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Ratio Legis Investigation by the Prosecutor: A Review of Distribution of Power in Investigation of Corruption Crime

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Keywords:
Distribution of Power; Investigation; Corruption Crime.

Abstract
This study discusses the distribution of investigative powers in the context of law enforcement on corruption crime. The urgency in this research that is to be achieved is to know the concept of distribution of investigative power in the field of corruption crime and to know the law with a closer distance to the ratio legis. The Prosecutor is given the authority to investigate corruption crimes. The preparation of this research uses legal research by analyzing legislation as well as treatises on discussing the draft act which arrange institutions are authorized to investigate corruption crime. The results of this study indicate that in a lex specialis manner, those authorized to investigate corruption crime are investigators at the Prosecutor and the Corruption Crime Eradication Commission, in addition to investigators at the Police institution who are also authorized to investigate corruption crime in a lex generalis manner. The three institutions are equally authorized to investigate corruption crime based on the concept of cooperating with each other. The ratio legis forming the act when discussing the draft act number 16 of 2004 concerning the Prosecutor's Office gives the Prosecutor authority to investigate corruption crime, namely that people have high hopes for the prosecutor's office as one of the important pillars in upholding the supremacy of law and being pro-actively involved in eradicating rampant corruption crime in all areas of life, bearing in mind that corruptors in Indonesia at that time were experts in breaking into banks, taking state money abroad for the sole reason of seeking treatment abroad, destroying evidence, manipulating data, and being able to trick prosecutors into going abroad freely. The people's high hopes for the Prosecutor are based on Rousseau's social contract theory in the making of the act.

Introduction

The term corruption comes from the word " corruptio" in Latin, meaning damage or depravity. Corruption is often associated with dishonesty committed by someone in the financial sector. Thus, corruption also means committing deviations related to finance.[1] Therefore, such an act should be declared as a crime by the rules of criminal law . The legal rules regarding corruption that were in effect at the time were Act Number 31 of 1999 as amended by Act Number 20 of 2001, hereinafter referred to as the Act on corruption crime.

[1] Elwi Danil, *Korupsi: Konsep, Tindak Pidana dan Pemberantasannya* (Rajawali Pers 2016) 3.

Basically in the Corruption Act there are 30 categories of corruption, narrowed down there are seven types of corruption, which include corruption crime involving losses to state finances or the country's economy, bribery, embezzlement in office, extortion, fraudulent acts, conflict of interest in procurement and gratification.[2]

When talking about corruption crime as described above as material criminal law, the application of corruption (formal criminal law) is inherently inseparable. When talking about the application of the law on corruption crime, it must be in direct contact with a system, namely the criminal justice system. According to V.N. Pilai, the criminal justice system consists of police institutions, prosecutors, courts and correctional institutions which are sub-systems of the criminal justice procedure layers which are described in a continuous and orderly manner.[3]

The term "system" for each institution carries out its scope of duties and authorities separately because there is a distribution of power. Even though they are separate, they are closely related to one another. Distribution of power means the division of labor from each institution, but does not affect the results of work between institutions.[4] According to Montesquieu's teachings, the distribution of power is wrong if the institutions of power and other institutions of power influence each other.[5]

At present the Indonesian state, after the amendment to the Constitution of the Republic Indonesia 1945, only recognizes separation of power in a formal sense. However, the separation of power is no longer relevant to be adhered to and maintained in principle. In other words, the current Constitution of the Republic Indonesia 1945 adheres to distribution of power, not separation of power.[6] In relation to power in the criminal justice system, the Criminal Procedure Code, which has been considered a masterpiece of the Indonesian nation, adheres to separation of power. Correctional institutions carry out the function of coaching convicts, courts carry out the function

[2] July Esther, 'Rekonstruksi Sistem Pemidanaan Tindak Pidana Korupsi Dan Pencucian Uang Dalam Pendanaan Pemilihan Umum' (2020) 15 Jurnal Hukum Samudra Keadilan 158.

[3] Kadri Husin dan Budi Rizki Husin, *Sistem Peradilan Pidana Di Indonesia* (Sinar Grafika 2016) 10.

[4] ibid 8-9.

[5] Titik Triwulan Tutik, *Konstruksi Hukum Tata Negara Indonesia Pasca-Amandemen UUD 1945* (Kencana 2016) 9.

[6] ibid 14.

of the judicial process, the prosecutor's office carries out the function of prosecution power, and the police to carry out the function of investigation.

In the investigative powers in the Criminal Procedure Code, referring to Article 1 number 1 junto Article 6 paragraph (1) of the Criminal Procedure Code, investigations can only be carried out by investigators from the police or certain Civil Servant Investigators who are given attributional authority to carry out investigations by a certain Act. While the definition of an investigation itself is "a series of investigative actions in terms of and according to the methods stipulated in this Act to seek and collect evidence with which evidence makes it clear about the crime that occurred and to find the suspect".[7] Referring to the definition of the investigation, the purpose of the investigation is in the framework of:[8]

1. Finding and collecting evidence;
2. Making it clear the criminal act that occurred; and
3. Finding out who is the suspect.

