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# ARRANGEMENTS OF LAW ENFORCEMENT INVOLVING LAW ENFORCEMENT OFFICERS IN BRIBERY

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## ABSTRACT

There are still a number of individuals and government bodies in Indonesia that have the capacity to abuse the power that they possess. In government entities, it is possible for KPK investigators to abuse their positions of power. Since the investigators have to make direct contact with the crime or the suspect, it is possible that they will accept bribes or gifts. This study aims to investigate the types of crimes that may be committed by KPK investigators when handling corruption cases, the criminal liability of law enforcement based on the Criminal Acts of Corruption Act, and the efforts made by the government to address the issue of criminal acts of corruption. This article employs qualitative analysis, which entails a detailed description of the processed data in the form of phrases, as the technique of data analysis used in this research (descriptive). In terms of Indonesian criminal law, corruption is governed by Law No. 31 of 1999 and Law No. 20 of 2001 on the Eradication of Corruption Crimes. These rules establish the extent of the punishment for corruption offenders, which includes imprisonment, fines, and the death penalty. In addition, the government aims to seize the profits of illegal acts of corruption via asset recovery through enforcing the Law on the Prevention and Eradication of the Crime of Money Laundering. Regarding law enforcement, the government created the Corruption Eradication Commission (KPK) and the Corruption Court.

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## Introduction.

Corruption in Indonesia has reached an acute stage or may be described as being at an all-time low. The parties not only engage in systemic corruption together, but have also engaged in it individually with the intention of profiting themselves or others who use their position in government to further their own nefarious ends. The ineffectiveness of law enforcement personnel poor this respect underscores the need of combating corruption. It is crucial that immediate action be taken in order to rebuild the public's faith in law enforcement. The demand for law enforcement must be bolstered. This enormous corruption threatens the sustainability of growth in Indonesia without a doubt. How corruption seems to have entered all levels of Indonesian society, as if those who commit corruption offenses feel no fear, shame, or guilt, and how this criminal conduct threatens the ideals of the state and calls for more harsh legal punishment.

As specified in law number 31 of 1999 and 20 of 2001 concerning Corruption Crimes (hereinafter referred to as the Law on the Eradication of Corruption Crimes) regulates 7 types of corruption crimes, including those related to state financial losses, embezzlement of office, bribery, extortion, conflicts of interest in procurement, fraud and satisfaction. The construction of bribery charges in the Anti-Corruption Law is primarily governed by Articles 5, 6, 11, 12 a, b, c, and d and Article 13 compared to other articles. Moreover, according to statistics given by the Corruption Eradication Commission (KPK) between 2014 and 2019, bribery accounts for 65% of corruption cases

in Indonesia. During the period of 2016-2019, the KPK made a total of 87 arrests (OTT), all of which were connected to bribery in some way.

Despite the fact that bribery occurs frequently and is outlawed by numerous laws, the Law of Corruption Eradication lacks explicit definitions and limitations. Because of this, the KPK, the police, the prosecutors, and the courts all approach cases of bribery different manner. It also delegates to law enforcement the authority to judge whether an act constitutes a bribe.

According to Mezger, the concept of criminal law is the rule of law, which binds to an act that satisfies specific circumstances, an impact in the form of a crime (Rubai, 2001). The explanation of what is meant by an act that satisfies specific circumstances is an act that is performed by a person, and it is possible to be subject to a criminal crime as a form of responsibility for the act that he has committed.

When discussing criminal law in Indonesia, it is impossible to overlook the governmental agencies and organizations responsible for enforcing such. Here, we focuses on the KPK institution, which is currently the subject of heated debate among the general public, academics, and politicians regarding the performance of the Corruption Eradication Commission or KPK as an ad hoc institution tasked with combating and eradicating corruption in Indonesia. However, in mid-2009, a case emerged involving several KPK employees and KPK investigators which later became known as the lizard and crocodile case, where in this case, KPK employees, namely Bibit Samad Rianto and Chandra Hamzah, who at that time served as KPK leaders which was reported to have committed a criminal act of extortion and abuse of authority in conducting an investigation into the Century Bank case at that time. Both have been charged with Article 23 of Law No. 31/1999 in conjunction with Article 15 of Law No. 20/2001 in conjunction with Article 421 of the Criminal Code on abuse of authority and Article 12 (e) of Law 31/1999, in conjunction with Law No. 20/2001 on extortion. In response to this case, the president immediately formed a Team 8 to investigate the case. Based on the findings of Team 8, it turned out that the Bibit - Chandra case did not have strong evidence for all the accusations and was actually scripted.

Stepanus Robin Pattuju, who was sentenced to 11 years in jail for accepting bribes while managing a number of corruption cases, is presently the subject of discussion in regard to the KPK. Robin was legally and conclusively demonstrated to have committed a criminal act of corruption, according to the Central Jakarta District Court's presiding judges.

