

## **Strengthening Criminal Policy to Create Justice-based Legal Certainty for Suspect in Corruption Case**

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### **Abstract**

*This work is aimed at exploring and finding an appropriate strategy for strengthening a criminal policy to create a Justice-based Legal Certainty for suspect in corruption case. This research is highly relevant as the backlog of corruption cases in legal enforcement in the prosecution office. Certainly, this backlog may deteriorate not only legal certainty, but also performance and reputation of the State, i.e. prosecutors, in protecting the suspects' rights as a part of the fundamental human rights, regulated under Indonesian 1945 Constitution, article 28. Therefore, this research will be focused on legal techniques in embodying some ideal values to create and strengthen institutional integrity, such as justice, legal certainty, properness, transparency, accountability, responsibility, human rights and so forth. Those values should be embodied into practical level, particularly at investigation, and charge level. To visualize those ideas, this research will apply normative legal research, by using statue and case approaches. All data will be collected through intensive and extensive literature review. In the end, this work offers an ideal model for strengthening a criminal policy that simplifies the completion of corruption cases in order to arrive at a justice-based legal certainty for suspects in the corruption case.*

### **1. Introduction**

This topic, which pertains to the simplification of the settlement and handling of corruption cases, is inspired by the current conditions of the law enforcement that still contain many weaknesses. These weaknesses stem from the system of law enforcement, which is found incoherent, inconsistent and incomprehensive in the handling of corruption cases. As a result, many arrearsages of corruption cases came to light, especially among the circle of attorneys. In general, in Indonesia the arrearsages reached 1463 cases from 2010 to 2014. In North Sumatra Higher District Attorney, particularly, the number has reached 101 cases<sup>1</sup>.

The arrearsages of law cases occur because of the conflict of normativity and inconsistencies among the laws of corruption, such as the Law No. 31 of 1999 amended by the Law No. 20 of 2001, the Criminal Procedure Code (Criminal Code) and the Law No. 8 of 1981. All of these laws do not set a clear deadline pertaining about the settlement and handling of corruption cases — whether they are in the initial investigation, investigation or prosecution stages — yet the Standard Operating Procedure (SOP) issued based on the Attorney General Regulation No. 039 /A/JA/10/2010 dated October 29, 2010 concerning the Governance of Administration and Technical Case of Special Crime Handling does. This shows that there is a lack of legal certainty, which becomes one of the basic elements of the law undertaking.

This legal certainty is the basic principle that requires the law enforcement officials to handle a case or take a legal action in a quick and measurable manner. Through the principle of legal certainty, a case can be immediately ascertained to have an end or to come to an end (not being suspended). This is important because oftentimes the legal uncertainty becomes a source of distortion practiced among the law enforcement officers.<sup>2</sup>

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<sup>1</sup>See: The Section of Programming for Special Criminal Assessment Report, Supreme Attorney of the Republic of Indonesia, 2014

<sup>2</sup> Darmono, Waiver of criminal cases in law enforcement: A case study of a waiver provision matter of public interest on behalf of DR.Bibit Samad Rianto and Chandara M.Hamzah (Penyampingan perkara pidana, seponering dalam penegakan

Certainly, people demand that prosecutors carry out their duties and functions in handling the settlement of corruption cases professionally, proportionally and accountably. Thus, their performance outputs can be more credible, measurable, visible (specific), attainable (achievable), timely (clear time limits) and relevant (according to the needs of the society).

Furthermore, in the practical level some weaknesses are still found, for example, the lack of commitment among the law apparatus in settling corruption cases. This happens partly due to the internal affairs such as, intervention of other parties — both inside and outside the attorney department —the lack of prosecutors' skills in handling corruption crimes, limited budgets<sup>3</sup>, and inadequate authorization to handle and anticipate corruption crimes and to conduct wiretapping<sup>4</sup>.

