**The Role of Special Corruption Court toward**

**the Law Enforcement for Corruptors**

**(Analysis of Law no. 46 of 2009 on the Corruption Court**)

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**Abstract :** The Corruption Court was a judiciary dealing with corruption which did not stand under the Supreme Court, but the corruption court was a special court in the general court. The law enforcement effort was conducted by establishing an independent judiciary in handling cases especially corruption case so that the judiciary could act according to the right corridor and the ruling intervention could be eliminated. Based on the ideology of Pancasila, justice should not be distinguished by social, economic, political, ideological, ethnic, racial, religious, color, and gender background. Judges as law enforcement officers in the judiciary had a significant role in their efforts to combat corruption. The role of the judge not only gave a sanction to the corruptors but also provided a deterrent effect for those violators of the law.Regarding its relationship with the eradication of corruption crimes, preventive measures are needed to prevent the incidence of non-criminal corruption, such as counseling and legal information, even a new method for Indonesia. It is common for other countries to be introduced, level of investigation as well as on the level of criminal execution. Moreover, also required awareness of community law, which awareness of this law is also at the same time the goal of law enforcement of corruption. Establishment of community awareness that supports the success of the enforcement efforts of corruption criminal acts, little or much influenced also by the understanding of the law is not criminal corruption, little or much also influenced by the legal understanding by the community about the law itself.

**Keywords :** Corruption Court, Law Enforcement, Corruption

# INTRODUCTION

Corruption had become a slowly emerging disease that could bring destruction to the State's economy. Admitted or not, corruption practices that occurred in this nation had caused many losses. Not only economics, but also in politics, socio-culture, and security[[1]](#footnote-2). Corruption was one of the significant problems in Indonesia, even chronic. Corruption in this country had even penetrated in all lines of life like an octopus. This deviation had entered into the agencies, and it was not inconceivable that there was corruption there[[2]](#footnote-3). According to etymology or language, “corruption came from corruption or corruptus, and in the older Latin term used corrumpere. From the Latin, it went down to various languages of the nations of Europe, as in England: corruption, corrupted; France: corruption; and Dutch: corruptive or corruptive, and then in Indonesia: korupsi.” The meaning of that word was rottenness, ugliness, depravity, dishonesty, bribe, immorality, deviation from sanctity[[3]](#footnote-4). The presence of the Corruption Eradication Commission (CEC) and Corruption Court to prove that corruption was not just a normal criminal offense. The modes and proofs were complex. The perpetrators were the ones who became actors of power (political oligarchic) and also entrepreneurs. A standard explanation of Law No. 30 of 2002 on the Corruption Eradication Commission even explicitly explained that: The criminal act of corruption could no longer be classified as an ordinary crime, but it had become an extraordinary crime. Similarly, in its eradication efforts, it could no longer be done regularly, but in exceptional ways[[4]](#footnote-5).

The fresh breeze was blowing toward the eradication of corruption after the presence of the Corruption Eradication Commission and the Corruption Court. The existence of the Corruption Court indeed could not be separated from various challenges. The beginning of the establishment of a Corruption Court could be regarded as a new hope in efforts to eradicate corruption as mandated by Law No. 30 of 2002 on Corruption Eradication Commission. The provisions of Article 53 stated that: With this Law, the Corruption Court has the duty and authority to examine and decide the criminal act of corruption whose prosecution had been filed by the Corruption Eradication Commission. The hope remained there until the issuance of the decision of the Constitutional Court Number 012-016-019 / PUU-IV / 2006 which opens a new phase of a transitional court of corruption.

 The special court was not a new thing in the Indonesian justice sector. Recorded at least two special courts ever stood before the entry of reform era, namely the economic court (Emergency Law No. 7 of 1955) and Law no. 3 of 1997 concerning on the juvenile court (as already amended by Law No. 11 of 2012 on the Criminal Justice System of the Child ). After the entry of the reform era that began with the monetary crisis, special courts began to be established.

