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The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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TABLE OF CONTENTS

Front Page	i
Information of the International Seminar	ii
Committee Composition	iii
Preface.....	iv
Greeting From The Dean Faculty of Law	vi
INDONESIA’S KPK AND NSW’S ICAC: COMPARISONS AND CONTRASTS	
Prof. Simon Butt	1
CAN INDONESIA FREE ITSELF FROM CORRUPTION IN 2020?	
Prof. Dr. Hikmahanto.,S.H.,LLM	4
AN ACT TO ESTABLISH THE ANTI-CORRUPTION AGENCY, TO VEST POWERS ON OFFICERS OF THE AGENCY AND TO MAKE PROVISIONS CONNECTED THEREWITH.	
Rohimi Shapiee.....	7
STRATEGY TO CREATE INDONESIA FREE CORRUPTION IN 2020	
Dr. Jawade Hafidz, S.H., M.H	11
THE NETHERLANDS INGLOBAL CORRUPTION	
Siti Malifah Marlou Feer, M.A.	28
ROBUST YET FRAGILE: EFFORTS IN COMBATING CORRUPTION IN INDONESIA	
Laras Susanti.,S.H., LLM.....	33
LEGAL STATUS OF AKTOR’S FOR CORRUPTION (In the Perspective of Islamic Law)	
Sumarwoto Umar	37
THE ROLE OF LAW IN THE POVERTY REDUCTION STRATEGY	
Lantik Kusuma Aji	46
THE INDEPENDENCY OF THE INSTITUTION FOR THE PROTECTION AND THE ESTABLISHMENT OF HUMAN RIGHTS TOWARDS THE GLOBALIZATION ERA 2020	
Khalid	55
THE URGENCY OF ANTI CORRUPTION EDUCATION FOR COLLEGES IN INDONESIA	
Siska Diana Sari.....	62
THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST	
Elis Rahmahwati.....	78
DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT	
Agung Widodo.....	87
DIVERSITY ADULT AGE LIMITS POSITIVE LAW IN INDONESIA (Studies in Multidisciplinary Perspective)	
Muhammad Andri	102

THE APPLICATION OF BALANCE IDEA IN SETTLEMENT OF DOCTOR MALPRACTICE CASE THROUGH PENAL MEDIATION Yati Nurhayati.....	111
MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL THROUGH ENFORCEMENT OF ETHICS Dr. Sukresno, SH, M.Hum	118
CORRUPTION POTENCIES IN LAND USE POLICY (A Case Study in Kuningan Regency) Haris Budiman	126
CORRUPTION PREVENTION AND CONTROLS INP Budiarta	133
ISLAMIC LAW VALUES TRANSFORMATION IN THE RECONSTRUCTION OF THE LEGALITY PRINCIPLE OF INDONESIAN CRIMINAL CODE Sri EndahWahyuningsih	145
JUSTICE AND CHARITY IN JAKARTA’S NORTH COAST RECLAMATION PROCESS THAT WILL LEAD TO INDONESIA CLEAN OF CORRUPTION Untoro	155
CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED Zulfiani.....	162
THE REFLECTION OF ISLAMIC BANKING IN THEORY AND PRACTICE Anis Mashdurohatun	171
THE IMPLEMENTATION OF LOCAL WISDOM SIRI’NA PACCE AS AN EFFORT OF CORRUPTION ERADICATION IN INDONESIA Muh. Afif Mahfud	181
DISCOURSE POLITICAL LAW IN INDONESIA ON A COMPLETION OF PLATO PHILOSOPHY Adrianus M. Nggoro,SH.,M.Pd.....	189
STUDY OF INDONESIA’S PARTICIPATION IN ICSID Agus Saiful Abib.....	202
NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED ON THE PRINCIPLE OF GOOD GOVERNANCE Aris Yulia	211
ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT IN THE PERSPECTIVE OF HUMAN RIGHTS Ariyanto,SH.,MH.....	221
SOCIAL WORKING PENALTY AS SOLUTION IN ERADICATING CORRUPTION IN INDONESIA Desy Maryani.....	232
LEGAL POLITICSOF EMPLOYMENT IN TERM OF PART OF TASK HANDOVER TO OTHER COMPANIES IN INDONESIA Endah Pujiastuti.....	244

RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE IN THE COMPANY EMPLOYING OUTSOURCING SERVICE Pupu Sriwulan Sumaya	256
THE APPLICATION OF CORRUPTION LAW TOWARD CRIMINAL ACT IN THE FIELD OF FORESTRY Ifrani	267
THE EFFORTS OF ERADICATION OF CORRUPTION THROUGH INSTRUMENTS OF MONEY LAUNDERING LAW AND RETURN ACTORS' ASSETS Yasmirah Mandasari Saragih.....	276
AFFIRM ROLE OF EXISTENCE <i>RECHTSVERWERKING</i> TO ACHIEVING LEGAL CERTAINTY IN LAND REGISTRATION Rofiq laksamana, Setiono, I Gusti Ayu Ketut Rachmi Handayani, Oloan Sitorus.....	287
ANTI-CORRUPTION EDUCATION AT AN EARLY AGE AS A STRATEGIC MOVE TO PREVENT CORRUPTION IN INDONESIA Ida Musofiana.....	304
FREED INDONESIA'S CORRUPTION BETWEEN HOPE AND REALITY Dr. Tongat, SH., MHum., Said Noor Prasetyo, SH., MH.....	313
UTILIZATION OF INDONESIA MARINE RESOURCES IN AN EFFORT TO REALIZE INDONESIA TOWARDS THE SHAFT OF THE MARITIME WORLD Dr.Lathifah Hanim, SH.M.Hum., M.Kn. and Letkol (mar) MS.Noorman, S. Sos., M.Opsla.....	319
POTENTIAL CORRUPTION IN THE VALIDATION POLICIES ON ACQUISITION TAX OF LAND AND OR BUILDING Lilik Warsito.....	325
THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION IN SOUTH SUMATERA Sri Suatmiati.....	334
ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT Siti Zulaekhah.....	344
AN EXPANSION OF CONCEPT THE STATE ECONOMIC LOSS IN CORRUPTION IN INDONESIA Supriyanto, Hartiwiningsih, Supanto.....	354
JURIDICAL STUDIES ON SUBSTANCE AND PROCEDURE OF THE DISMISSAL OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMATION Siti Rodhiyah Dwi Istinah.....	364
THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG Aryani Witasari.....	376
SEMARANG CITY GOVERNMENT ROLE IN CONSERVATION AND ENVIRONMENTAL PROTECTION TO THE CAPITAL OF THE NATIONAL HERITAGE IN INDONESIA Achmad J Pamungkas (<i>Indonesia</i>), Carlito Da Costa (<i>Timor Leste</i>)	390

STUDYING THE WISDOM OF ZAKAT Moch. Gatot Koco (Indonesia), Basuki R Suratno (Australia)	398
HOMOLOGATION RECONSTRUCTION IN BANKRUPTCY THAT IS BASED ON DIGNIFIED JUSTICE Agus Winoto	410
RECONSTRUCTION OF EXECUTIVE AND LEGISLATIVE AUTHORITY IN MAKING GOOD GOVERNANCE (GOOD GOVERNANCE) VALUES BASED ON WELFARE Mohamad Khamim	420
THE TASK RECONSTRUCTION AND BPKP'S AUTHORITY IN THE CASE OF JUSTICE VAUE BASED CORRUPTION Sarbudin Panjaitan	429
THE RECONSTRUCTION OF MADLIYAH AND IDDAH MAINTENANCE AND MUT'AH IN DIVORCE CASE FOR JUSTICE AND WELFARE Mustar	438
JURIDICAL ANALYSIS OF THE ALLEGED CRIMINAL OFFENSE TO MANUFACTURE A NOTARY DEED Subiyanto	446
REVITALIZATION DEAL IN AKAD HYBRIDS IN SHARIA BANKING VALUE BASED ISLAMIC JUSTICE Masduqi	452
RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION IMPLEMENTATION OF VALUE-BASED JUSTICE Kukuh Sudarmanto Alugoro	462
ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW ERADICATION OF CORRUPTION (LAW NUMBER 31 OF 1999 JO. LAW NUMBER 20 OF 2001) BASED ON VALUE OF JUSTICE As'adi M. Al-ma'ruf	472
RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT LAW BASED ON JUSTICE Christina N M Tobing	479
THE LAW AND THE IMPACT OF MARRIAGE SIRRI Sahal Afhami	489
CRIMES AGAINST CHILDREN AS ACTORS Muhammad Cholil	503
RECONSTRUCTION OF CRIMINAL PROCEDURAL LAW (KUHAP) ABOUT THE DETENTION Muhammad Khambali	512

BASED ON JUSTICE PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)	
Esti Ningrum	520
RECONSTRUCTION REGIONAL MINIMUM WAGE (UMR) IN RENEWAL OF EMPLOYMENT LEGAL REMEDIES BASED INDONESIA THE VALUE JUSTICE PANCASILA	
Urip Giyono	531
IMPLEMENTATION OF LAW AS TO MAINTAIN SECURITY IN THE CONTEXT OF PROFESSIONAL POLICE POLMAS (CASE STUDY IN LAMPUNG POLICE)	
Muhammad Yaman	539
RECONSTRUCTION OF CRIMINAL SANCTIONS PENAL CODE ACTORS ON ABORTION CRIME BASED ON THE VALUE OF JUSTICE	
Hanuring Ayu Ardhani Putri	549
REGISTRATION FIDUCIARY GUARANTEE REALIZE LEGAL PROTECTION OF CREDITORS AND DEBTOR	
Ansharullah Ida	556
RECONSTRUCTION OF LEGAL DISPUTES MEDIATION IN HEALTH CARE FOR PATIENTS HOSPITAL BASED ON THE VALUE OF JUSTICE	
Teguh Anindito	569
RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE	
Maria Marghareta Titiek Pudji Angesti Rahayu Teguh Anindito	579
IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW	
Aji Sudarmaji	587
FAIR SETTLEMENT RECONSTRUCTION OF PROBLEMATIC CREDIT DISPUTE AT BANK RAKYAT INDONESIA (STUDY CASE AT MEDAN-SINGAMANGARAJA BRI BRANCH OFFICE)	
Bachtiar Simatupang	594
RECONSTRUCTION OF THE WASTE MANAGEMENT LAW BASED ON WELFARE VALUE	
M. Hasyim Muallim	616
RECONSTRUCTION LAW OF PUNISHMENT AGAINST CHILDREN NARCOTICS ABUSE-BASED PROGRESSIVE LAW	
Salomo Ginting	625
LEGAL PROTECTION PROBLEM OF WIFE AND CHILDREN OF POLYGAMY SIRRI IN INDONESIA	
Muhlas	639

IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009 (CASE STUDY IN SUMATERA UTARA PROVINCE)	
Ahmad Zaini	648
IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT	
Ruslan	658
RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE	
Jufri Ghalib	667
RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE	
Elpina	679
RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE	
Ramon Nofrial	693
RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY	
Hakim Tua Harahap	706
RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE	
Ulina Marbun	726
RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE	
Zaenal Arifin	740
THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE	
Abdul Kholiq	751
THE RECONSTRUCTION OF LEGAL AID LAW FOR CHILDREN WHO GET CONFLICT WITH LAW IN PROCESS OF JUSTIFICATION FOR CHILDREN BASED ON THE VALUE OF PANCASILA	
Adi Mansar	767
MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)	
Mariah S.M. Purba	778
POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015)	
Warman	790

LAW ENFORCEMENT AGAINST CORRUPTION IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA Sekhroni	798
THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN'S RIGHT PROTECTION FOR CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA Indriyana Dwi Mustikarini	809
PREVENTING LAND MAFIA USING POSITIVE LAND REGISTRY SYSTEM Bambang Sulistyowati	816
UNRULY PASSENGER IN AVIATION: THE REGULATIONS AND CASES IN INDONESIA Adya Paramita Prabandari	826
EDUCATION ANTI-CORRUPTION IN INDONESIA: PROBLEMS, CHALLENGES AND SOLUTIONS Alwan Hadiyanto	839
SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING CORRUPTION IN INDONESIA Sulistyowati	852
SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA Sarjiyati	863
CONSISTENCY MODEL OF COURT DESIGNATION TO FOSTER PARENT RIGHTS AUTHORITY DUE TO DIVORCE ON CHILDREN Erna Trimartini	873
AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL JUSTICE SYSTEM IN INDONESIA Sukmareni	885
PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN INDONESIA Anis Rifai	903
PENAL MEDIATION IN SOLVING MEDICAL MALPRACTICE CASES AS AN ALTERNATIVE OF PENAL SANCTIONS BASED ON LOCAL WISDOM Sri Setiawati	913
SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM Achmad Sulchan	922
MORAL REFORM BUREAUCRACY AS PREVENTION OF ILLEGAL PAYMENTS TO INDONESIA CLEAN OF CORRUPTION Herwin Sulistyowati	932
STANCE AND AUTHORITY OF PEOPLE'S CONSULTATIVE ASSEMBLY DURING REFORMATION ERA 1945 Ahmad Mujib Rohmat	944

TAXES AND ALMS SEEN FROM ISLAMIC LAW	
Mohammad Solekhan	954
DIVERSION IN COURT (Case Studies in Karanganyar District Court)	
Anita Zulfiani	964
International Seminar	
Photos.....	971

DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT

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ABSTRACT

The discovery of the law by the judge in the court judgment is important. However, if these findings are based on a mistaken interpretation of the law, then such a step can not be regarded as legal discovery and it will have implications for the emergence of public disappointment. The results of analysis of 13 court verdict shows disparities legal interpretation both horizontally and vertically on Articles 2 and 3 of Law on Corruption Eradication. Among the legal interpretation of the most prominent of which are used judges is an interpretation of a restrictive, so that the element of "everyone" in Article 2 is interpreted as people who are not civil servants or state officials, while the element "any person" in Article 3 is interpreted as civil servants or state officials , The interpretation does not make sense because the resulting civil servants or state officials can not be charged under Article 2 (tort) and can only be charged under Section 3 (abuse of authority). Article 3 The minimum penalty is much lighter than a minimum sentence of Article 2, so that decisions are based on a restrictive interpretation of the implications for the injustice and legal uncertainty. In addition, in a systematic interpretation haldemikian contrary to criminal law umbrella because according to Article 52 of the Criminal Code, a threat to a crime in office plus one third.

Keywords: discovery of law, corruption, abuse of authority.

A. INTRODUCTION

Criminal offense of corrupt (Corruption) in Indonesia has been endemic ± various facets of life. The court ruling was also investigated corruption defendants comprised of various backgrounds, ranging from the fields of education, regional head (the heads), chairman of the SME (Small and Medium Enterprises) to a private company official partner of SOEs.

The history of corruption eradication in Indonesia is indeed a long history with a series of legislation that comes with a team or a Special Commission in order to support the eradication of corruption. But until now corruption is still rampant and massive.

Corruption is extraordinary crime (extraordinary crime), so pemberantasannyapun require extraordinary process. Therefore, the nations of the world have agreed to work together to combat transnational corruption. Indonesia is among the countries that signed the UNCAC (United Nations Convention against Corruption) or the UN Convention against Corruption and Indonesia has ratified the UNCAC through Law No. 7 of 2006, thus Indonesia was bound morally, politically, and legally to implement UNCAC.

One aspect that is important in the eradication of corruption is the law enforcement process. Law enforcement in combating corruption must be done carefully, accurately, and comprehensively with regard to the fact juridical and empirical facts, so the verdict is given a Judge may reflect fair law enforcement, legal berkepastian, and beneficial to the nation.

A decision will be closer to justice when taken through the process of statutory interpretation. A judge, for example, on any reading of establishing something approaching justice when maintaining law and to destroy or remove the law, therefore, every moment is essentially unique. Interpretation of the law (which is always new) should be carried out continuously so that a decision can be taken closer to justice, without it, a decision can not be considered fair, though this decision is valid. The moment of decision is a continuum in which people maintain succession in time, but a just decision to be ripped off time and defied various dialectics (Susanto, 2010: 289).