The above weaknesses have exacerbated the government's self-image, in this case the prosecutors' department, in the settlement of corruption cases. Substantively, prosecutors – functioning as the law enforcement agencies — are considered to have failed to protect human rights. It is widely known that every citizen has the right to receive equitable legal certainty, as stated in the 1945 Constitution, paragraph D of Article 28 (1), which states: "Everyone has the right to recognition, security, protection and legal certainty". Parallel to the provisions of the chapter, the State is also bound to provide equal legal protection for all citizens. The Article 4 of MPR Decree No XI /MPR/1998 dated 13 November 1998 regulates that the parameters for the eradication of corruption, collusion and nepotism are set forth impartially to anyone, either state officials, retired state officials, their family members, cronies and private parties/conglomerates, on the basis of the principles of presumption of innocence and human rights. Article 1, paragraph 3 Indonesian Constitution has affirmed that Indonesia is a law state. Thus, any effort to realize the function of the law state — as the consequence of the law state law of Indonesia (*recht staat*) — should at least be able to bring justice (*gerechtigheit*), usefulness (*zwehmassigkeit*) and legal certainty (*rechtsicherheit*) that is materialized in the daily life of the society, nation and state. So the state functions not only as a guard, but also as the engineer of state welfare. Theoretically, a law state covers a number of constitutive elements, such as the existence of state power, acknowledgement of human rights, the principle of legality, independent and impartial judiciary, and the realization of equity principles before the law.

For the above reason, the substance of the research is dedicated to create an appropriate model in strengthening criminal policy in order to simplify the completion of the corruption case in Indonesia, particularly in the prosecution office.

## **2. Anatomy of the Core Problems in Completing Corruption**

The anatomy of the problems in completing the corruption case is related the core problems that cause the backlog of the corruption case. Those factors stemmed from: (i) normativity, policy and procedure, and problems in handling corruption; (ii) institutional problems; and (iii) legal awareness of legal officers in handling the corruption case. All of those problems will be elaborated and discussed in detail.

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hukum studi kasus ketetapan mengesampingkan perkara demi kepentingan umum atas nama DR.Bibit Samad Rianto dan Chandara M.Hamzah). Solusi Publishing, Jakarta, 2013. p.24

<sup>3</sup> The budget available for the public prosecutor in the handling of a law case is very limited. The existing budget is disproportionate when compared to that of the Anti-Corruption Commission. The attorney's office has a budget allocation of 200 million rupiahs per case and it was limited only to a few cases only. For example, the provincial attorney has a budget as much as 5 cases per year. Meanwhile, the cost per case in the Commission can reach 400 million with unlimited budget.

<sup>4</sup> Compared to the Corruption Eradication Commission (KPK), the attorney office does not have any authority to conduct wiretapping and confiscation without the permission of the court. This results in the process of proving and resolving cases hindered. Ideally, if the government intends to strengthen the role of the prosecutor in the handling of corruption, it should give the same authority as that of the Anti-Corruption Commission.

### 2.1. Normative Problems in Handling Corruption Case

Normative problems are sparked by the inconsistency of the norms or regulation related to the handling corruption case. In this case, those conflicted norms are Indonesian criminal code and law of corruption<sup>5</sup> on one hand, and standard operational procedure<sup>6</sup> in the other hand. In this context, it can be explained that the organic law concerning the criminal law and corruption eradication above do not regulate the settlement of the case meticulously and firmly, both at the level of initial investigation and investigation. Even though the Criminal Procedure Code contains rules concerning the time limit of prosecution, but it does not set the deadline in the process of initial investigation and investigation.

Unlike the case of SOP on the governance of the administrative and technical handling of special criminal cases, Article 5 of The Attorney General No.039 has specifically regulated that the duration of initial investigation is within 14 days. This deadline can be extended for 14 days and Article 5 Paragraph (2) mentions that if under certain circumstances and logical rationales addition of time is required, the initial investigation can be extended again to 14 days. Thus, the overall period of initial investigation will be 28 (twenty-eight) days and the time of investigation of 30 days may also be extended for 30 days. Thus, the overall time of investigation will be about 60 days.

When examined more deeply, in fact there are other legal institutions originating from the SOP in the handling and settlement of corruption crime cases. Nevertheless, normatively this SOP is not strong enough, particularly in ensuring the completion of corruption cases<sup>7</sup>. Still in the normative level, the organic law concerning the eradication of corruption also does not regulate this. Consequently, legal uncertainty comes to light in the handling and settlement of corruption cases. This uncertainty has brought about an implication of the legal apparatus' doubts to act, i.e. whether they have to accelerate or stop the handling of the case. This causes the stacks or arrearages of corruption cases in the Attorney offices. Institutionally, the arrearages of case have worsened the quality of the attorney institution and prosecutors in the handling and settlement of corruption crime cases. Constitutionally, the arrearages of legal cases have actually reflected the government's failure to comply with the fundamental human rights, namely equitable legal certainty<sup>8</sup>. The complexity of the above problems has accrued with the absence of a policy or leaders' commitments to the handling and completion of corruption crime cases.

