

Criminal Law Reform Regarding Corruption Crime: A Review of Indonesia's Corruption Eradication

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Abstract

This study aims to identify and explain the principles of anti-corruption in the various rules that can be used as the foundation of reconstruction prevention of Corruption. This research is a normative law. Data collection techniques used were interviews and by library research. The data analysis was conducted through qualitative analysis methods. This analysis was performed using analysis of the theoretical basis as the knife in explaining the phenomena that are the focus of this study. The results show that the strategy of eradication of corruption can be performed on the elements of legal substance, that is to revise the existing weaknesses in the legal substance of the Law on Corruption Eradication, setting sanctions, in the form of illicit enrichment, the clarity of the regulation on the system the best evidence and clarity regarding setting minimum sanctions. Elements of the legal structure relating to the selection mechanism of political will by the organizers state apparatus, trustworthy leadership, coordination, synchronization authority of law enforcement agencies. Elements of legal culture through the establishment of standards of conduct and operational standards of service and strengthen community participation in combating corruption.

Keywords: Corruption, Legal Culture, Law Reform, Law Enforcement

I. INTRODUCTION

National development effort is a series of sustainable development, covering the whole life of the community, the nation and the state to carry out the task of realizing the national goals set forth in the Preamble of Indonesian constitution. The nature of the development is a continuous process of change leading to an increase in people's lives. Thus, the development will always lead to change, directly or indirectly affect the balance of humans and the environment in all aspects of life. In line with the dynamics of society in the implementation and development in an effort to realize the purpose of the law, it turns out there are many factors inhibiting the development of the expanded equivalent to the expansion of the development itself. One of the factors that are inhibiting the development of the criminal acts of corruption.

The problem of corruption is a very central issue in today's construction period and often does it cause prolonged talks and discussions by various circles of society. Corruption is a chronic disease in Indonesia. Corruption is a disease that eats away at people's welfare society, hamper the implementation of the development, adverse economic and moral neglect, therefore, must be eradicated.¹

The concerns about fighting corruption basically is closely related to three things: the substance of the law, sutruktur law and legal culture. Synergies between them are very dibutuhkan because without these two laws enforcement against corruption would be impossible to implement. The current reality shows that these three are still running on the confusion that creates uncertainty. Differences of opinion between the authority associated with police, prosecutors and the Komisi Pemberantasan Korupsi (KPK) is still a discourse that is not finished. In others side, the function of KPK, law enforcement agency crime of corruption has gained juridical justification, but the presence of KPK tends to cause kontroversial in practice. On the other hand, the role of law enforcement agencies, such as police and prosecutors was reduced, because previous investigations of corruption is the authority with the police and prosecutors.²

Difficulty in combating corruption is caused also by the current apparatus factor state officials. Vertical Agencies (Police, Courts, Tax, Immigration, Customs, Military, etc.), is still perceived as very corrupt. According to Transparency Indonesian version, that the judiciary is the highest agency level initiatives soliciting bribes (100%), followed by customs (95%), Imigasi (90%) BPN (84%), police (78%) and taxes (76%).³

Some surprising facts are public turns tort is not only done by the technical officials and leaders in the regions, but also up to a high state officials across ministries and state agencies. The action performed by members of the legislature (DPR) which is a representation of the people and respected because they can be trusted to bring people's aspirations and struggle. But in reality they were much inconsistent and so easy to deny the trust and its constituents to participate either individually or jointly commit unlawful acts that harm the state.

¹ T. Harun Pudjiarto. 1994. *Pemberantasan Tindak Pidana Korupsi*, RajaGrafindo: Jakarta. p. 4-5.

² Jawahir Thontowi. 2011. *Prospek Pemberantasan Korupsi: Perimbangan Kewenangan KPK dengan Institusi Penegak Hukum*. Universitas Islam Indonesia: Yogyakarta, p. 2.

³ Hasil Survey Lembaga Transparansi Internasional (TI) tahun 2010 yang dimuat dalam <http://www.hukumonline.com/klinik/detail/lt4cc69e823d092/beda-kewenangan-kpk-kepolisian-dan-kejaksaan-selaku-penyelidik-dan-penyidik>. Diakses pada 13 Agustus 2013.

Unlawful acts by members of the legislature is not just happening at the national level but up in these areas.