In fact, many perpetrators of corruption is given a relatively mild punishment, even lately many criminal korupsiyang given hukumanyang relatively mild, even belkakangan many cases were acquitted by the court of corruption (Corruption) in the area. Given this fact has caused disparity horizontally among first-level corruption court decision, among appellate court decision, and among the verdict appeal. In addition, it has led to disparities also vertically, ie between the Corruption Court verdict in the first degree court decision next level.

According to Big Indonesian Dictionary (Alwi et al, 2002: 270), is the disparity, the difference or distance. According to Black's Law Dictionary (Garner, 1999: 482), disparity or inequality is a difference in quantity or quality between two or more things. Free translation, inequality or disparity is the difference in the quantity or quality between two or more of something.

As for the decision to be examined disparity is, five first-level corruption court decision and eight court decision next level corruption, which, as the table below:

All 13 of the decision in the above table on the basis of the judge dropped the charges the prosecutor, which generally refers to the form of the indictment subsidairitas, namely the primary Article 2 of Law No. 31 Year 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption (Law PTPK) No. Defendant name (initials)

No	Defendant name (initials)	Number of First Instance Court Decision	Court Decision Number Next Level
1	HTS	03/Pid.Sus/TPK/2011/PN.Bdg	29/TIPIKOR/2011 /PT.Bdg 1874 K/PID.SUS/2011
2	MY dan HTD	10/Pid.Sus/TPK/2011/PN.Bdg	31 /TIPIKOR/2011 /PT.Bdg 2104 K/PID.SUS/2011
3	MM	22/PID. SUS/TPK/2011/PN.Bdg	2547 K/PID.SUS/2011
4	AS	36/Pid.Sus/TPK/2011/PN.Bdg	41 /TIPIKOR/2011 /PT.Bdg 2637 K/PID/SUS/2011
5	ICHL	76/Pid. Sus/TPK/2011/PN.Bdg	21 /TIPIKOR/2012/PT.Bdg

Table 1. List of Decisions Investigated

B. THEOLOGICAL PROBLEM

Based on the background mentioned above decomposes, then the problem in this paper are:

1. How disparity hakimatas interpretation of Article 2 and 3 of Law No. 31 Year 1999 jo. UU no. 20 of 2001 on the Eradication of Corruption (Law PTPK)?
2. What happens with the legal implications disparities judge interpretation of Article 2 and 3 of Law No. 31 Year 1999 jo. UU no. 20 of 2001 on the Eradication of Corruption (Law PTPK)?

C. LITERATURE REVIEW

1. Disparities in Corruption

According to Cheang Molly (in Muladi & Arief, 1998: 52), disparity of sentencing or disparity of criminal, is the application of the criminal is not equal to the equivalent offense (same offense) or the offenses that nature dangerous it can be compared without justification clear, Factors that influence the judge's verdict (Loqman, 2002: 100-101) consists of; These internal factors, factors in the legislation itself, the interpretation of factors, political factors, and social factors.

Corruption is a universal disease state, which can be found anywhere. Penyebabnyaamat deep so the effort to replace the system of government, for example, from totalitarian to democratic rule, such as in Indonesia, will not be enough to conquer corruption to its roots. Quite the opposite in fact countries that

succeed in eliminating corruption, such as Singapore and Hong Kong (China), is not a democratic country (Wattimena, 2012: 9-10).

According to Big Indonesian Dictionary (Alwi et al, 2002: 597), adalahpenyelewengan corruption or misuse of state funds (companies, etc.) for personal gain or others. According to Black's Law Dictionary (Gamer, 1999: 348), corruption is moral depravity, unnatural acts, stain: the destruction of integrity, virtue, morality, particularly the destruction of public officials with bribery.

According to Baharuddin Lopa (in Hartanti, 2005: 10) there are two nature of corruption, the corruption that is veiled and corruption are patterned double. Corruption is veiled, namely corruption in passing politically motivated, but concealed the true motive to earn money alone.

According to Gunnar Myrdal (1977: 166), the issue is an important thing for the government in South Asia because of the habit of bribing and dishonest pave the way expose corruption and prosecute offenders, the eradication of corruption is usually used as a justification for a military coup.

2. Doctrine nature of Unlawful Material

The criminal law is often said to be the law of the law because it is bound by the principle of legality. In the Criminal Code of the legality principle contained in Article 1 (1). The famous adage of Anselm Von Feurbach is *crimen delictum poena sine praevia lege Noela poenali*.

Nature against the material law in jurisprudence in Indonesia contained in Supreme Court Decision No. 42 / K / Kr / 1965, in the case Machroes Effendi, who were accused of violating Article 372 jo. Article 64 paragraph (1) Criminal Code and by the District Court Decision on Case No. Singkawang in 6/1964 / repulsion, September 24, 1964, declared proven legally and convincingly violating Article 372 jo. Article 64 paragraph (1) Criminal Code and sentenced to 1 year and 6 months, then in the level of appeal in the Jakarta High Court Decision on Case No. PT Criminal 146/1964, dated January 27, 1965, otherwise release the accused from all charges, and the Supreme Court approved the consideration of the Jakarta High Court. In consideration of the high court argued that the expenses DO sugar incentives paddy committed by the defendant is really the actions of the defendant that deviate from the objectives set, but the factor of public interest is served, as well as the factor of lack of profit that goes into the pocket of the defendant and factors

not suffered a loss by the state, are all factors that have a value of more than cukupguna eliminate unlawful nature of the actions of the defendant, which proved the formal entry in the formulation tindakpidana (in Sapardjaja, 2002: 137).

