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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

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

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

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

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

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

<b>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)</b>	
Ahmad Zaini .....	648
<b>IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT</b>	
Ruslan .....	658
<b>RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE</b>	
Jufri Ghalib .....	667
<b>RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE</b>	
Elpina .....	679
<b>RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE</b>	
Ramon Nofrial .....	693
<b>RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY</b>	
Hakim Tua Harahap .....	706
<b>RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE</b>	
Ulina Marbun .....	726
<b>RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE</b>	
Zaenal Arifin .....	740
<b>THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE</b>	
Abdul Kholiq .....	751
<b>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</b>	
Adi Mansar .....	767
<b>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)</b>	
Mariah S.M. Purba .....	778
<b>POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015)</b>	
Warman .....	790

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



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

# CORRUPTION PREVENTION AND CONTROLS \*

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## ABSTRAK

This paper entitled corruption prevention and controls that aims to examine the factors causing corruption; control and prevention strategy of corruption. The study was conducted by a normative approach and the concept of law through the analysis of legal interpretation. The results showed that there were four aspects of the factors causing corruption in Indonesia, namely: 1) individual behavior aspect, 2) organization, 3) society aspect and 4) legislation aspect. The strategy of corruption prevention and controls can be done through: 1) the preventive action that is to prevent corruption by eliminating or minimizing the causative factors / opportunities of corruption; 2) the detective action that is instrument to support the prevention of corruption through internal supervision by the relevant government agencies and external supervision through CPC, DPR/DPRD, NGOs and communities; 3) the repressive action by means of curbing or processing those committed corruption in accordance with the legislation without exception or it is done indiscriminately.

**Keywords: Control, Prevention, Corruption.**

## I. INTRODUCTION

State finance is one of the main elements in the administration of state government and have the benefits that are extremely important to realize the goal of the state to achieve a fair and prosperous society as mandated in the Preamble of the Constitution of the Republic of Indonesia Year 1945. To achieve the goal of the country, the management and financial responsibility of the state requires an independent and professional supervision to create a clean government that is free from corruption, collusion and nepotism.

Indonesia as a big country with abundant natural resources and has a history of struggle that is recognized by the world is, in fact, still left behind from Singapore and Malaysia in every aspects of life. Indonesia is backward, weak and poor because of the people behavior people who are generally poor and lack of willingness to obey and teach the basic principles of life. As a result, corruption is just like a storm that badly hits Indonesia. It becomes a major problem that is not resolved completely until today.

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Good governance is the key to success in preventing the growth of corruption practices. To that end, it is necessary that the state officers have the capacity to apply the values and principles of good governance. It is also stated in Act No. 28 of 1999 on State Management that is Clean and Free from Corruption, collusion and nepotism. Seven principles of good governance are put in the Act. These principles include the principle of legal certainty, the principle of orderly administration of the state, the principle of public interest, the principles of transparency, proportionality, the principle of professionalism, and the principle of accountability. The three main pillars of good governance are public participation (principle of public interest), accountability, and transparency (principle of openness).

The Presidential Instruction No. 5 Year 2004 on the Acceleration of Corruption Eradication at the beginning of the United Indonesia Cabinet was triggered by low corruption perception index (CPI) of Indonesia in an international perspective. This index is defined by international transparency based on an independent survey of Business Actors Perception of Public Service in a country. Based on the survey conducted by the Political and Economic Risk Consultancy (PERC), Indonesia in 2005 was ranked first as the most corrupt country in Asia. As it is known that in the last decade, CPI Indonesia has not undergone a significant progress. CPI Indonesia has just changed from 1.7 in 1999 to 2.2 in 2004. Since the publication of Presidential Decree No. 5 In 2004, CPI Indonesia has increased from 2.0 in 2004 to 2.2 in 2005. In 2006, it reached 2.4 and dropped again to 2.3 in 2007, or in the position of 143 out of 179 countries surveyed. Meanwhile in 2008 there was an increase of 2.6 (Ministry of State for Administrative Reform and the Institute of International Transparency).

