

December 9th 2016



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"



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

UNISSULA PRESS

ISBN. 978-602-1145-41-8

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 TO WARD 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 (KUHP) 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

CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED

ZULFIANI

Lecture Faculty Of Law Samudra University

Email : zulfiani_dosen@yahoo.com

ABSTRACT

Corruption is one of society's disorientation and is in the same state as other types of crimes such as theft, which has existed since the human are living as society. The problem is that the corruption is increasing in line with prosperity and technological advancement. In fact, when a nation is advancing in its development, it encourages people to have more need so that they will engage in corruption. Based on these descriptions, in the preparation of this paper the authors will describe, how corruption criminal sanctions with values of justice? In this study, the author applies qualitative research methods, constructive approach, and also applies primary data and secondary data. The techniques of observation and in-depth interviews with key informants are applied for collecting primary data. Last, data analysis technique is applied to the primary data.

Corruption prevention policies do not give deterrent effect to the corruptor. The investigation and prosecution policy in cases of corruption, supposedly having orientation for reimbursing the state and also aiming deterrent effect by providing severe criminal sanctions. No arrest for suspect of corruption (although the state has been paying losses) is reducing the deterrent effect or even not all.

For the sake of justice, the judge should see Article 5 of Law No. 48 of 2009, it is clear that the reconstruction of criminal responsibility and accountability of the administration are related to the values of justice, the values of divinity and legal values that live in the community (the living law) so we need to develop justice characterized by Indonesia, which is "justice of Pancasila", which implies "justice of deity," "fairness humane (humanistic)", "justice that is democratic, nationalistic, and social justice". This means, justice upheld is not just formal justice, but substantial justice.

Keywords: corruption, criminal sanctions, the value of justice

A. BACKGROUND

Technology provides a major influence for the change in lifestyle of the people, the more rapid development of technology, the more developed a lifestyle of people in the country marked by sophisticated crime. Crimes appearing must be subject to a fair law. Issues of justice according to Islamic law, can not be separated from the philosophy of Islamic laws and theories regarding the purpose of Islamic law, which in principle is how to realize the "benefit" to all mankind, which includes "expediency" in this life and in the hereafter.

Barda Nawawi Arief stated that, “Law enforcement is the overall activities of the executive law enforcement towards the rule of law, justice and the protection of human dignity, order, peace and the rule of law in accordance with the Act of 1945.”¹This means that the law enforcement side with all aspects of society and certainly enforce justice for all aspects of society. Barda Nawawi Arief also stated that, one study of alternative/comparison of urgency and in accordance with the idea of renewal of national law presently is the study of family law (family law) which is closer to characteristic of Indonesian society which is more mono-dualistic and prulalistic, a source of national law expected oriented legal values in the society, which is derived from the values of religious and customary law. Comparative studies of the corner of “traditional and religious family law” is a necessity.²

Corruption is one of society's disorientation and is in the same state as other types of crimes such as theft, which has existed since the human are living as society. The problem is that the corruption is increasing in line with prosperity and technological advancement. In fact, when a nation is advancing in its development, it encourages people to have more need so that they will engage in corruption.³

The uncontrolled increase of corruption will be catastrophic for not only to the national economic life but also the life of the nation in general. The widespread and systematic Corruption is also a violation of the rights of the local economy, and therefore, all the corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. Thus, the eradication process demands extraordinary ways.⁴

B. Problem Statement

What is corruption criminal sanctions which based on the values of justice?

¹ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung, Citra Aditya Bakti, 2005. Hal.8

² Barda Nawawi Arief, *Pembangunan Hukum Pidana Dalam Perspektif Kajian Perbandingan*, Bandung, Citra Aditya Bakti, 2005. Hal.7

³ Andi Hamzah, *Perbandingan Pemberantasan Korupsi di Berbagai Negara*, Sinar Grafika, Jakarta. 2005. Hal.1 (buku 1)

⁴ Ermansyah Djaja, *Memberantas Korupsi Bersama KPK*, Sinar Grafika, Jakarta. 2013. Hal. 255.

C. Research Method

The type of research is qualitative research. According to Kirk and Miller, it is a certain tradition of qualitative research in social science that is fundamentally dependent on the observations in humans both in the region and in their terminologies.⁵ The qualitative research is expected to locate the hidden meaning in the text as well as the fact in real society related to corruption criminal sanctions which based on the values of justice.

Constructive approach is applied in the research to collect empirical data material in the practice of criminal sanctions methodology applied towards corruption based on the values of justice.

