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# The 2nd Proceeding "Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"



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# AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL JUSTICE SYSTEM IN INDONESIA

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## ABSTRACT

Investigation of corruption, requires special provisions nonscheduled general criminal law. Investigation of corruption that were previously carried out by the police or the prosecutor's office, it turns out in practice raises legal issues at the level of implementation. Therefore, the establishment of the Corruption Eradication Commission (KPK) is going forward in the study referred to by the Commission through Act No. 30 of 2002 as an independent agency is expected to help accelerate the eradication of corruption in Indonesia. Establishment of the Commission resulted in differences in investigation and prosecution of corruption, has been authorized to investigate the criminal acts of corruption only at the police investigators and prosecutors, now compounded one another institution which has the authority investigation in Indonesia, namely the Commission.

Investigator Police authority in the investigation of corruption offenses based on Law No. 8 of 1981 on the Law of Criminal Procedure Code and Law No. 2 of 2002 on the Police, while the authority of the Attorney Investigator by the Criminal Procedure Code and the Law No.16 of 2004 on the Prosecutor and Law No. 28 of 1999 on Corruption, Collusion and Nepotism and Act 8 of 2010 on Money Laundering. KPK investigators and the authority under the Act No. 30 of 2002 on Corruption Eradication Commission .

Giving investigative authority at 3 above institutions (police investigation, prosecutor investigators and the KPK investigators) turned in its implementation raises several issues, among others, 1) differences in interpretation of the respective authorities of investigating corruption, 2) the willingness of the parties to protect fellow colleagues who indicated to corruption, 3) lack of coordination among the three agencies authorized to conduct the investigation corruption itself. This could hamper the acceleration of the eradication of corruption in Indonesia.

Therefore it is necessary to do further research to find a model investigation of corruption are ideal to be applied in the Indonesian criminal justice system, which is expected to be able to help accelerate the eradication of corruption itself

**Keywords : Authorities, Investigation of Corruption, the Criminal Justice System  
Indonesia**

## A. INTRODUCTION

Corruption is no longer perceived as something that only financial harm and / or economy of the country, but has rightly seen as something that violates the rights of the social and economic communities as part of human rights. Therefore, there are enough rational reason to categorize corruption as an extraordinary crime (*extraordinary crime*), so its needs eradication to be done in ways that extraordinary (*extra ordinary measure*) and using the legal instruments of the extraordinary (*extraordinary instrument*). Tyhe ways remarkable that later in the policy and laws manifested in the provisions of exceptional nature deviate from the general rule of criminal law, including in the field of investigation.

The probe is the most decisive stage in the operation of an integrated criminal justice system, without going through the stages of the investigation the next stages in the process of criminal justice that the prosecution stage, the hearing before the court and the implementation phase of the criminal verdict can not be implemented. Investigation of corruption, requires special provisions nonscheduled general criminal law.<sup>3</sup> Investigation of corruption that were previously carried out by the police or the prosecutor's office, it turns out in practice raises legal issues at the level of implementation.<sup>4</sup>

Therefore, the establishment of the Corruption Eradication Commission is going forward in the study referred to by the Commission (KPK) through Act No. 30 of 2002 as an independent agency is expected to help accelerate the eradication of corruption in Indonesia. Establishment of the Commission (KPK) resulted in differences in investigation and prosecution of corruption, has been authorized to investigate the criminal acts of corruption only at the police investigators and prosecutors, now compounded one another institution which has the authority investigation in Indonesia, namely the Commission (KPK).

Based on the article, this study investigated the problem that will be limited to the following formula:

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Elwi Danil, *Korupsi Konsep, Tindak Pidana dan Pemberantasannya*, PT Radja Grafindo Persada, 2011, hlm 76

Teguh Sulistia, Aria Zurnetti, *Hukum Pidana Horizon Baru Pasca Reformasi*, PT. Radja Grafindo Persada, Jakarta, 2011, hlm 88-89

Marulak Pardede, Ahli Peneliti Utama Bidang HukumBadan Pembinaan Hukum Nasional, Kementerian Hukum Dan HAM-RI, Sumber : *Harian Republika*, hlm 8, 14 Februari 2012

1. How is authorized to investigate corruption in the criminal justice system in Indonesia?
2. What are the problems arise with the existing pattern of investigation in the criminal justice system of Indonesia is currently on the agenda accelerated eradication of Corruption?