Percentage crime rate of corruption among law enforcement will not thrive impossible without cultural contributions mainly related to cultural practices tributes, bribes and a debt of gratitude, also a shortcut to obtain faster service and precedence. In his research, Farouk Mohammad,¹ revealed that the underlying factors that may explain the phenomenon of corruption is the abuse of power, mainly related to the low fakor welfare. Salary law enforcement, especially the police was insufficient for a proper security is an undeniable fact. Although the causes are not to be solely on welfare grounds, motivation enrich themselves will remain relevant as a relevant factor in the onset of corruption crimes.

One area that has a high rate of corruption is North Sulawesi province, where from 2006 to mid-2011, there were 548 cases or 22% of the total cases of corruption in Indonesia from 2006 to 2011, ie 2,487 cases.² Judging from these figures, is quantitatively quite high. The figure did not stop there. In a surprise from a number of regional heads in North Sulawesi are several mayors and regents act of corruption.³ In terms of psychosocial standpoint, the situation shows an interesting phenomenon that should be observed and studied from various perspectives, including the study of law and society.

It is interesting to study because the perpetrators are state officials should not take action against the law. The administration of the state is basically a model that should be an example to the community not otherwise does without any sense of shame and guilt. Cases of alleged corruption that occurred at the prosecutor, the courts, the police, the House of Representatives both central and local government officials at the central and local levels also occur, giving rise to the emergence of a lot of distrust of state officials and the law enforcement officers. Tone skeptical of its failure to eradicate corruption in Indonesia is not only voiced by the experts and the mass media, but also discussed in the grassroots level. This condition is in accordance with the revelation that ever put forward by Robert Klit Gaard,⁴ which states, "*Corruption is one of the foremost problems in the developing world and it is receiving much greater attention as we reach the last decade of the century*".

The essence of law enforcement in view Satjipto Rahardjo, contain substantial value that is contrary to justice and enforcement of its main pillars, namely a strong determination and commitment of the sub-systems associated with law enforcement. Law enforcement is not only intellectual but also a spiritual intelligence. In other words, law enforcement should be done with full determination, empathy, dedication, commitment and courage to be supported by a legal substance and the ideal cooperative society.

Based on the cases above, the issue of this study is that there is a tendency that the legislation on combating Corruption current is still less than perfect, and the ineffectiveness of law enforcement because of lack of integrity of state officials, thus inhibiting the process of law enforcement and create opportunities for action against the law.

II. MATERIALS AND METHODS

A. Type of Research

The study of law is a process to find the rule of law, principles of law, and legal doctrines in order to answer the legal issue at hand. Legal research done to produce arguments, theories or concepts as prescriptions in solving the problems faced.⁵

B. Type and Legal Sources

Terms of the legal research himself, then in this study the authors use this type of normative legal research. Normative legal research have the same definition with doctrinal research is research based legal materials (library based) that focus on reading and studying the materials of primary and secondary law. Research the law by Johnny Ibrahim is a scientific procedure to find the truth based on the logic of the normative laws of science. This opinion was subsequently confirmed by Sudikno Mertokusumo stating that scientific disciplines and how the normative jurisprudence is the object that is the object of law which mainly consists of a collection of mixed law peraturanperaturan is chaos: innumerable laws and regulations are issued each year and jurisprudence (normative) doesn't see the law as a chaotic or a mass of rules but see it as a structured whole of system.

C. Legal Approach

Based on the type of research that is used is normative research, there are several approaches, among others approach the legal research law (statue approach), case approach, historical approach, comparative approach, and

¹ Farouk Muhammad dalam Jawahir Thontowi. 2011. *Op cit.* p. 6.

² KPK Panen 548 Laporan Kasus Korupsi Provinsi Sulawesi Utara dalam <http://infokorupsi.com/id/korupsi.php?ac=9226&l=kpk-panen-548-laporan-kasus-korupsi-provinsi-sulawesi-utara>. Diakses, 11 Juni 2011.

³ "Korupsi Meningkat di Kalangan Pejabat" Manado Pos, 29 September 2010.

⁴ Busse. 1996, *The Perception of Corruption: A Market Discipline Corruption Model (MDCM)*, Goizueta Business School. Emory University. Atlanta. Georgia. U.S.A. p. 3.