Justice is actually a relative concept⁶. On the other hand, justice is the result of interaction between expectations and realities, the formulation can serve as guidelines in the lives of individuals or groups. From the etymological aspect of language, the word "fair" is derived from the Arabic "Adala" which implies middle. From this meaning, the word "Adala" then synonymous with the lowering wash to the word wasith, which means the arbitrator or a person standing in the middle which implies a fair attitude.⁷

From this meaning, the word fair is synonymous with meaningful inshaf (conscious), because the fair is a person who can stand in the middle without a priori partiality, in which such a person is a person who is always aware of the problems facing it in the overall context, so the attitude or decision taken with regard to the issue becomes right.⁸

Sense of justice can also be found in the implementation of the rule of law through the judge's decision.

For further in defining and achieving justice, Natural Law Theory retains the crown of justice as law since Socrates to Francois Geny. It gives priority to "the search

⁵ Lexy J. Moeleong, 2008, *Metode Penelitian Kualitatif*, Remaja Rosdakarya, Bandung, hlm. 4

⁶ Majjid Khadduri, *The Islamic Conception of Justice*, Baltimore and London : The Johns Hopkins University Press, 1984, hlm. 1, sebagaimana dikutip Mahmutarom, *Rekonstruksi Konsep Keadilan*, Undip Semarang, 2009, hlm. 31

⁷ *Ibid.*

⁸ Nurcholis Madjid, *Islam Kemanusiaan dan Kemoderenan, Doktrin dan Peradaban, Sebuah Telaah Kritis tentang Masalah Keimanan*, Jakarta : Yayasan Wakaf Paramadina, Cetakan kedua, 1992, hlm. 512-513, sebagaimana dikutip Mahmutarom, *Rekonstruksi Konsep Keadilan*, Undip Semarang, 2009, hlm. 31

for justice”⁹. There are a variety of theories on justice and a fair society. These theories related to the rights and freedoms, the opportunities of power, income and prosperity.

The efforts to "impoverishment" of the true corruption convicts for criminal sanctions such as confiscation or seizure of assets acquired convicted of acts of corruption engage. "Impoverishment" is a popular term used to refer to the seizure and confiscation of wealth. The Code of Penal (*Wetboek van Strafrecht* -KUHP-) in Book I Chapter II, Article 10 requires that the deprivation of certain goods is a type of criminal penalties or additional. Penal Code regulate in more detail in Article 39 paragraph (1) that "goods belonging to convicted derived from the crime or who intentionally used to commit a crime, can be deprived".

Penal sanctions have been imposed, in the context of criminal law, focused on the legal interest or folk. The nature of criminal law as public law does not depend on the will of the individual, which in concreto harmed, but submitted to the government as a representative of the public interest.¹⁰

In order to protect the public interest, what has been done by the state is an act which actually violates fundamental to the personal interests of the parties concerned, such as arrest, detention, to impose criminal sanctions to perpetrators.

The sanctions is in form of "impoverishment" including an attempt of restorative justice where the offender must return to the original condition before he committed the crime of corruption.

It is interesting that there is an improvement in law related to the decision of the Court of Corruption (Corruption Court) who hear the case of Gayus Tambunan. In the decision, the panel of judges impose criminal sanctions additional to confiscate property owned by Gayus Tambunan in addition to imposing sanctions of imprisonment and fines.¹¹ This ruling is a legal breakthrough and could be used as a precedent for subsequent corruption cases in an effort to "impoverish" the corruptor.

⁹ Theo Huijbers, *Filsafat Hukum Dalam Lintasan Sejarah*, Cet VIII, Yogyakarta: Kanisius, 1995, hlm. 196.

¹⁰ Wirjono Prodjodikoro, *Asas-asas Hukum Pidana di Indonesia*, (Bandung: Eresco, 1969)

¹¹ Putusan Pengadilan Tindak Pidana Korupsi yang dijatuhkan pada hari Kamis 1 Maret 2012 oleh Majelis Hakim Pengadilan Tipikor yang dipimpin Suhartoyo dan beranggotakan Ugo, Pangeran Napitupulu, Sudjatmiko, dan Anwar dengan hukuman enam tahun penjara dan denda Rp 1 miliar subsider empat bulan serta menyita harta Gayus senilai Rp 74 miliar di berbagai rekening dan deposito, serta aset berupa mobil Honda Jazz; Ford Everest; rumah di Gading Park View, Kelapa Gading, Jakarta Utara; dan 31 batang emas masing-masing 100 gram.

