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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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## TABLE OF CONTENTS

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Front Page .....	i
Information of the International Seminar .....	ii
Committee Composition .....	iii
Preface.....	iv
Greeting From The Dean Faculty of Law .....	vi
<b>INDONESIA’S KPK AND NSW’S ICAC: COMPARISONS AND CONTRASTS</b>	
Prof. Simon Butt .....	1
<b>CAN INDONESIA FREE ITSELF FROM CORRUPTION IN 2020?</b>	
Prof. Dr. Hikmahanto.,S.H.,LLM .....	4
<b>AN ACT TO ESTABLISH THE ANTI-CORRUPTION AGENCY, TO VEST POWERS ON OFFICERS OF THE AGENCY AND TO MAKE PROVISIONS CONNECTED THEREWITH.</b>	
Rohimi Shapiee.....	7
<b>STRATEGY TO CREATE INDONESIA FREE CORRUPTION IN 2020</b>	
Dr. Jawade Hafidz, S.H., M.H .....	11
<b>THE NETHERLANDS INGLOBAL CORRUPTION</b>	
Siti Malifah Marlou Feer, M.A. ....	28
<b>ROBUST YET FRAGILE: EFFORTS IN COMBATING CORRUPTION IN INDONESIA</b>	
Laras Susanti.,S.H., LLM.....	33
<b>LEGAL STATUS OF AKTOR’S FOR CORRUPTION (In the Perspective of Islamic Law)</b>	
Sumarwoto Umar .....	37
<b>THE ROLE OF LAW IN THE POVERTY REDUCTION STRATEGY</b>	
Lantik Kusuma Aji .....	46
<b>THE INDEPENDENCY OF THE INSTITUTION FOR THE PROTECTION AND THE ESTABLISHMENT OF HUMAN RIGHTS TOWARDS THE GLOBALIZATION ERA 2020</b>	
Khalid .....	55
<b>THE URGENCY OF ANTI CORRUPTION EDUCATION FOR COLLEGES IN INDONESIA</b>	
Siska Diana Sari.....	62
<b>THE PROBLEMS OF DIVORCE IN CUMULATION AT THE RELIGIOUS COURTS BASED ON THE PRINCIPLES OF SIMPLE, FAST AND LOW COST</b>	
Elis Rahmahwati.....	78
<b>DISPARITIES DECISION RELATED TO INTERPRETATION OF ARTICLE 2 AND 3 CORRUPTION ERADICATION ACT</b>	
Agung Widodo.....	87
<b>DIVERSITY ADULT AGE LIMITS POSITIVE LAW IN INDONESIA (Studies in Multidisciplinary Perspective)</b>	
Muhammad Andri .....	102

<b>THE APPLICATION OF BALANCE IDEA IN SETTLEMENT OF DOCTOR MALPRACTICE CASE THROUGH PENAL MEDIATION</b> Yati Nurhayati.....	111
<b>MODERNIZATION LAW AS A CRIME CORRUPTION VERY EXCEPTIONAL THROUGH ENFORCEMENT OF ETHICS</b> Dr. Sukresno, SH, M.Hum .....	118
<b>CORRUPTION POTENCIES IN LAND USE POLICY (A Case Study in Kuningan Regency)</b> Haris Budiman .....	126
<b>CORRUPTION PREVENTION AND CONTROLS</b> INP Budiarta .....	133
<b>ISLAMIC LAW VALUES TRANSFORMATION IN THE RECONSTRUCTION OF THE LEGALITY PRINCIPLE OF INDONESIAN CRIMINAL CODE</b> Sri EndahWahyuningsih .....	145
<b>JUSTICE AND CHARITY IN JAKARTA’S NORTH COAST RECLAMATION PROCESS THAT WILL LEAD TO INDONESIA CLEAN OF CORRUPTION</b> Untoro .....	155
<b>CORRUPTION CRIMINAL SANCTIONS WITH VALUES OF JUSTICE-BASED</b> Zulfiani.....	162
<b>THE REFLECTION OF ISLAMIC BANKING IN THEORY AND PRACTICE</b> Anis Mashdurohatun .....	171
<b>THE IMPLEMENTATION OF LOCAL WISDOM SIRI’NA PACCE AS AN EFFORT OF CORRUPTION ERADICATION IN INDONESIA</b> Muh. Afif Mahfud.....	181
<b>DISCOURSE POLITICAL LAW IN INDONESIA ON A COMPLETION OF PLATO PHILOSOPHY</b> Adrianus M. Nggoro,SH.,M.Pd.....	189
<b>STUDY OF INDONESIA’S PARTICIPATION IN ICSID</b> Agus Saiful Abib.....	202
<b>NOTARY ROLE IN THE IMPLEMENTATION OF EXECUTION PROCUREMENT OF GOODS AND SERVICES ARE FREE OF CORRUPTION BASED ON THE PRINCIPLE OF GOOD GOVERNANCE</b> Aris Yulia .....	211
<b>ANALYSIS WIRETAPPING AUTHORITY UPPER KPK LAW ENFORCEMENT IN THE PERSPECTIVE OF HUMAN RIGHTS</b> Ariyanto,SH.,MH.....	221
<b>SOCIAL WORKING PENALTY AS SOLUTION IN ERADICATING CORRUPTION IN INDONESIA</b> Desy Maryani.....	232
<b>LEGAL POLITICSOF EMPLOYMENT IN TERM OF PART OF TASK HANDOVER TO OTHER COMPANIES IN INDONESIA</b> Endah Pujiastuti.....	244