If based on the Criminal Procedure Code the Prosecutor's Office only functions as prosecutorial powers, then referring to Article 30 paragraph (1) letter d following the explanation of Act Number 16 of 2004 concerning the Indonesian Prosecutor, the Prosecutor's Office has the duty and authority to investigate certain criminal acts, one of which is in cases of criminal acts of corruption. If it is connected with the integrated criminal justice system, then there are three important things that are closely related to one another, namely:

1. Which institution administers criminal justice;
2. What are the limits of the authority of the implementing institution;
3. How is the procedure of the institution in carrying out its authority.[9]

The three are related to each other; what is carried out by one institution is an authority that has been determined by the rule of law and regarding how to exercise this authority describes an orderly and integrated arrangement in order to achieve the

[7] Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76).

[8] Didik Endro Purwoleksono, *Hukum Acara Pidana* (Airlangga University Press 2015) 61.

[9] Kadri Husin dan Budi Rizki Husin (n 3) 9.

objectives of administering criminal justice.[10]

In the context of institutions within the criminal justice system that have the authority to investigate corruption crime, the presence of a police investigator and investigator from the Prosecutor is not effective enough to deal with corruption crime. It is evident that Indonesia has failed to reduce the number of corruption cases, and it is not uncommon for law enforcement officials to investigate corruption crime. In this situation, it is necessary to reform the bureaucracy in terms of legal substance or reform the criminal justice system in order to realize state and government administration that is not maladministered and free from corruption, collusion and nepotism.[11]

Act No. 31 of 1999 is a milestone in the history of the establishment of the Corruption Crime Eradication Commission. The Corruption Crime Eradication Commission is a state institution that is not only authorized to prevent corruption, but also has the authority to eradicate corruption at the same time. This shows that the Corruption Crime Eradication Commission is a superpower state institution, considering that its authority is very complex. So that in carrying out its authority it must be independent and free from the influence of intervention or the interests of other state institutions.[12] Apart from that, the philosophy and identity of the establishment of the Corruption Crime Eradication Commission is as an institution that focuses on handling corruption problems.[13]

Based on the 2006 Constitutional Court Ruling, it stated that the Corruption Crime Eradication Commission could recruit from the Police or Prosecutor,[14] who will later become investigators and public prosecutors in cases of alleged corruption. But strangely, both the Police and Prosecutor are investigating corruption as well.

Based on all the descriptions, the authors feel interested in conducting research by analyzing: 1. The concept of distribution of power in investigations in the field of

[10] ibid.

[11] Nuriyanto Ahmad Daim, 'Urgensi Pengaturan Lembaga Negara Khusus Dalam Undang-Undang Dasar 1945' (2019) 16 Jurnal Konstitusi 106.

[12] Rico Yodi Tri Utama dan Retno Saraswati, 'Independensi Dan Urgensi Restrukturisasi Sistem Peradilan Pidana Indonesia Berdasarkan Aspek Kekuasaan Kehakiman' (2021) 5 Adjudikasi: Jurnal Ilmu Hukum 58.

[13] Anis Putri Miranda Daulay, 'Urgensi Penerbitan Perpu KPK Terhadap Komitmen Pemberantasan Korupsi Di Indonesia' (2022) 2 At-Tanwir Law Review 85.

[14] Rico Yodi Tri Utama dan Retno Saraswati (n 12) 59.

corruption crime; 2. Ratio legis the prosecutor's office has the authority to investigate corruption crime

Method Research

This research is legal research in order to reach a coherent truth, that is, is there coherence between legal rules and legal norms and are there norms in the form of orders or prohibitions that are coherent with legal principles.[15] This research uses statute approach and conceptual approach. The legal material used in this research is legal material which is authoritative in nature which consists of legislation related to the investigation of criminal acts of corruption, treatises on the discussion of the draft Act Number 16 of 2004 concerning the Prosecutor in order to find out the legal ratio for the formation of the legal rule and later connected with legal material secondary in the form of legal books, research results from journal articles and so on, which will later be found to be the ascertain truth to be achieved in legal issues.

The Concept Distribution of Power in Investigations in the Field of Corruption Crime.

According to Jan Remmelink, the conception of special criminal law is delicti propria, namely a crime committed by a person with certain qualities.[16] In this connection, corruption crimes are committed by someone who is qualified as a law enforcer and also a state administrator, it can be concluded that corruption is a special criminal law.