The first special trials of this era were the commercial court, which was governed by Government Regulation no. 1 of 1998. It was enacted by Law no. 4 of 1998, Tax Court (Law No. 14 of 2000), Human Rights Court (Law No. 26/2000), Corruption Court (Law No. 46 Year 2009), Industrial Relations Dispute Settlement Court (Law No. 2 Year 2004) and the last one was Fishery Court (Law No. 31 Year 2004). The authority of the court of corruption ("Corruption Court") was governed in Article 6 of Law no. 46 Year 2009 on the Corruption Court ("Corruption Court Law"), which stated as follows: The Corruption Court as referred to in Article 5 was authorized to examine, heard, and decided cases:

1. The criminal act of corruption;
2. The crime of money laundering whose original criminal offense was from a criminal act of corruption; and/or
3. Criminal acts explicitly stated in other laws and defined as criminal acts of corruption.

The transitional period of the Corruption Court occurred when the Constitutional Court (CC) granted the petition for judicial review of Law No. 30 of 2002 stating that Article 53 of the Corruption Eradication Commission Law which regulated the Corruption Crime Court was contradictory to the 1945 Constitution. The Constitutional Court ruling has ordered that the court of corruption be regulated by a separate law separated from Law no. 30 of 2002. Nevertheless, the Constitutional Court declared that the provisions of Article 53 still had a binding legal force until a change was made within 3 (three) years since the decision was pronounced[[5]](#footnote-6).

The three-year deadline was aimed at the process of drafting a new law by the government and the People's Legislative Assembly. After the enactment of Law no. 46 of 2009 on the Corruption Court, the problems associated with the practice of the courts of corruption began to emerge. The issue of the establishment of a Corruption Court in the region started to arise, such as budget, infrastructure, up to the quality of the judge's decision. The judgment of Corruption Court judges in some areas freed the defendants of corruption criminals which must have shocked the public and became the attention of some people including anti-corruption activists. Free verdict for defendants of corruption almost never happened when Corruption Court in Jakarta still handled the Corruption Court. Observers and lawyers also gave opinions which criticizing the decisions. Some suggestions were proposed, for instance, suggesting that the Corruption Court should be returned to the center, freezing Corruption Court in the region for a while to be evaluated, even there were also public officials who provided extreme advice to dissolve the Corruption Court in the area for failing to prosecute perpetrators of corruption.

# THEORIES

Corruption is a symptom of a community that can be found in any name. History proves that almost every country is faced with corruption. A person's financial dishonesty often enhances corruption. The terms corruption in some countries such as "gin moung" (Muanthai), meaning "eat the nation", "Tanwu" (Chinese) meaning greed of greed, "oshoku" (Japanese) meaning "dirty work". The literal meaning of corruption is rottenness, ugliness, depravity, dishonesty, bribery, deviation from sanctity, insulting or slanderous words. In Indonesian, the word corruption is a bad deed like embezzlement, receipt of bribes and so on.

With the enactment of Law Number 31 Year 1999 and renewed by Law Number 20 Year 2002, Law Number 3 Year 1971 on Eradication of Corruption Crime is no longer compatible with the development and legal requirement in society. Therefore the existence of the new law is expected to be more effective in preventing and eradicating Corruption Crimes that are alive and running systematically. In Law Number 31 Year 1999 there are several formulations of corruption offense formulated, as described in the explanation of the law as follows;

- "In this Law, Corruption is explicitly defined as a formal criminal. This is very important in the proof. With this formulation, although the corruption result has been returned to the state, the perpetrators of corruption will still be brought to justice and remain convicted ". Delik corruption is described in this law in Chapter II on Corruption and Chapter III on other criminal offenses related to criminal acts. Chapter II consists of Articles 2 to 20 and Chapter II consists of Articles 21 through 24.

If there are acts of corruption not covered in formal representation, then the perpetrator (suspect) cannot be brought before the judge, on the grounds as contained in Article 1 of the Criminal Code. It states that " nothing can be criminalized except on the strength of the existing criminal code of legislation before the act is committed. It is difficult for the investigation and prosecution but instead makes it easier for judges to prove.

- Any person who unlawfully commits an act of enrichment of himself or another person or a corporation that may harm the state's financial or state economy (Article 2 paragraph (1) of Law No. 31 of 1999).

