

# The Corruption Court in Indonesia

## History and Development

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### Abstract

The corruption eradication in Indonesia currently requires a faster, more assertive, and more significant effort of settlement. One of the reformation efforts is made by the government through the establishment of corruption court. Since 2009, the corruption court has been existing as a special judicative entity that handles corruption cases. However, there are many obstacles found during the dispute settlement of corruption, especially in the process of implementation that is often not in accordance with the applicable provisions. Based on this research, the Corruption Court has not performed optimally yet, because of several factors, namely: a large number of cases, the limited facilities and infrastructures, and also the lack of quantity and quality of human resources.

*Keywords: corruption, Corruption Court, history, development*

### Introduction

The existence of Corruption Court is established through Law number 46 the year 2009 (Corruption Court Law). The Corruption Court Law is the source of law on establishing the Corruption Court entity in Provincial level which domiciles in the Provincial Capital. The establishment of Corruption Court Law itself is based on Constitutional Court decision dated 19<sup>th</sup> December 2006<sup>1,2,3,4,5,6</sup> where Article 53 of Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* “*KPK*”) Law that establishes Special Corruption Court is considered as



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contradictive to Article 24A paragraph (5) of 1945 Constitution. The aforementioned article stated that an establishment of a court must be regulated by a special law and must not be regulated together with laws that regulate other matters.that. Meanwhile, the Corruption Court is established together with KPK and KPK Law. The presence of Jakarta Corruption Court is considered as unconstitutional because it is only established based on Article 53.

A large number of corruption cases per year definitely needs a quick settlement to prevent the cases pile up. The existence of Corruption Court on the other side is a solution to accelerate settlement of dispute compared to being centralized in only one court. Until now, the number of Corruption Courts in the regional area consists of 33 Corruption Courts in the District Court and the court on the appeal level in 30 High Courts in Indonesia. If we take a look at the data collected within 5 years (2010-2015), based on the Indonesia Corruption Watch (ICW) observation, there are 183 District Heads has become a suspect in corruption cases.<sup>7</sup> Based on the regional basis, 3 regions with the highest corruption level in Indonesia or according to KPK are categorized as “corruption emergency” are North Sumatera, Riau, and Banten. In those provinces, the corruption actors are not only from the executive or legislative officer background but also from law enforcement officer. However, on the other side, the existence of Corruption Court also causes various problems inter alia regarding the Corruption Court entity itself in the criminal court system, including the problems with coordination, resources, facilities & infrastructure, financing and level of success I the dispute settlement itself.

The main purpose of establishing Corruption Court in the regional area is to optimize the effort in eradicating corruption, hence it may be effectively and efficiently performed. The Corruption Court is existed as a part of law enforcement mechanism, especially on the eradication of corruption. This article will discuss the history and development of corruption court corruption in Indonesia.

## **Research Methods**

This research will use juridical normative approach, that is conducted through analyzing library materials as a secondary data.<sup>8</sup> The author will conduct assessment and examination toward the legal principles, legislation rules, and legal norm related to the legal enforcement theory and principle in the court session which are simple, fast, and low

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cost connected with the object of this research, which is about the Corruption Court in a regional area.

This research will not take every sample from Capital Province that has Corruption Court. The sample is selected based on the Corruption Court that has plenty amount of cases but has an inadequate amount of judge, facilities, and infrastructures. The sampling process is conducted through interview method and questionnaire toward the related parties such as Judges, Prosecutors, Clerks, and Chief of the District Court where the Corruption Court is domiciled.

### **Result And Discussion**

Currently, corruption is still considered a severe problem faced by Indonesia. This condition can be seen from various regulation and policies made by the government as an attempt to eradicate corruption. On the regulation scope, the attempt to eradicate corruption may be found in several regulations, namely: Law No. 8 year 1981 Criminal Procedural Law; Law No. 28 year 1999 regarding State Administrators Clean And Free of Corruption, Collusion and Nepotism; Law No. 31 year 1999 regarding Eradication of Corruption; Law No. 20 year 2001 regarding Amendment of Law No. 31 year 1999 regarding Eradication of Corruption; Law No. 30 year 2002 regarding the Commision of Corruption Eradication; Law No. 46 year 2009 on Corruption Court; Law No. 8 year 2010 regarding Money Laundry; Law No. 6 year 2011 regarding Immigration; Govt. Regulation No. 71 the year 2000 on Procedures for Implementation Of Public Participation in Prevention and Eradication of Corruption; Government Regulation No. 103 the year 2012 regarding amendment of Govt. Regulation No. 63 the year 2005 regarding System Management for Human Resource of KPK. Moreover, in the context of international cooperation, Indonesia has already ratified the United Nations Convention Against Corruption (UNCAC) through Law No. 7 the year 2006.