## **B. DISCUSSION**

### **1. The authority of the Corruption Investigation Criminal Justice System In Indonesia**

The authority is a set of rights attached to the office or an official to take the necessary measures so that work responsibilities can be done well : the rights and powers; jurisdiction; authority. There is a difference between understanding the powers and authority. We must be able to distinguish between (*authority, gezag*) of the powers granted by the authority (*competence, bevoegdheid*). It is called formal power. The power that comes from the powers granted by the Act or the legislative from the executive or administrative. Therefore, is of a particular group of people or power against a field of government or certain government affairs are unanimous. While the "authority" only of a "*onderdeel*" (parts of) certain of the authority. Authority in the field of judicial authority or prosecuting authority should be referred to the competence or jurisdiction although in practice the difference is not always perceived need.<sup>3</sup>

The authority of each sub-system in the criminal justice system is crucial at all in the context of law enforcement, especially on corruption, so that legal certainty and proportionality law can be achieved, because in the judicial system contained motion systemic subsystems support (police, is a unity (*totality*) seeks to transform the input (*input*) into outputs (*output*) the objectives of the criminal justice system that seeks resocialization of the perpetrator (short term), the prevention of crime (medium term) and social welfare (long-term). for that we need the certainty the law on each authority subsystems within the criminal justice system, especially in investigations on corruption.

Andi Hamzah, *Kamus Hukum*, Ghalia Indonesia, Jakarta, 1986, hlm 633

If the integration of their respective authorities sub-systems within the criminal justice system did not materialize, the public may assume that the criminal justice system causes crime let alone a criminal offense corruption.<sup>3</sup>

As for how to obtain the authority of government organs, according H.D Willem van Wijk and Konijnenbelt are:

- a. *Attributie: toekenning bestuursbevoegheid door een van een aan een wetgever bestuursorgan (attribution is the provision of government authority by lawmakers to the governing organs).*
- b. *Delegatie: overdracht van een van het ene bevoegheid bestuursorgan aan een ander (delegation is the delegation of government power from one organ to other government organs).*
- c. *Mandate: een bestuursorgan laatzijn bevoegdheid namens hem uitoefenen door een ander, (mandate occurs when the organ of government permitting authority is run by another organ on its behalf).*

Furthermore, in relation to the authority, the source of authority to determine who is responsible for the acts of the government, especially with regard to job responsibilities regarding the issue of legality. "<sup>3</sup> The source of authority in Administrative Law, namely (a) Attribution (attached to a position, both granted by the Constitution (UUD) and legislation), (b) delegation (delegation of authority by an organ of government to other parties who carry out these powers on its own responsibility, and (c) the mandate (authorizing the implementation of the other organs to act on behalf of the mandate) ,Based on the above it can be seen that the source of authority of the Commission investigation, the police and prosecutors in the investigation of corruption is attribution because it comes from the Law (Law Commission (UU KPK), the Police Act(UU police), the Attorney Act (UU attorney), the Act Number. 8 of 1981 on Criminal Code(KUHAP)).

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Sahuri Lasmadi, *Op.Cit*, hlm 19

Philipus Mandiri Hadjon, *Kaitan Hukum Administrasi dan Tata Naskah Dinas*, Universitas Airlangga Surabaya, 1997, hlm 1

The probe according to Article 1 paragraph 2 Criminal Code (KUHAP) is a series of actions the investigator in the case and in the manner set forth in this law to find and collect evidence with evidence that shed light on the crime happened and to find the suspects. While investigators under section 1 point 1 in conjunction with Article 6 of the Criminal Procedure Code (KUHAP) is a police officer or official of the Republic of Indonesia of certain civil servants are given special authority by the Act to conduct investigations.