Formulation of Corruption by Article 2 paragraph (1) of Law no. 31 Year 1999 is any person (individual or corporation) that fulfill the element of the article. Thus, the perpetrators of the Criminal Act of Corruption under this article are "everyone," there is no mandate of the Public Servant. So, it can also be done by people who are not status as civil servants or corporations, which may take the form of legal entities or associations.

The elements of Article 2 paragraph (1) of Law no. 31 Year 1999 are:

a. Unlawfully. The meaning of "unlawful is to include a formal understanding of the act of lawlessness or material. The law against materially means that even though the act is not regulated in legislation, it is against the law if it is deemed disgraceful because it is inconsistent with the sense of justice or the norms of social life in society, as opposed to customs, customs, moral, religious values ​​and so forth, then the action can be punished.

Komariah Emong Saparadja, stated briefly the teaching against the formal law is that if an action has been to match all the elements contained in the formulation of a crime, the act is a crime. If there are justified reasons, then the reasons are also explicitly stated in the law. While the material doctrine says that besides fulfilling the formal requirements that are to match all the elements contained in the formulation of the offense, the act must be felt by the public is an act that is inappropriate and despicable. Hence this doctrine recognizes justifications outside the law.

# DISCUSSION

## The Authority of the Special Corruption Court on the Prevention of Corruption

Explanation of article 27 paragraph 1 of Law no. 48 of 2009 on Judicial Power explained what was meant by special courts: "Special Courts" in this provision were juvenile Courts, commercial courts, human rights courts, Corruption Courts, industrial relations courts and fishery courts located within the general judiciary, as well as tax courts within the administrative court of the state.

Based on the explanation above, it was known that Law no. 4 of 2004 on Judicial Power did not define what was meant by a special court, but only provided the examples of the special court itself. Some of the courts mentioned were special courts established before Law no. 27 of 2009 was enacted. Juvenile Court was regulated by Law no. 3 of 1997 on Juvenile Court (as already amended into Law no. 11 of 2012 on the Child Criminal Justice System), The Commercial Court was regulated by Government Regulation no. 1 of 1998, Human Rights Court was regulated through Law no. 26 of 2000, Law no. 2 of 2004 regulated the Industrial Relations Court and Law no. 14 of 2002 regulated the Tax Court. Two other equations related to "special" courts, namely the existence of special judges with special competence.

Philosophically the drafting of Corruption Court Law as a Special Court was based on the following three considerations:[[6]](#footnote-7)

1. The establishment of the Corruption Court with the presence of particular judges who had the expertise was intended that in the future, corruption cases. It related to the procurement of goods and services, land, taxes and associated with the destruction of natural resources, could be examined and prosecuted professionally and objectively and not always depended on the information of the so-called Experts. The existence of an ad hoc judge in a Corruption Court was expected to dismiss the concerns of the panel of judges influenced by expert opinion without attempting to be critical. Law no. 8 of 1981 on Criminal Law stated that in the imposition of a criminal, a judge's verdict must be based on at least two evidence which led to his conviction that the suspect was guilty.
2. The United Nations Convention against Corruption (UNCAC), which had been ratified through Law No. 7 of 2006, was a commitment of the Indonesian government regionally and internationally to prevent and eradicate corruption, both in public and private sectors. One of the goals of reform in the field of corruption prevention based on that convention was the reform in the field of legislation. In the field of judicial power, the reform of the Judicial Authority law, the Supreme Court Law and the General Court Law had been implemented. However, general legislation reforms were inadequate so that in the object of certain cases and concerning certain legal subjects still required reforms both structurally and functionally. One of the reforms was the establishment of a Special Court for Corruption Crimes.
3. The Reform in the field of judiciary, especially about corruption was driven by a growing number of corruption cases in Indonesia. It covers enhancement and involvement of all elements of State organizers (executive, legislative and judicial) on the one hand, and on the other hand, the level of public confidence in the career judges was declining. This condition required special handling through the assistance of ad hoc (non-career) personnel besides the career judges.