Corruption has long occurred in Indonesia. The practices like authority abuse, bribery, giving baksheesh, illegal payments, the payments on the basis of collusion and nepotism and the use of state money for personal interests by the public are interpreted as the acts of corruption and perceived as is they are common in our country. Even so, the action or corrupt behavior is actually not part of our culture, even though there is a tendency to justify the opinion of Bung Hatta and Mochtar Lubis that now corruption has become part of our national culture (Mochtar Lubis, 1992: 35-36). Such a statement, though it is delivered jokingly, it shows their concern over the corruption behavior in our nation (Mochtar Lubis, 1998: 7-9). Ironically, despite the eradication efforts that have been done for more than four decades, corrupt practices are still in progress. There is even a modus operandi that

is more sophisticated and organized, making it very difficult to overcome. Therefore, corruption can be said an extraordinary crime as a part of social ill (Nyoman Serikat Putra Jaya, 2008: 12), which, for sure, requires the extraordinary prevention and suppression, for example with the use of retroactive principle. Supervision in the framework of prevention and control of corruption carried out with the commitments as good and effective as possible from state officials and the public, all components of the nation, not to mention the function of supervision and prevention taken by the House of Representatives / Regional Representatives Council, as the embodiment of the monitoring function held by Parliament in addition to other functions, namely legislation and managing budget.

## **II. THE FACTORS CAUSING CORRUPTION IN INDONESIA**

There are four aspects that have been identified as the factors that cause corruption in Indonesia (Financial and Development Supervisory Agency SPKN Assessment Team, 2002: 1), namely:

1. Aspects of individual behavior, i.e. internal factors that drive a person to commit corruption as their greed, the moral that is too robust in the face of temptation, insufficient income that is not enough for a reasonable life, the urgent needs, consumptive lifestyles, laziness or the person who do not want to work hard, and the religious teachings that are not implemented properly.
2. Aspects of the organization, which is there is no role model values in leadership, the weak organizational culture, the inadequate accountability system, the weakness of management control systems, management that tends to cover up corruption within the organization.
3. Aspects of the community, which is associated with a community in which individuals and organizations are located, such as the existing values that are conducive to corruption, lack of awareness that the disadvantages of corruption may affect society and corruption controls can only be successful if the community is actively participated. Besides, this aspect also includes the misinterpretation of values in the Indonesian culture.
4. Aspects of the legislation, namely the publication of monopolistic advantageous legislation that only benefits relatives and or the persons around state authorities, the inadequate quality of legislation, ineffective judicial review, improper penalties, the



application of inconsistent sanctions and indiscrimination, and a weak evaluation and revision of legislation.

Of the four aspects as a triggering factor of corruption proposed by Mochtar Pabotingi in Saldi Isra, recentralisation and decentralization system in the era of reformation efforts are also the aspects that cause corruption. This statement is not in line with the argument of Theodore Smith who only saw the centralization of power as a source of corruption (Saldi Isra, 2009: xx-xxii). Furthermore, it is said that there are three major groups of corruptors namely: the actors who are in the "more constitutional power" in the central government, the actors who are in the decentralization government, and/or the opportunistic conglomerate at the central and regional government.

The key success in the prevention and control of corruption is the commitment by all components, including the concrete commitment of all the people and state agencies as well as government administration agencies. That commitment has been manifested in various forms of acts and regulations that must be adhered to and must include the following:

1. Decision of MPRRI No.IX / MPR / 1998 regarding the State that is Clean and Free from Corruption, Collusion and Nepotism;
2. Act No. 28 of 1999 on State Implementation of Clean and Free from Corruption, Collusion and Nepotism;
3. Act No. 31 of 1999 on Corruption Eradication that is further enhanced by Act No. 20 of 2001 on Amendments to the Law No. 31 of 1999 on Corruption Eradication;
4. Act No. 15 of 2002 on Money Laundering;
5. Act No. 30 of 2002 on the Corruption Eradication Commission;
6. Act No. 15 Year 2006 regarding the Supreme Audit Agency (BPK)
7. Decree of the President of the Republic of Indonesia No. 127 on the Establishment of the State Commission of Examination Wealth and the General Secretariat of State Officials Wealth Audit Commission.

Combating corruption cannot be realized only by the commitment because the prevention and control of corruption is not an easy job. Such a commitment must be actualized in the form of strategic/comprehensive effort to minimize the four aspects causing corruption that have been mentioned above. The strategy covers the aspects of monitoring and prevention efforts including preventive, detective and repressive which are carried out intensively and continuously.