The definition of corruption based on Corruption Law composed of 30 forms/types of criminal conduct which are elaborated in 13 articles. To increase the effectiveness of corruption eradication, the government has finally established the Commision of Corruption Eradication (KPK) which owns various authorities ranging from the investigation to the prosecution process. The corruption court itself was initially regulated within KPK Law, where the provisions related to corruption court is stipulated in Article 3 of KPK Law. Considering that the

corruption case might be prosecuted by 2 (two) entities which are the Public Prosecution and KPK. The existence of Article 53 of KPK Law may result in legal consequences toward the trial process of corruption cases. The corruption cases which is being prosecuted by the Public Prosecution will be submitted to and processed in the District Court, while in the case of corruption that is being prosecuted by and submitted to KPK is processed in Corruption Court which is based on KPK Law is located in Central Jakarta District Court.<sup>9</sup>

After Article 53 of KPK Law has been announced by the Constitutional Court Decision No. 12-16-19/PUU-IV/2006 which concluded on 19<sup>th</sup> December 2006, the Government was given 3 years to establish a new independent regulation that regulates about the Corruption Court. Finally, in 2009 the government legalized the establishment of Corruption Court based on Law No. 46 the year 2009 on Corruption Court.

Law no. 46 the year 2009 regarding Corruption Court which is enacted on 29<sup>th</sup> October 2009 consists of 40 articles. The matters regulated in the Law no. 6 the year 2009 on Corruption Court are regarding the domicile and authority of Corruption Court. Furthermore, the provisions on the location of the establishment which is based on the mandate of Law No. 46 the year 2009 on Corruption Court will be enacted in every Regency/Municipality will be periodically conducted related with the facilities and infrastructures.

The existence of Corruption Court in Indonesia is established through Law No. 46 the year 2009 on Corruption Court. The background of Corruption Court establishment was based on the revocation of Article 53 of Law No. 30 the year 2002 on Commission of Corruption Eradication (KPK) by Constitutional Court through Decision No. 12-16-19/PUU-IV/2006 which concluded on 19<sup>th</sup> December 2006. Based on Article 54 KPK Law, initially, Corruption Court located in District Court of Central Jakarta which has jurisdiction in every area of across the Republic of Indonesia.

The reasoning behind the revocation of Article 53 of Law No. 30 the year 2002 regarding KPK by the Constitutional Court is because the article is considered as contradictive to the Constitution. The reasons of the Constitutional Court are:

- a. There is a dualism in handling corruption case.

For the case which is being prosecuted by KPK Prosecutor will be handled by the Corruption Court, while corruption case where

the prosecution process is conducted by the Prosecutor will handle in general court.

b. Regulating Corruption Court.

The Corruption Court shall not have been regulated in the KPK Law but instead must be regulated by independent Law. This is stipulated in Article 2A Paragraph (5) 1945 Constitution which stated that the structure, domicile, and the procedural law of Supreme Court along with lower judicative body are regulated by the laws.

Based on Law No. 46 the year 2009 on Corruption Court, *The Corruption Court is the sole Court that has authority to investigate, prosecute, and decide in a corruption case.*<sup>10</sup> *The consequence of such provision is the absence of dualism in handling corruption case. The corruption case which is handled either by KPK or by the Prosecutor, both will be handled in the Corruption Court.*

Law No. 46 the year 2009 also extends the competence of Corruption Court also related to the case that may be handled. Based on article 6 of the aforementioned law, the Corruption Court also may handle money laundering case, as long as the *predicate crime* (the initial crime conduct) falls within the category of corruption conduct,<sup>11</sup> and also with any other crime that has been assertively declared as corruption conduct by other regulations.

For several reasons, the procedural process which is regulated within Law No. 46 the year 2009 on Corruption Court has several differences compared to the regulation in Law No. 8 the year 1981 on Criminal Procedural Court, while for matters which is not regulated independently, still use the applicable procedural law.

The speciality of procedural law in Law No. 46 the year 2009 on Corruption Court are including;<sup>12</sup>

1. Asserting the separation of job desk and authority between the Head and the Deputy Head of Corruption Court.
2. The composition of Judges Panel during an examination in the court of first, appeal, and cassation level;
3. Settlement period of the corruption case dispute examination in every stage of examination;
4. Evidence which submitted during the trial, including evidence that is taken by wiretapping must be legally obtained based on the provisions in the regulations;
5. Special Clerk for Corruption Court.

The existence of Corruption Court intended to increase the attempt of corruption eradication through increasing human resource, including institutional and developing awareness of manner and conduct of anti-corruption society. If we take a look from the purpose of Corruption Court enactment, the corruption court is formed exclusively to handle corruption case,<sup>13</sup> hence the court would be more focused and the settlement process will become faster.

