regulations at that time there were already legal instruments regulating Criminal Acts of Corruption through Law Number 3 of 1971 concerning Criminal Acts of Corruption, so that collusion and nepotism are not criminal acts.

The government has accommodated the legal needs in society based on these aspirations by issuing the Decree of the People's Consultative Assembly of the

Republic of Indonesia (TAP MPR-RI) Number XI/MPR/1998 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism. Following up on this, the DPR-RI issued a legal instrument in regulating the Criminal Acts of Collusion and Nepotism by formulating Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism (KKN). In addition, to complement and perfect the previous legal instrument, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption was formed which was later amended through Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Collusion and nepotism themselves aim to give priority to certain parties, whether family or colleagues, in order to achieve a certain goal. This can be achieved by utilizing the authority and facilities available to state administrators that are given by the state itself to realize the welfare of the wider community. This is certainly contrary to the principle of equality and the general principles of good governance.

Collusion and nepotism itself is regulated in Article 1 Number 4 and Number 5 of Law 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism which contains the definition or understanding of collusion, collusion is an unlawful agreement or cooperation between State Administrators or between State Administrators and other parties that harms other people, society and/or the state. While Nepotism is any unlawful act of a state administrator that benefits the interests of his family and/or cronies above the interests of society, the nation and the state. Meanwhile, criminal sanctions that threaten acts of collusion and nepotism are regulated in Article 21 which reads "Every State Organizer or Member of the Audit Commission who commits collusion as referred to in Article 5 number 4 shall be punished with imprisonment of at least 2 (two) years and a maximum of 12 (twelve) years and a fine of at least IDR 200,000,000,- (two hundred million rupiah) and a maximum of IDR 1,000,000,000,- (one billion rupiah)." and Article 22 which reads "Every State Organizer or Member of the Audit Commission who commits nepotism as referred to in Article 5 number 4 shall be punished with imprisonment of at least 2 (two) years and a maximum of 12 (twelve) years and a fine of at least IDR 200,000,000,- (two hundred million rupiah) and a maximum of IDR 1,000,000,000,- (one billion rupiah)".

The enactment of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism is expected to be able to anticipate and take action against the behavior and perpetrators of collusion and nepotism in the implementation of the state and government as the goal and ideal of reform. In addition, this law is also expected to be able to prevent or close access to corruption by taking action against collusion and nepotism. The enforcement of collusion and nepotism practices through this law can close the gap for corruption that causes state financial losses. This is based on the fact that

Corruption itself is a crime that does not stand alone either in terms of the qualification of the act or the perpetrator of the Corruption. Of all cases of Corruption, the perpetrators of Corruption are not only carried out by one person, but also by many parties, both by officials who are given authority or facilities, private parties, both individuals or corporations, and other parties who have roles and duties that can help realize corruption crimes.

The implementation of law enforcement of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism is considered not to be running optimally. This is related to the politics of criminal law enforcement which results in the less than optimal implementation of the prosecution of the Criminal Acts of Collusion and Nepotism caused by various things. Law enforcers still dichotomize the prosecution of the Criminal Acts of Collusion and Nepotism with the Criminal Acts of Corruption. The Criminal Acts of Collusion and Nepotism are considered as criminal acts that are part of the Criminal Acts of Corruption, whereas Collusion and Nepotism are types of criminal acts that stand alone or are separate from the Criminal Acts of Corruption. This is understandable because there are several weaknesses in terms of the legal substance of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism, especially related to the formulation of unclear crimes, which causes this law to be non-applicable. Meanwhile, conceptually, the occurrence of Criminal Acts of Corruption is preceded by acts of collusion and nepotism, so this law must be a fortress in efforts to prevent Criminal Acts of Corruption.

Furthermore, in 2016 the Constitutional Court issued Constitutional Court Decision Number 25/PUU-XIV/2016 which explicitly explains that state financial losses must be actual losses or state financial losses must be real and certain or in other words the state financial losses must be proven and not potential. This provides a direct or indirect picture that there is no possible element of attempt in Corruption. In addition, the implementation of Corruption is never carried out by one person alone, but generally also carried out in unlawful conspiracy by either family or cronies.

That related to criminal acts of corruption, collusion, and nepotism, currently the Indonesian government is only actively enforcing the law on criminal acts of corruption. Meanwhile, for criminal acts of collusion and nepotism, it has not achieved its goals and ideals in accordance with Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism. After the issuance of the Constitutional Court Decision Number 25/PUU-XIV/2016, it also closed efforts to prevent the occurrence of state financial losses so that the only legal instrument that can be attempted in preventing state financial losses and preventing the occurrence of criminal acts

of corruption is through the implementation of Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism (KKN). This adds to the difficulty in the application, prevention of Criminal Acts of Corruption and prosecution of Criminal Acts of Collusion and Nepotism because in its prosecution requires proof of real losses. One of the things that causes Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism to be less applicable is because there are several shortcomings related to the legal substance of this law.

In fact, collusion is a form of evil conspiracy and is carried out together with the aim of reaping profits and is an act that cannot be justified and has been categorized as a criminal act, so anyone caught committing collusion needs to be processed legally. Collusion that occurs continuously, even considered normal, will certainly have several negative impacts on many parties. Because collusion is an act that violates the law. This has an impact on the first social gap in society and injustice in various areas of life, second economic growth and investment are hampered, so that poverty alleviation is also affected and hampered and strategic projects are not completed or are only carried out carelessly. Poor infrastructure, inadequate health services, and lagging education are some real examples of the impacts of collusion and nepotism, third a waste of resources, both human resources and economic resources, fourth democracy is disrupted, because there is a violation of citizen rights so that it becomes the root of various injustices felt by society. When access to economic opportunities, education, and employment is only given to those who have connections or pay bribes, society feels disadvantaged. This dissatisfaction can trigger protests, social unrest, even political conflict, fifth, a sense of distrust from society towards state officials which results in the weakening of the foundation of the government system which should work based on the principles of transparency and accountability, for example in decision-making based on personal relationships or the interests of certain groups, the quality of the resulting policies becomes low. This leads to poor public services and public distrust of the government, sixth, a misalignment between functions, process mechanisms in accordance with procedures and laws, objectives with their practices in the field, seventh, moral and ethical damage, this is because the culture of collusion and nepotism if it spreads is like a virus in society. When leaders and high-ranking officials practice collusion and nepotism without significant consequences, society tends to normalize this behavior. The younger generation who should be the pillars of the country's future can lose moral and ethical values, making it difficult to build a society with integrity.