Stepanus Robin was suspected of requesting Rp 1.5 billion from Tanjungbalai Mayor, M. Syahrial, who is also a suspect in this case, in exchange for a commitment to complete an inquiry into the alleged corruption in the Tanjungbalai City Government. Based on Firly Bahuri's statement, Stepanus Robin together with a lawyer who is also a suspect in this case, Maskur Husain, made the offer to M Syahrial. The offer was then approved by M. Syahrial, who transferred the money 59 times through the account of a friend of Stepanus Robin. In addition, M. Syahrial met directly with Stepanus Robin to hand over some money. The KPK suspects that Stepanus Robin has received Rp 1.3 billion from M Syahrial. The money was then also given to Maskur Husain for a total of Rp 525 million.

In this particular instance, the KPK has accused Stepanus Robin and Maskur Husain of violating Article 12 letter an or letter b or Article 11 and Article 12B of Law No. 31 of 1999, Law No. 20 as amended and added to Law No. 20 of 2001 concerning the Eradication of Corruption Crimes, and Article 55 paragraph (1) 1st of the Criminal Code. In the other side, M. Syahrial is accused of breaching Article 5 Paragraph 1 Letter an or b or Article 13 of Law No. 31 of 1999, Law No. 20 as Amended and Added to Law No. 20 of 2001 Concerning the Eradication of Criminal Acts of Corruption.

Based on the various facts above, a very interesting polemic emerged to be raised and studied further, namely the case above indirectly explains that in Indonesia there are still many individuals and certain government agencies who can abuse their authority. KPK investigators are one of the professions in government agencies that are vulnerable to abuse of authority. Due to the fact that investigators must engage directly with an event or suspect, it is essential for a KPK investigator to interact with criminals, creating the possibility of bribery and gratuities.

#### **Formulation of the Problem.**

In order to avoid any ambiguity, the author formulates several issues based on the aforementioned study background as follows.

- a. How is corruption defined under the criminal laws of the Republic of Indonesia?
- b. What types of criminal acts can KPK investigators engage in when handling corruption cases?

- c. According to the statute, what exactly constitutes criminal liability for members of law enforcement?
- d. How the government initiatives to combat the results of corruption crimes?

#### **Limitation of Study.**

The authors limit this work to solely address the optimization of law enforcement of bribery crimes involving KPK investigators in order to explain systematically and prevent overlap in describing the issues that must be solved.

### **LITERATURE REVIEW**

#### **Criminal act.**

In contrast to the phrase "evil conduct" or "crime" (crime or *Verbrechen* or *misdaad*), which are defined criminologically and psychologically, the definition of "crime" is based on the law and its precedents. Regarding the specifics of what should be included in the definition of a crime, academics can't seem to agree on anything. According to Yousefinejad et al. (2018) this is a broad summary of the concept of crime or crime that they have put up. The following are the components of a crime:

- a. Actions

Actions, in a positive sense are intentional human actions, in a negative sense are negligence. Criminal law sometimes stipulates that acts or omissions of new persons can be punished if committed under certain circumstances.

- b. The Defendant is Liable to Account

That for the existence of criminal responsibility, it is necessary that the perpetrator is able to take responsibility. The capacity for responsibility can be viewed as a physical state that justifies the execution of a criminal act, both from a general standpoint and from the individual's perspective. If a person has a healthy mental state, he is aware of the guilt of his actions and can predict how they will affect himself and others.

- c. Presence of *Dolus* (deliberately) and *Culpa* (negligence)

Deliberately as an intention to cause something as a result so that the goal is achieved, other actions must be carried out previously which constitute a violation of a provision of the criminal law. While negligence is the absence of caution and lack of attention to the consequences.

#### **Crime of Bribery Based on Legislative Provisions.**

The crime of bribery as referred to in Law Number 11 of 1980, namely that acts of bribery in various forms and natures outside those stipulated in existing laws and regulations are in essence also contrary to the decency and morals of Pancasila which endangers the life of the community and nation.

Acts constituting illegal bribery are defined under Law No. 11 of 1980 and include the following:

- 1) Whoever;
- 2) Receive something or promise;
- 3) Performing an act or not committing an act that is contrary to the authority or obligation;
- 4) Concerning the public interest.

Articles pertaining to the offense of active bribery (Article 209 and Article 210) and passive bribery (Article 418, Article 419 and Article 420) can be found in the Criminal Code. These articles were subsequently repealed in Article 1 Paragraph (1) sub c of Law Number 3 1971, which is now Article 5, Article 6, Article 11 and Article 12 of Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Likewise, active bribery in the explanation of Article 1 Paragraph (1) sub d of Law Number 3 of 1971 (now Article 13 of Law Number 31 of 1999) and passive bribery in Article 12B and Article 12C of Law Number 20 of 2001.

#### **Theory of Justice.**

As defined by Plato that justice as "*the supreme virtue of the good state*", while the just man is "*the self disciplined man whose passions are controlled by reason*". Plato believes that justice and law are not immediately connected. Further, he stated that justice and the rule of law are the fundamental elements of a cohesive community (Nursyam, 1998).

