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"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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FREED INDONESIA'S CORRUPTION BETWEEN HOPE AND REALITY[1]

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A. INTRODUCTION

Although the title of this article implies pessimism, but semantically title of this article is not intended to convey the message of pessimism in fighting corruptions.The title of this article actually more of reflective questions in social achievement to provide confirmation, that the eradication of corruption in Indonesia is very likely just be the "hope", but also very likely to be "true". In condition of Indonesia today, expectations and reality in eradication of corruption can be considered equally still be a tendency. At least there are a series of facts that can be used as an argumentation for an existence of two point that tendencies.

First, looked from a time side, eradication of corruption in Indonesia actually started since Indonesian nation's has it independence. In embryonal, efforts to control corruption by means of criminal law has been started since 1958, with the Regulations of the Lord of War Centre Chief of Army Staff on April 16, 1958 Number Prt/Peperpu/013/1958 (BN No. 40 of 1958) which also applied for the residents within the jurisdiction of Navy through Decree the Chief of Naval Staff Number Prt/Z.1/I/7 dated April 17, 1958.[2]Nevertheless, the effort for eradicate corruption in Indonesia is still far from the public expectations. In perspective of time, an effort to eradicate corruption in Indonesia can be compared with Singapore. The eradication of corruption in Singapore also began in 1952 when the Investigation and Inspection Agency of Corruption (CPIB) was established with first 13 person staffs. Many challenges in early days of that agency stands. Their problem is not only limited to employees. This new institution was not also have a support from the public and the government. However, CPIB keep moving until finally Lee Kuan Yew govern and fully support it since 1959. That effort has brought Singapore became a

[1] Described in*International Conference and Call Paper*by title "*Indonesian Clean of Corruption in 2020*", held on December 9-10, 2016 at the Islamic University of Sultan Agung, Semarang.

[2] Looked at:AdamiChazawi, 2005, *Hukum Pidana Materiil dan Formil Korupsi di Indonesia*, Bayumedia, Malang, p. 3.

country with the lowest corruption rate in Asia. In fact, it is always on the list of 10 countries with the lowest corruption on earth.[3]

Second, social achievement that Indonesia will be free from corruption is certainly not impossible. Although it seems slowly, but the progress of eradication of corruption in Indonesia has improved. In 2015, a score from*Corruption Perception Index* (CPI) that Indonesia amounted to 36 and ranked at 88th out of 168 countries measured. Indonesia's score rose 2 points and up 19 ranking from the previous year. That increasing has not been able to match scores and rankings are owned by Malaysia (50), and Singapore (85), and slightly below Thailand (38). Indonesia is better than Philippines (35), Vietnam (31), and well above the Myanmar (22).[4]This leaning is certainly encouraging, because that is social achievement for free Indonesia from snares of corruption were not to be impossible things. As well as Singapore, Indonesia would have chance to be a country with freedfrom corruption or at least into countries with low levels of corruption.

Third, there is a paradoxes in eradication of corruption in Indonesia, so that reality of corruption would be anomalistic. ***Firstly***, although the law enforcement against corruption continues to be made, but corruption still occuring with increasing quality and quantity continuesly. This reality shows that law enforcement corruption in disoriented occurring. This disorientation seen from not achieving important goals in law enforcement of corruption, namely "the general prevention" because of the low punishment imposed by judges.[5]Law enforcement of corruption punishment appears just be merely a "formal ritual", so it does not have prevensial effect. ***Secondly***, although public attention to the cases of corruption so high, but "how to arbitrate" law enforcer in handling corruption cases seem very flat, linear and less progressive, thereby strengthening the suspicion there is a "flirt" between law enforcer and the perpetrators of corruption. This allegation, least

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3 http://print.kompas.com/baca/politik/2015/10/13/Melihat-Pemberantasan-Korupsi-diSingapura-dan-Hon, accessed on Monday, Desember 5, 2016at 05.04 AM.

4 https://www.ti.or.id/index.php/publication/2016/01/27/corruption-perceptions-index-2015, accessed onSunday, Desember4, 2016 at 15.51 PM.