<b>RESOLUTION OF DISPUTES OF OUTSOURCING WORK FORCE IN THE COMPANY EMPLOYING OUTSOURCING SERVICE</b> Pupu Sriwulan Sumaya .....	256
<b>THE APPLICATION OF CORRUPTION LAW TOWARD CRIMINAL ACT IN THE FIELD OF FORESTRY</b> Ifrani .....	267
<b>THE EFFORTS OF ERADICATION OF CORRUPTION THROUGH INSTRUMENTS OF MONEY LAUNDERING LAW AND RETURN ACTORS' ASSETS</b> Yasmirah Mandasari Saragih.....	276
<b>AFFIRM ROLE OF EXISTENCE <i>RECHTSVERWERKING</i> TO ACHIEVING LEGAL CERTAINTY IN LAND REGISTRATION</b> Rofiq Iksamana, Setiono, I Gusti Ayu Ketut Rachmi Handayani, Oloan Sitorus.....	287
<b>ANTI-CORRUPTION EDUCATION AT AN EARLY AGE AS A STRATEGIC MOVE TO PREVENT CORRUPTION IN INDONESIA</b> Ida Musofiana.....	304
<b>FREED INDONESIA'S CORRUPTION BETWEEN HOPE AND REALITY</b> Dr. Tongat, SH., M.Hum., Said Noor Prasetyo, SH., MH.....	313
<b>UTILIZATION OF INDONESIA MARINE RESOURCES IN AN EFFORT TO REALIZE INDONESIA TOWARDS THE SHAFT OF THE MARITIME WORLD</b> Dr.Lathifah Hanim, SH.M.Hum., M.Kn. and Letkol (mar) MS.Noorman, S. Sos., M.Opsla.....	319
<b>POTENTIAL CORRUPTION IN THE VALIDATION POLICIES ON ACQUISITION TAX OF LAND AND OR BUILDING</b> Lilik Warsito.....	325
<b>THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION IN SOUTH SUMATERA</b> Sri Suatmiati.....	334
<b>ETHICAL PERSPECTIVE AND THE MAPPING OF NORM IN CORRUPTION ACT</b> Siti Zulaekhah.....	344
<b>AN EXPANSION OF CONCEPT THE STATE ECONOMIC LOSS IN CORRUPTION IN INDONESIA</b> Supriyanto, Hartiwiningsih, Supanto.....	354
<b>JURIDICAL STUDIES ON SUBSTANCE AND PROCEDURE OF THE DISMISSAL OF THE PRESIDENT AND/OR VICE-PRESIDENT AFTER THE REFORMATION</b> Siti Rodhiyah Dwi Istinah.....	364
<b>THE ROLE OF THE SHARIA SUPERVISORY BOARD IN THE FRAMEWORK ENFORCING SHARIA PRINCIPLES AT THE INSTITUTE OF ISLAMIC BANKING IN SEMARANG</b> Aryani Witasari.....	376
<b>SEMARANG CITY GOVERNMENT ROLE IN CONSERVATION AND ENVIRONMENTAL PROTECTION TO THE CAPITAL OF THE NATIONAL HERITAGE IN INDONESIA</b> Achmad J Pamungkas ( <i>Indonesia</i> ), Carlito Da Costa ( <i>Timor Leste</i> ) .....	390

<b>STUDYING THE WISDOM OF ZAKAT</b> Moch. Gatot Koco (Indonesia), Basuki R Suratno (Australia) .....	398
<b>HOMOLOGATION RECONSTRUCTION IN BANKRUPTCY THAT IS BASED ON DIGNIFIED JUSTICE</b> Agus Winoto .....	410
<b>RECONSTRUCTION OF EXECUTIVE AND LEGISLATIVE AUTHORITY IN MAKING GOOD GOVERNANCE (GOOD GOVERNANCE) VALUES BASED ON WELFARE</b> Mohamad Khamim .....	420
<b>THE TASK RECONSTRUCTION AND BPKP'S AUTHORITY IN THE CASE OF JUSTICE VAUE BASED CORRUPTION</b> Sarbudin Panjaitan .....	429
<b>THE RECONSTRUCTION OF MADLIYAH AND IDDAH MAINTENANCE AND MUT'AH IN DIVORCE CASE FOR JUSTICE AND WELFARE</b> Mustar .....	438
<b>JURIDICAL ANALYSIS OF THE ALLEGED CRIMINAL OFFENSE TO MANUFACTURE A NOTARY DEED</b> Subiyanto .....	446
<b>REVITALIZATION DEAL IN AKAD HYBRIDS IN SHARIA BANKING VALUE BASED ISLAMIC JUSTICE</b> Masduqi .....	452
<b>RECONSTRUCTION OF LEGAL PROTECTION DISTRICT HEAD IN THE ELECTION IMPLEMENTATION OF VALUE-BASED JUSTICE</b> Kukuh Sudarmanto Alugoro .....	462
<b>ABUSE OF AUTHORITY OFFENSE THEOLOGICAL RECONSTRUCTION LAW ERADICATION OF CORRUPTION (LAW NUMBER 31 OF 1999 JO. LAW NUMBER 20 OF 2001) BASED ON VALUE OF JUSTICE</b> As'adi M. Al-ma'ruf .....	472
<b>RECONSTRUCTION OF THE DAILY PAID WORK AGREEMENT IN THE EMPLOYMENT LAW BASED ON JUSTICE</b> Christina N M Tobing .....	479
<b>THE LAW AND THE IMPACT OF MARRIAGE SIRRI</b> Sahal Afhami .....	489
<b>CRIMES AGAINST CHILDREN AS ACTORS</b> Muhammad Cholil .....	503
<b>RECONSTRUCTION OF CRIMINAL PROCEDURAL LAW (KUHP) ABOUT THE DETENTION</b> Muhammad Khambali .....	512