According to Plato's theory of justice, there is both individual justice and governmental justice. To arrive to a true understanding of individual justice, one must first determine the fundamental essence of justice within the state, as stated by Plato:

*“let us inquire first what it is the cities, then we will examine it in the single man, looking for the likeness of the larger in the shape of the smaller”.*

The statement by Plato does not suggest that individual justice and government justice are comparable. Plato realizes that justice is the outcome of adjustments that place each element of a society in its proper place. In a society, justice is displayed when every individual performs well in jobs that are suitable or aligned with his abilities.

### **Law Enforcement Theory.**

According to Soekanto (2004), law enforcement is an activity to reconcile the connection of values expressed in solid laws and attitudes of action as the ultimate step in a sequence of value elaboration. Thus, law enforcement was aimed to build, preserve and maintain harmonious social life.

Enforcement of criminal law is the implementation of criminal law by law enforcement agents. In other words, criminal law enforcement is the execution of criminal laws. Hence, law enforcement is a system including the alignment of ideals, regulations, and actual human conduct. As a result, these norms become standards or benchmarks for conduct or behaviors that are deemed acceptable or should be. The conduct or attitude of the act seeks to build, preserve, and preserve peace.

### **Corruption Eradication Commission (KPK).**

In accordance with Articles 2 and 3 of Law No. 30 of 2002 on the Eradication of Criminal Acts of Corruption, the Commission for the Eradication of Corruption is a state institution that is autonomous and unaffected by any authority in the performance of its responsibilities and powers. This is indicated in both legal texts. On the basis of Law No. 30 of 2002 establishing the Corruption Eradication Commission, the Corruption Eradication Commission was established and given the mandate to eliminate corruption in a professional, intense, and long-term way. The Corruption Eradication Commission or also known as "KPK" is an independent governmental organization that was able to carry out its obligations and jurisdiction without interference from any other agency.

The Corruption Eradication Commission is an autonomous government agency that is independent of any authority in the execution of its anti-corruption duties and responsibilities. The head of the corruption eradication commission (KPK), consists of five people who concurrently serve as members, all of whom are state officials. As a result of having both community and government representatives in its leadership, the corruption eradication commission can continue to be subject to the community's system of evaluating the agency's work in identifying, investigating, and prosecuting corrupt actors.

In Article 6 of Law Number 30 of 2002, the tasks that need to be carried out by the Corruption Eradication Commission are laid out. These responsibilities are as follows:

- 1) Ensuring coordination with anti-corruption organizations;
- 2) Supervise agencies authorized to eradicate corruption. Authorized agencies include the Financial Audit Agency, the Financial and Development Supervisory Agency, the State Operator's Wealth Inspection Commission, the Inspectorate of Departments or Non-Departmental Government Agencies;
- 3) Inquiries, investigations, and prosecutions of criminal crimes of corruption that are being carried out;
- 4) Take precautions to avoid fostering corrupt behavior; and
- 5) Supervise the state government's performance of its responsibilities.

### **RESEARCH METHODS**

The sort of data analysis used to create this article is qualitative analysis, which comprises explaining the processed data in depth via the use of words. This method was used since it was suitable for the present investigation (descriptive). The empirical examination of the law is the basis for the qualitative analysis. This study is then bolstered by normative analysis and comparative analysis, both of which use primary legal sources. Inductive reasoning refers to a method of reasoning that uses specific evidence to reach a broad conclusion. These conclusions are inductively formed from the results of the study.

## **RESULTS AND DISCUSSION**

### **A. Criminal Acts of Corruption in the Criminal Law of the Republic of Indonesia**

In the legal aspect of Indonesia, at the beginning of independence, many laws and regulations were made by the government to eradicate corruption, even in certain circumstances these regulations were made and implemented by the military as law enforcers ((Hartani, 2005) in (Awe & Dua, 2022)). For example, Military Authority Regulation No. PRT/PM/06/1957 is issued by the military authority of the army and applies in the field of army control. Furthermore, the Military Ruler Regulation No. PRT/PM/08/1957 contains the establishment of a body authorized to denounce the state to sue people accused of various forms of civil corruption (other acts of corruption) through the High Court. The agency in question is the Property Owner (hereinafter referred to as PHB).

Moreover, the Military Ruler Regulation No. PRT/PM/011/1957 is a regulation that forms the legal basis of the authority possessed by Property Owners (PHB) to confiscate property that is considered the result of other corruption crimes, pending a decision from the High Court. Furthermore, Army Chief of Staff Central War Authority Regulation No. PRT/Peperpu/031/1958 and its implementing regulations, Army Chief of Staff Central War Authority Regulation No. PRT/Ze.1/1/7/1958. Law Number 24/Prp//1960 concerning Investigation, Prosecution, and Examination of Criminal Acts of Corruption is an amendment to the Government Regulation in Law Number. 24 Prp 1960 dated 9 June 1960 as stated in Law no. 1 of 1961 ((Wijoyo, 1983) in (Awe & Dua, 2022)).