5 Theoretically one purpose of criminal punishment is to prevent repeat offender crime (*special prevention*) and prevent others from doing the same thing with offenders (*general prevention*). Check at: Andrew Ashworth, 2010, ***Sentencing and Criminal Justice***, Fifth Edition, Cambridge University Press, Cambridge, UK, p. 78-83. Also check at :ShlomoGioraShoham, Ori Beck, Martin Kett, 2008, ***International Handbook of Penology and Criminal Justice***, CRC Press Taylor & Francis Group, USA, p. 352. By Sholmo, "Deterrence is commonly discussed in terms of general and specific deterrence (or prevention). Specific deterrence refers to the effects of a punishment on the punished person (e.g., the effects on his or her future actions), whereas general deterrence refers to the effects of the threat of punishment on the population at large". Also check at: Daniel E. Hall, 2009, ***Criminal Law and Procedure***, Fifth Edition, Delmar, Cengage Learning, Clifton Park, New York, p. 28. Daniel said, "Specific deterrence seeks to deter individuals already convicted of crimes from committing crimes in the future. It is a negative reward theory. General deterrence attempts to deter all members of society from engaging in criminal activity".

by knowing "affair" of law enforcer with several perpetrators of corruption as in the case of Gayus Tambunan, the case of prosecutor Urip Tri Gunawan and the last—themost surprising—arrestedChief of Lawal Court Akil Mochtar in handling various cases of elections regional heads (Pemilukada). ***Thirdly***, although the level of corruption in Indonesia is very high, but the growth rate of economic in Indonesia still the highest. Nevertheless, corruption anomaly is also still bring the peoples as "bearers" burden due to various acts of corruption that occurred.[6]

B. JURIDICAL PROBLEMS IN LAW ENFORCEMENT OF CORRUPTION

Law enforcement—including law enforcement of corruption—essentially a process through the various stages—thestage of formulation/legislation, the application phase and the execution phase.[7]According to Barda Nawawi Arief, legislative process is the process of law enforcement *in abstracto*. Legislative process is early stages of the most strategic law enforcement *in concreto*, than the mistakes at this stage are strategic error that can become an obstacle to law enforcement *in concreto*.[8]Starting from such thoughts, talks about law enforcement of corruption in this paper will begin by discussing the substance of legislation that be a form basis for law enforcement of corruption, especially Law No. 31 of 1999 jo Law No. 20 of 2001. Juridical problems in law enforcement of corruption is a fundamental problem that contributed to emergence large problem of corruption in law enforcement as a whole, although in sociological issues have been neglected as a central issue.

One of juridical problems inherent in Law No. 31 of 1999 jo Law No. 20 of 2001 are issues of criminal formulation threats, both related to the severity of formulation regarding the kind of criminal or a criminal threatened. Although Law No. 20 of 2001 built on extraordinary spirit, but the spirit is not manifested in it formulation of criminal threat. Formulation of criminal threat in Law No. 31 of 1999 jo Law No. 20 of 2001 clearly exposed in following table.

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[6] Tongat, Problem AkutPenegakanHukumTindakPidanaKorupsidanProspekKebijakanIdealnya, Papers submitted in "RefleksiAkhirTahunMenguraiKeburamanHukum di Indonesia", organized by the Faculty of Law, University of Muhammadiyah Malang on December 5, 2013 at the Hall of BAU University of Muhammadiyah Malang.

[7] Check also: Barda Nawawi Arief, 2011, ***Kapita Selekta Hukum Pidana tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System),*** Badan Penerbit Universitas Diponegoro, Semarang, p. 18; Barda Nawawi Arief, 2009, ***Tujuan dan Pedoman Pemidanaan Perspektif Pembaharuan Hukum Pidana dan Perbandingan Beberapa Negara***, Badan Penerbit Universitas Diponegoro, Semarang, p. 4.

[8] Barda Nawawi Arief, 2008, ***Masalah PenegakanHukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan***, KencanaPrenada Media Group, Jakarta, p. 25. Check also:Tongat, 2013, ***Kendala Substansial dalam Penegakan Hukum Tindak Pidana Korupsi***, Pustaka Magister, Semarang, p. 5.