Investigation on corruption, starting with a look at the provisions of Article 26 of Law Commission (UU KPK) to Article 39 paragraph (1) of the Law Commission (UU KPK) which stipulates that "Any inquiry, investigation, and prosecution of corruption carried out by criminal procedural law applicable, unless otherwise specified in the enactment this Act ". Criminal procedural law applicable, in the second chapter of the course of criminal procedure that apply to judicial authority to check corruption, the General Courts, Law Number. 8 of 1981 (Criminal Code/KUHAP) and the Military Courts, the procedural law of Law No. 31 of 1997. Thus if it is associated with other excluded sentence in this law, then the legal basis for an investigation, investigation, prosecution and examination before the court on corruption cases are:

- a. Law Commission (UU KPK)
- b. If there are no regulations governing the Law Commission (UU KPK) then used the provisions of the Law on corruption
- c. If there is no provision in the Act that govern corruption, then used existing provisions in the Criminal Code (KUHAP) or the Act. No. 31 of 1997 (military procedural law) in accordance with absolute competence.

Whereas the authority of the Prosecutor to conduct an investigation based on the similarity of the wording of Article 26 of Law Commission (UU KPK) above in conjunction with Article 3 of Law Number. 3 of 1971, by which time the enactment of Law Number. 3 In 1971, on the basis of ketentua in Article 284 paragraph (2) Criminal Procedure Code (KUHAP) and also on some of the decisions of the Supreme Court (as the Decision of the Supreme Court dated July 2, 1987 No. 563 K / Pid / 1987 with the defendant Drs. Widodo Sukarna and Ir. Rudi Pamaputera in the case Arthaloka, Supreme Court Decision No. 255 K / SPID / 1995 dated September 29, 1995 with the defendant Edd Tanzil, Attorney does have the authority to conduct

criminal investigations of corruption. this is confirmed in Article 18 paragraph (3) of the Act No. 28 of 1999 on the Implementation of the State which is clean and free from corruption, collusion and nepotism which states that:

If the results of the examination referred to in paragraph (1) were found indicative of corruption, collusion and nepotism, the results of the examination submitted to the relevant authorities in accordance with statutory provisions that apply to actionable. Agencies authorized herein according to the explanation of Article 18 paragraph (3), which is the authorized agency is the State Audit Agency and Development, the Attorney General and the Police. This is confirmed in Article 50 paragraph (2) Commission Code (UU KPK) which confirms that the investigation conducted by the Police or the Attorney referred to in paragraph (1) shall be conducted continuously coordinating with the Corruption Eradication Commission. This authority was reaffirmed in Article 30 paragraph (1) of Law No. 16 of 2004, hereinafter referred to as Law Attorney RI, which states that: "In the field of criminal, the prosecutor has the duty and authority ... d. conduct investigation on certain criminal offenses under the Act ", which in his description mentions" the authority referred to for example in the law of corruption.

Authorized to investigate corruption in Indonesia is currently at 3 agencies or law enforcement institutions, namely:

- a. Police pursuant to Act No. 8 of 1981 on the Law of Criminal Procedure Code (hereinafter in this paper called the Criminal Code (KUHP)) and Law No. 2 of 2002 on the Police (hereinafter the Police Act)
- b. Attorney by the Criminal Procedure Code, Law 16 of 2004 on the Prosecutor (hereinafter referred to as Law Attorney) and Law No. 28 of 1999 on Corruption, Collusion and Nepotism (KKN hereinafter referred to as the Act) and Act 8 Years 2010 on Money Laundering (hereinafter referred UUPU)
- c. KPK based on Law No. 30 of 2002 on combating Corruption Commission (hereinafter referred to as Law Commission (UU KPK))

Namely the authority of the Commission (KPK) as stipulated in Article 11 and Article 50 of Law No. 30 of 2002:

Article 9 of the Law Commission (UU KPK) states:

"Takeover investigation and prosecution as referred to in Article 8, conducted by the KPK on the grounds: (a) the public reports regarding corruption were not followed up, (b) the handling of corruption is protracted or delayed without reason can be accounted for, (c) the handling of corruption aimed at protecting the perpetrators of corruption are true, (d) the handling of corruption cases containing elements of corruption, (e) barriers to the handling of corruption because of the interference of the executive, judicial, or legislative; or (f) any other circumstances which in the judgment of the police or the prosecutor's office, the handling of corruption cases difficult to implement properly and can be responsible "

In addition to the authority to take over corruption cases, there are other things under the authority of the Commission (KPK), namely as provided for in Article 11 and Article 50 of Law No. 30 of 2002, which stipulates that:

"In carrying out the tasks referred to in Article 6 letter c, the KPK is authorized to conduct an inquiry, investigation, and prosecution of corruption offenses: (a) law enforcement officials, state officials, and others in connection with a corruption case conducted by law enforcement officers or state officials; (B), got the attention of disturbing the public; and / or, (c) concerning the state losses of at least Rp. 1,000,000,000.00 (one billion rupiah) ".