⁵ Peter Mahmud Marzuki. *Penelitian Hukum*. Kencana Prenada: Jakarta, 2005. p. 35.

conceptual approach.¹

D. Data Collection

Data collection techniques used in this research is to use the interview method, conduct interviews to obtain data necessary to obtain some of the information and data required and library research, this method is done by collecting and study and comprehend written material in the form of books, articles and written regulations relating to the problems examined.

E. Data Analysis

To analyze the data obtained in this study further processed and analyzed through qualitative analysis. This analysis was performed using analysis of the theoretical basis as the knife in explaining the phenomena that are the focus of this study.

III. RESULTS AND DISCUSSION

A. Criticism against Substance of Anti-corruption Law

The ability of legislators in drafting legislation will determine the quality of the resulting legal substance. So it will not adopt laws that would lead to legal uncertainty and multiinterpretasi in its application. Given the category of corruption as one of the extraordinary crime, then the matter must be handled with incredible too. Corruption needs to be addressed thoroughly and responsibly. But on a practical level, it is not uncommon provision in Law No. 31 of 1999 jo. Law No. 20 Year 2001 on Eradication of Corruption, it becomes a problem estuary. Here are a few weaknesses in the Law No. 31 Year 1999 jo. Law No. 20 of 2001 which must be addressed.

1. Setting Expiration

Both the Law No. 31 of 1999 and the Law No. 20 of 2001 did not include a qualifying felony and misdemeanor offenses. As a result, sometimes becoming its own problems for law enforcement, especially with regard to expired criminal prosecutions and penal execution expired expiry date for the criminal prosecution of crimes and violations of Article 78 of the Criminal Code (KUHP), namely:

- a. Authority according to the criminal delete because expired;
- b. Regarding all violations and crimes committed by printing after one year;
- c. Regarding a crime punishable by fines, imprisonment, or imprisonment of three years, after six years;
- d. Regarding a crime punishable by imprisonment for more than three years, after twelve years;
- e. Regarding a crime punishable by death or life imprisonment, after eighteen years.

Issues related to the expiry date, the researcher believes that it should in the formation of Corruption Act in the future asserted that there is no expiry date for the criminal acts of corruption since expired will only be a loophole for offenders, among others, by escaping during the term of the expired.

2. Implementation Firmness of Death Penalty

Death penalty formulation is only valid for one article, namely Article 2 paragraph (1) which is defined in Article 2 paragraph (2), in his explanation stated that what is meant by "certain circumstances" in this provision is intended as a weighting for the perpetrators of corruption when criminal act was committed during the country in dangerous circumstances in accordance with applicable law, at the time of national disaster, as the repetition of corruption or at the time of the State in economic and monetary crisis.

Certain circumstances such as national emergencies, natural bencabna national circumstances may occur only once in 50-60 years time as well as the economic crisis, making it difficult death penalty imposed. Linkages with the death penalty, the authors argue that there needs to be a regulation regarding the amount of loss caused state resulting in the threat of the death penalty.

3. Recidive Setting

Article 486 of the Criminal Code (KUHP) could actually capture the repetition of acts of corruption, as stipulated in Act 31 of 1999, namely Article 8 (ex Article 415 KUHP), Article 10 (Article 417 KUHP), and Article 12 (Article 425 KUHP). But after the publication of Act 20 of 2001, the three articles of KUHP that includes provisions that would otherwise apply by Article 43 B, so it can't be captured with recidive provisions. The author argues that the provisions on recidive must be confirmed in Corruption Act in the future.

Rules of punishment is necessary because it can be used as a punishment because it can be seen that the threat of a criminal offense maximum 20 years in prison was given a minimum of 4 years in prison punishment, but the problem is in offenses also the maximum penalty of 20 years in prison but was given a penalty of a minimum of 1 year in prison. It is also a weakness in using the formulation of alternative cumulative and cumulative system. The author observes, that of Article 2 and Article 3 is as if the self-enrichment is more severe than abuse of power, but when viewed from a social angle, abuse of power is more severe than enrich themselves.

The provisions of Article 2 and Article 3, according to the researchers also provided vertigo even difficulty in its application. There is no clarity about the losses the country punishable by a minimum and a loss

¹ *Ibid.* p. 93.

to the state punishable by a maximum so as if the state losses of Rp. 10,000 has implications sanction same state losses of 2 trillion.