<b>BASED ON JUSTICE PROBLEMS OF DISPUTE RESOLUTION REGIONAL CHIEF ELECTION (GOVERNOR, REGENTS AND MAYOR)</b>	
Esti Ningrum .....	520
<b>RECONSTRUCTION REGIONAL MINIMUM WAGE (UMR) IN RENEWAL OF EMPLOYMENT LEGAL REMEDIES BASED INDONESIA THE VALUE JUSTICE PANCASILA</b>	
Urip Giyono .....	531
<b>IMPLEMENTATION OF LAW AS TO MAINTAIN SECURITY IN THE CONTEXT OF PROFESSIONAL POLICE POLMAS (CASE STUDY IN LAMPUNG POLICE)</b>	
Muhammad Yaman .....	539
<b>RECONSTRUCTION OF CRIMINAL SANCTIONS PENAL CODE ACTORS ON ABORTION CRIME BASED ON THE VALUE OF JUSTICE</b>	
Hanuring Ayu Ardhani Putri .....	549
<b>REGISTRATION FIDUCIARY GUARANTEE REALIZE LEGAL PROTECTION OF CREDITORS AND DEBTOR</b>	
Ansharullah Ida .....	556
<b>RECONSTRUCTION OF LEGAL DISPUTES MEDIATION IN HEALTH CARE FOR PATIENTS HOSPITAL BASED ON THE VALUE OF JUSTICE</b>	
Teguh Anindito .....	569
<b>RECONSTRUCTION OF CRIMINAL SANCTIONS AGAINST CRIME OF ACTORS AND MURDER MURDER IN PLAN BASED ON VALUE OF JUSTICE CRIMINAL CODE</b>	
Maria Marghareta Titiek Pudji Angesti Rahayu Teguh Anindito .....	579
<b>IMPLEMENTATION OF PENAL MEDIATION IN CRIMINAL LAW</b>	
Aji Sudarmaji .....	587
<b>FAIR SETTLEMENT RECONSTRUCTION OF PROBLEMATIC CREDIT DISPUTE AT BANK RAKYAT INDONESIA (STUDY CASE AT MEDAN-SINGAMANGARAJA BRI BRANCH OFFICE)</b>	
Bachtiar Simatupang .....	594
<b>RECONSTRUCTION OF THE WASTE MANAGEMENT LAW BASED ON WELFARE VALUE</b>	
M. Hasyim Muallim .....	616
<b>RECONSTRUCTION LAW OF PUNISHMENT AGAINST CHILDREN NARCOTICS ABUSE-BASED PROGRESSIVE LAW</b>	
Salomo Ginting .....	625
<b>LEGAL PROTECTION PROBLEM OF WIFE AND CHILDREN OF POLYGAMY SIRRI IN INDONESIA</b>	
Muhlas .....	639