### **III. SUPERVISORY FUNCTION IN CORRUPTION PREVENTION AND ERADICATION**

Combating corruption can be implemented through preventive, detective, and repressive actions. The function of government agencies in combating corruption is emphasized on preventive and detective actions without ignoring functions through repressive actions.

#### **1. Strategy / Preventive Actions**

Preventive strategies are directed to prevent corruption by eliminating or minimizing the factors that cause or opportunities for corruption. Preventive strategies can be done by:

- 1) Empowering the House of Representatives;
- 2) Empowering the Supreme Court and members of the judiciary under it;
- 3) Establishing a code of conduct in the public sector;
- 4) Establishing a code of conduct in the sector of political parties, professional organizations and business associations;
- 5) Researching the causes of corrupt practices on an ongoing basis;
- 6) Improve management of human resources (HR) and improve the welfare of the Civil Servant;
- 7) To oblige the making of strategic planning and performance accountability reports for government agencies;
- 8) Improving the quality of implementation of management control systems;
- 9) Improving the management of state assets goods (BKMM);
- 10) Improve the quality of care in the community;
- 11) The campaign to create national anti-corruption values.

The preventive actions are implemented through the government's internal controls such as performance audits, monitoring, evaluation, review, consultation, socialization and assistance (technical assistance). This activity resulted in a recommendation to the head of government institutions and the working units that are fixing the internal control system (organization, planning, policy, and internal review), the refinement of methods of direct implementation and corrections on the irregularities found in the implementation. The following-up action on the recommendations of this control is an effective action to prevent corruption. Consulting activities, socialization and assistance are aimed at improving the

capacity of the object supervision in the implementation of the tasks, particularly in the matters related to legislation and financial administration.

## **2. Strategies/Detective Actions**

Strategy or detective actions are directed to identify the occurrence of corruption.

Detective strategy can be done by:

- 1) The improvement of the system and a following up actions on the public complaints;
- 2) The implementation of the reporting obligations of certain financial transactions;
- 3) Reporting personal wealth of public office holders;
- 4) Indonesia's participation in anti-corruption and anti-money laundering in the international community;
- 5) Commencement of a national identification number;
- 6) Increasing the ability of APFP / SPI in detecting corruption;

The detective strategy is an instrument that can support the prevention of corruption, the implementation of the necessary internal supervision of relevant government agencies. The external supervision can also be done by the CPC, DPR / DPRD, NGOs and communities. If the preventive and detective strategies can be conducted for both internal and external supervision and it is done intensively and continuously, undoubtedly, corruption can be prevented and eliminated early.

## **3. Strategy/ Repressive Action**

Repressive strategies are geared to curb or to process corruption in accordance with the existing legislation. Repressive strategies can be done by:

- 1) The establishment of the Anti-Corruption Commission
- 2) Investigation, Prosecution, Courts, and Punishment of the great corruptor (Catch Some Big Fishes);
- 3) The determination of the types of prioritized groups to the eradication of corruption;
- 4) The implementation of the evidence concept
- 5) To examine and evaluate the process of handling of corruption cases in the criminal justice system continuously;
- 6) To determine the handling process and monitoring system of corruption in an integrated manner;
- 7) Publication corruption cases and the analysis;

- 8) Setting the relations and employment standards among the duties of corruption investigator with the general investigator, PPNS and prosecutors;

In addition to several strategies posed above, the repressive actions can also be done through the recommendations given to the government agencies in the form of sanctions when corruption or loss of the country is found through an audit. The recommendation given to the department heads of government agencies can be done as a delegation of audit results to the law enforcement officers when corruption is found.

The implementation of the preventive, detective and repressive strategies as mentioned above will take a long time because it involves all components of the nation, whether legislative, executive and judicial. While continuing to strive and to realize the above strategy, the real efforts must be made immediately. The efforts can be done to prevent and control corruption among others. It is to improve the supervision function, the system of internal control (built-in control), as well as functional supervision (functional supervisory bodies of government (APFP) / Internal Audit Unit (IAU) SOE/D and banking) combined with community supervision (*wasmas*) and legislative oversight (*wasleg*).

#### **IV. CORRUPTION PREVENTION**

Corruption prevention and controls can be detected through: 1) State and Regional Budget Revenue Management; 2) Management of State/Regional Budget; 3) Management of Deficit Financing State Budget.