4. *Illicit Enrichment Setting*

Eradication of corruption is closely related to the integrity of state officials, but on the other factor is a legal substance that supports optimalisasi pemberantasan factor of corruption and integrity of the apparatus of state officials. Reform Law No. 20 of 2001, including the criminal policy. This was stated by Sudarto,¹ that Act No. 20 of 2001 is a rational effort of the community to tackle kejahatan because the substance include criminal law policy in the narrow sense is a crime prevention policy of the criminal law, which in the broadest sense is an overall policy pursued through legislation and official bodies, which aims to enforce the central norms of society

The view above shows that Law No. 20 of 2001 includes two forms of legal policy that crime prevention policy based on criminal law and policy based on legislation and other official bodies. This view suggests that eradication of corruption in Law No. 20 of 2001 is not only penal but also non penal.

The same views expressed by Muladi,² who said that legislation that policy has a central focus on the determination of actions that should be made a criminal offense and criminal sanctions against such crime. Therefore, in criminal law known material concerning the subject matter of a criminal offense, accountability, and criminal sanctions. Thus, policy legislation in particular substantive criminal law includes two terms, the act which is a crime and the criminal responsibility for the actions. Determination of criminal sanctions in the legislation is a policy of the underlying activity and facilitate the application and implementation in the context of criminal law enforcement inkonkret. Determination of criminal sanctions against an act is a declaration of disapproval from the majority of citizens.

It was accepted by the offender entered his moral consciousness, which will determine his behavior in the future. So, not merely obey menderitakan threat, but because of the respect of what is considered right and fair. Barda Nawawi Arief,³ also argued that crime prevention efforts must be taken by the policy approach, in the sense that there is coherence between political crime and social politics, and there is coherence between efforts to combat crime with penal and non-penal.

Criminal sanctions with a maximum sentence of the death penalty according to researchers is a step that can be taken to deter yet another step needed to be more effective to be able to provide education and at the same time an opportunity for criminals to improve themselves. Corruption is still growing and flourishing in Indonesia as a punishment for criminals no deterrent effect. So, if someone corruption or perpetrator of corruption that have been proven corrupt then he is serving a sentence for example four or three or two years in prison, parole and cut into remission, and during serving time in a correctional institution (prison) he could permit treatment and can exit freely, or if in a prison can get a luxurious room, then it makes no difference, no deterrent effect. Thus, in our view be a sentence of imprisonment to the fullest extent and the death penalty is not an effective way to combat corruption.

United Nations Convention against Corruption (UNCAC), there has been a provision that could ensnare the actions of civil servants enriches them illegally. UNCAC itself has been ratified by the government and the House of Representatives of Indonesia through Law No. 7 of 2006 on the Ratification of the UNCAC in 2003 through the House of Representatives plenary session on March 20, 2006. In Article 20 of UNCAC states that actions should be criminalized by the participating countries (state party) include "Illicit Enrichment" in which it is stated:

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

The author observed that the seizure and forfeiture entire proceeds of corruption or corrupt impoverishment is an effort that can be an alternative. Seizure and confiscation of illicit enrichment are called to provide a deterrent for perpetrators and ketakutan for the other party to engage in corruption. So the acquisition of assets that are not fair then criminalized and seized without any sort of proof. For example, someone has a salary Rp. 4 million last month suddenly have a lot of possessions and not in accordance with the formal acquisition later charged, then he must prove that the property is a legitimate acquisition. If he can't prove the acquisition of property acquired from legitimate then confiscated to the State.

Seeing that the phenomenon of civil servants who have wealth beyond its normal limits of income prevalent in Indonesia it is natural for the criminalization of the concept of Illicit Enrichment as mandated by the

¹ Sudarto. 1981. *Hukum dan Hukum Pidana*. Alumni: Bandung. p. 113.

² Muladi. *Proyeksi Hukum Pidana Materiil Indonesia di Masa Mendatang* (Pidato Pengukuhan Guru Besar Fak. Hukum Universitas Diponegoro: Semarang, 24 February 1990. p. 2.

³ Barda Nawawi Arief. Tanpa Tahun. *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*. Badan Penerbit Universitas Diponegoro: Semarang, p. 26.

UNCAC is immediately enacted. This must be done in order to protect the interests of approximately 238 million people in Indonesia (CIA Fact Book, 2004, BPS said a total population of Indonesia in 2000 approximately 206 million) of the destruction of the impact of corruption.