3. Application of Article 2 and Article 3 UUPTPK

The nature of unlawful material contained in Article 2 of Law No. 31 of 1999 on the Eradication of Corruption (Act PTPK), can be explored from the sound legislation.

Article 2 (1) of Law No. 31 of 1999, states: Any person who acts unlawfully enrich themselves or another person or a corporation that can mengikan state finances or the economy of the state, shall be punished with imprisonment for life or imprisonment for a minimum of 4 (four) years and most 20 (twenty) years and a fine of at least Rp.200,000,000, - (two hundred million rupiah) and Rp. 1.000.000.000, - (one billion rupiah).

Wiyono (2006: 26) states: corruption provisions contained in Article 2 paragraph (1) is a formal offense, also confirmed in the explanation of Law No. 31, 1999. With the formulation of corruption such as that contained in Article 2 (1) as a formal offense, then the state financial loss or loss of the country's economy should not have occurred.

Pada tanggal 25 Juli 2006 Putusan Mahkamah Constitution No. 003 / PUU-IV / 2006, expressed an understanding of Torts in the sense of material does not have binding legal force, given the definition in the explanation nPasal 2 paragraph (1) of the Constitution - Uhdang 31 of 1999 is contrary to the 1945 Constitution because besides this understanding can lead legal uncertainty, it is also contrary to the principle of legality which was adopted in Article 28D of the Act - Act No. 31 of 1999 and the principle of nullum crimen sine lege stricta.

Following the Ruling of the Constitutional Court, the Supreme Court in several decisions, as in the case on behalf of Rusadi Kantaprawira continue to apply the principle of nature against the material law, on the grounds the judge based on the doctrine of Sens-Clair, namely the Law on Judicial Power, judges must find legal.

Article 3 of Law No. 31 of 1999 states: Every person who with the intention of enriching himself or another person or corporation, abuse of authority, opportunity or means available to him because of the position or positions that could harm the

state finance or economy of the state, shall be punished with life imprisonment or criminal imprisonment of at least one (1) year and a maximum of 20 (twenty) years and / or a fine of Rp.50.000.000, - (fifty million rupiah) and Rp. 1.000.000.000, - (one billion rupiah).

Wiyono (2006: 37) states, the provisions contained in Article 3, in the explanation of Article 3 only mentioned the word "may" in that provision be interpreted together with an explanation of Article 2. Thus, to know what is meant by the explanation of Article 3, need to know first, what is stated in the explanation Pasal2.Di in the explanation of Article 2 states: "in these conditions the word" may "before the phrase" financial harm or state economy "shows that corruption is a formal offense, namely the existence of corruption enough with the fulfillment of the elements of actions that have been formulated, not the occurrence of consequences. "Poorer purpose of explanation of Article 3 of the only shows that the offense kompsi as referred to in Article 3 is also a formal offense as well as corruption as referred to Article 2 paragraph (1).

In practice it often happens that erroneous interpretation of Article 2 and Article 3 of Law No. 31 of 1999 as amended by Law No. 20 Year 2001. There are judges who interpret that provision Pasal2hanya true for those who are not civil servants classified, while Article 3 offense subject should meet the quality as officials.

Controversy against Article 2 and Article 3 of Law No. 31 of 1999 as amended by Law No. 20 In 2001 the Supreme Court has made the formulation, namely Articles 2 and 3 is intended for everyone, both private and public servants. Thus Article 2 and Article 3 shall apply to civil servants and non-civil servants (MARI, 2012: 21).

4. Crime in Position According to the Criminal Code

Weighting because of the positions stipulated in Article 52 of the Penal Code which states:

Where an official, for committing a crime, in violation of a specific obligation of the office or at the time of committing the criminal taking of power, opportunity or means given to him because of his position, the punishment may be increased by one third.

Another example is Article 415 Penal Code which states: An official or other person charged with running a public office continuously or temporarily which

deliberately embezzled money or securities are saved because of his position, or let money or securities that were taken or embezzled by others, or help as an auxiliary in committing such acts, punishable by a maximum imprisonment of seven years.

If the embezzlement in the office (Article 415 Penal Code) as compared with the usual evasion (Article 372 Penal Code), then it looks embezzlement in the office of the penalties are much higher than the usual penalty for embezzlement is only punishable by imprisonment for a maximum of 4 (four) years.

5. Doctrine Deelneming (Investments)

According to the Hoge Raad to be able to say that the form of participating business is to do, there must be two elements, namely:

- a. Among the participants there was cooperation diinsafi (buweste samenwerking)
- b. The participants together have implemented (gezamenlijke UITVOERING).

According Lamintang (1984: 588) describe the shape medeplegen as follows: in the form of deelneming that there is a principal and one or more perpetrators took perform criminal acts committed by the culprit, then this deelneming jugasering form is referred to as a mededadersschap. Thus, the next medeplegen a deelneming form, it is also a form daderschap.