### 2.2. Policy in Handling Corruption Cases

This policy is related to the weakness of the leaders' commitments to accelerate the completion of the handling of corruption crime cases. This commitment is said to be weak, not due to the absence of guidelines or legal sources of policy, but due to the absence of commitment among policy leaders to take a stand in implementing the authority granted by the law, i.e. whether the cases of corruption can be continued or terminated. The lack of commitment among the legal apparatus to settle corruption cases results in the emergence of various problems such as legal uncertainty, injustice, and the hold-up of individuals who have been decided as suspects or defendants. This clearly shows that there is a lack of consistency of the legal apparatus to protect the fundamental rights of the citizens.

### 2.3. Procedure in Handling Corruption Case

This process is related to the obstacles hindering the implementation of the completion of corruption crime cases. This bottleneck occurs as a result of intervention. Interventions can be stemmed from within and/or outside the Attorney offices.

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<sup>5</sup> The Law No. 31/1999 in connection with the Law No.20/2001 concerning corruption eradication, and the Law No.8/1981 concerning the criminal procedures.

<sup>6</sup> This regulation is referred to as the Regulation of Attorney General No. PERJA 039/A/JA/10/2010, on 29 October 2010, concerning Management of Administration and Technics in Handling Special Criminal Case.

<sup>7</sup> See: Romli Atmasasmita, Integrative Legal Theory, Reconstruction on legal theory and legal theory of progressive development, (Teori Hukum Integratif, Rekonstruksi terhadap teori hukum pembangunan dan teori hukum progresif), Genta Publishing, (Yogyakarta: 2012), p. 24-25.

<sup>8</sup> See: the Constitution of Indonesia, 1945, chapter 28, part D. Constitutionally, in fact the provisions of this Article guarantees the right of every citizen in obtaining certainty of legal services. Violation of this article is more visible when we see many people are determined as suspects but this act is not followed by the completion of the case. This unconstitutional act occurs when the legal certainty is absent from protecting the fundamental rights of its citizens.

The internal intervention frequently comes from the leader or colleague of the legal apparatus in the settlement or handling of corruption cases. The intervention can be in the form of delay or discontinuation of the case. In the same sense, the external intervention can come from individuals, institutions, or legal entities, such as political parties or companies. The form of external intervention can be equally similar to the internal intervention, namely the discontinuation<sup>9</sup> or delay of the completion or the handling of cases.

Furthermore, evidence that must be met to determine whether a person is a suspect or not is often found incomplete. This incomplete evidence is characterized by the lack of elements against the law and the state's losses. Oftentimes, in the initial investigation and investigation, there is no concrete evidence that determines whether a person is a suspect or not. If we scrutinize the laws and regulations, cases that do not have adequate evidence should be terminated. However, in practice, prosecutors often do not dare to stop investigation because they want to prevent themselves from field supervisors' inspections and are afraid of being considered to disobey the principles. This fact often results in the arrearages of cases.

Furthermore, another obstacle is stemmed from the lack of cooperation or coordination with relevant institutions involved in the corruption eradication, such as INTRAC, BPKP, and CPC. Even though prosecutors have signed MoU with these institutions, the MoU is not implemented proportionally. The lack of coordination and cooperation among these institutions made it difficult for prosecutors to determine the state losses. Consequently, these conditions result in the annulment of SOP that establishes the time limit in the process of initial investigation, investigation and prosecution of crime cases.

#### **2.4. Addressing the Backlog of Corruption Case**

The settlement of law case handling is concerned with the capabilities of prosecutors to resolve the completion of corruption cases. This includes individual and institutional capabilities. Individual ability is closely related to the professionalism, expertise, and knowledge. It should be realized that many of law enforcement officials, i.e. prosecutors, do not have sufficient knowledge and expertise in handling the settlement of corruption cases. This weakness accumulates with the weak capacity of the institution in dealing with the lack of infrastructure, and budget. To exemplify, the comparison between the budget used by the Attorney office and Corruption Eradication Commission to handle the legal cases is 1: 3. This means that if a prosecutor at Attorney office requires a budget of 200 million rupiahs to handle a law case, in the Corruption Eradication Commission this amount can go as much as three times, i.e. 600 million dollars per case<sup>10</sup>. Additionally, the Corruption Eradication Commission does not need to get permission from the court as regards the legal basis for prosecution, especially in wiretapping and seizure, whereas the prosecutor must obtain permission from the court to do a similar action. This explains why there are arrears of criminal cases in Attorney offices.