##### **1. Management of state and regional revenue budget.**

Irregularities in the management of the state/regional budget generally includes leaks either on the revenue side and the expenditure side. The leaks occur on the revenue side especially since not all budget revenues go into the state/regional treasury account, while on the expenditure side, budget expenditures are greater than the determined amount. The most vulnerable sectors in which state revenues irregularities may occur are 1) Acceptance of taxation which includes non-oil tax, oil and natural gas tax, customs and excise, regional income. 2) Acceptance of non-tax state includes general mining revenues, forestry revenues, other non-tax revenues.

There are quite a lot of irregularities cases that occurred during the examination, according to findings reported by APFP including SPI. Prevention or preventive strategies for irregularities of corruption in the management of the state/regional budget



that includes the development and improvement of the quality control system and its application, directed as steps taken to prevent irregularities. Preventive strategies that are willingly implemented do not constitute an absolute action. It is only a minimum of control that must be implemented optimally. Therefore, other developed methods are needed in accordance with the complexity of the critical points that are potential to make the irregularities occur. Detective effort is intended to gain a series of relevant activities aimed at identifying the occurrence of irregularities in the management of state/regional budget. This detective work is intended to obtain relevant and competent evidence to support the conclusion of examination results as the basis for making a follow-up (repressive efforts), by sticking to the principle of presumption of innocence.

## **2. The Management of State dan Regional Expenditure Budget**

The Efforts to prevent corruption in the management of state/regional can be traced through:

### **a. Routine Expenditure**

Irregularities in spending regular budget generally include double payments to officials who have two or more sources of income as civil servants, fictitious travel expenses or unnecessary travel, service the expenses that are not supported by the evidence of accountability , expenditure is not compatible with budget types and charging personal expenses to the office expenses are a burden on the state budget.

### **b. Development Expenditure**

In general, irregularities occur in the procurement of goods and services of government agencies. Irregularities cover all stages of the procurement of goods and services, which is in the planning phase, the preparatory phase which includes: activities of the establishment of the tender committee, the determination of HPS, document procurement / tender and determination of bidders and registration requirements; the implementation phase of the auction such as: the auction announcement, the explanation (and instructions) and opening of bid documents to determine the winner of the auction; and the stage of implementation of the work including the determination of the contract price escalation, if any.

### **c. Allocation Fund**

There is no empirical data that indicates the occurrence of irregularities. However, it is necessary to watch out for vulnerabilities that exist, for example, the determination of the allocation of funds, fund placement, allocation and the use of

public funds. There are the examples of vulnerability in the general allocation fund (DAU):

- 1) The "middleman" in the management of DAU, where certain elements lobby the competent authorities to determine the allocation of funds for large allocations. For the region that wants to get large amount of DAU will give reward to the "middleman" as much as the amount agreed by both parties.
- 2) DAU is not placed on local government bank accounts for the purpose of personal gain in the form of interest / interest on current account or on a bank by obtaining a commitment fee from the related bank.
- 3) DAU is used for vehicle procurement of executive and legislative interests.
- 4) Data manipulative rate requirements and economic potential of the region can be used as a parameter to get a portion DAU that is more than it should be.

In order to avoid irregularities in the management of state/regional, the prevention through preventive and detective strategy is needed. This strategy cannot only be done by the internal "watchdog" of the related agencies or companies as functional supervision performed APFP / SPI but also external control by the public and particularly by the House of Representative (DPR/DPRD) in accordance with constitutionally supervisory function.

### **3. The Management of Deficit State and Regional Budget**

Both internal and supervisory functions performed by external parties are made in order to prevent corruption in the management of deficit state and regional budget. This can be traced through:

#### **a. Privatization**

In conducting the privatization of state companies to anticipate the budget deficit state budget, irregularities or corruption may take place in several conditions listed below:

- 1) To choose the *underwriter*, financial advisors, legal counsel and public accounting as a profession is not done transparently through direct appointment so that the cost tends to be high.
- 2) There is no committee for *beauty contest* in the selecting an international financial advisory and other support professions. However it is designed that a particular company is chosen as the committee so that this can lead to subjective decisions.