6. Deeds Continues (VoortgezetteHandeling)

Article 64 of the Criminal Procedure Code regulates Continues act which in Dutch is called (Voortgezette handeling). A.Z. Abidin and Andi Hamzah (2002: 309) states, in terms of action continued, first there must be a decision of the will of the actions of the same kind. The judges' verdict supporting these directives, namely:

1. The unity of the will;
2. The actions were similar;
3. Factors relationship to time (the interval is not long).

7. Charges Subsidairitas

Van Bemmelen in Andi Hamzah (1996: 190) states: In the subsidiary charge indictment maker intends that judges examine first the primary charge and if this is not proven, then checked subsidiary charges.

Public prosecutor charged the defendant guilty of corruption by the form of the indictment are tiered layers (subsidairitas) ie in the primary charges of violating Article 2 paragraph (1) sub b jo. Article 18 paragraph (1) letter a, b paragraph (2),

(3) of Law No. 31 Year 1999 jo. UU no. 20 Year 2001 jo. Article 55 paragraph (1) 1st jo. Article 64 paragraph (1) of Criminal Code, then the subsidiary in breach of Article 3 of Law No. 31 Year 1999 jo. UU no. 20 Tahun 2001 jo. Article 55 paragraph (1) 1st jo. Article c4 paragraph (1) Criminal Code. In this aspect of the public prosecutor will prove the charges from the indictment primair. Apabila start primary charge has been proven, subsidiary charges need not be proven again. But conversely, if the primary charge is not proven, the public prosecutor imperatively will prove subsidiary charges (Mulyadi, 2013: 228).

8. Invention Law

Therefore, legislation is incomplete or unclear, then the judge should seek legal, must find legal. He must perform legal discovery (*rechtsvinding*). Enforcement and implementation of law is often a legal discovery and not just the application of the law (Mertokusumo & Pitlo, 1993: 4). Methods discovery of the law by the judge can be divided into two types, namely the method of interpretation and construction (Ali, 2008: 122). In order to achieve the will of lawmakers and can be run in accordance with the laws of social reality, judges use several ways of interpretation (Ardhiwisastra, 2000: 9).

9. Philosophy of Punishment

1. Judicial and legal discovery by the judge is legitimate (legitimate), so the sound of an establishment, if they produce a fair verdicts (Pontier, 2008: 9).
2. According P.A.F Lamintang and Theo Lamintang (2012: 11), basically there are three basic thoughts on the objectives to be achieved by a punishment, namely:
3. To fix the personal from the criminals themselves;
4. To make people be a deterrent;
5. To make certain criminals be able to do other crimes, the criminals in ways others have not irreversible.

10. Sholehuddin (in Marlina, 2011: 35- 36) mentions three philosophical perspectives on punishment, namely:

1. Perspective existentialism of criminal prosecution.
2. Perspective socialism of criminal prosecution.
3. Criminalization viewed from the perspective of Pancasila.

D. ANALYSIS

1. Position Case

In all court decisions that investigated basically form the indictments filed by prosecutors / KPK is subsidairitas charges, except in Case No. 22 / PID.SUS / TPK / 2011 / PN.BDG jo. Case No. 2547K / PID.SUS / 2011 form of the indictment is the combination of (cumulative disubsidairkan and dialternatifkan), but the first charge-shaped subsidairitas. Basically, the charges are:

the primary:

Article 2 (1) jo. Article 18 of Law No. 31 Year 1999 jo. as amended and supplemented by Law No. 20 of 2001 on Corruption Eradication jo. Article 55 paragraph (1) 1st Criminal Code.

Subsidiary

Article 3 jo. Article 18 of Law No. 31 Year 1999 jo. Article 18 of Law No. 31 of 1999 as amended and supplemented by Law No. 20 of 2001 on Corruption Eradication jo. Pasal 55 ayat (1) ke-1 KUHP.

In Case No. 76 / Pid.Sus / TPK / 2011 / PN.Bdg jo. No. 21 /TIPIKOR/2012/PT.Bdg besides the aforementioned articles, the primary charges and subsidiary charges associated also with deeds continue, namely Article 64 paragraph (1) Criminal Code.

1. The elements of Article 2 (1) jo. Article 18 of Law No. 31 of 1999 as amended and supplemented by Law No. 20 of 2001 on Corruption Eradication jo. Article 55 paragraph (1) 1st Criminal Code are: Each person;
2. Each person;
3. Perform the action enrich themselves or another person or a corporation; Which can be detrimental to state finance and economy of the country.

While Article 18 of Law No. 31 Year 1999 jo. UU no. 20 of 2001 on Corruption Eradication is related to additional criminal and Article 55 paragraph (1) 1st Criminal Code relating to inclusion. Elements of Article 3 jo. Article 18 of Law No. 31 of 1999 as amended and supplemented by Law No. 20 of 2001 on Corruption Eradication jo. Article 55 paragraph (1) 1st Criminal Code are: Each person;

1. With the aim dm benefit himself or another person or a corporation;
2. abuse of authority, opportunity or means available to him because of the position or positions;
3. opportunity or means available to him because of the position or positions;.

On the application of Article 18 of the Law PTPK and Article 55 paragraph (1) all I in all 13 decisions examined is not too problematic, so the problem to be studied disparity is an understanding judge in Articles 2 and 3 of the Law PTPK. Therefore the disparity to be analyzed here is the interpretation of the judge of Articles 2 and 3 of the Law PTPK.

- a. Judge A. Disparity interpretation of Article 2 and 3 of the Law PTPK Disparity occurs in all 13 decisions examined basically consists of four aspects, namely Aspects of procedural law;
- b. Legal aspects of the material;;
- c. Aspects of criminal punishment philosophy;
- d. Aspects of legal reasoning.