### **3. Designing Model in Legal Enforcement that may Support to Simplify the Completion of Backlog of Corruption Case**

The ideal model in designing systems and procedure of the completion of corruption case should be based on ideal values that construct the integrity of institution.<sup>11</sup>

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<sup>9</sup> See: Indonesian Criminal Procedure Code, article 140 (2), and Law No.16/2004 concerning Prosecution, 183 and 184, jo 35(c).

<sup>10</sup> Interview with the Head of Sub-directorate of Investigation, Attorney General of the Republic of Indonesia

<sup>11</sup> In the law enforcement, prosecutors have high personal integrity and discipline in order to carry out the duties of law enforcement for attaining justice and truth in accordance with the Attorney General of the Republic of Indonesia Regulation No Per-067 /A/JA /07/2007 on the Code of Conduct of Prosecutor. The basic principles of duties undertaking in the Attorney office are: (i) Complying with rules of the law, legislations and official regulations applied; (ii) Respect for fast, simple, low-priced principles in line with the procedures assigned; (iii) Basing on the conviction and legal evidence to achieve justice and truth; (iv) Acting independently, free from the influence, pressure/threat of public opinion either directly or indirectly, objectively and impartially; (v) Informing and/or giving the rights of the suspect/defendant or victim; (vi) Establishing and maintaining functional relationships among law enforcement agencies to realize an integrated criminal justice; (vii) Resigning from handling cases that have a personal or familial relationship with the job, political party or finance, and/or economic values, either directly or indirectly; (viii) Concealing and holding secrets that should be kept as secrets; (ix) Respecting freedom and dissenting opinions as long as not violating the statutory provisions; (x) Respecting and protecting human rights and freedom rights as stated in the legislation and the Human Rights instrument universally accepted; (xi) Responding criticism wisely; (xii) Being responsible internally and hierarchically in accordance

The integrity of the prosecution institution stemmed from ethical guidance or ethical code of prosecution as well as standard operational procedure in handling corruption case. In addition, it is necessary to consider circulation letter of Attorney General of Republic of Indonesia. For practical guidance, it is important to insert and embody the ideal values, such as justice, legal certainty, rationality, transparency, accountability, responsibility, fundamental human rights, and so forth.

### 3.1. Justice

Justice as named by Aristoteles as the highest virtue of the law. It is also the core soul of the law.<sup>12</sup> Based on the above concept, the law should be considered in formulating any public policy. This is because the public policy is a part of elements in implementing the function of the state, particularly in distributing public services, including the handling of the completion of the corruption case. In addition, the state must be based on the constitution. This is a consequence of the legal state (*rechtstaats*) principle<sup>13</sup>. Based on this principle the state is a legitimate servant as well as legitimate legal enforcement in handling any corruption case. In handling the corruption case, the government should guarantee the rights of the people in accessing their fundamental rights; that is justice-based legal certainty.

### 3.2. Legal Certainty

Principally, a law must contain certainty, because certainty is the basic element in the effort to realize the function and purpose of the law, namely to create order in a society. Besides, the rule of law should also protect people from arbitrary action<sup>14</sup>. This legal certainty plays an important role in the embodiment of practical law as it has the power of augmenting the constants and predictability that ensures what is desired by the community<sup>15</sup>.

The issue of corruption has become a common perception among people as a despicable and evil act. From the justice aspect, whoever does corruption shall be punished with no exceptions. However, factually the legal process often experiences technical and administrative barriers, partly due to the retention of the provisions of common procedural law. This practice has unduly harmed the principles of legal certainty and fairness in the society. Thus, there is a need to harmonize the main legal institutions that can complement one another to function properly in accordance with applicable laws.