The birth of Law no. 24 Prp 1960 began with the promulgation of a government regulation replacing Law no. 24 Prp of 1960 dated June 9, 1960, concerning the Investigation, Prosecution, and Examination of Criminal Acts of Corruption which then according to Law no. 1 of 1961, since January 1, 1961, has become a law, which is called Law no. 24 Prp 1960. Later, this law known as the Corruption Eradication Law which has undergone refinement from the previous regulation.

The formulation of criminal acts of corruption in Law no. 24 Prp 1960 are as follows:

a. The action of a person who intentionally or because of enriching himself or herself or causing financial loss or loss to the state or regional economy or harming the finances of an entity that receives assistance from state or regional finance or other legal entities using capital or concessions from the community.

b. The act of a person who by or because of committing a crime or violation enriches himself or another person or entity and which is carried out by abusing his position or position.

c. These crimes are listed in Articles 17 to 21 of this regulation and in Articles 209, 210, 415, 416, 417, 418, 419, 420, 423, and 425 of the Criminal Code.

Efforts to eradicate corruption by using Law no. 24 Prp 1960 seems less successful, based on the facts on the ground found things that are not right, such as:

a. The presence of a destructive conduct to the state's finances or economy, which, according to the community's sense of justice, must be prosecuted and punished, cannot be punished because there is no formulation of a criminal act of corruption based on the crime or violation committed. This implies that actions that are detrimental to a state's finances or economy cannot be penalized.

b. Perpetrators of criminal acts of corruption are only aimed at civil servants, but in fact people who are not civil servants who receive assignments or assistance from state institutions can commit disgraceful acts such as those carried out by civil servants.

c. Provisions need to be made to facilitate evidence and speed up the applicable procedural law process without neglecting the human rights of the suspect or defendant.

Furthermore, Law no. 3 of 1971 (LNRI 1971-19; TNLRI 2958) concerning the Eradication of Criminal Acts of Corruption. With the various considerations above, the above improvements were made to Law no. 24 Prp 1960 so that it was revoked and replaced by Law no. 3 of 1971. Law no. 3 of 1971 concerning the Eradication of Criminal Acts of Corruption is almost the same as Law no. 24 Prp of 1960 that there were only minor changes, for example the term element of violation which was originally "committing a criminal act or violation" enriching oneself or an unknown person or entity, was changed to "against the law", enriching oneself and so on. In addition, there are several articles of the Criminal Code which were drawn into Law no. 3 of 1971 as a corruption crime.

In this Law there are changes to the improvement of Law no. Prp 1960 are as follows:

a. The formulation of a criminal act of corruption does not require that a criminal act or violation be committed but requires a way of violating the law in committing a crime that enriches oneself or another person or an entity (Article 1 paragraph 1 paragraph 1 of Law No. 1971).

b. Regarding the prosecution of members of ABRI who are involved in criminal acts of corruption together with civilians, which can be brought together in both general courts and military courts (Article 25 of Law No. 31 of 1971).

c. The threat of an aggravated sentence can be imposed with life imprisonment or a maximum imprisonment of 20 (twenty) years and or a maximum fine of Rp30.000.000. (thirty million rupiah) (Article 28 of Law No. 31 of 1971).

The New Order government also launched an Orderly Operation (hereinafter referred to as Opstib) which was followed by Presidential Instruction No. 9/1977 concerning the formation of an Orderly Operations Team (Arifianto, 2001: 1-23). This team is intended to increase the authority of government officials and eradicate fraudulent practices in all forms. At the end of the New Order era, the government and the DPR issued Law Number 11 of 1980 concerning the Crime of Bribery. The laws make it illegal for both the briber and the bribed to engage in the practice. In addition, the new order government also issued a regulation on Civil Servant Discipline as stated in Government Regulation no. 30 of 1980.

In the reform era (Kurniawan, 2022), the People's Consultative Assembly (MPR) issued MPR Decree No. XI / MPR / 1998 concerning a clean government and free from corruption, collusion, and nepotism (also known as KKN). Afterwards, President Habibie issued Law No. 28 of 1999 concerning the implementation of a clean and free state from the KKN and the establishment of various new commissions or bodies such as the KPKPN and KPPU which is still in use, namely Law no. 31 of 1999 (LNRI 1999-40, TNLRI 387) concerning the Eradication of Corruption Crimes, which was later amended by Law number 20 of 2001 (LNRI 2001 -134; TNLRI 4150) concerning Amendments to Law number 31 of 1999 concerning the Eradication of Corruption Crimes.