Existence formulation of Law No. 20/2001 on the Amendment of Act No. 31/1999 concerning the Eradication of Corruption Act, Chapter II, Article 2, paragraph (2), related to death penalty for corruption in specific circumstances. Therefore, it must be placed as the positive law reality and become a part of Indonesia.

This statement explains that researchers better to put together with the moral law and not in separate things as Austin stated. Positive law is not a separate part to the ideal law, because, to see the nature of the positive law it must return to the values, empirical facts and legal ideals that built up in it. The idea of the law must not be contrary to the idea of justice, and therefore actual conflict that exists between the law and justice should be interpreted as a consequence of the interpretation which is not perfect against each idea.¹²

Therefore, it is derived from the general principles of the natural law through a process of inference, as “one should not kill” may be derived from the principle of “no one should do evil against one another”. Some others are derived from by establishment.

Specialization of the rights under natural law it relies upon positive law, or in other words, the positive law is a means to apply the general principles of the natural law on the arrangement of real-life people in society.¹³

From the above philosophical reasoning, the researchers will analyze the reality of death penalty for corruption in Indonesia based on the level of specificity as characteristic of positive law. The formulation of the Act No. 20/2001 on the Amendment of Act No. 31/1999 concerning the Eradication of Corruption Act, Chapter II, Article 2, paragraph (2), related to death penalty for corruption in certain circumstances, on aspects of the grounding values, law and justice sanction law

Discussion

Sanction of Corruption which Based On Value of Justice

Corruption is like an illness in someone’s body, which should be prevented for not harming the other part of the body itself. The harmed part of the body should be amputated

Disebabkan keterbatasan akses terhadap putusan tipikor tersebut maka referensi isi amar putusan mengacu pada pemberitaan surat kabar di media online yang diunduh pada hari Senin, 9 April 2012 ; Lihat <http://nasional.kompas.com/read/2012/03/02/11392587/Putusan.Memiskinkan.Gayus.Diapresiasi> dan <http://www.rakyatmerdekaonline.com/read/2012/03/02/56474/PBNU:-Putusan-Hakim-Rampas-Harta-Gayus-Tambunan-Tepat->

¹² Carl Joachim Friedrich, *Filsafat Hukum Perspektif Historis*, 2008, 20.

¹³ *Op. cit.*, 22.

so that the viruses will not affect the others. From this illustration, the corruption should be treated so.¹⁴

Corruption will be the obstacle for the development of democracy, hinder the implementation of agencies in performing their duty and can not use resources optimally. Corruption fosters behavior in concealing everything and encourage oppression. At the end, corruption preclude the weakest citizens to have share in the development and have higher quality of life.¹⁵

The increasing of corruption has been spread from all level of people to the members of the legislature and the judiciary. This has implications brought huge losses to the state finance.

Corruption has become the culture in society. It increases the number of corruption case. We still have confidence, that corruption in Indonesia is the result of a systemic cause that occurs in Indonesia

Corruption is the result of failure of systemic management of our country, where the limitations and lack of accessory facilities and infrastructure that supports both the bureaucratic system involving physical, technological and human resources.

For example, the lack of shipbuilding in Tanjung Priok so the ship takes long enough to be able to do the unloading, while the vessel operating costs are quite high, the length of time it takes to make the permitting is caused by the bureaucratic system which is quite complicated, even though there has been one-stop service. The superstructure system of government is less precise and firm, so it results vulnerable crimes of corruption.¹⁶

In the end, from these conditions, it will gradually lead to crimes of corruption among government administrators and bureaucrats, and if this condition is not immediately resolved and equipped, provide a deterrent effect and prosecute the perpetrators of corruption instead, it will lead to new corruption that carried out the crime of corruption. If this happens, it will be more difficult for the implementation of eradication of corruption, and the conditions that would make corruption more intricate and more complicated.

¹⁴ Jawade Hafidz Arsyad, *Korupsi Dalam Perspektif Hukum Administrasi Negara*, Sinar Grafika. Jakarta. 2013. Hal.3.

¹⁵ Jeremy Pope, *Strategi Memberantas Korupsi*, Yayasan Obor Indonesia, Jakarta. 2007. Hal. 61.

¹⁶ Zulki Zulkifli Noor, Deklarator Indonesia Seharusnya.

The nature of criminal law as public law does not depend on the will of the individual, which in concreto harmed, but submitted to the government as a representative of the public interest.¹⁷

Another result, the handling of corruption cases lose their deterrent effect. First, rich criminals will easily restore the proceeds of corruption and continuing business activities as if nothing had legal issues.