To reduce the impacts mentioned above, law enforcement has been carried out by the Bengkulu High Prosecutor's Office Investigator and is the only case ever prosecuted by the Public Prosecutor with the provisions of Article 1 Number 5 Jo

Article 5 Number 4 Jo Article 22 of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism, then decided by the Panel of Judges using Law Number 28 of 1999 is in the case with Case Number 61 / Pid.Sus-TPK / 2016 / PN.Bgl. In this case, the Defendant H. MURMAN EFFENDI, SH. MH Bin ISMAIL as the State Organizer with the position of Regent of Seluma for the 2010-2015 period who collaborated with Mr. JORESMIN NURYADIN Bin MURMAN EFFENDI who is the Director of PT. PUGUK SAKTI PERMAI and is the biological child of the Defendant to be determined as the winner of the auction by referring to the requirements set out in the Regent Regulation Number 4 of 2011 and Regent Regulation Number 5 of 2011, whereas PT. Puguk Sakti Permai does not meet the requirements to be won as the winner based on Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services, because in the Regent Regulation Number: 4 of 2011 which was amended by Regent Regulation Number: 5 of 2011 contains discriminatory requirements that benefit the interests of the defendant MURMAN EFFENDI's family as the Regent of Seluma above the interests of the community, nation and state. The auction in question is in the process of procuring government goods and/or services with a work package, namely road improvement infrastructure with hotmix construction and bridges. In this case, the Audit Board of Indonesia determined the value of state financial losses at IDR 4,185,750,353.37 (four billion one hundred eighty five million seven hundred and five thousand three hundred and fifty three thousand, thirty seven cents). Meanwhile, in the indictment and demands of the public prosecutor, the Defendant was charged with Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption and Article 1 Number 5 in conjunction with Article 5 Number 4 in conjunction with Article 22 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, each of which was indicted in an alternative combination. At the first instance court, the Panel of Judges decided with Article 1 Number 5 and Article 5 Number 4 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism which was strengthened by the Bengkulu High Court Decision Number 7/ Pid.Sus-TPK/ 2017/ PT BGL dated May 8, 2017. However, in the cassation court with the Supreme Court Decision Number 2291 K/PID.SUS/2017 dated February 26, 2018 and the judicial review of the Supreme Court Decision Number 227 PK/Pid.Sus/2019 dated August 14, 2019, it was revised and used the Corruption Eradication Law.

That the case of collusion or corruption with the defendant an. MURMAN EFFENDI is one example of a criminal act of collusion or corruption that has been revealed in court. However, more than that, it should be remembered that in the case of the 4G BTS construction project in the outermost, remote and underdeveloped areas at the Ministry of Communication and Information with the defendant an. JOHNNY G. PLATE who is the Minister of Communication and

Information has provided an opportunity and collaborated with other defendants, one of whom is the defendant an. GREGORIUS ALEX PLATE who is the younger brother of the defendant an. JOHNNY G. PLATE who at the time the project was implemented was the Minister of Communication and Information with an actual state financial loss of approximately Rp8,320,000,000,000.00 (eight trillion three hundred and twenty billion rupiah). This can be revealed by the Investigating Prosecutor of the Deputy Attorney General for Special Crimes after carrying out an expose on alleged corruption in the implementation of the project with the results of finding sufficient preliminary evidence regarding the alleged corruption in the BTS 4G case and its supporting infrastructure for packages 1, 2, 3, 4 and 5 BAKTI Kominfo in 2020-2022 with the finding of discrepancies in the procurement of the project, namely 7,904 BTS 4G 3T towers carried out in two phases, namely 4,200 villages and sub-districts carried out in 2021, then continued with 3,704 villages and sub-districts in 2022 but at the end of the contract period, the project had not been completed. However, the Investigator and Public Prosecutor suspected and charged the defendant in the name of. JOHNNY G. PLATE and the defendant in the name of. GREGORIUS ALEX PLATE Article 2 paragraph (1) and Article 3 in conjunction with Article 18 of Law of the Republic of Indonesia Number 31 of 1999 as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 in conjunction with Law of the Republic of Indonesia Number 31 of 1999 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, does not use the provisions of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism. So this becomes a long series of handling of cases that should be able to be suspected and charged with provisions as in Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, making Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism a sterile or non-applicable law.

In the handling of the alleged misuse of the South Kalimantan Provincial Budget carried out by the Corruption Eradication Commission with the suspect an. SAHBIRIN NOOR who was the Governor of South Kalimantan at that time and six other suspects, several of whom were state administrators and the rest were private parties or prospective providers of goods and/or services. In this case, the state administrators at the Public Works and Spatial Planning Service of South Kalimantan Province engineered the case by helping prospective providers to win the tender for the procurement of the construction of a soccer field, an integrated samsat building, and a swimming pool in the South Kalimantan region, while the prospective providers had agreed to give gifts or promises to the organizers, namely approximately Rp12,000,000,000.00 (twelve billion rupiah) and US$ 500 (five hundred US dollars). However, investigators from the

Corruption Eradication Commission also suspect that the provisions of Article 2 paragraph (1) and Article 3 in conjunction with Article 18 of Law of the Republic of Indonesia Number 31 of 1999 as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 in conjunction with Law of the Republic of Indonesia Number 31 of 1999 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, do not use the provisions of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism.