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The background of the corruption court establishment is considered necessary is based on the analysis that in one side corruption deemed as an extraordinary crime that needs an extraordinary settlement. Furthermore on the other side, the lack of public trust toward judication system,<sup>14</sup> is because several identifiable shortcomings such as the judicial corruption which rampantly exists, lack of integrity and limitation of judge capacity, besides there is also lack of case transparency factor, existence of unusual and controversial decision which is contradictive toward the sense of justice. Such factors have become the background of the lack of public trust towards the general judicial institution hence it needs a special court with ad hoc judge.<sup>15</sup>

According to Corruption Court Law, the court is expected to be domiciled in every regency/municipality and for the special region such as capital city Jakarta, it is also expected to be included in every town. The intention and purpose of the distribution of Corruption Court in every province and district are to ensure that the society to have better access to the court which also enhance the processing system itself compared to the centralized system in the capital city. The distribution of Corruption Court in every capital province has proven to be more effective in terms of corruption dispute settlement, comparing to the centralized system with the general court or back when it was still located in the capital city only. The distribution of Corruption Court also helps the society that seeks justices in accessing the court institution. If the Corruption Court is only located in Central Jakarta District Court, the people who live outside the region of Jakarta including people that reside outside java island will experience difficulties in accessing the corruption case due to distance, time, including the huge amount of cost.

During the initial period of its establishment, the corruption court is established outside DKI Jakarta, namely in Bandung, Semarang, and Surabaya. The legal basis for its establishment was based on the Decision Letter of Chief of Supreme Court Number 191/KMA/SK/XII/2010

the Year 2010 which becomes the ground for the creation of Corruption Court in Bandung District Court, Semarang District Court, and Surabaya District Court. Afterwards according to the Decision Letter of Chief of Supreme Court Number 22/KMA/SK/II/2011 is the legal basis of the establishment of Corruption Court on Medan District Court, Padang District Court, Pekanbaru District Court, Palembang District Court, Tanjung Karang District Court, Serang District Court, Jogjakarta District Court, Samarinda District Court, Banjarmasin District Court, Pontianak District Court, Makassar District Court, Mataram District Court, Kupang District Court, and Jayapura District Court. Furthermore, the Decision Letter of Chief of Supreme Court Number 153/KMA/SK/X/2011 served as the legal basis for the establishment of the Corruption Court on the District Court of: Banda Aceh, Tanjung Pinang, Jambi, Pangkal Pinang, Bengkulu, Palangkaraya, Mamuju, Palu, Kendari, Manado, Gorontalo, Denpasar, Ambon, Ternate, and Manokwari. The establishment of the Corruption Court in each region of District Court, as well as operating the Court at the Appeal level in that region. Therefore, until now after approximately 8 years, the Government has succeeded in establishing 33 Corruption Courts in every Central Province in Indonesia but still has not yet fulfilled the mandate that has been given by the Corruption Court's regulation.

The difficulties in fulfilling the mandate that has been given by the Regulation in establishing the Corruption Court in the region was hindered by the problems on the budget and human resources. As a result of this problem, it can be seen that even though the main purpose of the corruption court establishment was to accelerate and simplify the judiciary process of the corruption court, under the governmental perspective the creation of the corruption court itself requires it still needs a substantial amount of budget.

Corruption Court, in every region, has its own building, such as Corruption Court of the Bandung District Court, Semarang District Court, and Surabaya District Court, but most of them still located inside local District Court's building. The establishment of the new building also faces obstacles in relation to the construction site, which has become harder to be acquired. Other obstacles that occur during its establishment are in regards to the human resources that can be placed to fill the position. Until now, the government still has a difficulty in finding judges especially *ad hoc* judge, which requires a set of quality in order to become the Corruption Court judge. Considering

the existence of the ad hoc judge is urgently needed to strengthen the role and function of the judicial power in enforcing the law and justice.

The increase in the amount of human resource is also inseparable from the increase in the operational cost, such as the cost of recruiting judges and the court's operational cost. Besides that, the problem of facilities and infrastructure becoming the most prominent problem in the implementation of Corruption Court in the region. Especially the ad hoc judge has not received any facilities as stipulated on the Presidential Regulation Number 5 the Year 2013 regarding The Distribution of the Financial Rights and Facilities for ad hoc judge, especially on financing the house allowance's facilities, health support, it is all depending on the ability of state budget through the budget in Supreme Court, causing in certain region there has been an ad hoc judge which has to share the housing facilities with other judges due to the limited budget. This also includes the health allowance issues. This also includes the issues of equality in receiving the incentive (*tunjangan kemahalan*) even though the related judges placed in the same region with carrier judge, the ad hoc judge doesn't get the incentive, even though it has been strictly regulated by the Law that an ad hoc judge is also under the Supreme Court.