Exemption from the provisions of Article 11 can be seen setting in article 50 of Law Commission asserted that:

"Paragraph (1): In the case of a corruption case and the KPK has not conducting an investigation, while the case has been conducted investigation by the police or prosecutors, the agency shall notify the Corruption Eradication Commission no later than 14 (fourteen) working days date of commencement of the investigation.

Paragraph (2): The investigation conducted by the police or prosecutors as referred to in paragraph (1) shall be conducted continuously coordinating with corruption Eradication Commission. Paragraph (3) In the case of the Corruption Eradication Commission has begun an investigation as referred to in paragraph (1) , the police or prosecutors no longer authorized to conduct an investigation. Paragraph

(4) In the case of investigations carried out simultaneously by the police and / or prosecutor's office and the Corruption Eradication Commission, investigations conducted by the police or prosecution is stopped immediately ".

## **2. The Problems Appears With Pattern Investigation of Existing Criminal Justice System In Indonesia Current Acceleration Agenda Against Corruption Eradication**

Dualism investigative authority of the Corruption among police with prosecutors, before the Commission formed already implications juridical, where a defendant who has been convicted of Corruption could not be convicted because the investigation criminal acts committed by police investigators, this would obviously hamper the process of resolving the corruption cases that own. Especially with the three agencies and institutions alike have the authority to conduct investigations against Corruption.

Although both have the authority to order an investigation into corruption, the fact that the performance of the Commission to look more aggressive and menornjol in eradicating corruption compared with the investigator the other, it is because the Commission has the additional powers that can take over corruption cases despite being handled by the police or the Prosecutor (Article 8 (2) of Law No. 30 of 2002) however, the takeover of corruption cases should be on the grounds set out in Article 9 of Law No. 30 of 2002. in addition to the authority to take over corruption cases, there are things another became

Authority of the Commission so large as described above constitute a risk to the existence of the Commission itself, it is seen with the emergence of the desire of some in the House of Representatives (DPR) RI to the weakening of the duties and authority of the Commission by the parties who feel threatened by the performance of the current KPK this. Some of the authority of the Commission to be reduced by the House of Representatives (hereinafter referred to as the House of Representatives), through the revision of the KPK Law:

- a. Law Commission on the current, authority of the Commission is to conduct an inquiry, investigation, and prosecution of corruption cases. Interlocking revised DPR by removing prosecutorial powers of the KPK. Prosecutorial powers will be returned to the AGO
- b. The Commission may suspend the case through a letter of Termination of Investigation (SP3). During this time at the Commission are not known SP3
- c. The Commission may suspend the case through a letter of Termination of Investigation (SP3). During this time at the Commission are not known SP3
- d. Authority of the Commission to tap complicated and limited. In the draft revision of the KPK Law stipulated that the leadership of the Commission to conduct wiretaps must ask permission prior written to the Chairman of the Court, a maximum of 1 x 24 hours after tapping begins. Tapping The longest lasted only three months, with an extension only once for the same period
- e. KPK will be monitored by a Board of Trustees appointed by Parliament<sup>3</sup>

On the other hand, there seizure of authority among all the agencies authorized to conduct investigations against corruption, this is caused by the lack of uniformity of interpretation of the statutory provisions that exist, overlapping regulation of authorities and legal uncertainty, or it could be due to conflicts of interest exist. It is as if to show the sort of seizure powers between the three institutions and agencies that are authorized to conduct investigations against corruption.<sup>3</sup>

It actually does not have to happen because the three agencies and institutions authorized to conduct these investigations already held a Joint Agreement Between the Prosecutor of the Republic of Indonesia, the Indonesian National Police, the

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<http://hukum.kompasiana.com/2012/09/30/inilah-kewenangan-kpk-yang-mau-dipangkas-dpr-497977.html>. Diakses, tanggal 17 September 2012.