That in government spending activities that have the most crucial figures and contribute to the corruption perception index are government procurement of goods and services, as many as 90% (ninety percent) of corruption cases handled by law enforcement agencies, especially the Corruption Eradication Commission, are corruption cases in government procurement of goods/services. Alexander Marwata, who is the Deputy Chairperson of the Corruption Eradication Commission, stated that in the prosecution process, almost 90% (ninety percent) involved goods and services. Corruption cases handled by the Corruption Eradication Commission, gratification and bribery, if examined further, are closely related to goods and services, for example contractors who want to get projects by bribing or buying projects with gratification. Based on data from the Corruption Eradication Commission, as of January 10, 2024, the Corruption Eradication Commission has handled 1,512 corruption cases, of which 339 cases occurred in the government procurement of goods/services sector, making it the second largest case after bribery cases. Alexander Marwata said that since long ago various corruption efforts in the government procurement sector have been carried out, one of which is electronic-based auctions through e-procurement. However, along the way there are still many modes of deviation.

That in handling or implementing law enforcement of criminal acts of collusion has been regulated in Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, but based on the handling of the case, there has not been a single case in Indonesia that has permanent legal force (inckact van gewisjde) by making Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism the basis for judges' considerations in deciding cases. So that the existence of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism is something that needs to be studied whether it is still needed or not in terms of its legal effectiveness, especially in its law enforcement in government procurement of goods/services.

2. Research methods

Research method is a method of working to be able to understand the object that is the target of the relevant science. Method is a guideline for how a scientist studies and understands the environment that is understood. While research is a way that is based on a systematic method and certain thinking that aims to solve a scientific problem.

3. Results and Discussion

3.1 Implementation of Law Enforcement of Criminal Acts of Collusion in Government Procurement of Goods/Services in Indonesia

Indonesia is a country based on law (rechtsstaat) and the State of Indonesia is based on law (rechtsstaat), not based on mere power (machtsstaat). A country based on law is a country that adheres to the principle of law and has its sovereignty. The basis of a country based on law is the concept of the rule of law which means that the state in carrying out its functions must be based on the principle of law. Based on this concept, we can take the understanding that every member or citizen of a legal state must obey and recognize the supremacy of the law itself.

According to Jimly Asshiddiqie, the concept of a modern legal state in continental Europe was introduced using the term "rechtsstaat" from German. Figures such as Immanuel Kant, Paul Laband, Julius Stahl, Fichte, and others contributed to the development of this concept. On the other hand, in the Anglo-American tradition, the concept of a legal state is known as "The Rule of Law" which was first introduced by AV Dicey. In addition, the idea of a legal state is also related to the concept of "nomocracy" (nomocratie), which means that law is the main determinant in the implementation of state power.

The positivistic legal approach adopted and implemented in Indonesia is a legacy from the Dutch colonial era. The positivistic approach bases the law on what is written in the laws and regulations made by the authorities. In this context, the law is considered as something formalistic, namely the law is closely related to the applicable legal text or in a law and regulation. The positivistic legal approach can be found in the process of making laws and implementing the law by law enforcement officers. Because the law is very dependent on explicit legal texts, the process of making laws must pay close attention to the preparation and interpretation of legal texts.

Criminal acts must be given a scientific meaning and clearly defined to be able to separate them from the terms used in everyday life in society. In essence, criminal law is to provide protection to society and provide retribution for actions that have been committed.

In this context, law enforcement is also heavily influenced by strict interpretations of written legal provisions. Therefore, the influence of this formalistic approach can affect how laws are formed and how they are applied in concrete cases. In short, Indonesia still follows the positivistic legal tradition which involves the use of clear and firm legal texts in the legislative and law enforcement process. This approach has the advantage of ensuring legal clarity, but can also pose challenges in legal interpretation and flexibility especially in complex or changing situations.

Politics has a very important role in the formation and enforcement of its laws therefore justice can be realized if political activities are in line with the values of justice. The role of politics in the formation of laws is an integral part of the legal system in Indonesia, in which case a regulation is formed based on the initiative of the parliament or the People's Representative Council as the legislative chamber in the trias politica which functions to regulate or regeling, while on the other hand there is the initiative of the President who functions as the executive who oversees law enforcement officers except for the judiciary. The DPR consists of individuals who are directly elected by the people through the mechanism of political parties, as well as for the Presidential contestation which must use political party vehicles, the President and DPR have political authority and interests. Therefore, when political activities prioritize the values of justice in the creation of legal products, the laws that are formed will be good, but if the opposite happens, the supremacy of law will be questioned by the community. Although legal institutions must work independently to provide legal certainty and protection, collaboration between political and legal institutions must be based on the principles of the supremacy of law that is just. This is an important foundation for achieving a just and functioning legal system.

In law enforcement when there is a violation of the law or deviation from the law, it is mandatory to involve law enforcement officers and the continuity of the law is under the control of law enforcement officers. The role of law enforcers is important because the party that implements the laws and regulations in terms of enforcing sanctions against the prohibitions therein, then only law enforcement officers can and have the authority to implement it. According to Satjipto Rahardjo, law enforcement is an effort to realize ideas about justice, legal certainty, and social benefits into reality. The process of realizing these ideas is the essence of law enforcement. However, on the other hand, when law enforcement officers have been able to let go of conditions outside the law such as politics, then in enforcing the law, legal certainty, benefits and justice will be achieved. Law and justice are two keywords that cannot be separated. These two things are not new problems in our lives, but are very much felt in critical times that hit our nation so that they are a very urgent need and demand. The court is not a place to look for money, but it is a place to seek justice.

In discussing law enforcement, especially in Indonesia, it is a complex discussion that is not only contributed by the complexity of the legal system but also still constrained by the adaptation between the legal system and the ideological, political, economic, social, and cultural systems that exist in the midst of society. Lawrence M. Friedman once mentioned several factors that determine a law enforcement process that can lead to success, namely legal substance factors, legal structure and legal culture. These factors are interrelated with each other, so that if one cannot be implemented properly or is not in a state that is acceptable and becomes a solution to problems in society, it will affect other factors so that it will result in a shift in the focus of law enforcement and there is no correlation and interdependence with legal needs in society.