<b>IDEAL RECONSTRUCTION OF REHABILITATION PUNISHMENT FOR NARCOTICS ADDICTS AND ABUSER'S VICTIMS JUSTIFIED BASED ON THE LAW OF THE REPUBLIC OF INDONESIA NO. 35 YEAR 2009 (CASE STUDY IN SUMATERA UTARA PROVINCE)</b>	
Ahmad Zaini .....	648
<b>IMPLEMENTATION OF ACCELERATION SYSTEMATIC LAND REGISTRATION FULL IN HUMBANG HASUNDUTAN DISTRICT</b>	
Ruslan .....	658
<b>RECONSTRUCTION OF STATUS AND AUTHORITY OF THE SHARIA COURT IN THE NATIONAL JUDICIAL SYSTEM BASED ON JUSTICE</b>	
Jufri Ghalib .....	667
<b>RECONSTRUCTION OF LIABILITY NOTARY PUBLIC OFFICERS TO ACT AS A VALUE-BASED JUSTICE</b>	
Elpina .....	679
<b>RECONSTRUCTION OF CONSUMER PROTECTION LAW IN MAKING THE BALANCE BUSINESS BASED BUSINESS AND CONSUMER VALUE OF JUSTICE</b>	
Ramon Nofrial .....	693
<b>RECONSTRUCTION OF LAND USED RIGHT EIGENDOM VALUES BASED ON JUSTICE AND LEGAL CERTAINTY</b>	
Hakim Tua Harahap .....	706
<b>RECONSTRUCTION OF DIVERSION CONCEPT IN CHILD PROTECTION OF CONFLICT WITH THE LAWS BASED ON THE VALUE OF JUSTICE</b>	
Ulina Marbun .....	726
<b>RECONSTRUCTION OF PARATE EXECUTION MORTGAGE RIGHTS TO LAND BASED ON THE VALUE OF JUSTICE</b>	
Zaenal Arifin .....	740
<b>THE RECONSTRUCTION OF DIVORCE DUE TO MARITAL STATUS UNDER THE UNAUTHORIZED GUARDIAN AS VALUE OF JUSTICE</b>	
Abdul Kholiq .....	751
<b>THE RECONSTRUCTION OF LEGAL AID LAW FOR CHILDREN WHO GET CONFLICT WITH LAW IN PROCESS OF JUSTIFICATION FOR CHILDREN BASED ON THE VALUE OF PANCASILA</b>	
Adi Mansar .....	767
<b>MEDIATION RECONSTRUCTION AS ONE OF THE ALTERNATIVE SETTLEMENT OF DECLINE IN THE COURTS BASED ON THE VALUE OF JUSTICE (Study at the Simalungun District Court)</b>	
Mariah S.M. Purba .....	778
<b>POLYGAMIC POLICY IN INDONESIA (Analysis of Polygamic Arrangements and Practices 1959-2015)</b>	
Warman .....	790

<b>LAW ENFORCEMENT AGAINST CORRUPTION IN PERSPECTIVE OF HUMAN RIGHTS IN INDONESIA</b> Sekhroni .....	798
<b>THE PRINCIPLE OF NATURAL JUSTICE AND HUMAN'S RIGHT PROTECTION FOR CITIZENS IN ERADICATION OF CORRUPTION IN INDONESIA</b> Indriyana Dwi Mustikarini .....	809
<b>PREVENTING LAND MAFIA USING POSITIVE LAND REGISTRY SYSTEM</b> Bambang Sulistyowati .....	816
<b>UNRULY PASSENGER IN AVIATION: THE REGULATIONS AND CASES IN INDONESIA</b> Adya Paramita Prabandari .....	826
<b>EDUCATION ANTI-CORRUPTION IN INDONESIA: PROBLEMS, CHALLENGES AND SOLUTIONS</b> Alwan Hadiyanto .....	839
<b>SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING CORRUPTION IN INDONESIA</b> Sulistyowati .....	852
<b>SUE FOR THE STATE ADMINISTRATION OF JUSTICE IN INDONESIA</b> Sarjiyati .....	863
<b>CONSISTENCY MODEL OF COURT DESIGNATION TO FOSTER PARENT RIGHTS AUTHORITY DUE TO DIVORCE ON CHILDREN</b> Erna Trimartini .....	873
<b>AN INVESTIGATION AUTHORITY OF CRIMINAL ACT ON CORRUPTION IN CRIMINAL JUSTICE SYSTEM IN INDONESIA</b> Sukmareni .....	885
<b>PRO CONS THE EXISTENCE OF DEATH PENALTY IN CORRUPTION ACT OF 1999 IN INDONESIA</b> Anis Rifai .....	903
<b>PENAL MEDIATION IN SOLVING MEDICAL MALPRACTICE CASES AS AN ALTERNATIVE OF PENAL SANCTIONS BASED ON LOCAL WISDOM</b> Sri Setiawati .....	913
<b>SPECIAL PROTECTION OF CHILDREN IN CRIMINAL JUSTICE SYSTEM</b> Achmad Sulchan .....	922
<b>MORAL REFORM BUREAUCRACY AS PREVENTION OF ILLEGAL PAYMENTS TO INDONESIA CLEAN OF CORRUPTION</b> Herwin Sulistyowati .....	932
<b>STANCE AND AUTHORITY OF PEOPLE'S CONSULTATIVE ASSEMBLY DURING REFORMATION ERA 1945</b> Ahmad Mujib Rohmat .....	944



<b>TAXES AND ALMS SEEN FROM ISLAMIC LAW</b>	
Mohammad Solekhan .....	954
<b>DIVERSION IN COURT (Case Studies in Karanganyar District Court)</b>	
Anita Zulfiani .....	964
International Seminar	
Photos.....	971

# **SPIRITUAL URGENCY OF RELIGIOUS AND EXPENSES OF EVIDENCE IN COMBATING CORRUPTION IN INDONESIA**

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## **ABSTRACT**

In 1950 - an A Psychologist Erich Fromm says about the most basic things, which should grasp man in her life. In his formulation, that humans have a life orientation that focuses on attaining human qualities (being oriented). Life should not be obsessed just want to reach the attributes of life, such as job title, wealth, or position in the social strata (having oriented).

The sudden rise to the surface of the case - a case of corruption involving officials of Law Enforcement and Public Officials, giving an indication that the authority and power, provide opportunities for corruption.