In addition to special criminal law which has characteristics in terms of material criminal law, special criminal law also has characteristics in terms of formal criminal law. At the investigative level, investigators in general criminal law are investigators from the police, while in special criminal law are police investigators, prosecutors, civil servant investigators and the Corruption Crime Eradication Commission.[17] So thus the investigative powers in corruption crime actually adhere to the concept of distribution of power, because, based on the Criminal Procedure Code, prosecutors are not allowed

[15] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2005) 47.
[16] Ruslan Renggong, *Hukum Pidana Khusus: Memahami Delik-Delik di Luar KUHP* (Prenadamedia 2019) 28.
[17] ibid 27.

to conduct investigations and the Criminal Procedure Code does not recognize the Corruption Crime Eradication Commission. Therefore, when there is an Act outside the Criminal Procedure Code which attribution gives authority to investigate corruption crime other than police investigators or Civil Servant Investigators are considered to deviate from the Criminal Procedure Code, the type of settlement is related to the principle of legal preference, namely the principle of lex specialist.[18] Acts outside the Criminal Procedure Code are called *lex specialist* and the Criminal Procedure Code itself is called *lex generalis*, so based on the principle of *lex specialist derogate legi generalis* the Criminal Procedure Code is ruled out.

There are currently three institutions that have attributional authority to conduct investigations into corruption crime, namely the Indonesian National Police, the Indonesian Prosecutor and the Corruption Crime Eradication Commission. The three institutions have the same authority to conduct investigations into corruption crime, so in the context of investigative powers in corruption crimes these adhere to distribution of power. The distribution of power in question is the distribution of power horizontally; according to Philiphus M. Hadjon, the distribution of power by means of a sideways or horizontal line is the distribution of state power to other state organs, which in the Indonesian constitution is known as state institutions.[19]

The adherence to the division of powers between state institutions in the post-amendment Constitution of the Republic Indonesia 1945 cannot be separated from the background of the desire to create a democratic government through checks and balances in an equal and impartial manner among the branches of power, upholding the rule of law and justice, as well as protecting and guaranteeing human rights.[20] Even though the distribution of power for each state institution has been determined, cooperation between state institutions is possible in order to carry out its functions and duties in accordance with the acts.[21]

[18] Philiphus M. Hadjon and Tatiek Sri Djatmiati, *Argumentasi Hukum* (Gadjah Mada University Press 2005) 31.

[19] Titik Triwulan Tutik (n 5) 241.

[20] ibid 76.

[21] ibid 75-76.

The first act that became the legal basis for the police having the authority to investigate corruption crime was Act No. 8 of 1981 concerning Criminal Procedure Code junto Act No. 2 of 2002 concerning the Police. The second order is the promulgation of Act No. 30 of 2002 concerning the Corruption Crime Eradication Commission in conjunction with Act Number 19 of 2019 as an institution that also has the authority to conduct investigations into criminal acts of corruption and in third place is the promulgation of Act Number 2004 concerning the Prosecutor's Office junto Act Number 11 of 2021 which also has the authority to conduct investigations into criminal acts of corruption. Of the three institutions, the authority and division is explained as follows:

Police

In applying law, the police are seen as a very important entry point in the criminal justice system, the police act as gatekeepers who manage the first steps to bring someone suspected of committing a crime into the Criminal Justice System.[22] In this case, what is meant by a suspected person is any person, be it an individual or a corporation, who commits a corruption crime based on sufficient preliminary evidence.

The criminal justice system usually always involves police investigators, thus it appears that the sub-system is connected and needs other sub-systems in the criminal justice system.[23] In general, the Act gives investigative authority to the police, so that in practice the term "single investigator" appears. This means that the police are the only law enforcers who have attributional authority to conduct investigations in all criminal cases.[24] It also includes the authority to conduct investigations into alleged cases of corruption crime.

Article 1 point 1 of the Criminal Procedure Code defines an investigator as "an official of the Indonesian National Police or a certain Civil Servant Investigator who is given special authority by Act to conduct an investigation".[25] Investigative powers carried out by the police as strengthened by the Criminal Procedure Code, this

[22] Eddy Santoso and Sri Endah Wahyuningsih, 'Peran Kepolisian Dalam Sistem Peradilan Pidana Terpadu Terhadap Penanggulangan Tindak Pidana Perjudian' (2018) 1 Jurnal Daulat Hukum 183.

[23] Aditya Hari Susanto, 'Pemberatan Sanksi Pidana Terhadap Penyidik Polri Yang Menyalahgunakan Barang Bukti Narkotika' (2019) 2 Jurist-Diction 8.

[24] Elwi Danil (n 1) 221.

[25] Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76).

authority is strengthened and reaffirmed based on Act Number 2 of 2002 concerning the Police which is explicitly based on Article 14 paragraph (1) letter g Act Number 2 of 2002 which basically states that the Police conduct investigations of all criminal acts in accordance with the criminal procedure law and other laws and regulations".[26] That way, the police have the authority to conduct investigations in all types of crime, including corruption crime.