Today, the government still ignores several subsystems of the law and even their existence is not considered by certain groups. Therefore, there are cases of corruption, collusion, nepotism, and privileges for someone who has power. So this is a legal downturn that has a negative impact on the nation's economy because it is the heart of the country's life in carrying out its activities. No matter how much is done in the economic field by our economic experts, but as long as the supremacy of law and justice cannot be upheld properly, the future of Indonesia's sovereignty is at stake. If the government does not improve the supremacy of law, it is impossible for things like when the reform was echoed in the New Order era from 1997 to 1998 not to happen again.

The reforms requested by the community in 1997 and 1998 were a momentum that marked changes in various fields, especially related to the sovereignty of ideology, politics, economy, social, culture, law, defense and security. Specifically, the community's request for changes in the legal and state administration fields that were based on a closed bureaucracy in the previous government era and exacerbated by the proliferation of corruption, collusion and nepotism practices, the community longed for sharp laws up and down and no one was given special treatment as a fellow citizen. The practices of corruption, collusion and nepotism were the general perspective of the community at that time and even now to assess the implementation of the New Order government. Corruption, collusion and nepotism themselves are negative products of social and political symptoms as an indication of the decline in values and morals in government practices and even the mentality of the Indonesian people in general. We still often find practices of corruption, collusion and nepotism in Indonesia, to the point that it has become commonplace that employee recruitment, both in government institutions and private companies. This is a tendency to take shortcuts to meet expectations or see the possibility of personal gain associated with the opportunity to commit acts related to nepotism. The public still assumes that many acts of collusion and nepotism are not acts like criminal acts of corruption. The impact of the rampant practice of collusion and nepotism is the emergence of a sense of injustice due to the monopoly of information and access to certain

parties, while the implementation of transparency in information and access should be so that all parties can participate.

The practice of collusion and nepotism that occurred at that time was due to the length of President Soeharto's rule and also the centralized government system at that time. The practice of collusion also occurred in the making of economic policies, because in making these policies Soeharto relied on advice and support from those closest to him. One of them is the capitalist cronies, most of whom are families and several wealthy ethnic Chinese conglomerates. The most visible practice of collusion occurred when Tomy Soeharto, who was also President Soeharto's biological son, was freed from the corruption that dragged his name. Many people think that he was freed because of the power of his father, President Soeharto. On the other hand, during President Soeharto's leadership, President Soeharto appointed regional heads directly without going through political contestation and the person appointed was someone with a military group or the Indonesian Armed Forces (ABRI) in the past or now the Indonesian National Army (TNI). So that the President's actions have an impact on the marginalization of civil rights in using their political rights to determine their leaders in their respective regions.

That these matters have become the government's concern in order to realize a clean state administration free from corruption, collusion, and nepotism, Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism has been established which also establishes general principles of state administration which include the principle of legal certainty, the principle of orderly state administration, the principle of public interest, the principle of openness, the principle of proportionality, the principle of professionalism, and the principle of accountability. That the establishment of the law is also based on the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism. However, based on the Decree of the MPR, it has implications for the establishment of Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. It should be noted that in the formation of the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption based on problems that appeared on the surface then caused turmoil in society so that the practice of collusion and nepotism then became the main topic. The community asked for legal reform, especially the formation of laws and regulations governing the eradication of criminal acts of collusion and nepotism on the other hand in the structure of laws and regulations at that time there were already legal instruments regulating Criminal Acts of Corruption through Law Number 3 of 1971 concerning Criminal Acts of Corruption, so that collusion and nepotism are not criminal acts.

The government has accommodated the legal needs in society based on these aspirations by issuing the Decree of the People's Consultative Assembly of the Republic of Indonesia (TAP MPR-RI) Number XI/MPR/1998 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism. Following up on this, the DPR-RI issued a legal instrument in regulating the Criminal Acts of Collusion and Nepotism by formulating Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism (KKN). In addition, to complement and perfect the previous legal instrument, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption was formed which was later amended through Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Collusion and nepotism themselves aim to give priority to certain parties, whether family or colleagues, in order to achieve a certain goal. This can be achieved by utilizing the authority and facilities available to state administrators that are given by the state itself to realize the welfare of the wider community. This is certainly contrary to the principle of equality and the general principles of good governance.

Collusion is regulated in Article 1 Number 4 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism which contains the definition or understanding of collusion, collusion is an agreement or cooperation that is against the law between State Administrators or between State Administrators and other parties that harms other people, society and/or the state. While Nepotism is any act of a state administrator that is against the law that benefits the interests of his family and/or cronies above the interests of society, the nation and the state. Meanwhile, criminal sanctions that threaten acts of collusion and nepotism are regulated in Article 21 which reads "Every State Organizer or Member of the Audit Commission who commits collusion as referred to in Article 5 number 4 shall be punished with imprisonment of at least 2 (two) years and a maximum of 12 (twelve) years and a fine of at least IDR 200,000,000, (two hundred million rupiah) and a maximum of IDR 1,000,000,000, (one billion rupiah)." and Article 22 which reads "Every State Organizer or Member of the Audit Commission who commits nepotism as referred to in Article 5 number 4 shall be punished with imprisonment of at least 2 (two) years and a maximum of 12 (twelve) years and a fine of at least IDR 200,000,000, (two hundred million rupiah) and a maximum of IDR 1,000,000,000, (one billion rupiah)".

The enactment of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism is expected to be able to anticipate and take action against the behavior and perpetrators of collusion and nepotism in the implementation of the state and government as the goal and ideal of reform. In addition, this law is also expected to be able to prevent or close access to corruption by taking action against collusion and nepotism. The

enforcement of collusion and nepotism practices through this law can close the gap for corruption that causes state financial losses. This is based on the fact that Corruption itself is a crime that does not stand alone either in terms of the qualifications of the act or the perpetrators of Corruption. Of all cases of Corruption, the perpetrators of Corruption are not only carried out by one person, but also by many parties, both by officials who are given authority or facilities, private parties, both individuals or corporations, and other parties who have roles and duties that can help realize corruption crimes.

