

HUMAN RIGHTS AND CRIMINAL PROCESS IN COMBATING CORRUPTION

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Abstract

The human rights idea does influence the enactment in the Indonesian Code of Criminal Procedure KUHAP. Criminal process is a very important part of the administration of criminal justice, Indonesia established The Anti-Corruption Commission (KPK) and The Court. The team were designed as the Millennium Law Enforcement to take corruption cases with the additional powers given by the Law. The paper approach to analyze regulations relevant to human rights protection in Criminal Process in combating corruption. The idea is to find legal understanding, concept relevant to the link between human rights and criminal process under the law enforcement team and whether it even makes sense to speak of human rights violations which might cause abuse of process by the law enforcer. This paper also to determine the notion of a fair trial globally towards legal certainty and justice which is the most essential human rights of all citizens.

Key Words: Human Rights, Criminal Process, Combating Corruption

1. Introduction

Indonesia has transformed from one of Southeast Asia's most repressive and centralized political system to its most decentralized and democratic.¹ Post Soeharto 1998 until present, Civil liberties are central to the Indonesian criminal justice process. Comprehensive human rights instruments make a massive contribution to understanding the essential dynamics of the process.² Yet, while not entirely hidden, human rights have rarely been centre state in Indonesia legal system. Their role has been more that of a prompt than a principal actor. This paper is the product of ideas by the lives of convicted crime who have been locked away for decades to access justice as fairness due to the discretion by the millennium law enforcer. I was motivated by our political commitment to breaks new ground in legal writing particularly on the criminal process in combating corruption.

¹ Butt, Simon (2017), *Corruption and law in Indonesia*, NY:Routledge

² Hurst, William, *Ruling Before The Law The Politics of Legal Regimes in China and Indonesia*, UK:Cambridge University Press, p 83-84

This paper focused and dedicated to ending abuse of power, abuse of process, discrimination due to the obstruction of justice in the criminal process by Law Enforcement, particularly in corruption case. By introducing a rights into the analysis of criminal justice procedure, makes an important contribution to understanding on fairness to articulating what is now recognised as the respect that the law and law enforcement should pay to human rights and discrimination against them. We can begin to understand what makes law work and how it the Law governs interactions between law enforcement institution, as well as the convicted citizens in corruption cases. Method of this paper based on normative juridical research, as McLeod wrote “overview of the legal basis of the constitution as the foundation of any real understanding”.³ This paper, therefore consider the legal frame work of International and National law. According to Soerjono Soekanto and Sri Mamudji, "The Object of Normative Law Research Study includes: (i) research on legal principles, (ii) research on systematic law, (iii) research on vertical and horizontal synchronization levels, (iv), and (v) legal history, the approaches taken are statute approach, conceptual approach, and case approach”.⁴ The structure of this paper reflects the fact that there are no simple solutions to the achievement in combating corruption based on the principles of human rights as fundamental freedoms for all citizens.

Louis Henkin wrote: “Human rights is the idea of our time. It asserts that every human being, in every society, is entitled to have basic autonomy and freedoms respected and basic needs satisfied”.⁵ In the last decade a new tool has been developed in the global war against official corruption through the introduction of the link between human rights and criminal process to take particular types of corruption cases beyond the reach of abuse of power, abuse of process and error on crime and punishment, Beccaria said “it is an admirable law which ordains that every individual shall be tried by his peers, and that individuals are innocent until found guilty”.⁶ The Indonesian Criminal Justice System contains numerous safeguards to prevent the conviction of innocent persons. The Bill of Rights provides nineteen separate rights for alleged criminal offender. Despite these safeguards, wrongful convictions persist, and the issue has reverberated in the national debate over capital punishment.⁷

A major premise of the ongoing research argues that corruption disables a state from meeting its obligations to respect, fulfill, and protect the human rights of its citizens. Unfortunately, the recent spate of international legislation against official corruption provides no clear guidelines on how to proceed in balancing the right of the accused to be presumed innocent against the competing right of society to trace the recapture the criminals acquired national wealth. Corruption and human rights is the relationship between state and citizen.⁸ The main objective of this paper is to describe and analyze those criminal processes and legal changes. More broadly, to emphasize the essence on law enforcers that act arbitrarily in the criminal procedural results in gross human rights violations.