Of the four above-mentioned aspects of material legal aspects, which is understanding the judge to Article 2 and Article 3 of Law No. 31 Year 1999 jo. UU no. 20 of 2001 (Act PTPK), which is also related to aspects of the philosophy of sentences and the aspect of legal reasoning, perceived the researcher most prominent disparity and the most important implications of sentences by judges, therefore, further research will focus on the legal aspects of the material, especially the interpretation of the judge against Article 2 and Article 3 of the Law PTPK. In interpreting Article 2 and Article 3 of Law No. 31 Year 1999 jo. UU no. 20 of 2001 (Act PTPK) has occurred disparities both horizontally (among the judge's decision level) and vertically (between the court verdict in the first degree court next level). The legal considerations Decision on Case No. 03 / Pid.Sus / TPK / 2011 / PN.Bdg, Putusan Perkara No. 10 / Pid.Sus / TPK / 2011 and Decision on Case No. 22 / Pid.Sus / TPK / 2011, principally stated Because the indictment prepared by the subsidiary, then the panel will first consider the primary charge.

Considering that the formula contained in Article 2 (1) jo. Article 18 of Law No. 31 of 1999 as amended and supplemented by Law No. 20 of 2001 on Corruption Eradication jo. Article 55 paragraph (1) 1st Criminal Code, which includes elements:

1. Every person;
2. It is against the law;
3. Perform the action enrich themselves or another person or a corporation;
4. What can be detrimental to state finance and economy of the country.

Considering that the current panel of judges will consider one by one the elements associated with the legal facts revealed in court a quo, which is basically as follows:

Ad

1. Unsur Setiap Orang:

Menimbang bahwa unsur setiap orang dalam tindak pidana corruption has been regulated in Article 1 paragraph 3 of Law No. 31 of 1999jo.UU No. 20 of 2001, that everyone adalahperseorangan is an individual or a corporation.Considering bahwaunsursetiap person in Article 1 item 3 of the Law PTPK is general in nature, as well as in Article 2 paragraph (1) UU PTPK,

- a. the panel argued that every person in Article 2 (1) of the Act PTPK also common.
- b. Considering that the definition of any person referred to in Article 3 of Law PTPK, the panel looked specifically have a better understanding when compared to Article 2 paragraph (1) of the Act PTPK, namely their title or station predicate elements inherent in the question.
- c. Considering that the definition of any person referred to in Article 3 of Law PTPK, the panel looked specifically have a better understanding when compared to Article 2 paragraph (1) of the Act PTPK, namely their title or station predicate elements inherent in the question.
- d. Considering the indictment the prosecutor, who charged the defendant committed the crime of corruption is directly or indirectly related to the position or the position of the defendant (in Case No. 03 / Pid.Sus / TPK / 2011 / PN.Bdg, as Head of the Education Office of Bekasi, in Case No. 10 / Pid.Sus / TPK / PN.Bdg, as Regent of Subang, and Case No. 22 / Pid.Sus / TPK / PN.Bdg as Mayor of Bekasi).
- e. Considering that based on the above description assemblies found element of every person in Article 2 (1) of the Act PTPK it is not proved.
- f. In the end, the judges concluded that is evident is the whole elements of Article 3 of the Law PTPK.

The third decision of the district court that the next two decisions, namely Decision on Case No. 03 / Pid.Sus / TPK / 2011 / PN.Bdg and Decision on Case No. 10 / Pid.Sus / TPK / 2011 upheld by the high court and the Supreme Court, while a Decision No. 22 / Pid.Sus / TPK / 2011 was canceled by the Supreme Court, it can be concluded that three decisiondistrict courts and two high court decision, coupled with

two Supreme Court decisions, assume that Article 2 of Law PTPK intended for people who are not civil servants or state officials, while Article 3 is intended for people who work as civil servants or state officials.

Based on Decision No. 03 / Pid. Sus / TPK / 2011 / PN.Bdg jo. Decision No. 29 / Corruption / 2011 / PT.Bdg jo. Decision No. 1874 K / PID.SUS / 2011, Decision No. 10 / Pid.Sus / TPK / 2011 jo. Decision No. 31 / Corruption / 2011 / PT.Bdg jo. Decision No. 2104 K / Pid.SUS / 2011, and Decision No. 22 / Pid.Sus / TPK / 2011 / PN Bandung, it can be deduced that the civil servants or state officials can not be snared by Article 2 of Law PTPK (in the form of an unlawful act) and can only be charged under Article 3 of Law PTPK (in the form of abuse of authority)As with the Decision No.36 / Pid.Sus / TPK / 2011 jo. Decision No. 41 / Corruption / 2011 / PT.Bdg and Decision No. 76 / Pid.Sus / TPK / 2011 jo. Decision No. 21 / Corruption / 2012 / PT.BDG in cases the defendants are not civil servants / officials of the state, so it is not identified on the judge's understanding of Article 2 and Article 3 of Law PTPK, because the judges immediately assume the primary charge has been proven (Article 2 (1) Act PTPK Thus it is not clear whether the imposition of Article 2 (1) of the Act PTPK against the defendant, because the defendants are not civil servants or not. While Verdict 2547 K / PID. SUS / 2011 which stated the defendant legally and convincingly proven to have violated Article 2 paragraph (1) of the Act PTPK is right and correct.From the description on the interpretation of Article 2 and Article 3 of Law PTPK disparities appear to have occurred both horizontally and vertically. However, the most worrisome is a restrictive interpretation (of Article 2 and Article 3 of Law PTPK) in fact many do judges, as the above description. Therefore, legislation is incomplete or unclear, then the judge should seek legal, must find legal. He must perform legal discovery (*rechtsvinding*).Enforcement and implementation of law is often a legal discovery and not just the application of the law (Mertokusumo & Pitlo, 1993: 4). A decision will be closer to justice when taken through a process of legal interpretation (Susanto, 2010: 289). Thus the discovery of the law by judges is very important,However legal discovery must be logical in an effort to bring the law to justice. As the opinion of J.A. Pontier, judicial and legal discovery by the judge is legitimate (legitimate), so the sound of an establishment, if they produce a fair verdicts (Pontier, 2008: 9).Restrictive interpretation made judges mentioned above,