Collusion aims to give priority to certain parties, whether family or colleagues, in order to achieve a certain goal. This can be achieved by utilizing the authority and facilities available to state administrators that the state itself has provided to realize the welfare of the wider community. This is certainly contrary to the principle of equality and the general principles of good governance. The worst consequence of collusion practices is the destruction of social order with the widening of social inequality. State administrators must provide information or answers according to their authority and duties. This obligation is also balanced with the opportunity for State Administrators to use their rights and obligations in the form of rebuttals to incorrect information from the public.

The implementation of law enforcement of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism is considered not to be running optimally. This is related to the politics of criminal law enforcement which results in the less optimal implementation of the prosecution of the Criminal Acts of Collusion and Nepotism caused by various things. Law enforcers still dichotomize the prosecution of the Criminal Acts of Collusion and Nepotism with the Criminal Acts of Corruption. The Criminal Acts of Collusion and Nepotism are considered as criminal acts that are part of the Criminal Acts of Corruption, whereas Collusion and Nepotism are types of criminal acts that stand alone or are separate from the Criminal Acts of Corruption. This is understandable because there are several weaknesses in terms of the legal substance of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism, especially related to the formulation of unclear crimes, which causes this law to be non-applicable. Meanwhile, conceptually, the occurrence of Criminal Acts of Corruption is preceded by acts of collusion and nepotism, so this law must be a fortress in efforts to prevent Criminal Acts of Corruption.

Collusion is a dishonest attitude and act by making a hidden agreement in carrying out an agreement that is colored by the provision of money or certain facilities as a lubricant so that all matters run smoothly. Collusion which has been popular since the reform era which is associated with corruption is a concept that can only be applied in the context of organizations, whether in the form of companies, political parties, student organizations, and of course the state.

However, in the context of the general public, collusion is a social practice that is considered to have good values. What's wrong with collaborating with your own friends to gain mutual benefits. In addition, traders and small businessmen are more likely to survive by "colluding" among themselves, and what's wrong with giving opportunities to children or relatives and other family members.

So, if the boundaries of the community, which are guided by moral values, propriety and socio-cultural appropriateness are blurred or obscured by the organizational territory, especially the state, which is regulated by legal rules and legitimate power tools, collusion and nepotism are not something that is problematic, although, they can be disturbing because of the consequences they cause. Collusion and nepotism are considered deviations that cannot be tolerated if the pressure they cause has exceeded the limit. When the "private area" has overlapped with the "public area", collusion and nepotism are not considered a problem, but when the two are separated, then collusion and nepotism become a serious problem.

Collusion and nepotism mainly involve public servants such as bureaucrats, judges, or people's representatives and occur in the public sphere. Based on this context, collusion and nepotism are just two forms of the same behavior. Collusion means tying cooperation with outside parties - private parties - to gain illegitimate benefits from public or state property. While nepotism provides public positions based on family ties or blood relations or ideology, not based on considerations of a merit system.

The word Collusion as a new form of corruption recognized by the public. Collusion as a symptom is recognized due to several factors. First, the very strong role of government in economic development and in encouraging business development. Second, the growth of corporations and conglomerates whose development and size are very impressive. Third, few people have the opportunity and are able to develop large businesses. Fourth, there seems to be cooperation between certain entrepreneurs and the authorities. And fifth, the development of politics as a new resource or new production factor that determines the success of the company. This symptom is more apparent than the symptom of collusion among entrepreneurs themselves in determining high prices or price increases and dividing market areas.

Robin Fox in his book Kinship and Marriage states that one of the characteristics of developing countries is the widespread practice of collusion and nepotism in society. This is different from the society of developed countries which can close the opportunity for nepotism by implementing various regulations strictly in the life of society.

Collusion is essentially prioritizing and opening opportunities for relatives or close friends to obtain facilities and positions in positions related to government

bureaucracy, without heeding applicable regulations, thus closing opportunities for others. The practice of collusion cannot be associated with private parties who provide positions to children and their families. This term is only used for government bureaucracy. Collusion can arise for various reasons, including those related to the strong cultural values of society that demand successful family members to help other relatives who need help.

In the fierce competition in society as faced by Indonesian society lately, the tendency to collusion has become a daily practice of society. This tendency will become even worse if the opportunities offered in government institutions are not open to the public. This closedness has caused people's opportunities to commit nepotism to become more open. If an applicant does not have family in the bureaucracy, then he will try to find a "family" who can help him. Brokers in the bureaucracy often act as family in exchange for material benefits from the assistance they provide. Therefore, in broader practice, nepotism eventually develops into the practice of collusion. The practice of collusion and nepotism is often complained about, but is difficult to eradicate. Many realize that such practices are not in accordance with the demands of justice and modern life, but they are still unable to change them. Here there is a kind of obligation that must be fulfilled by those who are successful in the bureaucracy to help their relatives, because if not they will receive social sanctions from their community. Seeing this, in fact the practice of collusion and nepotism does not stand alone. This practice is actually also related to the orientation of the cultural values of society, namely something related to the system of ideas or concepts about what things are valuable and what are not valuable in life.

The push for collusion and nepotism practices has become stronger with the increasing prevalence of materialism in society lately. People always think and dream of obtaining something materialistic, especially new technology products imported from developed countries, which have penetrated so far into the heart of society. This has led to the emergence of various forms of life that lead to instant culture and hedonism. Symbolically, such a life model has given a signal of society's insatiable thirst for technological objects that incessantly intervene in society's life.