- 3) In the selection of an international financial advisory. The criteria are not specified and there is no negotiation fee.
- 4) A certain company is appointed as global coordinator but the scope of work is not clearly announced and the tasks are also not separated clearly from financial advisors who get the fee in percentage and gross cash proceed received.
- 5) The winner of the selection process is not the company's strategic partners that are invited. It also did not follow the pre-qualification, bidding and negotiating privatization and are not engaged in a relevant business.
- 6) Sale of state shares with a block sale and a non-regular secondary market trading but still use the services of an underwriter (standby underwriter), and the underwriter agreement is drawn up after negotiations regarding the price and the number to be sold by the placement agent take place.
- 7) The transaction value of the investment is below the value of the proposal with the reasons that there is non receipt of cash, such as; repair and maintenance of the system as well as the payment of insurance costs.
- 8) Privatization of state companies is camouflaged by selling subsidiary newly formed companies, so that the results of privatization do not get into the country (the state budget) but as the parent company's revenue.
- 9) Sale of shares block sale price is lower than the regular market with a reason to give discounts to investors resulting in the large enough opportunity lost so that the revenues decrease.
- 10) There are expenses to the outside of privatization such as: the cost of the preparation of the previous year Initial Public Offering (IPO), operations costs / foundation and other expenses but charged to the privatization costs and deducted directly on the results of privatization.
- 11) There are financial advisory members who do not work properly in accordance with engagement letter but the fee is paid so as to avoid waste of state finances.

**b. Restructuring**

In the banking restructuring, there are opportunities that are particularly vulnerable to corruption, such as:

- 1) Sale of assets that are submitted to shareholders in the program of Settlement Obligation Holders (PPP) through direct sales to strategic partners in a closed / non-transparent and thus potentially got a sale price that is lower than it should be.

- 2) The decline in the value of the company's assets in the context of settlement programs through the PPP scheme Acquisitions Master Settlement Agreement (MSAA) that is performed by the management company for the benefit of the existing shareholders (collusion) which resulted in a decrease in the selling price of the company.

**c. Foreign Debt**

The vulnerability to corruption in foreign loans may occur in terms of:

- 1) The proposed project is financed by loans/grants (PHLN), not the required project that has a high priority according to the policy, objectives and development programs.
- 2) Volume, specifications and price of the proposed projects to be financed with PHLN are higher than actual needs.
- 3) There is a job that basically requires foreign consultants for which it can be done by local consultants.
- 4) The realization of PHLN project is used to project the cost of incremental recurring costs (costs of employees for the operation of the project) that is not proper
- 5) The tender of procurement of goods/services financed from PHLN is manipulated so that the proposed winner is not approved by the lender. Then the results of the rejected tender are proposed to be financed at a pure cost without re-tender but only by converting the price of foreign currencies to the price of rupiah and add burden related taxes.
- 6) The value of local ingredients in contracts with foreign partners on projects funded from the PHLN project is calculated using foreign currency (do not use the value of the rupiah/fixed exchange rate), so that when there is an increase, the state finance is ruined.
- 7) There is a consulting job that is not needed because the project has never been completed or they have not completed the project. However, because it is the provisions of *leader*, the contract is still included.
- 8) The work generated by many consultants are typically oriented lenders, which is intended to overcome the problems that are important but not a priority according to the consultant for the project.
- 9) Consultants tend to offer the professionals whose qualifications (professional experience, education level) are above the actual qualification needed so that the value of the contract is much higher than it should be.



- 10) The program of procurement funded from PHLN is designed by the central government without involving the regional government, including the type of goods, quantity and unit cost, so the region as the executor has the difficulty to find the suppliers. As a result, overprice takes place and there are goods that are not in accordance with the needs.

Supervision of the management of deficit state revenue and expenditure budget is internally carried out by the relevant agencies. The external supervision is carried out by the CPC, DPR / DPRD and NGOs or community. This can be done by making strategic steps both preventive and detective.

## V. CONCLUSION

in order to prevent, control function basically be done through strategies and prevention efforts with the commitment of all components of the nation, either through internal control by government agencies, the legislative and judiciary, NGOs and communities. Supervision is able to effectively and continuously done through a strategy of preventive, detective and repressive. The activities or areas that are particularly vulnerable to the extensive corruption are on: 1) state revenue and expenditure budget management, 2) management of state/regional regions, 3) management of deficit state and regional budget. Meanwhile, efforts were made to prevent corruption is through: bureaucracy reform; public service reform; reform of budget execution; reform of treasury and receipts and payment systems; reform of the management of cash, accounts receivable, state property, and government obligations; reform of inspection and control systems, increase public participation and strict enforcement of the code of ethics.

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