Salahuddin Luthfie, Kewenangan Kejaksaan Dalam penyidikan Tindak Pidana Korupsi, *Tesis*, Fakultas Hukum, Pascasarjana Ilmu Hukum, Universitas Indonesia, 2011, hlm 41-43

Corruption Eradication Commission of the Republic of Indonesia Number: KEP-049 / A / JA / 03/2012, No. : B / 23 / III / 2012 and No. SP3-39 / 01/03/2012 on Corruption Eradication Optimization, which signed on March 29, 2012 at the AGO, which is the second part of the Corruption Case Management Article 8 states that:

- a. If the parties can conduct an investigation on the same target, to avoid duplication of investigation the determination of the institution has an obligation to follow up investigation is the agency earlier issued a warrant as a survey or upon agreement of the parties.
- b. Investigations conducted by the prosecution and the Police Department notified to the Commission, and its development is notified to the Commission no later than 3 (three) months
- c. Party KPK received a monthly submission activity recapitulation investigation conducted by the Attorney and the Police Inquiries and investigations of corruption by one party can be transferred to another party in accordance with the legislation, the first made his case, which was attended by the parties, the implementation was presented in the Minutes.<sup>3</sup>

Then in the case of offenses found hard proof can be done in teams under the coordination of the Attorney General<sup>3</sup>

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<http://news.detik.com/read/2012/08/04/093627/1983031/10/ini-mou-kpk-polri-soal-wewenang-penyidik-dikan-korupsi>. Diakses hari Senin tanggal 31 Desember 2012, Jam 16.00 WIB. Lihat juga Pasal 14 huruf m Perkapolri No. 14 Tahun 2011 tentang *Kode Etik Profesi Kepolisian Negara Republik Indonesia* yang menyatakan Setiap Anggota Polri dalam melaksanakan tugas penegakan hukum sebagai penyelidik, penyidik pembantu, dan penyidik dilarang menangani perkara yang berpotensi menimbulkan konflik kepentingan.

Pasal 27 UU No 31 Tahun 1999. Dalam penjelasan pasal dinyatakan, bahwa yang dimaksud perkara korupsi yang sulit pembuktiannya, antara lain korupsi di bidang perbankan, perpajakan, pasar modal, perdagangan dan industri, komoditi berjangka atau di bidang moneter dan keuangan yang bersifat lintas sektoral, menggunakan teknologi tinggi atau dilakukan oleh orang yang berstatus penyelenggara negara. Dalam praktik hampir tidak ada perkara korupsi yang sederhana pembuktiannya, misalnya kasus Bank Mandiri yang menggunakan rekayasa finansial canggih dan tidak mudah konstruksi yuridis serta pembuktiannya.

Kasus dimaksud Diantaranya : tindak pidana korupsi Pengadaan Simulator SIM di lingkungan Kepolisian RI (terjadinya rebutan kewenangan untuk melakukan penyidikan antara Penyidik Polri dan Penyidik KPK). Kasus Anggodo Widjojo. Kasus korupsi besar “disinyalir” melibatkan Komjen Pol Susno Duedji. Dalam rekaman KPK orang ketiga (Trunojoyo 3) Mabes Polri, sering disebut-sebut tersangka Anggodo. Orang ini pula yang memperkenalkan istilah “cicak melawan buaya”. Berujung kepada pengkriminalisasian pimpinan KPK (Bibit-Chandra) Ketua KPK Abraham Samad dianggap arogan memimpin KPK,. tatkala menetapkan tersangka Angelina Sondakh dan Miranda S. Goeltom [h.<http://www.negarahukum.com/hukum/dilema-penyidik-independen-kpk.html>](http://www.negarahukum.com/hukum/dilema-penyidik-independen-kpk.html). Diakses hari Senin tanggal 31 Desember 2012, Jam 14.10 WIB

Facts on the ground of late showing juridical implications that occur are problems in implementing authority among the three agencies and institutions authorized to conduct investigations of Corruption is in some cases.<sup>3</sup> As an example the case of the seizure of authority investigations of suspected corruption in the police procurement Sim Simulator. Suspect the case has been assigned, although different versions, both by police and by the Commission. KPK chairman Abraham Samad claimed that the Commission has issued a warrant investigation includes defining a suspect on July 27, 2012, while the new Police set suspects on August 1, 2012. The police through Kabareskrim Komjen Pol. Sutarnan said the new police will submit the case to the Commission if there is a court order. Anggodo case. Major corruption cases "allegedly" involved Komjen Pol Susno Duadji. In the recording KPK third person (Trunojoyo 3) Police Headquarters, often touted suspect Anggodo