Accompanying the increasing materialism, society found a way to satisfy its thirst through a crashing mentality that has long been rooted in the heart of Indonesian society. In the early days of the New Order government, Koentjaraningrat had warned about the dangers of the crashing mentality possessed by Indonesian society, because such a mentality has a strong potential to hinder the development efforts that are being carried out.

This is mainly because those who prefer to find shortcuts even if they have to do it by violating ethics and rules rather than working hard. To make it easier to get a position, then people form organizations of children of officials. With this, they

have easy access to achieve their goals. The practice of this mentality is what causes many people to collusion and nepotism, among other things. The prohibition of nepotism does not mean a closed standard for family members, but it does prohibit civil servants from using or abusing their position in a public institution to provide public jobs for their family members. The purpose of the prohibition is not to prevent family members from working together, but to prevent civil servants from prioritizing family members, in using subjective authority, in the name of the public, to accept qualified people as public administration employees.

In the public sector, collusion means that the most qualified candidate is denied a position or promotion, and the entire community suffers as a result, in addition to the person who could have achieved the position had it not been for the collusion. Or collusion can mean that the bidder who submitted the highest bid is the one who gets the government contract, paid for with taxpayer money. Collusion can create loyalty conflicts within an organization, especially when one family member is placed in a supervisory position over another family member. Co-workers are unlikely to feel comfortable in such a situation, so it should be avoided.

Collusion and nepotism themselves have a very negative impact on the sustainability of a nation. Collusion and nepotism go hand in hand with corruption, because collusion and nepotism themselves can be said to be variants of corruption. Collusion and nepotism are not legal terms. There is not a single provision of offenses in the Corruption Eradication Law, the Criminal Code and other criminal laws that threaten criminal penalties for acts of collusion and nepotism. The two terms are more sociological terms and not legal terms. More of a social issue than a legal issue.

Based on this explanation, collusion and nepotism violate the standards of universal values, namely justice, equal rights, and balance, as well as using illegitimate means to seek wealth or position.

Furthermore, in 2016 the Constitutional Court issued Constitutional Court Decision Number 25/PUU-XIV/2016 which explicitly explains that state financial losses must be actual losses or state financial losses must be real and certain or in other words the state financial losses must be proven and not potential. This provides a direct or indirect picture that there is no possible element of attempt in Corruption. In addition, the implementation of Corruption is never carried out by one person alone, but generally also carried out in unlawful conspiracy by either family or cronies.

That related to criminal acts of corruption, collusion, and nepotism, currently the Indonesian government is only actively enforcing the law on criminal acts of corruption. Meanwhile, for criminal acts of collusion and nepotism, it has not

achieved its goals and ideals in accordance with Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism. After the issuance of the Constitutional Court Decision Number 25/PUU-XIV/2016, it also closed efforts to prevent the occurrence of state financial losses so that the only legal instrument that can be attempted in preventing state financial losses and preventing the occurrence of criminal acts of corruption is through the implementation of Law Number 28 of 1999 concerning State Administration that is Clean and Free from Corruption, Collusion and Nepotism (KKN). This adds to the difficulty in the application, prevention of Criminal Acts of Corruption and prosecution of Criminal Acts of Collusion and Nepotism because in its prosecution requires proof of real losses. One of the things that causes Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism to be less applicable is because there are several shortcomings related to the legal substance of this law.

In fact, collusion is a form of evil conspiracy and is carried out together with the aim of reaping profits and is an act that cannot be justified and has been categorized as a criminal act, so anyone caught committing collusion needs to be processed legally. Collusion that occurs continuously, even considered normal, will certainly have several negative impacts on many parties. Because collusion is an act that violates the law. This has an impact on the first social gap in society and injustice in various areas of life, second economic growth and investment are hampered, so that poverty alleviation is also affected and hampered and strategic projects are not completed or are only carried out carelessly. Poor infrastructure, inadequate health services, and lagging education are some real examples of the impacts of collusion and nepotism, third a waste of resources, both human resources and economic resources, fourth democracy is disrupted, because there is a violation of citizen rights so that it becomes the root of various injustices felt by society. When access to economic opportunities, education, and employment is only given to those who have connections or pay bribes, society feels disadvantaged. This dissatisfaction can trigger protests, social unrest, even political conflict, fifth, a sense of distrust from society towards state officials which results in the weakening of the foundation of the government system which should work based on the principles of transparency and accountability, for example in decision-making based on personal relationships or the interests of certain groups, the quality of the resulting policies becomes low. This leads to poor public services and public distrust of the government, sixth, a misalignment between functions, process mechanisms in accordance with procedures and laws, objectives with their practices in the field, seventh, moral and ethical damage, this is because the culture of collusion and nepotism if it spreads is like a virus in society. When leaders and high-ranking officials practice collusion and nepotism without significant consequences, society tends to normalize this behavior. The younger generation who should be the pillars of the country's

future can lose moral and ethical values, making it difficult to build a society with integrity.