Although on the other side the existence of Corruption Law is intended to simplify the judicial process causing it to be more focused and provide the society with easier access to justice, however, in regards to its implementation, especially in the establishment of Corruption Court in the region requires a huge amount of money in the government perspective. The process of settling cases effectively in regards to the corruption case can be seen from the numerous provisions that are contained in the regulation. Article 25 Law Number 20 the Year 2001 regarding Corruption Eradication has stated that the procedural process of the Corruption cases shall be prioritized over the other cases to be settled immediately. However, the process in settling a case in the Corruption Court based on the Law of the Corruption Court has been determined and limited by the provision in which The maximum time for the corruption court to examine the case is 120 days.

The existence of Law Number 46 the Year 2009 regarding the Corruption Court, has caused significant changes especially for those who have the task of implementing the law. The existence of Law Number 46 the Year 2009 regarding the Corruption Court regulates that the qualification for the judge who could handle the corruption cases.



The Judge who could handle the corruption cases on the Corruption Court consisted of Carrier Judge and Ad hoc Judge. Carrier Judge who could handle the corruption cases shall have special requirement both in terms of experience as well as qualification, such as having a special certificate as a corruption judge. For the Ad hoc Judge, the qualification itself is, having a minimum experience in the legal field between 15 up to 20 years. The existence of an ad hoc judge which have a varied background such as taxation, capital market, finance, banking, and etc., definitely helpful in assisting the court performance in solving complex cases

According to the author, until now the Corruption Court has not worked effectively yet. The obstacles to implementing Corruption regulation are related to the mandate to establish a Corruption Court in every capital of Regency/Municipality. These days even after the enactment of the Law No. 6 the year 2009 on Corruption Court, the corruption court has only been established in every Province Capital, which amounted to 33 Corruption Court, hence the targets of the laws itself has not been fulfilled yet. The obstacles to fulfilling the provisions in the Corruption Law also caused by facilities and infrastructure, and human resources, which includes the quality and quantity of judges as the law enforcer are difficult to obtain.

### **Conclusion**

The existence of Law No. 46 the year 2009 on Corruption Court has caused a significant change, especially towards the parties who implement the law. The facilities and infrastructures issues, especially the budget availability is the factor for the corruption court to have not yet performed in accordance with the trial principle, which is fast and low cost. The limitation of the budget has caused a lack of facilities and infrastructures, including in the recruitment process of qualified *ad hoc* corruption court judges. The budget limitation also makes the trial schedule exceeds working hours, because of the inadequate trial room and the number of corruption judges that may be placed in each of the corruption courts are not enough.

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## Notes

- 1 See Constitutional Court No. 012-016-019/PUU-IV/2006
- 2 Boniface AE (2016), 'Animals: 'Objects' Or 'Sentient Beings'? A Comparative Perspective Of The South African Law,' *Journal of Advances in Humanities and Social Sciences* 2(3), p. 143-155.
- 3 Ambikai and Ishan Z (2016), 'Comparative Analysis Of Law On Tort Of Deviant Behaviors In Malaysia And India,' *Journal of Advances in Humanities and Social Sciences* 2(4), p. 243-249.
- 4 Lawyer LA (2017), 'The Changing Character of Democracy in the Pre and Post Colonial Cameroon: An Old Practice, A New Word,' *Journal of Advanced Research in Social Sciences and Humanities* 2(1), p. 43-53.
- 5 Damaryanti H, Hendrik and Annurdi (2017), 'Remission For The Corruptor (Between The Human Right And The Spririt For Eradication Corruption),' *Journal of Advanced Research in Social Sciences and Humanities* 2(6), p. 358-362
- 6 Kim H (2016), 'Political correctness on David Mamet's Oleanna,' *Journal of Advances in Humanities and Social Sciences* 2(3), p. 195-203.
- 7 <http://www.antikorupsi.org/id/content/183-kepala-daerah-jadi-tersangka-korupsi>
- 8 Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, 1990, Pg. 9
- 9 Article 5 of KPK Law
- 10 See Article 5 of Law No. 6 year 2009 regarding Corruption Court
- 11 See Article 6 Law No. 46 year 2009 on Corruption Court
- 12 See Elaboration of Law No. 46 year 2009 on Corruption Court
- 13 With the addition on money laundry crime as long as the *predicate crime* (the initial crime conduct) are included in corruption conduct, *idem*.
- 14 Departemen Hukum dan Ham, Naskah Akademik, Rancangan Undang-Undang tentang Tindak Pidana Korupsi, p. 6
- 15 *Ibid*, p. 8-9

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