5. *Maximizing Reversal Burden of Proof*

Article 17 paragraph (1), (2) and (3) of Law No. 3 of 1971 shows the reversal burden of proof in corruption cases experiencing a new paradigm shift. Here a shift in reversal burden of proof hasn't led to the reversal of burden of proof. The defendant can prove that he was not committing a crime after a judge allowed, but it is not imperative meaning that if the defendant did not use this opportunity actually strengthens the prosecutors.

The term "Reversal Burden of Proof" has been widely recognized by the public as a language that can easily be digested in one solution to the problem and eradicate corruption. This term is not appropriate, in terms of the language known as "*omkering van het bewijslat*". As a universal principle, it would be biased sense if interpreted as Reversal Burden of Proof. Article 37 of Law No. 31 of 1999 regulating Reversal Burden of Proof. Reversal Burden of Proof systems in both laws is still limited because of the role they appoint public prosecutor has the obligation to prove the guilt of the accused.

Reversal Burden of Proof in terms of ownership of assets from a person suspected of corruption raises the pros and cons. The view counter said that, reversed evidence in ownership of assets is also contrary to human rights that every person has the right to acquire wealth and privacy rights that must be protected. However, in contrast to the idea that corruption is a serious source of poverty and crime are difficult to prove in practice the legal system in all countries, the rights of individuals over their wealth is not viewed as an absolute right, but rather the relative rights, and in contrast to the protection of personal freedom and the right to obtain a fair trial and reliable.

Implementation of Reversal Burden of Proof is basically justified purely philosophical, juridical and sociological as described below:¹

1. *Philosophical Justification*. In this aspect of the asset returns corruption may consist of fixed objects and moving objects or can be in the form of the proceeds of corruption both inside the country and abroad. From this dimension, the asset is essentially (in ontology) is a state in casu the money is coming from public funds. By using the tool/method (in epistemology) reversal of burden of proof and punishment of the perpetrators then logically perpetrators of corruption asset recovery results are expected to impact / benefits directly to restore state finances or economy of the state that ultimately leads to the well-being of the community (in axiology). If the starting point to the essentially legislative policy corruption is systemic and widespread and also has violated the rights of social and economic community at large. The logical consequence then to realize a just society, the prosperous there must be a continuous action and also can not be ruled out is that efforts are prevention of corruption (preventive), eradication of corruption (repressive), and restorative approaches which one of them a return on assets of perpetrators of corruption in addition also other measures such as criminal acts as perpetrators brought to justice and that the verdict handed down as fair as possible in accordance with the levels of guilt.
- b) *Sociological Justification*. Studied from the perspective of the provisions of the Law on Corruption Eradication, the aspirations of the people to fight corruption and other forms of irregularities increased. In fact no act of corruption has caused a huge loss to the state so that the impact on the onset of the crisis in various fields. The prevention and eradication of corruption needs to be further enhanced and intensified by upholding human rights and public interest. In addition to the eradication of corruption is one of them through the asset returns will have broad impact on society . Concretely, the public will see and assess the seriousness of law enforcement on combating corruption by upholding the presumption of innocence, the principle of equality before the law, and the principle of legal certainty. Sociological justification is the realization and the role and application of legislation and policies to provide a wider space for the presence of co-operation between law enforcement agencies with community participation as mandated by the provisions of Article 41 of Law 31 of 1999 in conjunction with Law 20 of 2001.
- c) *Juridical Justification*. Presence provisions Corruption Act which already exists and which will be introduced in the future should provide space and a wider dimension for both law enforcement. Society and all walks of life to be complete in tackling the causes and effects of acts of corruption. Therefore provide space policy legislation in the fight against corruption can be done through actions penal law and civil action. In essence, asset recovery aspects of corruption through criminal procedures may include criminal punishment to the perpetrators as criminal fines and sentenced defendant to pay compensation. The elements then the return on assets of corruption can also be through a civil lawsuit.

The success of the expected return on assets is relatively higher because of evidence of civil law merely for formal correctness (*formale waarheid*). With the tangle of two acts of corruption in the form of asset returns perpetrators of corruption in the penal law through actions and acts of justice civil society are expected to be

¹ Djoko Sumaryanto. 2009. *Pembuktian Terbalik dalam Tindak Pidana Korupsi*. Gagasan Hukum: Jakarta. p. 1

achieved. This aspect should be understood more deeply because of the nature of corruption as extraordinary crime, so that eradication was not possible.