Problems authority in question clearly affect and hinder the process of eradicating corruption and completion, giving rise to legal uncertainty and injustice in society. Lawyers and law enforcement in this country differ in addressing these problems, sometimes they are different statements shows the difference in interpretation about setting corruption investigations that already exists in the formulation of criminal justice.<sup>3</sup> To solve the above problems, it is necessary to have a pattern or model of investigation that can provide legal certainty for law enforcement in the field of investigation of corruption in our country.

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Yusril Ihza Mahendra, "KPK cenderung bertindak sewenang-wenang karena Polri sudah lebih dulu melakukan penyidikan". I Wayan Yudha berpendapat kewenangan yang dimiliki KPK dalam memberantas tindak pidana korupsi melebihi kewenangan yang dimiliki oleh Kepolisian dan Kejaksaan. ([http://video.tvonenews.tv/arsip/view/59896/2012/08/06/polri\\_gelar\\_pertemuan\\_bahas\\_sengketa\\_penidikan\\_korupsi\\_simulator.tvOne](http://video.tvonenews.tv/arsip/view/59896/2012/08/06/polri_gelar_pertemuan_bahas_sengketa_penidikan_korupsi_simulator.tvOne)). Dimiyati, Wakil Ketua Badan legislasi DPR " masalah ini masih debatable di DPR dalam rangka revisi UU Kejaksaan . Sekjen Peradi Hasanuddin, perkuat kejaksaan di idang penuntutan dan perkuat penyidik polri di bidang penyidikan. Mahkamah Konstitusi dlm putusan terhadap perkara pengujian terhadap UU Kejaksaan, berpendapat bahwa pembuat UU harus konsisten dlm memberikn kewenangan penyidikan kepada kepolisian atau kejaksaan. Kemudian mengusulkan revisi UU kejaksaan" .<http://hukum-indonesia.com/12-nasional/20-kejaksaan-diusulkan-tidak-lagi-menyidik-korupsi>.

Satjipto Raharjo, *Masalah Penegakan Hukum*, Badan Pembinaan Hukum Nasional, 2000: 1, sekalipun ketiga-tiganya merupakan nilai dasar hukum, namun antara ketiganya terdapat suatu ketegangan (*spannungsverhaltnis*) satu dengan yang lain. Hubungan keadaan yang demikian dapat dimengerti karena ketiga-tiganya berisi tuntutan yang berlainan satu sama lainnya yang mengandung potensi bertentangan.

Masyarakat Anti Korupsi Indonesia (MAKI), Gugatan ini dilayangkan terkait penanganan kasus dugaan korupsi Korps Lalu Lintas (Korlantas) Polri yang berujung sengketa penyidikan."Gugatan ini dilakukan karena ketiga lembaga tersebut sudah menyalahi dan menyimpang dalam hal melakukan proses hukum dalam penyidikan dan penahanan pada kasus korupsi simulator SIM Korlantas Mabes Polri," ujar Koordinator MAKI, Boyamin Saiman, sebelum sidang perdana gugatan praperadilan di Pengadilan Negeri Jakarta Selatan, Selasa tanggal 28 Agustus tahun 2012.

The importance of legal certainty here if it is associated with the opinion of the ideals of law Radbruch (*idee des Rechts*), which serves to guide man in life, supported by three pillars, as the basic values of law (*grundwerten*), namely fairness, expediency and certainty. Though ideally three basic values are reflected as a legal content, but in reality all three it is in a state which is not always in harmony with one another. In fact, all three face each other, contradictory, and voltage. expediency could collide with fairness, justice could conflict with certainty, certainty could conflict with expediency, and so on.

This resulted in the emergence of the desire of some people to seek legal certainty concerning the authority of each institution and the institution's investigation of corruption, by filing a lawsuit to the Constitutional Court. The Constitutional Court assess the substance of Article 50 paragraph (3) of Law Number 30 of 2002 on the Corruption Eradication Commission (KPK) has been set out clearly.