Tabel 1. Heavy/ Slight Formulation System of Sanctionin LawNo. 31 of 1999 joLaw No. 20 of 2001

ART.	CRIMINAL THREATENED				
	Minimum Sanction		Maximum Sanction		
	Imprisonment	Fines	Death Penalty	Imprisonment	Fines
2 (1)	4 y and	200 M	-	LIor 20 yand	1 B
2 (2)	-	-	DP (specific circumstances)	-	-
3	1 y and/or	50 M	-	LIor 20 y and/or	1 B
5 (1)	1 y and/or	50 M	-	5 y and/or	250 M
5 (2)	1 y and/or	50 M	-	5 y and/or	250 M
6 (1)	3 y and	150 M	-	15 y and	750 M
6 (2)	3 y and	150 M	-	15 y and	750 M
7 (1)	2 y and/or	100 M	-	7 y and/or	350 M
7 (2)	2 y and/or	100 M	-	7 y and/or	350 M
8	3 y and	150 M	-	15 y and	750 M
9	1 y and	50 M	-	5 y and	250 M
10	2 y and	100 M	-	7 y and	350 M
11	1 y and/or	50 M	-	5 y and/or	250 M
12	4 y and	200 M	-	LIor 20 y and	1 M
12A (2)			-	3 y and	50 jt
12B (2)	4 y and	200 M	-	LIor 20 y and	1 M
13	-	-	-	3 y and/or	150 jt

Explanation :

D= Death Penalty

LI = Life Imprisonment (Life Imprisonment Penalty)

I = Imprisonment (Imprisonment Penalty)

F = Fines (Fines Penalty)

jt = juta (Million in IDR)

M = Milyar (Billion in IDR)

y = years

Noting at table 1 above readed clearly, that the extraordinary spirit in Law No. 31 of 1999 jo Law No. 20 of 2001 are not reflected in substance of sanctions setting. Formulation of criminal sanctions in both of legislation did not show as an extraordinary instrument, at least on some reasons:

First, the death penalty should be a punishment has an effect of deterrence/prevention—especially the general prevention—preciselyplaced as a specific

crime which can only be imposed in certain circumstances/emergency (vide Article 2 act (2) of Law No. 31 of 1999 jo Law No. 20 of 2001). This formulation—not only—resulting a death penalty loses it power as a means of general prevention, but also putting the death penalty merely just "decoration" in the legislation which is almost impossible to apply.

Second, although Law No. 31 of 1999 jo Law No. 20 of 2001 has been using the specific minimum and the specific maximum system as a reflection that can be a formulation system for particular criminal threats (*definite sentence*)—whichin tradition of ordinary criminal law is used to formulate a criminal threat on type of heavy criminal act or serious criminal act—but with a really high range between minimum and maximum sanctions, that system is relatively not functioning optimally. Whereas, with formulation of that system thus remains the judges arbitrarily determine the standard of sanction. With the high range of minimum and maximum punishment, it has become a potential means of "deal-bargaining" in making decision of punishment.

Third, there are no special arrangements about fines penalty in Law No. 31 of 1999 jo *Law* No. 20 of 2001—whichimplies submission of legislation to provisions of fines in the Penal Code (KUHP)—givingunimpeded space to "rolling bad game" between executor institution with the corruptor. Even the threat of fines penalties are very high in Law No. 31 of 1999 jo *Law* No. 20 of 2001 to be a "toothless tiger" that many people questioned it executorial power. Remembering this, sanctions are substitute the fines penalties specified in Law 30 of Penal Code (KUHP) explored only six months in maximum limits, so no matter how much of the maximum fines penalty be given replaced with just six months.

Various juridical problems mentioned above not only has potential to become a kriminogen factor—which will continue to be a trigger of corruption—but also has potential obstacle to rule a law of enforcement, including to become a potential means for "love affair" between law enforcer with perpetrators of corruption. Therefore, messy of corruption law enforcement can not be solely seen as an errors or lacked of law enforcement officers, but also the shortcomings and errors of lawmakers. In the last statement would be a strategic error or omission which can be a followed error on the next steps. Various kinds of law enforcement problems are suspected to be a sizeable contributing factor a rampant of corruption until now.*****

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