According to data from the Supreme Court[[7]](#footnote-8) in the 2010 and 2011 Final Reports, the following data were found: In 2010 in the Corruption Court, at the Central Jakarta District Court. There were 32 cases, the remaining cases in 2009 were 12 cases so that the number of cases handled in 2010 was 44 cases. The number of cases in 2010 decreased to 51, 56% from 2009 which received 64 cases. From the whole cases during 2010, it successfully decided 34 cases. The rate of settlement of corruption cases in Central Jakarta was 79.07 %. In 2011, cases received by 33 Corruption Courts were 872 cases; the rest of the cases in 2010 was 392 cases, so the number of cases handled during 2011 was 1,264 cases. From all the cases handled, the Corruption Court had decided 466 cases (63,13 %).

After the Constitutional Court Decision No.012-016-019 / PUU-IV / 2006 which stated that article 53 of Law no. 30 of 2002 was contrary to the constitution; then the corruption case could not be examined in two different courts namely the Jakarta Corruption Court and the general court. The establishment of the Corruption Court as a court that had the competence to review the Corruption cases was motivated by the spirit of reform to eradicate the widespread corruption in Indonesia. It was reflected in Law no. 30 of 2002 on the Corruption Eradication Commission. In 2006, through the decision of the Constitutional Court Number: 012-016-019 / PUU-IV / 2006 on December 19th, 2006 the establishment of Corruption Court in Law no. 30 of 2002 was declared contradictory to the 1945 Constitution.

The establishment of the Corruption Court should be established by a special law separate from Law no. 30 of 2002, thus Law no. 46 Year 2009 on the Corruption Court would be established. The Corruption Court must have been formed in 33 provinces in Indonesia by the end of 2011. Thus, in early 2012 there should have been 33 regional Corruption Courts. The sharp spotlight from the public began to emerge when some Corruption Courts in the district decided to release some defendants of corruption. Since then, the public had questioned the usefulness of Corruption Court establishment in the regions which showed clearly that there was something wrong in the judicial process[[8]](#footnote-9).

Some experts argued to evaluate the existence of a Corruption Court related to some of the accused's free decisions and allegations of bribery by some corruption judges in the region. Based on interviews with the deputy director of LeIP, this was a consequence of the Constitutional Court's decision in 2006.

## The Efforts to Prevent Corruption in Indonesia

Corruption was a very extraordinary crime as well as a crime that was difficult to find its perpetrators (crime without offenders) because corruption was in an area that was difficult to reach. Why was that, because corruption was said to be an invisible crime that was very difficult to obtain the evidence, where the mode of operation was systematic and congregational[[9]](#footnote-10).

Satjipto Rahardjo said that the prevention and eradication of corruption were not enough done conventionally, but it must be done in a different way and beyond the prevalence of other crime countermeasures[[10]](#footnote-11). One of the efforts that could be done was to compliance the law to play a role in creating controls to prevent the results of corruption to be enjoyed by corruptors; also, this effort was a form of asset recovery (securing assets ).

Andrew Haynes said that the new paradigm in tackling crime could be done by eliminating the lust and motivation of criminals to commit crimes, by preventing him from enjoying the outcomes or results of his crimes. Because the crime result was the blood of the crime, meaning that the crime result was the blood that fed the criminals as well as the weakest point of the most easily detected crime chain[[11]](#footnote-12).

The efforts to cut this crime chain were relatively easy to do, and it would also eliminate the offender's motivation to commit a crime because the purpose of the criminal to enjoy the proceeds of his crime was hindered. Law no. 8 of 2010 on the prevention and eradication of money laundering crime (further to be written as the Law of TPPU) was a new paradigm in preventing and combating crime through the principle of following the money. It followed the money of disguised crime to be made as if the money was a legitimate result, easy to detect and trace, even to the intellectual actor. Also, the TPPU Law can penetrate bank secrecy, where at this time the perpetrator always used the financial system like a bank in doing the crime transaction, at least in keeping the proceeds of his crime to be safe for a while.

Principles contained in the Law on TPPU could be used as an instrument in preventing and combating corruption. Although the Law on TPPU could be regarded as a special preventive and eradication law on money laundering only, more deeply, this law prevented and combated other crimes as regulated in Article 2 of the Law on TPPU. The object of the crime of money laundering was derived from the original criminal acts such as the proceeds of the property.