Indonesian courts have always engaged with the jurisprudence of the Dutch Colonial System those regulations remained in force until such time a new law was enacted to repeal them. The Daendels

³ McLeod, Ian (1999), *Legal Method*, UK:Macmillan Press LTD, p 57

⁴ Soerjono Soekanto, Sri Mamuji. (2014), *Normative Law Research A Brief Review*, cited by Salim HS, Erlies Septiana Nurbani, *Application of Legal Theories in Theses and Dissertation Researches* (Jakarta: Raja Grafindo Persada), p 14

⁵ Henkin, L (1981) *The International Bill of Rights: The Covenant on Civil and Political Rights, 1st edition*, NY:Columbia university press P 1

⁶ Beccaria, Cesare ((1983), *On Crime and Punishment*, London:International Pocket Library-Branden books, p 7

⁷ Westervelt, Sandra D., Humphrey, John A. (2010), *Wrongly Convicted Perspective on Failed Justice*, New Jersey:Rutgers University Press, p 1

⁸ Olaniyan Kolawole (2016), *Corruption and Human Rights Law in Africa*, Oxford:Hart Publishing, p 55

Governorship saw many changes to the Indonesia system of justice as established by the Dutch throughout their colonization occur since 1798.⁹ The old criminal procedure contained in HIR 1941 a Dutch regulation concerning the Procedural Law in Hindia Belanda (Indonesia) have affect Indonesia remains one of the last outposts of resistance to what has been describe in contemporary jurisprudence as the “rights revolution” and progressively become intellectually isolated from global law, as a result Indonesian law and jurisprudence may become impoverished.

A new order proclaimed by the late President Soeharto in Indonesian Politics and dramatically shifted foreign and domestic policies away from the course set in Dutch Colonization and Soekarno’s final years. The new order includes the bill of Indonesian Criminal Process is regulated in Law No. 8 of 1981 is so called KUHAP or Kitab Undang-Undang Hukum Acara Pidana an Indonesian Code of Criminal Procedure that replaced the old criminal procedure contained in HIR 1941, a Dutch regulation concerning the Procedural Law in Hindia Belanda (Indonesia).¹⁰ When the Law was enacted in 1981, it was considered a masterpiece, because the law made some changes and even included some innovations considered to be significant improvements on notion of fundamental rights that have a pervasive and controlling influence at all stages of the criminal justice process.

KUHAP as the new Indonesian Code of Criminal Procedure, the Law on enactment was to be nationally implement and applicable throughout Indonesia to improve the penal law system particularly Indonesian Criminal Justice System. As Becarria said “Penal laws so considerable a part of every system of legislation, and of so great importance of the happiness, peace, and security of every member of society, are still so imperfect, and are attended worth so many unnecessary circumstances of cruelty in all nations, that an attempt to reduce them to the standard of reason must be interesting to all mankind.”¹¹

The quest for good governance during the past decade at one end of the spectrum we find “the eradication of corruption” and “good governance”, law trust government goes with high perception of corruption among officials.¹² In addition Kumar C. Raj, wrote, “This finding can be expressed in the language of anti-discrimination law. Corruption might potentially violate the prohibitions against discrimination found in the universal and regional human rights conventions”.¹³

Despite Indonesia has the Law of Criminal Procedure that reflects the national aspirations and ideology, Yet, well over a decade after Soeharto’s fall in may 1998, reformers have been unable to dislodge one of his enduring legacies; corruption. Indonesia is often said to have corruption levels amongst the highest in the world.¹⁴ Corruption in Indonesia is systemic and has a long history, even longer than the history of the Unitary State of the Republic of Indonesia itself. In the post-independence period, the new order era to the post-reform era, corruption remained rampant.¹⁵