Observing reversed evidence is known that the defendant must prove that his property is not the result of corruption investigators believe that corruption is a criminal offense that requires a tremendous exceptional handling. The most important thing in the rules of evidence of corruption by the researcher rather than the country elements of the real losses are still expected even a real loss, it is misplaced and disproportionate to become a central element in a crime of corruption, and karenannya do not need to be confirmed. Losses wider community, especially an injured third party because of corruption it should be noted.

B. Corruption Eradication Through Strengthening Legal Culture

1. Standards of Conduct and Operational Services

Morality and ethics are two things that are very important in an institution that is a combination of personal-personal who have the personality, abilities and behaviors are different. However, as an organization, then the default behavior of the apparatus of state officials need to be set as a guideline for organizing apparatus of the State in carrying out the duties and obligations and a reference from the officials to provide rewards and punishment.

Each State administering agency in the exercise of its functions based on the legislation. But legislation is only limited make arrangements related to the functions of these institutions. It takes an internal regulation that limits the organizers state officials in taking action so that always goes according to legislation, moral values and ethical values in public life.

The problem of corruption is closely related to the complexity of the various other problems, among other issues mental attitude / morale, patterns / attitudes, and social culture, the needs / demands of the economy, structural / political culture, the opportunities that exist in the mechanism of development or bureaucratic weakness in the financial sector and public services.¹ Within this framework, anti-corruption strategy must be sought first cause, then the cause of it is removed by means of prevention, followed by education (raising awareness of law) society accompanied by repressive measures.²

Moral and ethical issues need to get careful attention to give life to the law and its enforcement. In order to support the revitalization of democratic law, and in particular to tackle corruption, the moral and ethical issues urgent for improved function and existence, because the current moral and ethical aspects have vanished from the legal system in Indonesia.

Corruptive power management has to protect himself from the elements of morality and ethics,³ because the law has been the legal ruling it made the law has lost its ethical dimension.⁴ Associated with corruption, reflecting the views of the various formulations that corruption involves moral terms, the nature and state of the foul. Therefore, in the context of prevention of corruption that using legal instruments in order to achieve maximum results, it is necessary to also constructed aspects of morality and ethics in law.⁵

Between morality and the law is there is a very close correlation, in the sense that morality is not supported by the law of life will be subjectivity konduksif each other will collide. Conversely law drafted without basic and moral reasons will bear a repressive legalism, counter-productive and contrary to the values of truth and justice is the goal of law.⁶

Efforts to eradicate corruption, collusion, and nepotism have been pursued in conjunction with the development of society and institutions, particularly the democratization of civil society needs to be supported and also the presence of a strong participation from the community. Operationalization of the Anti-Corruption Act should be placed in such a framework in crime prevention, the need to find a role in the end lies in law enforcement. It caused at the hands of enforcement law which will mengkonkretisasikan policy, the goals that have been formulated in the law in criminal cases are real. To that end, the enlightenment of the moral and ethical dimensions for law enforcement needs to be done. Thus, the law enforcement work ethic based on both professional ethics and general ethics and consistently enforced for the offense. It is also related to the educational aspects

¹ Barda Nawawi Arief. 1998. *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*. PT Citra Aditya Bakti: Bandung. p. 72.

² Andi Hamzah. 2005. *Pemberantasan korupsi melalui Hukum Pidana nasional dan internasional*. Raja Grafindo Persada: Jakarta. p. 241.

³ Cornelis Lay. *Aspek Politik KKN di Indoensia*. Seminar Nasional Menyambut UU Tindak Pidana Korupsi dan Antisipasinya terhadap Perkembangan Kejahatan Korupsi (Yogyakarta: Fak. Hukum UGM, KEJATI DIY, Departemen Kehakiman, 11 September 1999. p. 7.

⁴ Soedjono dirdjosisworo. 1984. *Fungsi Perundang-undangan Pidana dalam penanggulangan korupsi di Indonesia*. CV Sinar Baru: Bandung. p. 47

⁵ *Ibid*. p. 21.