The eradication of corruption, must be done comprehensively, because corruption is an extraordinary crime. Eradication of corruption should start from the stage of the prevention / preventive measures, namely the one with the religious spiritual practice. As for the law enforcement phase / repressive measures, that the burden of proof in the trial in court, should be borne by the defendant, and no longer charged to the prosecutor. Prosecutors just enough to make the accusation that the defendant committed the crime of corruption, and it is the defendant who must prove that the defendant is not guilty of corruption .It is called the burden of proof is reversed.

Reversal system of the burden of proof, is one way, which can contribute to reduce the number of perpetrators of corruption. During this time, prosecutors had to fight to prove the charges. While the defendant has the right to prove that the property is acquired not from corruption. Because it is only a right and not an obligation, then the defendant can not conduct verification or proof. Therefore, it is necessary juridical changes in the procedural law of evidence for corruption, namely that the burden of proof should and must be done by the defendant, no longer by the Attorney.

Based on the description above, there are two (2) issues to be discussed are: 1) How do I make an effort - preventive efforts in the prevention of corruption in Indonesia? and 2) Is the burden of proof reversed, will be able to contribute in reducing the number of perpetrators of corruption in Indonesia?.

By discussing the two (2) to these problems, are expected to provide a way out, in efforts to prevent and eradicate corruption in Indonesia, making Indonesia free of corruption is expected by 2020.

**Keywords: power, corruption, religious spiritual, the burden of proof.**

## A. INTRODUCTION

Corruption comes from the word corruption, according to Webster's New American Dictionary, 1985, literally means obsolete, destructive, impure, foul, bad or rancid. While New World Dictionary of the American Language, 1998, defines the state becomes bad, nasty and despicable behavior, moral crimes, violation of religious norms, bribery and dishonesty.

Corruption is an extraordinary crime, because corruption is a criminal act, unlawful discharge, ethical, moral, and acts forbidden by religion. Corruption action will damage the country's financial and economic aggravate society that it interferes with economic growth, and will undermine religious spiritual moral joints. People who engage in corruption, consciously or not, will cause risk values religious moral values. This, because, corruption was no longer using the common norms grounding moreover specific norms, such as religious spiritual norms.

In Terminology of corruption, is an act of abuse of power, authority or trust for private interests, and the interests of other parties or to enrich themselves and enrich party or another.

Corruption is the abuse of power and misuse of authority, which arises due to a lack of control of power and control, and open the opportunity to divert these powers. In addition, the fragility of religious and moral conduct religious spiritual loss, is also a factor that encourages someone to corruption. In addition, it to the above, corruption is also driven by the motive personal motives, for example: want to live in luxury and rich in ways that instant, in order to pursue recognition of the socio economic status.<sup>1</sup>

Ideals and hopes and efforts to make Indonesia clean of corruption in 2020, is a spirit to fight corruption with a target very quickly. Corruption is an evil corporation and is an extraordinary crime, corruption eradication efforts must also be done in a way - a way that is outstanding as well. Fighting corruption, can not only by repression and repressive law enforcement, with sanctions of imprisonment are high, but it must be done holistically comprehensive, and simultaneous terintegratif and continue - constantly. Measures to fight corruption in a holistic comprehensive, and simultaneous terintegratif and continue again, is the most effective and efficient way to reduce the growth rate of corruption, and expected to be able to make Indonesia free of corruption in 2012.

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<sup>1</sup>Pulungan ,Suyuthi , Korupsi Di Negeri Berpenduduk Mayoritas Muslim : Suatu Kajian Tentang Sistem Politik , Yogyakarta , Gama Media , 2006 , h . 205 .

One way that can be done to fight corruption comprehensively, is to make an effort prevention as preventive measures and action enforcement actions, with repressive measures. One of the preventive measures, for the prevention of corruption is to improve the spiritual and moral religion, every man Indonesia in general and in particular Officials. Religious spiritual moral quality, and color will affect every person's actions. Morality is a religious spiritual guidance, life to determine the attitude and purpose in life. Religious spiritual than as a solid foundation for determining the direction of life as well as ideals to guide and direct, any human desires and lust.

While law enforcement measures to corruption, which is a repressive measures, has yet to show the maximum results. This, due to the attitude of law enforcement authorities who do not have a moral commitment to take responsibility for combating corruption. This situation is evidenced by the many Law Enforcement caught red handed, were accepting bribes in the process of law enforcement in combating corruption. Procedural Law of Evidence for corruption, yet also provides the loading of proof by the defendant, and the burden of proof should still be the responsibility of the Attorney. Evidence Procedure Law which is still conventional and thus make the defendant did not have a responsibility to prove that all his property instead of the proceeds of corruption. While prosecutors have to work hard to prove all the indictments that the assets of the defendant is factually correct result of corruption.

## **B. DISCUSSION**

### **1. Preventive Efforts for Prevention of Corruption in Indonesia :**

Corruption eradication programs should be conducted simultaneously and simultaneously, as well as comprehensive and integrative . Eradication is an integrative and comprehensive, meant that, to combat corruption are not effective enough when only do the movements of repressive law enforcement alone. To be effective, the eradication of corruption should be conducted simultaneously and simultaneously, in addition to the repressive as well as preventive.