Legal certainty should have formal and material weights because people usually have quite sensitive feelings towards injustice. The performance of legal certainty is also observable in the eyes of the public<sup>16</sup>. Formal performance generated by consistency in the application of methods and procedures are relatively the same as the behavior that deviates from the norm of law, as stated Rawls "*Formal justice is adherence to principle, or as some have said, obedience to the system*"<sup>17</sup>. Formal performance of the law can guarantee the achievement of substantial justice. "*It is maintained that where we find formal justice, the rule of law and the honoring of legitimate expectations, we are likely to find substantive justice as well*"<sup>18</sup>. Different from to the formal legal certainty obtained mainly through its performance, the legal certainty whose materials produced by the sense of justice is proportionally raised when the behavior that deviates from the norm of law receives valuation with different weights.

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with the established procedures; (xiii) Being responsible externally for the public in line with the government policy and societal aspirations concerning justice and the truth

<sup>12</sup> Aristotle, *Politics: A Treatise on Government*, Translated from the Greek of Aristotle, by William Ellis, A.M. without year of publication. See at e-book library.

<sup>13</sup> See: Indonesian 1945 Constitution, article 1 (3).

<sup>14</sup> See: Musakkir, *Discriminative Court Decision in Criminal Case (Putusan Hakim yang Diskriminatif dalam perkara Pidana)*, Ranking Education, (Yogyakarta 2013), p. 74-75. See also: Sudikno Mertokusumo, *Knowing Law: An Introduction (Mengenal Hukum: Suatu Pengantar)*, Yogyakarta; Liberty, 1999, hal.145.

<sup>15</sup> The most fundamental unrestricted intention to act is free-will. This free-will should fit with the law and legislation and not contrary to morality and values that exist and develop in the society. See: Savignian thought that emphasizes the importance of *volkgeist*, the public spirit, as one element in measuring the development of law in the society. Savigny stated that the law must grow and develop in line with the growth and development of its society.

<sup>16</sup> John Rawls, *A Theory of Justice*, The Belknap Press of Harvard University Press Cambridge, Massachusetts London, England, 1995, p. 56

<sup>17</sup> *Ibid* p. 58

<sup>18</sup> *Ibid* p. 60

### 3.3. Rationality

Rationality is one of the basic elements in the embodiment of law. This legal rationality is grounded on the common sense and truth<sup>19</sup>. This is needed to prevent the manipulation of the embodiment of law, particularly in the interpretation of law. In addition, it is necessary to reduce the multiple interpretations in the implementation of the law enforcement, particularly in the handling of corruption cases. The handling of corruption cases, therefore, should be based on the objective, logical, and transparent principles. Rooted in the rationality, the enforcement of law may be implemented accurately to help the maintenance of consistency and creation of justice.

This applies similarly in the process of initial investigation, investigation and prosecution. All enforcement of law activities above are basically aimed at fighting for justice. Theoretically, initial investigation, investigation and prosecution activities cannot create justice because all these activities are parts of the process for finding the truth. While justice is not a process, it is an end product of examination in search and discovery of truth.

Clearly, there is a significant correlation among activities done in the initial investigation, investigation and prosecution stages. The three first activities are methods, while justice is the aim. In this context, the aim and method should be linked not only logically but also ethically. Thus, it is not possible we do right at the second stage when we consciously make a mistake at the first stage. Thus, the methods used must prove the truth of the purpose<sup>20</sup>. Therefore, all activities in the initial investigation, investigation and prosecution pertaining about the handling of corruption crime cases should be rooted in rationality, which include objectivity, logic and openness.

### 3.4. Transparency

Transparency has a vital position to realize "good governance" because with transparency, people can exercise their rights to monitor and observe the behavior of public officials and raise objections if there is a violation of the public rights.

Transparency is an escapable entity that governs the implementation of law enforcement. However, in practice the law enforcement performed by the law enforcers still shows a lack of openness towards the public. This makes the public trust to the law enforcement agencies (Attorney) degrade. The shortage of transparency in many instances is found here and there in the process of law enforcement (ranging from initial investigation, investigation to prosecution phases) so that the resulted reports run as far as the formal procedure is concerned. Transparency of law enforcement is therefore required in order to avoid the manipulation of facts, the misuse of power, and dishonesty. The law enforcement process should be implemented in accordance with standard operational procedures (SOP) and must be communicated transparently to the justice seekers. For this reason, transparency is vital in the initial investigation. Without transparency, abuse of power and corrupt practices will easily occur. Subsequently, transparent initial investigation of law enforcement needs to be continually built and developed in order that the integrity of law enforcement can be maintained and controlled. At this point, it is necessary to highlight that the transparent process of initial investigation is crucial for establishing the integrity of clean law enforcement agencies.