As a result, the government of Abdurrahman Wahid issued Chairman Decree No. 127 of 1999, the government established the Commission for Examination of State Organizers' Wealth (hereinafter referred to as KPKPN) and also strengthened the issuance of a Presidential Decree dated October 13, 1999, regarding investigations that had been prevented. In addition, the government formed the National Ombudsman Commission following the formation of the Joint Team for the Eradication of Corruption Crimes (hereinafter referred to as TGPTPK). However, during the Megawati Soekarnoputri Administration, the Joint Eradication of Corruption Crimes Team had to be disbanded due to the Supreme Court's decision on the right to judicial review. Later, the Megawati government formed the Corruption Eradication Commission (KPK). The KPK is one of the new state institutions formed with the spirit of legal reform in the enforcement of criminal acts of corruption, which was established through Law Number 30 of 2002 concerning the Corruption Eradication Commission (Sudarmanto, 2009).

The KPK can be categorized as a special institution (*ad hoc*) authorized to handle certain corruption cases as required in Articles 11 and 12 of Law Number 30 of 2002, namely:

- a. Involving law enforcement officers, administrators, and other people related to criminal acts of corruption committed by law enforcement officers or state administrators.
- b. Attracts attention to an issue that is causing issues in the community.
- c. Regarding the loss of the State of at least one billion.

Subsequently, on December 9, 2004, President Susilo Bambang Yudhoyono proclaimed National Anti-Corruption Day and issued Presidential Instruction No. 5 of 2004 about the Acceleration of Corruption Eradication. This Presidential Instruction is comprised of 11 Special Instructions and 10 General Instructions sent to various federal entities. Around 500 government agencies at the national and regional levels were addressed by the General Instruction. Meanwhile, the Special Instruction was addressed to the Coordinating Minister for the Economy, Minister of Finance (UN), Minister of Finance, Bappenas, Menpan, Minister of Law and Human Rights, Ministry of SOEs, Minister of National Education, Minister of Communication and Informatics, Attorney General, Chief of Police, Governor, Regent and Mayor. Later, in 2005, President Susilo Bambang Yudhoyono enacted Presidential Decree No. 11 to establish the Corruption Eradication Coordination Team (also refers to Timtas Tipikor). The Corruption Team, comprised of the Police, the Attorney General's Office, and the Financial and Development Supervisory Agency (henceforth referred to as BPKP), was tasked with coordinating the separate roles and authority of institutions (Widiatmaja & Albab, 2019).

Based on the historical series of Indonesian laws on the prevention and eradication of corruption, it can be concluded that the current instruments are:

- a. The Constitution of the Republic of Indonesia, which was established in 1945;

- b. The Criminal Procedure Code (KUHP), which was established by Law Number 8 of 1981;
- c. Decree No. XI/MPR/1998 of the MPR of Rhode Island pertaining to State Administrators who are Clean and Free from Corruption, Collusion, and Nepotism;
- d. In accordance with Act No. 28 of 1999, Clean and Free from Collusion, Corruption, and Nepotism State Administrators are Required;
- e. Act No. 31 of 1999 Relating to the Suppression of Criminal Acts of Corruption;
- f. Law No. 20 of 2001, Relating to Amendments to Law No. 31 of 1999, Relating to the Eradication of Criminal Acts of Corruption;
- g. Law Number 28 of 1999 Concerning the Establishment of the Commission for the Examination of the Wealth of State Organizers (KPKPN);
- h. The Corruption Eradication Commission was the subject of Law Number 30 of 2002, which was amended by Law Number 19 of 2019, which was just passed.

The eradication of corruption is no longer possible using regular legal tools (conventional). However, corruption may be eradicated by classifying it as a crime against humanity, which is addressed using the same instruments, technical, and procedural laws as human rights breaches (Ifrani, 2018). In this manner, corruption is no longer a national issue, but rather a global one that transcends state and national boundaries. Therefore, the nations of the globe have the right to join the fight and identify it as a crime that must be combated collectively. This is what makes corruption a persistent and difficult to remove threat (Hamilton-Hart, 2001). The presence of law and a culture of shame, which previously defined our nation's identity, is still incapable of providing shock treatment to those who perpetrate acts of corruption in our country. Corruption has become a cause of catastrophe or crime, which is comparatively more hazardous than terrorism.

In Law no. 31 of 1999 and Jo. Law No. 20 of 2001, concerning the Eradication of Criminal Acts of Corruption, the severity of the punishment for perpetrators of corruption is regulated by applying imprisonment, fines, and even the death penalty. These laws were passed in order to eradicate criminal acts of corruption (Schaap, 1998). In addition to this, the government is working to recover stolen assets in an effort to seize the profits of illegal acts of corruption. This is being done via the application of the Law on the Prevention and Eradication of the Crime of Money Laundering (Schaap, 1998).

In addition, the Law no. 31 of 1999 Jo. Law no. 20 of 2001 on the Eradication of Corruption Crimes has important provisions for the determination of penalty kinds. For instance, linguistic editorials. Each sort of punishment in this provision no longer employs the term "maximum"; instead, the phrase "minimum or shortest" is used in every choice about the provision of punishment for those who do corrupt crimes. One example is Article 31 of 1999 Jo. Law Number 20 of 2001 on the Eradication of Criminal Acts of Corruption, which states that a civil servant or state administrator who receives a gift or promise even though it is known or reasonably suspected that it is in exchange for favors is punishable by imprisonment for a minimum of one year and a maximum of five years and/or a fine of at least fifty million rupiah and a maximum of two hundred and fifty million rupiah.