⁹ Global Investment Center (2015), *Indonesia Criminal Justice System Laws, Regulations and Procedures Handbook* Volume 1, USA:International Busienss Publications, p 55

¹⁰ Indonesia, (1981) Law No. 8 on *Criminal Procedure*, ratified on 31 December 1981, LNRI No.1981/76, Supplement to the State Gazette No. 3209

¹¹ Beccaria (1983), *Op.Cit.*, p 23

¹² Pippidi Alina Mungiu (2015), *The Quest for Good Governance How Societies Develop Control of Corruption*, United Kingdom:Cambridge University Press, p 10-12

¹³ Kumar C. Raj (2011), *Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance* Oxford:Oxford University Press , p 36, 46-47

¹⁴ Butt (2017).*Op.Cit.*

¹⁵ The Head of Indonesian Eradication Commission (2014), *8th Agenda Anti-Corruption for the President 2014-2019*, Jakarta: KPK, p 9

Indonesia has a long way to go in the fight against corruption. How have the state obligations referred to corruption? One of state contribute more to fighting corruption in Indonesia is the Anti-Corruption Commission (Komisi Pemberantasan Korupsi, or KPK) and the Anti-Corruption Court (ACC), established in 2003 due to the international influence on governance of interest in combating corruption. The team were designed to take particular types of corruption cases. In the Indonesian criminal justice system The KPK is one of the components to the systems beside the Police, the Attorney General and the Court. However KPK's authority to initiate and to take over corruption cases. Other power aimed at making KPK investigations and prosecutions easier and convictions more likely in the ACC. KPK appoints and dismisses its own criminal investigators and prosecutors. All of the enforcers are working under one roof called KPK.¹⁶ Despite all extra ordinary powers KPK has, in the criminal process the KPK is as a general principle subject to the Indonesian Code of Criminal Procedure Law No.8/1981 (KUHAP).

Despite Indonesia has the Law of Criminal Procedure that upholds the human rights, consequently what we chiefly encounter is a patchwork approach, characterized by a discretionary element and lack of certainty around what, when and how it will apply. So KPK as the Anti-Corruption Commission ground their decisions in or make reference to human rights principles while others reject this approach due to some legislatures reference or incorporate human rights, as do some policies and decisions of the executive arm of government.

The questions is now, what is the link between human rights and criminal process?, why are so many people are being convicted of corruption? and whether it even makes sense to speak of human rights violations in criminal process focus on the KPK's authority? and what state action?. From a legal standpoint, it is crucial whether we qualify a situation as merely undermining human rights, or whether we qualify it as a true rights violation that must be deemed unlawful and may be addressed with the usual sanction. Prior to answers all of those questions, we have to examine in generally all types of human rights give rise to the criminal process and its law enforcers. A rights based on analysis of criminal justice procedure in corruption cases is a complex task. This is because in Indonesia, rights reasoning and the application of human rights principles are largely not structured around and established and identifiable human rights enactment or framework.

The relationships of criminal process and potential human rights abuses are obvious. Every crime is a form of human rights violation, since every crime is bound to disturb people's lives. The phenomenon of globalization is that all corruptors should be impoverished and the perpetrators should be severely punished without discrimination. Corruption should be eradicated is a necessity, but it becomes interesting when we equate the level of criminal process and law enforcement in corruption crimes with crimes against human rights. This paper examine the essence to protect human rights in the criminal process of corruption cases through the role of Indonesian Code of Criminal Procedure (KUHAP) and the Anti-Corruption Commission (KPK), to find how KUHAP as the Law apply to KPK.