### 3.5. Accountability

The term accountability is very closely related to the capability or capacity of the law enforcement officers (prosecutors) to carry out their duties and responsibilities. To fulfill their duties as investigators, law enforcement officers must meet the standard abilities and expertise as stated in Presidential Instruction No. 7 of 1999 on performance accountability report of government agencies. Furthermore, the term Accountable law enforcement is defined as an attempt to accomplish prosecution duties responsible for the public, nation and state to ensure legal certainty, fairness of treatment and provision of benefits for the society within the framework of legal system. The law enforcement process simply cannot be separated from the legal system itself. In this view, a legal system is defined as parts of processes/interdependent stages that must be executed and complied by the law enforcers and the community to substantiate the attainment of legal certainty.

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<sup>19</sup> Aulis Aarnio, 1981, On the Truth and Acceptability of Interpretative Propositions in Legal Dogmatics, *rechtheorie beiheft* 2, p. 33.

<sup>20</sup> Personal communication with Hayyan ul Haq, lecturer of epistemology and method in law and legal reasoning, when we discussed about ethic in law, and the coherence between objectives and method in finding the truth in Mataram, on 24 April 2015.

### 3.6. Responsibility

A responsive model combines social reasoning and political reasoning that can be justified and accounted for by the law, both politically and socially. This model is responsive to the needs and aspirations of the society. It reflects the central idea of a democratic governmental system widely known as check and balance. According to this model, the power performed by an attorney must not be carried out without supervision and even the authority that controls his/her performance is bound to responsibility. Responsive model is suitable for modern society as proposed by Philippe Nonet and Philip Selznick. The responsive model, as further reinforced through the theory of law, classifies three (3) types of legal morality in the society, namely:

1. Repressive law serves as the instrument of the authority and seeks to create social order
2. Autonomous law, according to this theory, requires that the law be oriented towards empirical and social conditions of society and control of repressive power to carry out honest and legitimate procedures of law free from political influence.
3. This responsive law is intended as a legal instrument that can act as a facilitator in response to societal needs and aspirations of the people. This law is expected to provide services to people and legal institutions in order to achieve procedural and substantive justice. This legal theory tends to favor the types of autonomous law.

Philippe Nonet and Philip Selznick view that the law functions as a facilitator for responding the social needs and aspirations. This means that the law requires the development of standard legal institutions. The successful implementation of a responsive law is dependent on the competence of law enforcers as well as their capacity to develop new institutional methods to measure the social needs and to find sensitive legal remedies which are politically feasible and socially acceptable. Thus, it is increasingly clear that the responsive law requires community that has political capacity to solve their problems, set priorities and constantly strive to make commitments as required<sup>21</sup>.

### 3.7. Fundamental Human Rights

As stated in Article 1 paragraph 3 of the Constitution of 1945, Indonesia is a law state. This means that all forms of government's action should be based on law. This is meant to prevent the abuse of power committed by the authorities themselves. A law state is characterized by: (i) recognition and protection of human rights that cover equality in the political, legal, social, cultural and educational lives; (ii) the existence of independent and impartial judiciary free from the influence of authority or any other power whatsoever; (iii) the existence of legality in all sorts of law<sup>22</sup>. In this regard, in carrying out its duties and authorities, prosecutors —in their capacity as law enforcement agents — must uphold the supremacy of law because it becomes the essential element of the law state<sup>23</sup> and law enforcement.

Pertaining about the law enforcement, the prosecutor's role is very crucial in determining the case disposition within the criminal justice system, especially in protecting and upholding human rights<sup>24</sup>.

<sup>21</sup> In this study, the psychological aspect includes ability, integrity, personality, mentality and experience of the prosecutors as investigators; Law enforcement includes substance, structure, culture, infrastructure and legal paradigm. Techniques and strategies of investigation include evidence, proof-system, reliability of witnesses, interview and interrogation, the rescue of State property, and responsive investigation to reach legal certainty.