Corruption Crime Eradication Commission (KPK)

Prior to the formation of the Corruption Crime Eradication Commission, there were already institutions authorized to investigate corruption such as the Police and the Prosecutor, so that in the end the government made an effort to form a number of institutions dealing with eradicating corruption. However, in fact these institutions are considered inefficient and ineffective and have not shown optimal results in tackling corruption cases in Indonesia.[27]

The Indonesian nation has long dreamed of being a country free from corruption, especially during the spirit of the reform era. In the beginning there was only a joint team for eradicating corruption crime, which consisted of police investigators and prosecutors, one of whose duties was to investigate corruption crime. The joint team is permanent and has a legal umbrella against Government Regulation Number 19 of 2000. In short, the Government Regulation was canceled by the Supreme Court Decision Number 03/P/HUM/2000 because it was deemed antinomy to Article 27 Act Number 31 of 1999. Article 27 has the phrase "a joint team can be formed under the coordination of the Prosecutor General." This means that the joint team in question is temporary and does not have to be made permanent, and is only formed on a casuistry basis when proving a corruption case is complex and difficult to uncover.[28] However, since the Corruption Crime Eradication Commission is regulated in a separate act, Article 27 Act Number 31 of 1999 by itself does not apply.

[26] Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2002 Nomor 2).

[27] Mellysa Febriani Wardojo dan Didik Endro Purwoleksono, 'Kedudukan Komisi Pemberantasan Korupsi Sebagai Lembaga Negara' (2018) 2 Legal Standing 75.

[28] Elwi Danil (n 1) 237.

To follow up on Article 43 paragraph (1) of Act No. 31 of 1999 which basically states that no later than two years after Act number 31 of 1999 came into effect, a commission for eradicating corruption crime must have been formed. Therefore, on December 27, 2002, Act No. 30 of 2002 concerning the Corruption Crime Eradication Commission was ratified and promulgated.[29] The establishment of the Corruption Crime Eradication Commission is considered necessary as an institution to eradicate corruption, because its characteristics are extraordinary crimes that have wide-reaching impacts, especially on the country's finances and economy and are difficult to see, disclose, and prove. The establishment of the Corruption Crime Eradication Commission seems to have been inspired by The Independent Commission Against Corruption which was established by the Hong Kong government around 1974.[30] The formation of the Commission to eradicate corruption in Indonesia seems to be considered similar to the situation in Hong Kong at that time, therefore Law Number 31 of 1999 mandated that a Corruption Crime Eradication Commission be formed.[31]

However, on October 17, 2019, Act Number 30 of 2002 was amended by Act Number 19 of 2019. Meanwhile, based on Article 11 paragraph (1) of the Act, it arrange "the commission for eradicating corruption has the authority to conduct investigations, investigations and prosecutions of criminal corruption which:

a. Involve law enforcement officials, state administrators, and other people who are related to criminal acts of corruption committed by law enforcement officials or state administrators; and/or
b. Concerning state losses of at least Rp. 1,000,000,000.00 (one billion rupiah)".[32]

Furthermore, Article 11 paragraph (2) of this article arranges that if a corruption criminal does not meet the criteria as stated in Article 11 (1) mentioned above, investigators at the Corruption Crime Eradication Commission must submit the investigation and/or prosecution to Police and/or Prosecutor. Paragraph (3) in that Article arranges in

[29] ibid 246.
[30] Yudi Kristiana, *Independensi Kejaksaan Dalam Penyidikan Korupsi* (Citra Aditya Bakti 2006) 90.
[31] ibid.
[32] Undang-undang Nomor 19 Tahun 2019 tentang Perubahan Kedua atas Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindak Pidana Korupsi (Lembaran Negara Republik Indonesia Tahun 2019 Nomor 197).

principle, that the Corruption Crime Eradication Commission provides supervision of investigations and/or prosecutions that are being handled by the Police and/or the Prosecutor. Based on Article 10, supervision carried out by the Corruption Crime Eradication Commission and includes supervision, research or review of institutions carrying out their duties and authorities related to eradicating corruption crime, in this case either the Police or the Prosecutor.

As for the reasoning given criteria for setting the authority of Corruption Crime Eradication Commission as referred to in Article 11 paragraph (1) these are to prevent overlap of authority with conventional investigators (Police and Presecutor) in handling alleged corruption crime, with the pressure that the Corruption Crime Eradication Commission only focuses on dealing with allegations of corruption crime that have a major impact on society.[33]

Pursuant to Article 10A paragraph (1), the Corruption Eradication Commission has the authority to take over the investigation and/or prosecution of perpetrators of corruption crime that are being processed at the police or prosecutor's office, the follow-up or handling of the case contains elements of corruption crime and others as referred to in Article 10A paragraph (2).