To reduce the impacts mentioned above, law enforcement has been carried out by the Bengkulu High Prosecutor's Office Investigator and is the only case ever prosecuted by the Public Prosecutor with the provisions of Article 1 Number 5 Jo Article 5 Number 4 Jo Article 22 of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion and Nepotism, then decided by the Panel of Judges using Law Number 28 of 1999 is in the case with Case Number 61 / Pid.Sus-TPK / 2016 / PN.Bgl. In this case, the Defendant H. MURMAN EFFENDI, SH. MH Bin ISMAIL as the State Organizer with the position of Regent of Seluma for the 2010-2015 period who collaborated with Mr. JORESMIN NURYADIN Bin MURMAN EFFENDI who is the Director of PT. PUGUK SAKTI PERMAI and is the biological child of the Defendant to be determined as the winner of the auction by referring to the requirements set out in the Regent Regulation Number 4 of 2011 and Regent Regulation Number 5 of 2011, whereas PT. Puguk Sakti Permai does not meet the requirements to be won as the winner based on Presidential Regulation Number 54 of 2010 concerning Government Procurement of Goods/Services, because in the Regent Regulation Number: 4 of 2011 which was amended by Regent Regulation Number: 5 of 2011 contains discriminatory requirements that benefit the interests of the defendant Murman EFFENDI's family as the Regent of Seluma above the interests of the community, nation and state. The auction in question is in the process of procuring government goods and/or services with a work package, namely road improvement infrastructure with hotmix construction and bridges. In this case, the Audit Board of Indonesia determined the value of state financial losses at IDR 4,185,750,353.37 (four billion one hundred eighty five million seven hundred and fifty five thousand three hundred and fifty three thousand, thirty seven cents). Meanwhile, in the indictment and demands of the public prosecutor, the Defendant was charged with Article 2 and Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption and Article 1 Number 5 in conjunction with Article 5 Number 4 in conjunction with Article 22 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, each of which was charged in an alternative combination. At the first instance court, the Panel of Judges decided with Article 1 Number 5 and Article 5 Number 4 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism which was strengthened by the Decision of the Bengkulu High Court Number 7/ Pid.Sus-TPK/ 2017/ PT BGL dated May 8, 2017. However, in the cassation court with the Supreme Court Decision Number 2291 K/PID.SUS/2017 dated February 26, 2018 and the judicial review of the Supreme Court Decision Number 227 PK/Pid.Sus/2019 dated August 14, 2019 was revised and uses Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the

Eradication of Criminal Acts of Corruption.

In this case, there has been an overlap in the formulation and analysis of the charged crimes between Article 1 Number 5 in conjunction with Article 5 Paragraph 4 in conjunction with Article 22 of Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion, and Nepotism with Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. So that in the formulation of these crimes, it is necessary to emphasize the differences which limit atively impose restrictions so that there is no overlap.

Furthermore, on the side of the Supreme Court Justices, they tend to use the crime of corruption because the legal politics and legal culture in the crime of collusion and nepotism are not yet clearly visible. So it is appropriate according to law that the Supreme Court Justices decide the case with the crime in Article 3 of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. In addition to the legal politics and legal culture that have so far tended to strengthen the prosecution and eradication of criminal acts of corruption, it is also seen that in the crime as regulated by Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion, and Nepotism cannot be interpreted more clearly because the legal instruments and doctrines that have so far developed regarding the crime of collusion and nepotism are inadequate.

That the case of collusion or corruption with the defendant an. MURMAN EFFENDI is one example of a criminal act of collusion or corruption that has been revealed in court. However, more than that, it should be remembered that in the case of the 4G BTS construction project in the outermost, remote and underdeveloped areas at the Ministry of Communication and Information with the defendant an. JOHNNY G. PLATE who is the Minister of Communication and Information has provided an opportunity and collaborated with other defendants, one of whom is the defendant an. GREGORIUS ALEX PLATE who is the younger brother of the defendant an. JOHNNY G. PLATE who at the time the project was implemented was the Minister of Communication and Information with an actual state financial loss of approximately Rp8,320,000,000,000.00 (eight trillion three hundred and twenty billion rupiah). This can be revealed by the Investigating Prosecutor of the Deputy Attorney General for Special Crimes after carrying out an expose on alleged corruption in the implementation of the project with the results of finding sufficient preliminary evidence regarding the alleged corruption in the BTS 4G case and its supporting infrastructure for packages 1, 2, 3, 4 and 5 BAKTI Kominfo in 2020-2022 with the finding of discrepancies in the procurement of the project, namely 7,904 BTS 4G 3T towers carried out in two phases, namely 4,200 villages and sub-districts carried out in

2021, then continued with 3,704 villages and sub-districts in 2022 but at the end of the contract period, the project had not been completed. However, the Investigator and Public Prosecutor suspected and charged the defendant in the name of. JOHNNY G. PLATE and the defendant in the name of. GREGORIUS ALEX PLATE Article 2 paragraph (1) and Article 3 in conjunction with Article 18 of Law of the Republic of Indonesia Number 31 of 1999 as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 in conjunction with Law of the Republic of Indonesia Number 31 of 1999 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, does not use the provisions of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism. So this becomes a long series of handling of cases that should be able to be suspected and charged with provisions as in Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, making Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism a sterile or non-applicable law.

In the handling of the alleged misuse of the South Kalimantan Provincial Budget carried out by the Corruption Eradication Commission with the suspect an. SAHBIRIN NOOR who was the Governor of South Kalimantan at that time and six other suspects, several of whom were state administrators and the rest were private parties or prospective providers of goods and/or services. In this case, the state administrators at the Public Works and Spatial Planning Service of South Kalimantan Province engineered the case by helping prospective providers to win the tender for the procurement of the construction of a soccer field, an integrated samsat building, and a swimming pool in the South Kalimantan region, while the prospective providers had agreed to give gifts or promises to the organizers, namely approximately Rp12,000,000,000.00 (twelve billion rupiah) and US$ 500 (five hundred US dollars). However, investigators from the Corruption Eradication Commission also suspect that the provisions of Article 2 paragraph (1) and Article 3 in conjunction with Article 18 of Law of the Republic of Indonesia Number 31 of 1999 as amended and supplemented by Law of the Republic of Indonesia Number 20 of 2001 in conjunction with Law of the Republic of Indonesia Number 31 of 1999 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, do not use the provisions of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism.

3.2 Effectiveness of Law Enforcement of Collusion Crimes in Government Procurement of Goods/Services in Indonesia Based on Legal Certainty

The implementation of law in society, in addition to depending on the legal awareness of the community, is also very much determined by law enforcement officers, because it often happens that some legal regulations cannot be implemented properly because there are some law enforcement officers who do not implement a legal provision as it should be. This is caused by the implementation by law enforcers themselves which is not appropriate and is a bad example and can lower the image. In addition, good examples and the integrity and morality of law enforcement officers must be good, because they are very vulnerable and open to opportunities for bribery and abuse of authority. Money can influence the investigation process, the prosecution process and the decisions made.