Improving religious spiritual aims are the preventive measures that can be done to prevent corruption intentions and desires. Morality teachings of religion must be spiritual coloring each of the people, to be able to distinguish what conduct is in violation of religious norms and actions which tarnish the faith and moral ethical person. Morality standards of ethics and religious spiritual rather the issue of attitude of the heart and voice

of conscience. Religious spiritual truth becomes the basic norm to measure good and bad, beautiful and elegant, merit and sin and to determine the size of the ethical and unethical. Size religious spiritual morality, besides from of the Bible is also in the transformation of the culture of life is often acculturated with local wisdom<sup>2</sup>.

Inauguration religious spiritual, should not be interpreted as a mere religious ceremonial only implement, but it should be understood the nature and crystallized in the attitude of morality conduct of life. Build religious spiritual quality, will be a major investment in order to prevent corruption, and is the first door to corruption. Fighting corruption, by way of prevention, actually assumed to be more efficient but less effective. However, prevention remains the determinant variable speed to suppress corruption. Thus, the actual act of prevention and prosecution of corruption, is one coin, which each side determines the value<sup>3</sup>.

In the perspective of social transformation, it is very possible if the condition of society, as if the loss of a role model in social life. Such conditions would potentially anomalous role and social status of Public Officials, which contradicts the ethical norms *das sollen das sein* religious spiritual with factual conditions of life<sup>4</sup>.

The strength of religious spiritual role, to prevent acts of corruption, must be done through the implementation of values of religious moral conduct so that it becomes spiritual power of religion and no longer actualize a symbol as well as a mere religious ritual. Values strong religious morality ethics is an indication of the quality of one's faith and spiritual as well as a religious practice.

The morality can not be separated from one's faith. Will justify the faith in the heart, utter by the tongue and work with members of the body. Those who believe, not to engage in corruption. People who do not engage in corruption and not be tempted to corruption, because it is based on the solid faith, because faith will be actualized in solid spiritual religious life<sup>5</sup>.

A person's character is also an important capital to determine whether the attitude of people to commit corruption or not. This is because the character means a behavior, character and basic nature. Morals will be firmly entrenched in the soul and becomes the color of someone's personality and character is an act done with an acceptable and without

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<sup>2</sup>Muslich, *Etika Bisnis Islami*, Yogyakarta, Ekonisia – F. E. UII, 2004, h. 2007.

<sup>3</sup>Hamzah, Andi, *Perbandingan Pemberantasan Korupsi Di Berbagai Negara*, Jakarta, Sinar Grafika, 2014, h. 78.

<sup>4</sup>Duski Ibrahim, *Perumusan Fikih Anti Korupsi*, Gama Media, Yogyakarta, 2006, h. 161.

<sup>5</sup>Heri Junaedi, *Agama Melawan Budaya Korupsi*, Gama Media, Yogyakarta, 2006, h. 171 – 173.

thinking (unthought). Thus the good morals will make people to do real and preferably without any element of the temples<sup>6</sup>.

Religious spiritual, soul and spirit is a religious, who will direct and guide the thoughts, attitudes and actions Someone. Experts Philosophy of Law asserts that the moral and legal are two sides which should always co-exist and complement each other to achieve the quality of life of people. According to Immanuel Kant, morality law is a law in the true sense. Thus it can be a line of understanding, that the moral person is one who has religious spiritual, ethical and morality faith with quality, so being able to keep themselves from acts that violate the law, especially corruption. With a good religious spiritual capital, will keep away from the practice of behavior corruption, because it understands that corruption is not only violate the norms of state law but also violated the norms of religious law.

Attitude not to commit corruption with a commitment that is based on religious spiritual heart, will become a tangible manifestation of corruption prevention . Corruption prevention , provide more efficient calculations, though not necessarily effective. Preventatively more value effective, must be sustained, not to get disconnected generation to fight corruption together.

Measures to combat corruption, preventively by increasing religious spiritual, can be scheduled for the whole society. So not only targeting the potential use Officials authorized to perform acts of corruption. This will give great hope that precautions had a broad spectrum of targets, so as to realize Indonesia clean of corruption.

## **2. Repressive efforts Eradication of Corruption in Indonesia :**

Corruption in Indonesia, is now entering a phase that is quite dangerous, the stability of economic growth. In addition, the community resulted in no trust and low trust to officials and power holders, which have great potential for abuse of power and authority. Abuse of power and authority, may be a gratification and corruption, collusion and nepotism. The high number of Corruptor in Indonesia known as the State Religious, in because not all officials, the power holders in Indonesia has a high religious spiritual soul. In addition, as well as the power holders Officials have not been able to understand the meaning of Position as duty Almighty. Such circumstances, it becomes a major

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<sup>6</sup>*Ibid.* h .175 .

benchmark, whether corruption will be eradicated in Indonesia and Indonesia will be clean of corruption in 2020.