With such strong authority of the Corruption Crime Eradication Commission, it can be said that it is the coordinator in eradicating corruption.[34] Because if the Police or Prosecutor are held hostage in eradicating corruption, the Corruption Crime Eradication Commission can be relied upon and become a solution to eradicating corruption.[35] The existence of the Corruption Crime Eradication Commission as a strong institution, independent, self-sufficient and free from the influence of power of any institution is reaffirmed in decision of Court Number 012-016-019/PUU-IV/2006.

Prosecutor

The Prosecutor's juridical basis in carrying out investigations into criminal acts is

[33] Jeshimob Deddy Christianto Giawa, 'Implikasi Yuridis Pengaturan Kewenangan KPK Dalam Penyidikan Tindak Pidana Korupsi' (Tesis: Universitas Brawijaya 2019) 87-88.

[34] Febri Diansyah et al., 'Penguatan Pemberantasan Korupsi Melalui Fungsi Koordinasi Dan Supervisi Komisi Pemberantasan Korupsi (KPK)' (2011) 22.

[35] Sekar Anggun Gading Pinilih, 'Politik Hukum Kedudukan KPK Sebagai Lembaga Pemberantasan Korupsi di Indonesia' (2020) 8 Jurnal Hukum Progresif 19.

Article 284 paragraph (2) Chapter XII Transitional Provisions of the Criminal Procedure Code which arranges:

> "Within two years after the promulgation of this Act, the provisions of this Act apply to all cases, with the temporary exception of special criminal procedural provisions as referred to in certain Acts, until there is a change and/or declared no longer valid".[36]

On the basis of the provisions in the special criminal act (such as the corruption act), the prosecutor's claim that the authority to conduct investigations into criminal acts is the monopoly of its institution.[37] The specific provisions for criminal procedures for a certain Act are as referred to in Article 284 paragraph (2) of the Criminal Procedure Code are Act Number 16 of 2004. Based on Article 30 paragraph (1) letter d Act Number 16 of 2004 arranges that "in the criminal field, the Prosecutor has the duty and authority to carry out investigation of certain criminal acts under the Act".[38] In the elucidation of this article, one of the specific crimes referred to is corruption crime.

Based on the existence of each institution, including the Police, the Corruption Crime Eradication Commission and the Prosecutor, in the criminal justice system in Indonesia, it turns out that investigative powers are distributed in cases of corruption crime. Although the Police, Corruption Crime Eradication Commission and Prosecutor each have certain duties and authorities, in the concept of distribution of power according to Titik Triwulan Tutik[39] it is possible for cooperation between state institutions in carrying out their functions and duties in order to carry out investigations of corruption crime based on the spirit of togetherness in order to realize an integrated criminal justice system and lead to the aspirations of a prosperous and prosperous Indonesia free from corruption.

For example, the coordination and supervision carried out by the Corruption Crime Eradication Commission against the Police and the Prosecutor when carrying out the eradication of corruption crime. Or it could be the other way around, the Police

[36] Undang-undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana (Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76).

[37] Elwi Danil (n 1) 221.

[38] Undang-undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 67).

[39] Titik Triwulan Tutik (n 5) 75-76.

cooperate by providing assistance to the Corruption Crime Eradication Commission and the Prosecutor in the case of carrying out forced measures such as arrests, or the Prosecutor cooperates with the Police and the Corruption Crime Eradication Commission. This is stated in the Act which is the legal basis for each, which arranges:

> Article 42 paragraph (2):
>
> "Relations and cooperation within the country are carried out mainly with elements of local government, law enforcers, agencies, institutions, other agencies, and the public by developing the principles of participation and subsidiarity".[40]
> Article 33 letter a:
> "In carrying out its duties and authorities, the Prosecutor maintains a relationship of cooperation and communication with law enforcement agencies and other agencies." Explanation of the Article states "The cooperation carried out by the Prosecutor is based on the spirit of openness and togetherness to create an integrated criminal justice system".[41]

The existence of the Police, the Corruption Crime Eradication Commission and the Prosecutor in eradicating corruption crime in Indonesia is basically not a novelty in the development of criminal law in Indonesia. Each of the three law enforcement agencies have special authority, the Prosecutor and the Corruption Crime Eradication Commission have wide and strong authority, apart from being authorized to prosecute corruption cases, on the other hand they are also authorized to conduct investigations; this is a manifestation of the criminal law and the criminal justice system in Indonesia reform.[42]

The three institutions that are equally authorized to carry out investigations into corruption crime means there is no overlapping authority, because the criteria for investigative authority by the Corruption Crime Eradication Commission have been clarified since the existence of Act Number 19 of 2019. Although the Police and Prosecutor also have investigative powers, both of them carry out their duties and authorities in investigating corruption crimes by working together.[43]

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[40] Undang-undang Nomor 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2002 Nomor 2).

[41] Undang-undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 2016 Tahun 2004 tentang Kejaksaan Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2021 Nomor 298).

[42] Elwi Danil (n 1) 219.

[43] Lihat Pasal 33 huruf a Undang-Undang Nomor 11 Tahun 2021 *junto* Pasal 42 ayat (2) Undang-Undang Nomor 2 Tahun 2002.