In the aforementioned article mentioned Mohammad Alim Judge of the Constitutional Court, in the inaugural session of judicial review, the Constitutional Court on Thursday on 30 August 2012, authorized to investigate corruption clearly the authority of the Commission, while investigations double that is currently happening in between the Commission and the Criminal Investigation Police not fault the substance of a law. He explained it was just a matter of different interpretation of each person. "Interpretation of Law Commission on the object of the investigation it was also clear about corruption,".<sup>4</sup>

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Pengujian materi terhadap Pasal 50 ayat (3) Undang-Undang KPK ini dimohonkan oleh tiga orang pengacara, yakni Habiburokhman, Maulana Bungaran, dan Munatsir Mustaman. Mereka meminta MK untuk memberikan tafsiran yang tegas terkait kewenangan penyidikan perkara dugaan korupsi simulator surat izin mengemudi (SIM) Korps Lalu Lintas (Korlantas) Polri. Pasalnya, KPK dan Polri bersengketa mengenai wewenang penyidikan perkara tersebut. <http://nasional.kompas.com/read/2012/08/30/1955462/MK.Sudah.Jelas.Penyidikan.di.KPK>

Putusan Mahkamah Konstitusi Nomor 28/PUU-V/2007 tentang *Permohonan Pengujian kewenangan jaksa sebagai penyidik Pasal 30 ayat (1) huruf d Undang-Undang Kejaksaan* yang dimohonkan oleh Djailuddin Kaisupy PNS Pemda Kabupaten Seram Bagian Barat yang ditetapkan sebagai tersangka oleh Kejaksaan Tinggi Makasar

In connection with the investigation on the issue of corruption at the top, for the sake of an integrated criminal justice system (*integrated criminal justice system*), can put forward some opinions, such as the Constitutional Court in its Decision No. 28 / PUU-V / 2007 found:

- a. It is time for legislators to align the various statutory provisions relating to the authority of the investigation, so it confirms legal certainty and fairness for justice seekers and ensuring legal certainty to the law enforcement officers in their duties;
- b. In conducting the investigation function, when the selection of the legislators set Attorney as investigators in specific criminal acts, then the police should be determined no longer authorized. Conversely, if the investigation is fully authorized to be given to the police, the prosecutor only has the authority to prosecute;
- c. Prior harmonization is realized, all law enforcement agencies should coordinate if suspected overlap would occur in cases of exercise of powers of investigation among law enforcement officers.<sup>3</sup>

Sahuri Lasmadi in his research found :

"The authority of each sub-system in the criminal justice system is crucial at all in the context of law enforcement, especially on corruption, so that legal certainty and proportionality law can be achieved, because in the judicial system contained motion systemic subsystems support (police, prosecutors, Courts and Prisons) that as a whole and a unity (totality) seeks to transform the input (*input*) into outputs (*output*) which is the goal of the criminal justice system. For that we need legal certainty about the authority of each subsystems within the criminal justice system, especially in investigations on corruption. If the integration of the authority of each subsystems within the criminal justice system did not materialize, the public may assume that the criminal justice system causes crime especially corruption.<sup>3</sup>

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Sahuri Lasmadi, Tumpang Tindih Kewenangan Penyidikan Tindak Pidana Korupsi Dalam Perspektif Sistem Peradilan Pidana, *Tesis*, Pascasarjana Universitas Diponegoro, Semarang, 2009. Hlm 136

Hibnu Nugroho, Membangun Model Alternatif Untuk Integralisasi Penyidikan Tinda Pidana Korupsi di Indonesia, *Disertasi*, Program Doktor Ilmu Hukum, Universitas Diponegoro, Semarang, 2011, hlm 18-19

Indryanto Senoadji, *Korupsi dan Pembalikan Beban Pembuktian*, Konsultan Hukum Senoadji dan Rekan, Jakarta, 2006, hlm 17

While Hilman Nugroho found:

"Investigation of Corruption conducted by police investigators, investigators AGO and the KPK investigators have not integral, it is because (a) In the system of investigation of corruption in Indonesia, the agency investigating corruption that exists is on police investigators, investigators AGO and the KPK investigators have a separate system set out in legislation separately, (b) compartmentalized box corruption investigation agency creates a tendency centric institution / fragmentation. Thus affecting the course of the process of handling cases of the results of investigations conducted by police investigation to the Public Prosecutor, (c) The absence of keintegrasian and harmony of ideas, ideas, values, norms and regulations on which the code of professional conduct, causing the *output* that is not in the form of a corruption investigation alignment results. Constraints juridical cause ketidakintegralan in investigations of corruption is (a) the persistence of the multiplication of agencies investigating criminal offenses of corruption which led to the emergence of the tendency of sectoral egoism in the process of transferring the case from the investigator to the Public Prosecutor, (b) the absence formulation of legislation integral in a corruption investigation that can be dismissed emergence of sectoral egoism.<sup>3</sup>

To minimize the corruption that has systemic and structured, very difficult to measure, strong and permanent nature, required a maximum effort for law enforcement, namely through a systems approach itself (*Systemic Approach*), in three layers:

1. Maximize the role of the Criminal Justice System is widely
2. Coordination and integration among law enforcement officers
3. Settling law covering structures (*legal structure*), substance (*legal substance*) and legal culture (*legal culture*)<sup>3</sup>

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Yoserwan, Shinta Agustina, Ferdi, *Penyusunan Model Sinkronisasi dan Koordinasi Pelaksanaan Kewenangan Penegak Hukum Dalam Mewujudkan Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice Sistem)*, *Laporan Penelitian Hibah Bersaing*, Universitas Andalas 2006, hlm 71

Also related to the issue of this investigation Yoserwan found:  
"... Still there are not synchronous coordination arrangements law enforcement agencies in the criminal justice system contained in the existing regulations, such as (a) The powers of inquiry and investigation, (b) The powers between the investigator general and special investigator, (c) Privileges and coordination between investigators PPNS , investigator Navy, Attorney and the investigator Police, (d) Wewenangan and

coordinating investigator and prosecutor, (e) Privileges and coordination of the public prosecutor (prosecutor with the court, (f) Privileges prosecutor with Correctional Institution, (g) the authority of the court with Penitentiary. this raises a number of problems in the coordination between each sub SPP, such as coordination between the investigator general (police investigators) with a special investigator (investigators, investigators AGO and KPK). this is due to specific rules that resulted in each sub-system has foundation on their own, so that each run according to formal authority. Preparation of the various regulations are not unified resulted in various rules not reveal a harmony between one another.<sup>3</sup>

In relation to the investigation of corruption, appeared presumption that criminal law policy, particularly in relation to criminal investigations of corruption models which authorizes the Commission, the Police and the Attorney General has not yet been able to meet the expectations of the community towards the eradication of corruption in this country. Therefore, it needs to raise the quality of the respective law enforcement officers who have authority in the field of investigation to be able to interpret and apply the duties and authority given by the relevant legislation. Further research is needed to find a model investigation of corruption are ideal to be applied in the Indonesian criminal justice system, which is expected to be able to help accelerate the eradication of corruption itself.

## **C. CONCLUSION**

### **1. Conclusions**

- a. At this time authorized to investigate corruption in the criminal justice system of Indonesia is at 3 institutions, namely the police agencies, prosecutors and the institutions KPK, wherein each of these powers granted by the Act ., Police investigation pursuant to Act No. 8 of 1981 on the Law of Criminal Procedure Code (hereinafter in this paper called the Criminal Code) and Law No. 2 of 2002 on the Police (hereinafter the Police Act). Attorney Investigator by the Criminal Procedure Code, Law 16 of 2004 on the Prosecutor (hereinafter referred to as Law Attorney) and Law No. 28 of 1999 on Corruption, Collusion and Nepotism (KKN hereinafter referred to as the Act) and Act 8 year 2010 on Money Laundering (hereinafter referred UUPU). KPK based on Law No. 30 of 2002 on Pembarantasan Corruption Commission (hereinafter referred to as Law Commission)

- b. Granting authority to the three above institutions (police, judiciary and the Commission) turned in its implementation raises several issues, which are supposed to inhibit the acceleration of the eradication of corruption, among others, 1) differences in interpretation of the respective authorities of investigating corruption, 2) the parties' willingness to protect colleagues who indicated to corruption, 3) lack of coordination among the three agencies authorized to conduct the investigation itself TPK.

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## **B. THE LAWS**

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