## **B. Forms of Criminal Acts that can be committed by KPK Investigators in handling corruption cases**

### **1) Law number 31 of 1999 in conjunction with Law number 20 of 2001 concerning corruption crimes**

This legislation controls the criminal act of corruption committed by public workers. The KPK gets wages from the State budget in line with Article 15 paragraph 6 of Government Regulation No. 63 of 2005. This is in conformity with the definition of public employees in Article 1 number 2 letter c of Law Number 31 of 1999 concerning criminal acts of corruption, which identifies civil workers as those who get salaries and wages from state or regional funds. Hence, KPK personnel may be classified as government officials, Law number 31 of 1999 applies to KPK employees any illegal actions that can be performed by public servants, including the following:

1. Article 5 paragraph 2: The crime of accepting bribes / passive bribes;
2. Article 8 : Crime of embezzlement;
3. Article 9 : The crime of counterfeiting;
4. Article 10: The crime of eliminating evidence;
5. Article 11 : Passive bribery / accepting bribes;
6. Article 12 letters a, b and e:



- a. Letter a : The crime of accepting bribes / passive bribes;
  - b. Letter b : The crime of accepting bribes / passive bribes;
  - c. Letter e : The crime of extortion.
7. Article 12B : Criminal acts of gratification / bribery are widespread.

Law number 31 of 1999 Jo. Law number 20 of 2001 on the elimination of corruption regulates the aforementioned criminal offenses. Whereas all of the aforementioned illegal actions may be committed by KPK investigators or KPK personnel in the processing of corruption investigations. The aforementioned unlawful activities may be undertaken by KPK investigators either purposefully (*dolus*) or accidentally (*culpa*). However, if a KPK employee who is a government servant breaches it, he or she will be liable to administrative and criminal penalties.

## **2) Law number 32 of 2002 concerning the KPK**

In Law number 32 of 2002 concerning the KPK itself regarding the forms of criminal acts that can be carried out by KPK investigators in handling cases of corruption, it is only regulated in Article 36 concerning the prohibition for KPK leaders, which is then expanded the scope of the prohibition by Article 37, which does not only apply only for the leadership of the KPK, but the prohibition also applies to the Advisory Team and employees assigned to the KPK. Thus, the prohibition regulated in Article 36 also applies to KPK investigators. The prohibitions in article 36 are as follows:

1. Maintain any kind of contact, direct or indirect, with a suspect or any party involved in a case of corruption that is being investigated or prosecuted by the Corruption Eradication Commission;
2. dealing with instances of criminal acts of corruption if the criminals are related to the member of the Corruption Eradication Commission concerned by blood or marriage in a direct line up or down to the third degree.

In current investigation, we only mentions 2 of the 3 points regulated in article 36, because only the two points above are possible for KPK investigators to do when the investigator is handling corruption cases. As a result, the form of criminal acts that can be carried out by KPK investigators based on this law is only in the form of holding direct or indirect relationships with suspected corruptors, or handling corruption cases where the perpetrators are related by blood family to the members of the Corruption Eradication Commission concerned.

From the above description of the types of criminal acts that can be committed by KPK investigators when handling corruption cases, it can be concluded that deviations or abuses of authority can be committed by anyone with authority; the more power or authority a person possesses, the more he abuses the authority he possesses. Because in essence humans are never satisfied with their needs, the same applies to KPK employees and KPK investigators.

## **C. Criminal Liability**

### **1. Based on Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the eradication of corruption**

The definition of liability in criminal law consists of several elements that make it up, namely:

- 1) when the person is judged capable of being responsible;
- 2) there is a form of mental connection between the act and the mind of the act in the form of intentional (*dolus*) or negligence (*culpa*); and
- 3) there is no excuse.

Accountability in criminal law is founded on the criminal law concept of *geen straf zonder schuld*, which states that there is no crime without fault. Therefore, it may be inferred that the commission of a criminal act does not always result in punishment. In other words, punishment may only be administered if the person who does a criminal act can be held accountable under criminal law. Hence, even though a person has performed an act as defined by the law as a crime, he will not be punished if his acts cannot be held accountable.

A person is deemed incapable of responsibility if he meets the criteria outlined in Article 44 of the Criminal Code, while minors under the age of 12 are deemed incapable of responsibility under the terms of Law No. 11 of 2012 concerning Juvenile Justice. In other terms, a person is deemed competent of responsibility only if:

- 1) when the person's mental state is healthy;
- 2) age has passed 12 years;

3) realize of his actions; and

4) able to determine the will based on the consciousness he has. The form of the mental relationship between the act and the mind of the act is divided into 2, namely in the form of intentional/*dolus* (known) and negligence/*culpa* (suspected). Where intentionally it begins with the intention to violate, while neglect is the beginning not with the intention to violate the provisions of the law.