<sup>22</sup> Article 1 (3) of the 1945 Constitution affirms that Indonesia is a constitutional state (*rechtsstaat*), not state of power (*machtsstaat*). Franz Magnis Suseno says that the authority of state must be run on the basis of a good and fair law because it becomes a cornerstone of the state action and the law. Thus, Attorney offices also have to enforce the law on the basis of both legality and fairness. Franz Magnis Suseno, *Political Ethics Basic Principles of Modern State (Etika Politik Prinsip-prinsip Dasar Kenegaraan modern)*. PT.Gramedia Press, Jakarta, 2001, p. 295

<sup>23</sup> Essential elements of a law state that characterizes the supremacy of law include, among others: (i) a guarantee from the government to exercise its power based on laws and regulations; (ii) a guarantee of legal protection of fundamental rights; (iii) clear, fair, and consistent distribution of state power and; (iv) legal protection from judicial bodies against the government's actions

<sup>24</sup> This is really stipulated in one of the considerations of UN Guidelines on the Role of the prosecutors in 1990, which reads: "... Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime".

See: UN Guidelines on the role of prosecutors, adopted by the eighth united nations congress on the prevention of crime and the treatment of offenders, 1990. UN Guidelines on the Role of Prosecutors. Translated into Indonesian by. RM Surachman. Senior Research Fellow. Office of the Attorney General, p. 4-

Considering the prosecutor's important role in the execution of justice and provision of responsibilities to act, he or she must be able to support criminal justice, which is right and fair, and provide effective protection for citizens from crimes.

### **3.7. Commitment of Legal Apparatus**

The enforcement of law and order is absolutely necessary to create a peaceful and prosperous Indonesia. If the law is enforced and the order is realized, then the certainty, safety, peace and harmonious life will be achieved. Conducting the governance and law enforcement to the government authorities are essentially like two sides of a coin, in which each side has a close inseparable relationship from the other because one needs and complements with another within the framework of good governance. All policies related to the government's acts must be based on the statutory provisions.

The law enforcement with the truth principle signifies that in the enforcement of law, steps, actions or policies taken must always be based on provisions of the applicable law. This means that the duty and authority held by the state or law enforcers shall be implemented in accordance with the scope and stages of law enforcement (investigator, prosecutor, or judge in any kind of justice) and provisions of the applicable laws.

The law enforcement with the justice principle requires that every step, legal action or policy taken, issued or established by the law enforcement officers should always be based on and looking at the demands of conscience, the inner voice of human beings in general. The measure, of course, can be done through assessing the society's views based on the qualification of appropriateness, i.e. what people view as appropriate and fair actions. The demands for justice in the handling of law cases can be measured by looking at the law enforcers' actions in every stage during the handling of a case, i.e. whether their actions, decisions and policies are made in accordance with their conscience.

The fulfillment of the demands for the truth and justice should become the desire and commitment of all components of the nation, especially state officers or law enforcement officers. With their commitments to sustain the state authority, these officers will carry out their duty and authority on the basis of the principles of truth and justice. It is expected that the commitment will provide motivation for state officers, including law enforcement agencies, to carry out their duties, authorities and functions properly as mandated by the provisions of the applicable law.

## **4. Closing Remarks**

### **4.1. Conclusion**

Law enforcement is essentially a part of criminal politics, which is essentially an integral part of social policy. This policy is then implemented into the criminal justice system. According to Muladi, criminal justice system has multiple functional dimensions. On the one hand, it serves as a societal instrument to restrain and control a crime at a certain level (i.e. containment system). On the other hand, it also serves as secondary prevention. This system attempts to reduce crimes that may happen among those who never commit a crime and those who intend to commit a crime through the detection process, criminal prosecution and criminal enforcement.

In its operations, the criminal justice system involves sub-systems that work in a coherent, coordinative and integrative manner to achieve maximum efficiency and effectiveness. The efficiency and effectiveness is therefore highly dependent on some factors, such as: (i) supporting infrastructure and facilities; (ii) professionalism of law enforcement officers; and (iii) societal legal culture.