Eradication of Corruption through the implementation of money laundering law must be done seriously by prioritizing the principles of criminal law as an integrated policy. It means that not only something which was fragmentary, partial and repressive but also must be pursued in the direction of negating or overcoming and improving the overall causation and conditions that became criminogenic factors for the occurrence of corruption. So an integral strategy was needed[[12]](#footnote-13).

If the money laundering formula were examined, then two types of the criminal act would be illustrated, i.e., crimes that generate illicit money such as corruption and money laundering. Both types of criminal offenses could raise questions within the evidentiary system, whether the act of corruption should be proven first, so that money from laundered corruption could be classified as a money laundering.

The qualification of money laundering crimes was defined as the placement of assets known or reasonably suspected to be the proceeds of a criminal offense to the financial services provider, either on his behalf or behalf of others. Under this provision, the act of corruption was not necessary to be proved in advance, directly by the knowledge or the allegation that the illicit money was derived from an act of corruption if sufficient initial evidence existed[[13]](#footnote-14).

Many people said that corruption in Indonesia had been entrenched, and lasted for generations. One of the people who said that was the proclaimer of our nation, Bung Hatta. The phenomenon of corruption had become a behavior, not only in the bureaucracy but also in the business sector, the private sector, even in all members of society. If this were left alone, it would be difficult to eradicate it, because almost all members of society had been involved in it, either as a giver, receiver or requester of bribery[[14]](#footnote-15).

The accumulation of wealth to a group of ruling elites had occurred since long time ago. Examples of this custom were tax payments to rulers such as kings and royal knights, or commonly known as the noble class. The kings and nobles had to live on an individual level more than ordinary people. They might impose a tax on his behalf, and it was permissible at that time[[15]](#footnote-16).

Sociologically corruption was related to the sociological power. Corruption was a deviation from power. Power allowed a person or a group to pursue a goal, and limited other people or groups to have choices or determine their attitudes. This power could be run without authority which was undoubtedly against the law. This corruption could be put into the category of power without the rule of law because there was always a presumption of the use of power to achieve a goal other than the purpose stated in that power. But not all the power without the rule of law was corruption because such power could be derived from patriotism. Power without the rule of law was an injustice; sometimes it was a result of corruption[[16]](#footnote-17).

# CONCLUSION

The Corruption Court was established under Law no. 30 of 2002 on the Corruption Eradication Commission namely in article 53 where the Court of Corruption was a Special Tribunal in the general court, handling corruption cases. The purpose of the establishment of the Corruption Court was:

1. To realize law and justice for justice seekers by the provisions of the amendment of the 1945 constitution of the Republic of Indonesia. The provision was the main basis for establishing the court in Indonesia.
2. The establishment of the Corruption Court should be based on the basic principle of independent judicial authority as stipulated in Law Number 48 Year 2009.
3. As part of the legal system, the establishment of the Corruption Court was to meet the need for legal certainty to support other legal systems.
4. The alignment is the direction and design of legal and judicial reform under the Supreme Court. If there were no any alignment, then the Corruption Court would run outside of the existing system, and its effectiveness would be in doubt.
5. The results of a comprehensive review of the level of needs above involved various parties including the Supreme Court and the Community.

To combat corruption in the judiciary, one of its efforts was to establish a Corruption Court (Tipikor). In the Corruption Court (Tipikor) the judicial process was the same as the Criminal Court, but there were different elements in the Corruption Court (Tipikor). In the Corruption Court (Tipikor) acting as the public prosecutor was the Corruption Eradication Commission ( CEC)). Based on Law no. 6 Letter c of Law Number 30 of 2002 and State Gazette of the Republic of Indonesia of 2002 Number 137 on Corruption Eradication Commission stated that Corruption Eradication Commission (CEC) had the duty and authority to conduct an investigation, and prosecution of corruption in the Corruption Court (Tipikor).

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7. ICW Study Results on free verdicts against corruption defendants in the General Courts. <www.antikorupsi.org [↑](#footnote-ref-8)
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