In Law Number 31 of 1999, especially articles 5, 8, 9, 10, 11, 12 letters a, b and e as well as article 12B, the author or subject is a civil servant, so that the element of age is not an excuse for a civil servant committing a crime violate the law so that they cannot be held accountable for their actions before the law. Regardless of whether or not they are aware of the actions committed by the civil servant, they also cannot be used as reasons for being responsible for the type of crime in this law is a type of formal crime where what is prohibited is the act so that even though the result of a criminal act does not yet exist, it has been caught red-handed will commit a criminal offense as referred to in this law, it is sufficient for the arrest and examination of the civil servant.

In Law Number 31 of 1999, it has also been divided into subjective elements regarding which actions can be said to be acts on the basis of intent (*dolus*), namely that civil servants accept gifts from someone because they know the gift is related to the position they hold. With an act on the basis of negligence (*culpa*) where the civil servant receives a gift from someone who reasonably suspects that the purpose of the gift is related to the position he holds, even though the civil servant still accepts the gift, the civil servant has been negligent.

As for the excuse for forgiveness can be in the form of an excuse for eliminating the crime if doing the act is based on a position order in accordance with Article 50 of the Criminal Code or if the act is carried out in a state of necessity (*Overmacht*) because if it is not done, the safety of the civil servant and his family is threatened. Hence, if a civil servant or KPK investigator violates the provisions in Law number 31 of 1999, especially articles 5, 8, 9, 10, 11, 12 letters a, b and e and article 12B accompanied by reasons for carrying out office orders or in a state of *overmacht*, they can subject to the excuse of abolishing the crime or at least reducing the sanction in order to be more lightened considering that the civil servant did not do it against his will.

## **2. Criminal liability Based on Law number 30 of 2002 concerning the Corruption Eradication Commission**

In line with article 36 of law number 30 of 2002 pertaining to the KPK, KPK personnel and investigators are subject to criminal liability if they violate the law regulating direct or indirect contact with suspects and the management of corruption cases involving family members of KPK employees. The act can then be held accountable if it satisfies the criteria for criminal liability.

The first element is being able to be responsible, in Law No. 30 of 2002, the legal subject whose actions are regulated are KPK employees, thus the age factor is not an excuse for being able to take responsibility. A new KPK employee can be said to be unable to account for his actions if at the time he committed the crime his soul was disturbed which must be proven by a statement from a psychiatrist or psychiatrist that his soul was indeed disturbed.

Then he realized that his actions were related to the second element, namely the relationship between the act and the mind of the perpetrator, where this KPK employee if in committing a violation prohibited in Article 36 is either done intentionally or unintentionally (it is reasonable to suspect) then he can be subject to punishment. because what is prohibited here is the act and includes the type of formal crime. Hence, KPK employees who commit criminal acts in accordance with what is regulated in Article 36 both intentionally and unintentionally can be subject to sanctions which if it is proven that the act was intentional, the punishment will be increased.

The third element is that there is no excuse for criminal acts that are prohibited by article 36 of Law No. 30 of 2002. The criminal will be repealed if the KPK employee who committed the act in question did so by order of the position or law, or because he was in a forced or *overmacht* situation, which can be proven by the KPK employee who violated the law.

### **D. The Government's Efforts in Overcoming the Impact of Corruption Crimes**

Based on the facts, the habit of abusing authority results in the emergence of corrupt behavior. It is agreed that corruption will lead to inefficiency in the utilization of scarce state resources. Similarly, if resources are mismanaged, the goals set to achieve will be lost or ineffective. To control acts of fraud

or corruption, the party receiving the report must be responsive in taking action if there are irregularities in accountability that highlight the difficulties in its implementation. For example, if the costs incurred do not match the projected results, this is an indication that something needs to be assessed, such as whether the standards set are too optimistic or there is waste that leads to fraud (Wulandari & Parman, 2019). In the near future, in order to find solutions to corruption, the government must take immediate, effective, efficient, measurable and concrete actions. If action is not taken as soon as possible on the deviations that arise, destructive results may occur later, in which the deviations become worse, and it becomes more difficult to find a solution (Ridwan, 2014).

Not only in terms of law enforcement, a comprehensive mechanism is also needed to eradicate this systematic crime. The government's efforts to minimize the consequences of social change experienced by the community as a result of corruption require community involvement, especially the implementation of social control on government officials. Here, the community must be involved as a subject of state governance, not only as an object (Widodo et al., 2018). As a result, the implementation of community participation must be seen not only from one perspective, namely providing legal protection and certainty for people who want to use their rights to obtain and convey information about state administration, but also as an effort to regulate the use of these rights.