The Constitution of Republic of Indonesia 1945 does not explicitly regulate the existence of the Prosecutor and Corruption Crime Eradication Commission, but only the Police, in which is explicitly stated in Article 30 paragraph (4) of the Constitution that one of their duties is to law enforcement. However, the Constitutional Court Decision 012-016-019/PUU-IV/2006 confirms that the Corruption Crime Eradication Commission is an institution whose function is related to judicial power as referred in Article 24 paragraph (3) of the Constitution.[44]

This is also coherent with the Prosecutor, which is also an institution whose function is related to judicial power as referred in considerations letter b of Act Number 11 of 2021. Therefore, according Barda Nawawi Arief the judicial power as referred to in the Constitution is not only manifested in the power to be judicial and decide, more than that the judicial power in field criminal law in a broad sense, also includes the powers of investigation, prosecution, adjudication and making decisions and carrying out decisions.[45] It cannot be denied that the three institutions given the authority to eradicate corruption through investigations is a manifestation of the ideals of the Republic of Indonesia in the preamble to the Constitution to "..protect the entire Indonesian nation and all Indonesia bloodshed and in advancing general welfare and educating the nation".

Ratio Legis The Prosecutor's Office Has The Authority to Investigate Corruption Crime

Based on the principle of dominus litis, the Prosecutor is the only state institution authorized to control criminal cases and includes the exercise of prosecution power independently and free from the influence of any person and power of any state, including in corruption crime cases.[46] In a prescriptive normative manner, prosecution of corruption crime cases that have been carried out has been guaranteed and confirmed

[44] Sekar Anggun Gading Pinilih (n 35) 22.

[45] Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana* (Citra Aditya Bakti 1998) 40-41.

[46] Brando Aiba et al., 'Kedudukan Dan Kemandirian Kejaksaan Dalam Sistem Ketatanegaraan Republik Indonesia' (2021) IX Lex Administratum 211.

in Article 2 paragraph (1) Act which stipulates that the Prosecutor performs functions related to judicial power (prosecution of corruption cases) independently. In fact, anyone who interferes with the independence of the Prosecutor or the public prosecutor from the Corruption Crime Eradication Commission in the prosecution of corruption crime cases is threatened with imprisonment for a maximum of 12 (twelve) years.[47] Thus the independence of the prosecution of corruption cases has been guaranteed in such a way. However, if the descriptive empirical facts of prosecution corruption crime cases are ridden by the interests of certain people or groups or do not match what is expected, these are factors outside the law.

In the context of investigations into corruption crime, some think that it is the Police who have the authority to investigate corruption crime. But on the other hand, on the basis of corruption crime, which is a special criminal law, according to Yudi Kristiana, who is a prosecutor, it is actually the prosecutor's office that has the authority to investigate corruption crime.[48] In the opinion of this writing,[49] both the Police, the Prosecutor and moreover the Corruption Crime Eradication Commission both have strong authority, because all three of them are authorized to investigate corruption crime; these three institutions are legitimized by the Act.

Teguh Prasetyo is of the opinion that the special criminal law has its own characteristics, including the corruption criminal law. In special criminal law this character can be identified from law enforcement institutions, judicial bodies and legal subjects.[50] The Prosecutor claims that the authority to investigate criminal acts is the monopoly of its institution on the basis of Article 284 paragraph (2) of the Criminal Procedure Code, Article 284 paragraph (2), which is reaffirmed in Article 17 of the Government Regulation concerning the implementation of the Criminal Procedure Code which arranges:

"..Investigations according to the special provisions of criminal procedure as

[47] Markhy S. Gareda, 'Perbuatan Menghalangi Proses Peradilan Tindak Pidana Korupsi Berdasarkan Pasal 21 UU No 31 Tahun 1999 Juncto UU No 20 Tahun 2001' (2015) IV Lex Crimen 138.

[48] Yudi Kristiana (n 30) 79-80.

[49] Rudy Cahya Kurniawan, *Pengaturan Kewenangan KPK dan Polri Dalam Penyidikan Tindak Pidana Korupsi di Indonesia* (Deepublish 2021) 84.

[50] Ruslan Renggong (n 16) 32.

referred to in certain Acts as referred to in Article 284 paragraph (2) of the Criminal Procedure Code are carried out by investigators, prosecutors and other authorized investigating officials based on statutory regulations...".[51]

In the context of investigating corruption by the Prosecutor as a special provision referred to in the Government Regulation, namely Article 30 paragraph (1) letter d following the explanation of Act No. 16 of 2004 concerning the Prosecutor, it arranges:

"..In the criminal field, the prosecutor has the duty and authority to investigate certain crimes based on the Act..".[52]

Based on these provisions, the Prosecutor in principle and attribution has the authority to investigate acts of corruption, so that differences of opinion regarding the Prosecutor do not have the authority to investigate corruption crime and the authority to investigate criminal acts of corruption is absolutely the authority of the Police investigator should be stopped, because the existence of both is legitimized by act.