Second, the calculation of loss-prone countries still make a difference. In any corruption case, handling the process of calculating the losses amount of the country is still causing differences of interpretation either by the Prosecutor, state audit agency (BPK), the financial supervision and development (BPKP), as well as the courts.

Third, the delivery of assets belonging to criminals is prone to be manipulated. So far, the fines policy is still unclear whether the state should be in cash or assets or both. Issues will arise if the indemnification of the country is carried out in the form of assets. It is not possible for asset to be given by a suspect which is bulging asset or assets whose value has increased (markup).¹⁸

In principle, severe sanctions are given only when the enforcement mechanism of the lighter has not been deemed useful or not suitable. Criminal law sanctions should be fair and proportionate to the reality, performed by the offender. The sanction is the form of “impoverishment”, including an attempt of restorative justice where the offender must return to the original condition before he committed the crime of corruption.

The reconstruction of the criminal sanctions under the Act is absolutely necessary, such as in the Law of the Republic of Indonesia Number 31 of 1999 on Corruption Eradication jo Law of the Republic of Indonesia Number 20 of 2001 concerning amendments to the Law of the Republic of Indonesia No. 31 of 1999. Thus, it should balance in the special criminal sanctions as stipulated in the Act, in particular, the balance and values of justice in the confiscation of the assets of the perpetrator of the offenses of corruption committed.

¹⁷ Wirjono Prodjodikoro, *Asas-asas Hukum Pidana di Indonesia*, (Bandung: Eresco, 1969), 11.

¹⁸ Indonesia Corruption Watch, diakses 3 April 2014.

Conclusion

Corruption prevention policies do not give deterrent effect to the corruptor. The investigation and prosecution policy in cases of corruption, supposedly having orientation for reimbursing the state and also aiming deterrent effect by providing severe criminal sanctions. For the sake of justice, the judge should see Article 5 of Law No. 48 of 2009, it is clear that the reconstruction of criminal responsibility and accountability of the administration are related to the values of justice, the values of divinity and legal values that live in the community (the living law) so we need to develop justice characterized by Indonesia, which is “justice of Pancasila”, which implies “justice of deity,” “fairness humane (humanistic)”, “justice that is democratic, nationalistic, and social justice”. This means, justice upheld is not just formal justice, but substantial justice.

BIBLIOGRAPHY

Books

- A. Stauss and J. Corbin Busir, 1990. *Qualitative Research: Grounded Theory Procedure and Technique*, Lindon Sage Publication.
- Andi Hamzah, 2005. *Perbandingan Pemberantasan Korupsi di Berbagai Negara*, Sinar Grafika, Jakarta.
- Barda Nawawi Arief, 2005. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Bandung, Citra Aditya Bakti.
- Barda Nawawi Arief, 2005. *Pembangunan Hukum Pidana Dalam Perspektif Kajian Perbandingan*, Bandung, Citra Aditya Bakti.
- Ermansyah Djaja, 2013. *Memberantas Korupsi Bersama KPK*, Sinar Grafika, Jakarta.
- Jan Remmelink, 2003. *Hukum Pidana*, Jakarta: Gramedia Pustaka Utama.
- Jawade Hafidz Arsyad, 2013. *Korupsi Dalam Perspektif Hukum Administrasi Negara*, Sinar Grafika. Jakarta.
- Jeremy Pope, 2007. *Strategi Memberantas Korupsi*, Yayasan Obor Indonesia, Jakarta.
- Lexy J. Moeleong, 2008. *Metode Penelitian Kualitatif*, Remaja Rosdakarya, Bandung.
- Soerjono Soekanto & Sri mamudji, 2007. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Rajagrafindo, Jakarta.

Theo Huijbers, 1995 *Filsafat Hukum Dalam Lintasan Sejarah*, Cet VIII, Yogyakarta: Kanisius.

Wirjono Prodjodikoro, 1969. *Asas-asas Hukum Pidana di Indonesia*, Bandung: Eresco.

Journals and Articles

Majjid Khadduri, *The Islamic Conception of Justice*, Baltimore and London : The Johns Hopkins University Press, 1984, hlm. 1, sebagaimana dikutip Mahmutarom, *Rekonstruksi Konsep Keadilan*, Undip Semarang, 2009.

Nurcholis Madjid, *Islam Kemanusiaan dan Kemoderenan, Doktrin dan Peradaban, Sebuah Telaah Kritis tentang Masalah Keimanan*, Jakarta : Yayasan Wakaf Paramadina, Cetakan kedua, 1992, hlm. 512-513, sebagaimana dikutip Mahmutarom, *Rekonstruksi Konsep Keadilan*, Undip Semarang, 2009.