⁶ Kunto Wibisono. *Supremasi Hukum dalam Negara Demokrasi Menuju Indonesia Baru*. Makalah. Fakultas Hukum Universitas Diponegoro 27 July 2000. Semarang. p. 6.

Based on that, Muladi,¹ argued that the law enforcement dimension, which should be highlighted is the aspect of professionalism that promotes the ability through intensive training, a sense of social responsibility and adherence to ethics. It should be noted, the law enforcement profession in terms of the ability to not only contain the sheer physical skills, but also require a significant intellectual component. Professional attitude will keep away from the mall action practice in the area of law under the standard form of action, contrary to the obligation.

Characteristics of law enforcement that is required is that law enforcement has the maturity value / psychiatric, which will be able to fertilize again niali-values morality and ethics in law and enforcement, relation to criminal law. Mentioned by Barda Nawawi Arief,² as a new generation in the development of criminal law. In this case, Satjipto Rahardjo introduces the need for a new generation of thinkers and doers of law in Indonesia, which is capable of designing, making, applying the law to provide the greatest justice to the people (*to bringing justice to the people*).³

Law enforcement and moral ethic that work based profession will be supporting the establishment of the rule of law which is a milestone in the establishment of a democratic political system in Indonesia, which in this framework the corruption prevention goals will be successful. In regard to the rule of law, in fact as well as the supremacy of the rule of law.⁴ This means that the rule of law is essentially implies that in the livers of nationality should be upheld substantial values that animate the law and to the demands of society, among others: upholding the values of justice, truth, honesty, and trust between each other, as well as the establishment of human values that civilized and human rights protection, as well as the absence of abuse of power.

The implementation of the body functions as the controller organizer apparatus of the State, there are two (standard) behavior that must be established that the discipline and code of conduct. Ethics and morals into the factors that cause the apparatus organizers did not state the maximum performance and lack of responsibility for tasks and works in creating the figure of the government that is responsible to the diperintah. Masalah ethics is an issue that should be viewed in the context of the system.

Ethics doesn't happen by itself. Ethics is basically a set of attitudes, beliefs and feelings on a matter that is embraced and executed by one of the nation at one time. Ethics has been shaped by the history of the nation and through the ongoing process of social, economic and political. The pattern of attitudes that have been formed in the past experiences have an important effect on the urgent political future behavior. The influence will lead each individual in a political role, the demands of the political and legal responses.⁵

Ethics will shape the actions of individuals who carry out the role which encompasses political and legal systems as well as social. Each individual action is also influenced by the dynamic process of community experiences. Therefore, the code of conduct affecting the behavior of individuals in the performance of duties and obligations. To realize the consistency of the Institute for State Officials there should be regulation on the necessity of each State administering agency to draw up a code of ethics and honor boards in the enforcement of the code of ethics.

2. Public Participation

Public participation in the eradication of corruption contained in Law No. 31 Year 1999 on Eradication of Corruption, further stipulated in Government Regulation No. 71 Year 2000 on Procedures for the Implementation of Community Participation and an Award in the Prevention and Combating of Corruption. The community has an important role in combating corruption, including:

- a. Role as a feeder or supply information, where people take the initiative to report, disclose and provide information to law enforcement officials to the possibility of corruption.
- b. Role as a trigger. The low law enforcement initiative in uncovering cases of corruption have spawned long disappointment of society. This rigidity sometimes intruded by providing information regarding alleged corruption to the media so that the public mind. This strategy is very important to form an opinion or public perception that at one point allegedly occurred corruption. This situation is expected to force law enforcement officers to carry out concrete actions. Although it is recognized that the strategy contains a huge risk, for example, charged with defamation, but the effort it still can not be abandoned.
- c. Role of the controller (supervisor). Within the limitations, the public still has a tremendous energy to oversee the investigation of cases of corruption that are being carried out by the authorities. Event rallies, hearings, public discussions, hearings and so forth is a tool that is often used groups of people to accelerate

¹ Muladi. 1997. *Hak Asasi Manusia, Politik, dan Sistem Peradilan Pidana*. Badan Penerbit Universitas Diponegoro: Semarang. p.127.

² Barda Nawawi Arief. *Op. cit.* p.127-128.

³ Satjipto Rahardjo. *Supremasi Hukum dalam Negara Demokrasi dari Kajian Sosio-Kultural*. Makalah Seminar. Fakultas Hukum Universitas Diponegoro. Semarang 27 July 2000. p.12.