It is important to look at the legal rules at a closer distance using legal theory. In the formation of legal rules, legal theory is related to the technical search for ontological foundations and ratio legis for the existence of provisions in certain written legal rules.[53] Ontology is one of the branches of philosophy, ontological metaphysics in general with regard to everything that exists. The general metaphysics in question is related to the existence of something.[54]

The ontological basis referred to refers to the background as to why the Prosecutor Act, especially regarding the authority to investigate corruption committed by the Prosecutor, is needed. In addition, the ontological basis also reveals the philosophical basis for making an Act. The background as to why the Act is needed can be seen from the ontological basis that is poured into academic texts or treatises on the discussion of the draft Act. The ontological basis in question can be traced from the treatise making the

[51] Peraturan Pemerinah Nomor 27 Tahun 1983 tentang Pelaksanaan Kitab Undang-undang Hukum Acara Pidana (Lembaran Negara Republik Indonesia Tahun 1983 Nomor 36).

[52] Undang-undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia (Lembaran Negara Republik Indonesia Tahun 2004 Nomor 67).

[53] Peter Mahmud Marzuki, *Teori Hukum* (Kencana 2020) 10.

[54] Zainal Arifin Mochtar dan Eddy O.S. Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori Asas dan Filsafat Hukum* (Red and White Publishing 2021) 217.

Prosecutor Act in parliament which contains the views of the legislators.[55]

The following is the ratio legis why the Prosecutor has the authority to investigate corruption crime, as conveyed by Sayuti Raharawin a member of the Daulatul Ummah faction, in expressing his final opinion on draft Act Number 16 of 2004:

> "Draft Act for as a replacement Act 5 of 1991 concerning the Prosecutor gives great hope to the prosecutor to be proactive in eradicating rampant corruption in all areas of life. The Prosecutor e as one of the pillars of law enforcement must increase its professionalism considering that corruptors in this country are already experts and use sophisticated technology to break into banks, destroy evidence, manipulate data and are able to trick prosecutors into being free to go abroad." Draft Act for as a replacement Act 5 of 1991 concerning the Prosecutor gives great hope to the prosecutor to be proactive in eradicating rampant corruption in all areas of life. The Prosecutor as one of the pillars of law enforcement must increase its professionalism considering that corruptors in this country are already experts and use sophisticated technology to break into banks, destroy evidence, manipulate data and are able to trick prosecutors into being free to go abroad. Currently, the public has high hopes for the ranks of the Prosecutor as one of the important pillars in upholding the supremacy of law in accordance with their duties and authorities. Experience shows that many big-time corruptors flee the country taking state money with the excuse of seeking medical treatment abroad. Was the person concerned really sick or faking it, or was it just a toothache, or was it because the officer had a pocket problem that allowed this high class corruptor to escape. The presence of this new Draft Act on the Prosecutor shows that Act Number 5 of 1991 concerning the Prosecutor is no longer in accordance with the developments and legal needs of society and state administration according to the Constitution 1945. In line with that, Prosecutors are required to improve performance, be honest, fair and consistent in carrying out his duties and powers both as a Public Prosecutor, executor of Court decisions, supervises the implementation of conditional criminal decisions, criminal supervision decisions, and conditional release decisions, conducts investigations of certain crimes".[56]

It turned out that the ratio legis gave the Prosecutor the authority to investigate corruption crime by the legislators who were the embodiment of people's sovereignty and democratic principles because the people at that time had hopes and gave hope to the Prosecutor's Office to be pro-actively involved in eradicating corruption crimes

[55] Peter Mahmud Marzuki, *Filsafat Hukum sebagai Pedoman Pengambilan Keputusan* dalam Adriano et al., *Eksistensi, Fungsi, Dan Tujuan Hukum Dalam Perspektif Teori Dan Filsafat Hukum: Dalam Rangka Memperingati 80 Tahun Guru Kami Prof. Dr. Frans Limahelu, S.H., LL.M* (Kencana 2020) 45.

[56] Risalah Rapat Paripurna Pembahasan RUU tentang tentang Perubahan atas Undang-undang Nomor 5 Tahun 1991 tentang Kejaksaan Republik Indonesia pada Pembicaraan Tingkat II di Dewan Perwakilan Rakyat Republik Indonesia. Kamis, 15 Juli 2004, 131-133.

other than by means of authorized prosecutions as well as investigation, considering that at that time corruption was carried out with a sophisticated and complicated modus operandi, even on a transnational scale.