ie narrowing the understanding of everyone in Articles 2 and 3 of Law PTPK to interpret Article 2 is intended not to civil servants or state officials, while Article 3 is

intended for civil servants or state officials is erroneous and unreasonable because it contradicts the umbrella of criminal law, namely the Criminal Code.

In the Criminal Code of criminal acts in office the threat is actually plus one-third of the threat of ordinary crime (Article 52 of the Criminal Code), even embezzlement in office Article 415 Criminal Code penalties are a maximum of seven (7) years in prison, much heavier than the penalty of embezzlement regular (Article 372 Criminal Code) that only a maximum of four (4) years in prison. According to the formulation of the Plenary Meeting of the Supreme Court in 2012, Article 2 and Article 3 is intended for everyone, both private and public servants. Thus Article 2 and Pasal 3 berlaku for civil servants and non-civil servants (MA RI, 2012: 21). Thus the corruption court ruling based on legal considerations in the form of restrictive interpretation of Article 2 and Pasal 3 UU PTPK is wrong. Judge A. Implications interpretation of Article 2 and 3 of the Law PTPK

As described in item 1 above analysis, the judge restrictive interpretation of Article 2 and 3 of Law PTPK is very wrong and unreasonable. The erroneous interpretation will have implications for the criminal punishment for the accused and sentencing verdicts were lower for accused of corruption, will have implications for the lack of deterrent effect for corruptors inmates also step will be followed by others.

If civil servants / state officials can not be charged under Article 2 of Law PTPK, means civil servants / state officials can not be held guilty of acts against the law and can only be charged under Article 3 of Law PTPK (abuse of authority). If misrepresents the continuously applied to the judge corruption, it will have implications, civil servants / state officials will not hesitate to follow the footsteps of the corrupt past for committing corruption offenses as criminal sanctions minimal in Article 3 of Law PTPK light, namely 1 (one) years in prison and / or fines of at least Rp.50.000.000, - (fifty million rupiah), whereas Article 2 of Law PTPK criminal threats minimum is 4 (four) years imprisonment and a fine of at least Rp.200,000,000, - and strangely court judge the first level is often convict with minimal threats, as well as in case No. 03 / Pid.Sus / TPK / 2011 / PN.Bdg, case No. 10 / Pid.Sus / TPK / 2011 / PN.Bdg and even in Case No. 22 / Pid.Sus / TPK / 2011 / PN Bdg, the defendant was acquitted.

Corruption Court acquittal at the Bandung District Court severely injure the sense of justice in society danbertentangan with the philosophy of punishment.

D. CONCLUSION

Based on the analysis decomposes in atasdapat drawn the conclusion as follows:

1. Against Article 2 and Article 3 of Law PTPK yangditeliti have disparity interpretation of the judge either horizontally, that is among the first-level corruption court decision and also among high-level corruption court decision, as well as among the Supreme Court ruling. In addition, there has been a disparity vertically between the Corruption Court in the first degree Corruption Court next level. Restrictive interpretation, which narrowed the definition of each person in Article 2 and Article 3 of Law PTPK was a lot of corruption committed by the trial judge first level and the next level is to take over all legal considerations Corruption Court first rate and strengthen the first level corruption court decision. The restrictive interpretation is very wrong because it contradicts the umbrella of criminal law, namely the Criminal Code. In the Criminal Code of criminal acts in office the threat is actually plus one-third of the threat of ordinary crime (Article 52 of the Criminal Code), whereas the interpretation restrictive of the civil servants / state officials can not be snared by Article 2 of Law PTPK (tort) and can only be snared by Article 3 PTPK Act (abuse of authority) the minimum penalty is much lower than Article 2 of Law PTPK.
2. The legal implications disparity in the interpretation of Article 2 and Article 3 of Law PTPK is the emergence of sentencing yangberbeda widely.

If the decision is based on a restrictive interpretation of the judge of Article 2 and Article 3 of Law PTPK, then it looks in Decision No. 03 / Pid.Sus / TPK / 2011 / PN.Bdg, PutusanNo.10 / Pid.Sus / TPK / 2011 / PN.Bdg, the court dropped the minimum imprisonment under Article 3 of Law PTPK much lighter than minimal criminal penalty in Article 2 Law PTPK and even in Decision No. 22 / Pid.Sus / TPK / 2011 / PN Bdg, the defendant was acquitted. Corruption Court acquittal at the Bandung District Court severely injure the sense of justice in society. If the corruption case sentenced to light, then it is against the philosophy of punishment because it would not be a deterrent effect for offenders who instead will be followed by other actors and will jeopardize the credibility of the Corruption Court, due to public mistrust.

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