In the modern state structure, the task of law enforcement is carried out by the judicial component and implemented by the bureaucracy, so it is often called the law enforcement bureaucracy. The executive with its bureaucracy is part of the chain to realize the plans contained in the (regulations) of law. Judicial freedom is essential to a state of law that has now been realized where the power of the Judiciary is independent and free from the influence of executive and legislative elements and judicial freedom also determines the life of the state and the upholding of the principle of the Rule of Law.

The judiciary as one of the law enforcement institutions, therefore its activities are inseparable from the laws that have been made and provided by the law-making body. In this case there is a difference between the judiciary and the court, the judiciary refers to the process of trying, while the court is one of the institutions in the process, other institutions involved in the process of trying are the Police, the Prosecutor's Office and Advocates.

The running of the judicial process is closely related to the substance being tried, namely civil or criminal cases, the involvement of institutions in the full judicial process only occurs when trying criminal cases. In its development, several judicial bodies were formed within the scope of General Courts, Religious Courts, Military Courts and State Administrative Courts, Taxation Courts where each has the authority to try cases in accordance with the authority of each of these courts.

That the role of the judicial institution in realizing an independent court, not influenced by any party, clean and professional has not functioned as expected. This is not only caused by:

1) the existence of government intervention and influence from other parties on court decisions, but also because of the quality of professionalism, morals and ethics of law enforcement officers which are still low. As a result, public

trusttowards the judicial institution as the last bastion for obtaining justice is decreasing.

2) weak law enforcement is also caused by the performance of other law enforcement officers such as Judges, Police, Prosecutors, Advocates and Civil Servant Investigators (PPNS) who have not shown a professional attitude and high moral integrity. The condition of legal facilities and infrastructure that are very much needed by law enforcement officers is also still far from adequate so that it greatly affects the implementation of law enforcement to play an optimal role and in accordance with the sense of justice in society.

As an effort to increase empowerment of judicial institutions and other law enforcement institutions, the steps that need to be taken are:

a. Improving the quality and capabilities of law enforcement officers to be more professional, have integrity, have personality and high morals.

b. It is necessary to make improvements to the recruitment and promotion system for law enforcement officers, education and training, as well as monitoring mechanisms that provide a greater role for the community in the behavior of law enforcement officers.

c. Striving to improve the welfare of law enforcement officers in accordance with the fulfillment of life's needs.

The existence of horizontal and vertical violence is basically caused by the weakening of the implementation of cultural values and legal awareness of the community which results in low public compliance with the law and the emergence of various acts of abuse of authority. Likewise, the lack of socialization of laws and regulations both before and after they are implemented both to the general public and to state administrators including law enforcement officers. The efforts that will be made are to increase understanding and legal awareness in all levels of society regarding the importance of the rights and obligations of each individual which is ultimately expected to form a good legal culture.

Law enforcement is greatly influenced by the circumstances and social interactions that occur in society, can be included in a society that maintains or develops a system of rights based on status, or a society with a sharp distinction between "the have" and "the have not", or a society that is in an authoritarian power environment, will place a different law enforcement system than an open and egalitarian society. In other words, true and fair law enforcement is determined by the will and participation of community members, not merely the wishes of law enforcers.

4. Conclusion

Law enforcement in several cases of procurement of goods/services has involved conspiracy or unlawful cooperation between State Administrators or between State Administrators and other parties that harm other people, the community, and/or the state or the crime of collusion as regulated in Article 21 in conjunction with Article 5 number 4 in conjunction with Article 1 number 4 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, however, when enforcing the law on the crime of collusion, only one case was found, namely against the defendant in the name of. MURMAN EFFENDI who has been charged with First violating Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption or Second violating Article 21 in conjunction with Article 5 number 4 in conjunction with Article 1 number 4 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, did not stop there, then the Public Prosecutor charged the defendant by proving the Second indictment, namely Article 21 in conjunction with Article 5 number 4 in conjunction with Article 1 number 4 of Law Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion, and Nepotism, which was then taken over by the Judge at the first level, namely the Corruption Crime Court at the Bengkulu District Court, then The case was rolled at the appeal level, the same thing also happened, namely the Appellate Judge at the Bengkulu High Court agreed with the first instance Judge and only revised several things other than the criminal provisions that were proven, but this was later annulled by the Supreme Court Judge in the a quo case with his verdict stating that the defendant was proven guilty of committing a crime as regulated in Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, while other cases related to deviations and abuse of authority in the procurement of government goods/services, investigators and public prosecutors did not use Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State but used Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which adds to the long list of counterproductive factors in enforcing the law on criminal acts of collusion. As a result of the 1998 reform, Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion, and Nepotism was created, one of which regulates collusion as a criminal act as stated in Article 21, but in its implementation, the law has many obstacles, especially related to the procurement of government goods/services, such as the formulation of

elements of the crime that are open to multiple interpretations and there are no firm and clear restrictions regarding the elements that harm others, society and the state, then also regarding the elements of the article that overlap or overlap with the crime of corruption, in addition there are also doubts among law enforcers in its implementation because it is not clearly determined which law enforcers are authorized to investigate the crime because what is explicitly mandated in the law is the inspection commission which was ultimately annulled by Law Number 30 of 2002 concerning the Corruption Eradication Commission as last amended by Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission Eradication of Corruption Crimes, but the commission is stated in its law that it only has the authority to enforce the law on corruption crimes, and there is no legal culture among law enforcers, the private sector, and society in general and there is no political will or criminal law policy of the government in the direction of enforcing the law on collusion crimes so that only one case handling was found, namely against the defendant an. MURMAN EFFENDI but this was annulled by the Supreme Court Justice in the a quo case, while other cases related to deviations and abuse of authority in the procurement of government goods/services, investigators and public prosecutors did not use Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State but used Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption so that it not only resulted in the absence of legal certainty but also had an impact on Law Number 28 of 1999 concerning the Implementation of a Clean and Corruption-Free State, Collusion, and Nepotism being ineffectively implemented by law enforcement officers.

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