The public has high hopes for the Attorney to be involved proactively in eradicating criminal acts of corruption through the establishment of a Prosecutor Act in line with the theory of forming legal rule through the social contract of thinking as described by JJ. Rousseau (1712-1778). According Rousseau, an Act is a statement of the original will of the people; therefore, that will becomes the sole reference for establishing law.[57] In this connection, the view of the legislator Sayuti Raharawin is that the Prosecutor be given the authority to eradicate corruption through investigations is the original will of the Indonesian people, so that what will be conveyed through his views becomes the valid legal rules. Remember that Raharawin is the embodiment or representative of the Indonesian people.

According to Rousseau, the law is not the will of a particular group, or the will and interests of people who live in an association. It is not the will and interests of individuals, but the law is an orderly manifestation of public will and interests in the political system of a country.[58] Rousseau said that legal rule can be qualified, valid and has binding legal force if the legal rule reflects the common will of the association of free people (*volonté generale*). Therefore, according to him, it is necessary to have a legislative body which is the embodiment of those people who will and are free.[59]

Apart from that, the author also speculates that the atmosphere of the spirit of reform to fight corruption in Indonesia which was carried out with a sophisticated, complicated, and even transnational-scale modus operandi at that time in the discussion of Draft Act Number 16 of 2004 was similar to the naturalist *status naturalis* after the renaissance era and the reforms to medieval theology and feudalism. According to Thomas Hobbes, when the human *status naturalis* is selfish it likes to hurt fellow human beings, is brutal and aggressive. Whereas according to Hobbes every human being has a

[57] E. Fernando M. Manullang, *Legisme, Legalitas dan Kepastian Hukum* (Kencana 2017) 9-10.

[58] Bernard L. Tanya et al., *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi* (Genta publishing 2013) 79.

[59] ibid 80.

natural right to defend his body and soul, both the right to objects and the right to benefit from attacks by other parties. Therefore, such a situation must be ended by making a community agreement by surrendering the natural rights in question to someone who has no absolute power and does not take sides.[60]

In this connection, corruption crime committed by perpetrators of criminal acts, which are generally carried out by those who have high positions, are certainly selfish acts and hurt fellow human beings, because the state money that was taken should have been used for the benefit of all people in Indonesia, both in the infrastructure, health, economic and education development sectors. So that with such circumstances, the legislature at that time wanted the rampant corruption crime to end immediately by giving investigative authority to the Prosecutor to jointly eradicate corruption which has become an acute disease and a common enemy for all mankind (*hostis humani generis*) through the instrument of Act Number 16 of 2004 concerning the Prosecutor.

In other words, the ratio legis was given authority to the Prosecutor in investigations in the field of corruption crime through Law Number 16 of 2004 because legislators at that time gave and placed great hopes on the Prosecutor to be actively involved in eradicating corruption crime. Corruption crime which at that time or even today is carried out with sophisticated, complicated modus operandi, scale transnational, and by those who have high positions so that it is difficult to see, reveal and prove; because of that, legislators commit corruption crime This is eradicated jointly or under siege by law enforcers, including by the Prosecutor through its investigative authority. This is reasonable, because the corruption crime is an extraordinary crime that affects all aspects of human life, so it becomes a necessity if corruption becomes the common enemy of all mankind (*hostis humani generis*), with the hope that corruption crime can be eradicated in its entirety or at least reduce the number of criminal acts of corruption in Indonesia through the submission of investigative powers to the Prosecutor.

[60] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Kencana 2008) 99-101.

The granting of authority to Prosecutor to investigate corruption is an extraordinary measure in eradicating corruption crime, because corruption itself is an extraordinary crime with a very broad impact. In giving investigative authority to the Prosecutor in eradicating corruption crime through this legal instrument, according to Thomas Aquinas, that law ideally emanates from the power to govern with the aim of the common good.[61] The common good in question is the eradication of corruption crime, for the sake of realizing a just and prosperous Indonesian society based on Pancasila and the Constitution of the Republic of Indonesia 1945.

Conclusion

The concept of distribution of power in the investigation of corruption crime between the Police, the Corruption Crime Eradication Commission and the Prosecutor is that, between the three, it is possible to cooperate with each other in the context of carrying out investigations of corruption crime based on the spirit of togetherness in realizing an integrated criminal justice system for the realization of an Indonesia clean from corruption. Of the three institutions, both have the authority to investigate corruption, although police investigators are general criminal law (*lex generalis*), because police investigators have the authority to investigate all crimes.

The ratio legis of giving authority to prosecutors is that the community through the forming of the Act at that time gave and placed great hopes on the Prosecutor to be proactively involved in eradicating corruption crime, considering that corruption at that time or even up to now is a crime committed by the sophisticated and complicated operandi, even a crime on a transnational scale. Giving great hope to the legislators is based on social contract theory in the forming a legal rule following Rousseau, giving hope to the Prosecutor to carry out an investigation into the corruption crime as the will of the people, , so that they agreed to hand over the eradication of corruption crime to the Prosecutor by authorizing the Prosecutor Act.

[61] ibid 96.

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