Efforts are needed to apply the concept of law enforcement indiscriminately to apply the principles of good governance (Retnowati, 2012). Eradicating corruption can only be carried out successfully and optimally by law enforcement officers of high caliber and integrity. To produce law enforcement individuals with integrity and quality, the human resource management system in the law enforcement environment must be reorganized, starting with procedures for recruitment, coaching, education, career, incentives, and penalties. However, it should be underlined that the process of good resource management is universal and should be implemented at all levels of state and government. It is hoped that law enforcement is carried out properly and evenly with high integrity (Dirwan, 2019).

Looking further from the theoretical and practical approach, the success of efforts to eradicate corruption must be carried out under three aspects of law enforcement according to the theory by M. Friedman which highlights three main aspects, namely legal substance, legal structure, and legal culture (Prabowo & Suhernita, 2018). Legal substance means that the government must ensure that the existing laws and regulations are adequate to accommodate the needs of the community in eradicating corruption. The legal structure in law enforcement shows that in ensuring the effectiveness of the law, it is important to strengthen the moral and substantial capabilities of law enforcement. In this case, Indonesia's central legal apparatus, namely the Indonesian National Police, the Attorney General's Office, and the KPK, must unite to eradicate corruption. Finally, the legal culture in law enforcement alludes to the mental attitude and behavior of the community towards current legal norms. The inseparable nature of law and society encourages an absolute obligation for the people to support government regulations (Maroni et al., 2021). In other words, the community will not only have a role in the administration of a country but also play an active role in implementing and enforcing existing regulations. By taking this theory, the author develops possible solutions that the Indonesian government can do to overcome this chronic problem.

Cases of corruption, which then injure the sense of justice for the community (Susilo, 2020). Furthermore, corrupt behavior is a complex form of crime that lies in a person's morality, lifestyle, economic needs, and social culture. Therefore, a special plan is needed to change the culture of the community (a plan for social change). As the most important part of a country, society can be a tool to change the order that has been damaged. Furthermore, social problems will be solved if the majority of one part can successfully implement a goal; there will be gradual changes due to the tendency to 'follow' the majority (Winarno & Tjandrasari, 2017). Hence, social change can be a challenge as well as an answer to eradicating corruption cases in Indonesia.

The social change approach means changing people's beliefs and asking people to fight corruption. As defined by the legal system, expectations are a wise move, but there is often a mismatch between expectations and reality (Berkovich et al., 2019). Therefore, he demands concerted efforts to achieve corruption prevention through educational institutions. Efforts made to effect social change, which begins through changing one's way of thinking, are impossible, even if there is a movement in the right direction if the wrong attitude is still trapping society. Thus, the government must make a plan for social change (Planned Social Change), although social change may not be in the planning process, as social change occurs by itself (Gregory, 2006). Even if the status of corruption in Indonesia has reached the point of being "virtually impotent," removing corruption is not impossible if legal content,

legal structure, and legal culture can be balanced. If the presence of the community as controllers and supervisors is backed by skilled law enforcers and bolstered by a strong legislative framework that can meet the demands, then corruption in Indonesia may be eradicated gradually but certainly.

### **Conclusions.**

Based on the findings and discussion above, following conclusion can be drawn in regards with formulation of the problem.

1) Law number 31 of 1999 concerning the Eradication of Corruption Crimes, which was later amended by Law number 20 of 2001 (regarding Amendments to Law number 31 of 1999 concerning the Eradication of Corruption Crimes. KPK as one of the new state institutions formed with the spirit of legal reform in the enforcement of criminal acts of corruption, which was established through Law Number 30 of 2002 concerning the Corruption Eradication Commission. The extent of punishment for corruption criminals is governed by Law No. 20 of 2001 on the Eradication of Corruption Crimes, which includes imprisonment, fines, and the death penalty. In addition, by implementing the Law on the Prevention and Eradication of Money Laundering, the government seeks to seize the proceeds of corruption offences through asset recovery.

2) In Law number 32 of 2002 concerning the KPK itself regarding the forms of criminal acts that can be carried out by KPK investigators in handling cases of corruption, it is only regulated in Article 36 concerning the prohibition for KPK leaders, which is then expanded the scope of the prohibition by Article 37, which does not only apply only for the leadership of the KPK, but the prohibition also applies to the Advisory Team and employees assigned to the KPK.

3) Criminal liability based on the KPK law indicates that criminal acts prohibited by article 36 of Law number 30 of 2002 will be repealed if the KPK employee who committed the act in question did so by order of the position or law, or because he was in a forced or *overmacht* situation, which can be proven by the KPK employee who violated the law.

4) The success of efforts to eradicate corruption must be carried out under three aspects of law enforcement according to the theory by M. Friedman which highlights three main aspects, namely legal substance, legal structure, and legal culture. Efforts made to influence social change begin through changing one's way of thinking, it is impossible to do, even if there is a movement in the right direction if the wrong attitude is still trapping the community. If the existence of the community as controllers and supervisors is supported by qualified law enforcers and strengthened with sufficient legal foundations that are able to accommodate the needs, then slowly but surely the eradication of corruption in Indonesia can be achieved.

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