⁴ Barda Nawawi Arief. *Pokok-pokok Pemikiran Supremasi Hukum: dari Aspek Kajian Yuridis*, Makalah Seminar. Fakultas Hukum Universitas Diponegoro, 27 July 2000. p.5.

⁵ Mahfud MD. *Membangun Politik Hukum, Menegakkan Konstitusi*. LP3S: Jakarta. 2006. p.12.

the handling of corruption. Ensure that the eradication of corruption in line with expectations is a step that may not be ignored in the midst of a situation that law enforcement officers have not changed much.

Based on all description above, the author believes that the eradication of corruption in Indonesia generally and pda pda in North Sulawesi in particular, requires a strategy that puts the integrity of state officials both personally and institutionally supported by community participation. State administering agency is a structure consisting of individuals as an integral part of the state administering agency so that discussion of the eradication of corruption can not be separated from the discussion of the integrity of the organizers of the State.

Organizers of the State apparatus is part of the system of the country in which the larger environment of the host country authorities are State institutions. In regard to the relationship between the Host Country and as host Country lembaga one theory that investigators are using as a reference is from Anthony Giddens's theory of structuration. He argued that the structure and agency are two different things but is unity (duality), which we can't learn them separately from each other. Through its activities it can create awareness and the structural conditions, so that all activity can take place. Not have been possible without the agency structure, and vice versa, will not be mutually dependent structures would be created if no individual.

Basic concepts of this theory lies in thinking about the structure of the system, and the double nature of the structure. The structure is not a reality that is outside actors, but it is the rules and resources that manifests itself when activated by actors in a social practice. Thus, not only the structure of the curb (constraining) or limit what can be run perpetrator, but also gives the possibility (enabling) the occurrence of social practices.

Out of view of the above and the organizers of the state is part that cannot be separated with institutions and ways of thinking, organizers of the state manner of behaving and ethics an apparatus organizers of the state to be determined by the integrity of an institution organizers of the state both internally and externally. Hence, researchers views that efforts to pemberantasan corruption conducted in penal and nonpenal by involving three the principal actor, that is personal, the organizers of the state and society and eradicating corruption can only be done if the three are in a single entity that are integral supported by legislation implementer be included in the integrity of the country. The concept of corruption eradication the researchers does in the wrap-up sevgai a circle integrity who moves from individual to society or author call as *the circle of integrity*.

An action is legal if in accordance with the regulations. Legality is conformity to law applicable and is one of the possibilities for criteria the validity of the chair. The legalities could only memperbandingkan an action with the prevailing law. A law can be checked legalitasnya checking the conformity with the norm of law between concrete underlying judgments about legality a power acts shall be established by the legal department that determines the procedure of making law. Pendasaran political authority on legality is a regressus and infinitum (backward and without end) due to the positive law underlying legality always should be based on a positive law again. In other words, the most fundamental legitimacy cannot be based on the determination of positive law.¹

Depart from the idea above, it takes the form of ethical legitimacy. The ethical questioning of the legitimacy of authority the legitimacy of political power in terms of moral norms. Legitimacy appear in a context that any act of the State legislature and the Executive should be viewed in terms of morals and in accordance with the demands of a just and civilized humanity

IV. CONCLUSION

The strategy for the eradication of corruption can be done on the legal substance, namely to revise the existing weaknesses in the substance of the legislation law of the eradication of corruption, setting the action in the form of illicit enrichment (impoverishing corruptor), he clarity of the arrangement of the Reversal Burden of Proof system. The element of legal structure related to political will through the mechanism of the selection state, organizers apparatus leadership mandate, coordinating, synchronizing the authority of law enforcement agencies. Elements of the legal culture through the establishment of standardized behavior and operational standards of service as well as to strengthen the role of the community in the eradication of corruption.

Substantially, the necessary revisions to the Law on Corruption Eradication, especially with regard to the provisions concerning unlawful. In addition to expanding the range and the Civil Judge, accommodate illicit enrichment, setting back the special minimum punishment. The law required the establishment of a culture needs to be done to provide education to the community either through socialization or the strengthening of participation. Thus, corruption eradication strategies must be sought first cause, then the cause of it is removed by means of prevention, followed by education (raising awareness of law) society accompanied by repressive measures.

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¹ *Ibid.*

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