In addition to the mental and corrupt soul, which becomes the cause of the high number of corrupt officials, as well as the Criminal Procedure Evidence of Corruption in Indonesia, more aligned to the defendant. Law Enforcement System Corruption In Indonesia, especially for the Procedural Law of Evidence, still favor the defendant, because all of the burden of proof of corruption must be borne by the Prosecutor. So Prosecutor who had to work hard to prove that his indictment to the defendant correctly and proven in court examination of Corruption (Corruption Court).

The above fact, unnecessary and should be corrected in the application of the Criminal Procedure Evidence for corruption. It is thus a mistake in applying Procedural Law of Evidence. Proof of corruption are not subject to the provisions of Article 66 of the Criminal Procedure Code, which reads: " The suspect or defendant is not burdened proof " , thus proving is the duty of prosecutors who have made the indictment to the defendant.

Evidence of corruption in Indonesia, should be applied to the Criminal Procedure System Burden of Proof Reversed or Reversal of the Burden of Proof (dry van het ombewijslast or shifting burden of proof / reversal burden of proof). As the legal basis of the referenced are the provisions of Article 38 B, Paragraph (1, 2, 3, 4, 5 & 6) Act - Act Number : 20 of 2001 on the Amendment of Act - Act Number : 31 of 1999 on Corruption.

In the practice of verification, it turns out that fixed Prosecutors must prove the charges, and the defendant is not required to prove that the property possessed is not the result of corruption. Usually at the plea or defense of the defendant or the Legal Counsel reserve the right to prove that the defendant did not commit the crime of corruption, as stipulated in Article 37, Paragraph (1) and Article 37 A, Paragraph (1, 2 & 3) Act - Act Number : 20 Year 2001 on the Amendment of Act - Act Number : 31 of 1999 on Corruption.

The provisions of Article 37, Paragraph (1) and Article 37 A, Paragraph (1, 2 & 3), makes, Procedural Law of the Burden of Proof Reversed or System Reversal of the Burden of Proof (om dry van het bewijslast or shifting burden of proof / reversal burden of proof) is increasingly unclear. This is certainly related to the Indonesian Government Law Politics is still strongly controlled by legislators. There appears to be a political interest in the formation of legislation this legislation, so obscure and ambiguous on the System Reversal of the Burden of Proof (dry van het ombewijslast or shifting burden of proof /

reversal burden of proof). Politics Government Law from the beginning stages of manufacture, implementation and enforcement of corruption strongly influenced by political interests, so it is difficult to assess the good will of the government and legislators to combat corruption. According to Marwan Effendy, corruption in Indonesia entered a phase of the iceberg, because corruption has been running in a systematic, coordinated and sustainable mode of changing or changed.

At the beginning, when the proposed draft Amendment Act - Act Number : 31 of 1999 (now set to become law - Act Number : 20 of 2001 on the Amendment of Act - Act Number : 31 of 1999 on Corruption), the real spirit of the primary will the change is scheduled to do clause governing the imposition of proof for the offense of corruption. The imposition of proof is no longer a liability attorney who indicted but should be the obligation of the defendant to prove that He is not corrupt. Proof of such is also called REVERSAL LOAD OF EVIDENCE. Facts Political Will Legislators who do not have the vision to really intend to combat corruption, the chapter regulating the reversal of the burden of proof, arrived deflected and inserted the provisions of Article 37, Paragraph (1) and Article 37 A, Paragraph (1, 2 & 3)<sup>7</sup>.

Reversal of the burden of proof, if it can be included in the Procedural Law of Evidence of Corruption, in fact it can be used as a tool of repression for The Corruptor think, for proving all his wealth instead of the proceeds of corruption is much more difficult and complicated, because it would involve verification of date about the origin wealth.

In Malaysia, the reversal of the burden of proof has been done, and according to Baharuddin Lopa (Former Minister of Justice), the State of Malaysia, had considerable success in combating corruption by using System Reversal of the Burden of Proof. Mode Reversal of the Burden of Proof in Malaysia, is an attorney just to prove a core part of a corruption offense, for example offense the grant gratuity (gratification), remaining there by itself, thus prosecutors no longer need to prove the offense else that becomes an the elements of corruption. So the element associated with the administration of His position and contrary to their obligations, so there is an element of unlawfully enrich themselves or others, no losses and the state owned property is the result of corruption. All of this must be proven by the defendant with Reversal of the Burden of Proof System. In the System Reversal of the Burden of Proof, Liabilities Recipient and Giver, is the same, namely to

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<sup>7</sup>Hamzah ,Andi , *Op . Cit .h .81 .*



prove that what prosecutors indicted is not true, and therefore Recipients and Employers must prove that there is no corruption alleged.

Obstacles and difficulties experienced by the State of Indonesia in a clean sweep of corruption, not only political will Legislators who do not wholeheartedly support, but also the willingness of the Government to fight hard Reversal of the Burden of Proof is not persistent enough. Even when the initial proposal for the Reversal of the Burden of Proof, Prof. Oemar Seno Adji (when the Minister of Justice) refused precisely because they are deemed contrary to the principles and the principles of criminal law, namely the presumption of innocence or presumption of innocence.