The above view is parallel with Soerjono Soekanto's opinion of factors that affect the law enforcement: (i) law and regulations, (ii) law enforcement<sup>25</sup>, (iii) infrastructure or facilities to support law enforcement<sup>26</sup>, (iv) society, (v) legal cultural factors<sup>27</sup>. The five factors above should be seen holistically. This means that each of those elements cannot be separated from others. All the factors mentioned above should be considered in nurturing and strengthening the law enforcement system, particularly in the handling and settlement of corruption cases.

As described in the main text, the arrangements pertaining about crime acts of corruption have been regulated in the Act No. 31 of 1999 as amended and added with the Act No. 20 of 2001. Regardless of this, in the process of handling cases, i.e. from initial investigation to prosecution stages, no specified time limit is set for a person regarded as a suspect/defendant. Although SOP in the attorney office regulates the deadline/time limit for initial investigation and investigation, in practice this is never applied appropriately so that a person who has been named as a suspect will undergo legal uncertainty. The legal process could even run for a long time.

#### 4.2. Recommendation

In strengthening the criminal policy on the basis of justice, Attorney General should consider three important aspects, namely: (i) normative aspects; (ii) institutional aspects; and (iii) personal aspects. Normative aspects deal with the validity or the source of law for actions to be taken by the prosecutor, either accelerating or stopping the handling/settlement of arrears of corruption cases. These normative aspects include: legal institutions, policies, and commitments of the custodian of practical laws, i.e. the prosecutor. Technically, this normative approach can be realized through the regulation of a firm deadline for the implementation initial investigation and investigation. To ensure legal certainty, this should be clearly and unequivocally regulated in the law of corruption crimes so that there is a clear legal certainty for those who have been determined as a suspect or defendant.

Furthermore, the institutional aspects deal with the strengthening of institutional capacity with emphasis on the importance of elements of budgetary supports, infrastructure and facilities, supervision, strengthening integrated systems, strengthening special units of investigation and prosecution, strengthening the system and the quality of supervision, and strengthening the public information disclosure. Personal aspects deal with the resources that are inherent in the personality of a prosecutor, such as integrity, credibility, professionalism (ability knowledge and skills), and an exemplary role model. By looking at the human resources development program above, the prosecutor can improve the quality and quantity of law enforcement officers (prosecutors) by assessing their skills, experiences, patterns of planning activities for initial investigation and investigation of corruption cases. All of the personal aspects above become basic prerequisites for prosecutors to complete the handling of corruption cases objectively and proportionately.

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<sup>25</sup>The success of the mission of the criminal law to tackle corruption is determined not only by the perfect formulation of legal postulates contained in the positive law, but also the people who implement the law (the law enforcement offices) — ranging from investigation to execution levels. Due to the characteristics typical types of corruption crimes known as extraordinary crimes, the logical consequence is that the law officers should have more professional skills in solving corruption cases. Professionalism and moral courage of the law enforcement officers are demanded and tested to seek legal discovery of law (*rechtsvinding*) so that there is no reason for them to hide behind narrow legality principles, such as the laws and regulations are incomplete or there is no legislation that regulates the case. Law enforcement officers should have more abilities to conduct investigations, provide proof or evidence both during the preliminary investigation and the judicial processes. They also should have extensive knowledge and insight pertaining about materials of offenses as well as legal events, high discipline and dedication in implementing the law enforcement toward the perpetrators of corruption crimes. The obstacles encountered by the Attorney office in the completion of corruption cases are as follows: (i) a limited number of prosecutors, skills and work experiences in dealing with corruption cases; (ii) prosecutor's lack of commitment to complete the prosecution of corruption cases; (iii) the absence of a deadline in the investigation phases and regulations pertaining about corruption cases; (iv) a lack of early planning in the initial investigation and investigations of corruption crimes.

<sup>26</sup>This factor can be considered as the backbone of law enforcement against corruption, because its existence becomes the backbone of success for finding the truth of materials. Therefore, harmonious cooperation among the law enforcement agencies with several experts and specialists in their fields, such as financial experts /BPKP/CPC, construction experts, and adequate operational funding are the motivating factors for prosecuting or narrowing down the space for corruption perpetrators.

<sup>27</sup>Without disregarding other important factors, the societal legal cultural factor also has an influence and plays an important role in the process of law enforcement against corruption. Pluralism of legal culture available in the society is a unique phenomenon and contains any potential risks, which quite often put the position and profession of law enforcement officers into a dilemma state, which in turn can lead to ambivalence in the implementation of their actual roles.