The dynamics of the pros and cons to insert chapter reversal of the burden of proof in the Act - Act Number : 20 of 2001 on the Amendment of Act - Act Number : 31 of 1999 on Corruption Eradication, was ultimately only realize the objectives were not decisive, because the reversal of the burden of proof neither do I , and the burden of proof entirely the responsibility and obligation of the prosecutor, but the defendant has the right to prove that the property owned not obtained from corruption or not obtained from abuse of power and authority. Such verification system, according to Mr. LukmanWiriadinata, called the reversal of the burden of proof that the system is limited or the presumption of corruption in Certain cases.

In the State of Singapore, also adopts a reversal of the burden of proof is limited or the presumption of corruption in Certain cases, by listing them on the part of the formulation of the offense, as in this example: " Where in any proceedings against a person for an offense under section five or six it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department there of or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department there of or any public body, that grativication shall be deemed to have been paid or given and received corruptly as an inducement or reward as here in before Mentioned unless the Contrary is proved"<sup>8</sup>.

Combating corruption in Singapore, it is not too difficult because the problem is not as complicated as in Indonesia. Communities and the Government / Public Officials / Political Officers Singapore own culture and mental discipline, law awareness is high because Singapore law properly strictly enforced in full, in addition to the Government of

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<sup>8</sup>*Loc .Cit .*

Singapore known clean (clean government). Singapore level with Australia in terms of corruption, because the two countries are indeed correct it is committed to running a government that is clean government. Anti-Corruption Agency in Singapore is only a guard dog or watchdog, because Singapore does Officials and its people have religious spiritual and strong culture for orderly and not violate the law. Orderly not for fear of criminal sanctions, but orderly because it becomes a pattern and a system in the state of life and society<sup>9</sup>.

In Australia, it has an independent Anti-Corruption Organization, honest and have a good performance. Anti-corruption education given to the public in the public sector and public officials, so the eradication of corruption carried out in a systematic and thorough. Australia view corruption as a behavior that is opposed to honesty and fairness eliminate. Indonesia is rather far behind, the successful eradication of corruption in comparison with the two states.

Australia, in its history is the most corrupt country, but now the country's most clean, because their officials professional, committed to not corrupt, and its people are also accustomed to orderly comply with the Act legislation, and not taking a way that violates the rules, when it has an interest dealing with officials.

Mentality state and behavior of officials and the public in Singapore and Australia are different mentalit state and behavior of public officials as well as Indonesia. Therefore, it is certainly to eradicate corruption in Indonesia can not be as successful as Singapore and Australia. Given that a lot of factors and variables that hinder the eradication of corruption in Indonesia. Because the complexity of issues that give rise to corruption, it must find a way most appropriate for, eradicate corruption. Law enforcement, as repressive efforts, should emphasize the changes clause that provides firmness on System Reversal of the Burden of proof.

Reversal of the Burden of proof system, it becomes very important and urgent, because the system of proof is reversed, creating a potentially Officials of corruption will be counting again. Reversal of the Burden of proof system, can be used as a vehicle that officials have become more careful and more honest, to not be deceived by acts of corruption. Reversal of the Burden of proof system has a working mode that Who was charged of corruption, then he must prove that He is not corrupt. Mode burden of proof should be done this defendant, a scourge for anyone who has the intention of corruption.

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<sup>9</sup>HarimanSatria ,*AnatomiHukumPidanaKhusus*, Ygyakarta , UII Press , 2014 , h . 49 – 51 .

Reversal of the Burden of proof principle is, indeed burden and obligations to the defendant, which has been a burden and liability attorney. Reversal of the Burden of proof urgency is to make others able to count not to commit corruption because of evidence of corruption must be proved by the person who was charged by the prosecutor, that he was not corrupt. The burden of proof with proof system upside, they would certainly lighten the duties and obligations of the Prosecutor. It is thus expected that prosecutors are able and willing to uncover and apply for as much Defendants Corruption Court, spurring to complete the eradication of corruption separately. Working mode so this will definitely give good results and in time Indonesia will be free from corruption like: Malaysia, Singapore, Australia and Thailand<sup>10</sup>.

### C. CONCLUSION

The fight against corruption must be done in a comprehensive, holistic and integrative, because corruption is a criminal offense that is remarkable, therefore, must be done to eradicate the extraordinary way anyway.

Combating corruption, must be carried out simultaneously and synchronously, ranging from prevention as preventive measures, undertaken by strengthening religious spiritual whole Indonesian nation. At the same time must also be increased repressive eradicate corruption, the rule of law, which applies Reversal of the Burden of Proof System (dry van het ombewijslast or shifting burden of proof / reversal burden of proof).

The burden of proof with this system, most effectively lowering the rate of corruption in the State of Malaysia, Australia and Singapore, which now reign be clean (clean Government). In Indonesia need to implement a system Reversal of the Burden of Proof (dry van het ombewijslast or shifting burden of proof / reversal burden of proof), so that in 2020 Indonesia free and clean of corruption.

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<sup>10</sup>Marwan Efendy, *Korupsi Dan Strategi Nasional Pencegahan Serta Pemberantasannya*, Jakarta, Referensi, 2013, h. 193.

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