In principle, KUHAP as the Law upholds the human rights of Indonesian in it substance occupies a dominant position in Judicial process, therefore this paper also analyzing how KPK that has wider powers for law enforcement authority in corruption cases interpreting existing Laws. In general, this paper covers pre-trial and trial aspects of the criminal justice which dealt with a rights analysis relevant to other aspects of the criminal justice process. Our aim in adopting a rights based approach in this paper is to make human rights thinking more central in the criminal procedural context. Finally this paper explore the exercise of law

¹⁶ Indonesia, (1999) No. 31 concerning *Eradication Of The Criminal Act of Corruption*, Stipulated in Jakarta 16 August, 1999, State Gazette 1999 Number 140

enforcement powers the corruption eradication commission (KPK) which might potentially violate the prohibitions against discrimination of human rights found in KUHAP”

2. Corruption As A Topic of The United Nation Human Rights Bodies

Corruption has existed and been a problem since the beginning of human history, corruption refers to moral impurity, the word itself derives from the Latin for ‘to spoil, pollute, abuse, or destroy, depending on the context. But the concept of corruption has changed over the centuries and varies somewhat across cultures.¹⁷ Growing evidence of climate change along with continuing threat of global corruption and memories of the meltdown of financial markets in 2008, has brought home to people around the world the complex problems we face today.¹⁸ Corruption impacts upon individuals, groups and organizations (including the state) in numerous ways, while many of its negative effects are obvious, other are less so.¹⁹ None of these problems can be solved by sovereign states acting alone. All require cooperation of some sort among states and the growing number of nonstate actors. The many aspect of the relationship between corruption and human rights are, if anything more apparent in the relationship between human rights and criminal procedural.²⁰

As noted, it is only in the past twenty or so years that the international community has focused its attention on corruption. One reason is that the West, which has been the principal anti-corruption driver since the 1990s, had little interest in pushing an international anti-corruption agenda during the Cold War.²¹ United Nations efforts to address corruption commenced in 1996, when the General Assembly adopted two Resolutions on the topic: the International Code of Conduct for Public Officials²² and the UN Declaration against Corruption and Bribery in International Commercial Transactions.²³ Subsequently, 1997 saw the Bribery in International Commercial Transactions,²⁴ which was taken further in 1998 with the Action Against Corruption and Bribery in International Commercial Transaction Resolution.²⁵ In 1999, another GA Resolution was adopted,²⁶ while in 2000 the first Convention in the field came into being the UN Convention Against Transnational Organized Crime (UNTOC).²⁷ This instrument entered into force on 29

¹⁷ Holmes, Leslie (2015), *Corruption A Very Short Introduction*, Oxford:Oxford University Press, p 1

¹⁸ Karns, P. Margaret, Mingst A. Karen, Stiles, W. Kendall (2015), *International Organizations The Politics & Processes Of Global Governance*, UK:Lynne Rienner Publishers, Inc. p 1

¹⁹ Holmes (2015), *Op.Cit.*, p 18

²⁰ Ivory, Radha (2014), *Corruption, Asset Recovery, and the Protection of Property in Public International Law The Human Rights of Bad Guys*, UK:Cambridge University Press, p 6

²¹ Holmes (2015), *Op.Cit.*, p 108

²² UN Doc. A/RES/51/59 (12/12/1996)

²³ UN Doc. A/RES/51/191 (16/12/1996)

²⁴ UN Doc. A/RES/52/87 (12/12/1997)

²⁵ UN Doc. A/RES/53/176 (15/12/1998)

²⁶ UN Doc. A/RES/54/128 (17/12/1999)

²⁷ UN Doc. A/RES/55/25 (15/12/2000)

September 2003 and currently has 147 State parties²⁸ includes Indonesia. The human rights dealt with in this paper are those relevant to the criminal justice process guaranteed in the general international human rights treaties, the International Covenant on Civil and Political Rights (ICCPR), The European Convention for the protection of Human Rights and Fundamental Freedoms both of which were derived from the Universal Declaration of Human Rights and influenced the national human rights enactments of most countries as well Indonesia.

The UN Human Rights Committee (HRC), supervising State compliance with the ICCPR, as of 1992 the HRC issue collective concluding observations, the topic of corruption featured in 28 observations. These can be classified into a number of thematic categories.²⁹

- 2.1. *The Right to Equality Before Courts and Tribunals and to a Fair Trial*, concerned with corruption in the judiciary which related to Article 14 of the ICCPR³⁰.
- 2.2. *The Prohibition of Human Trafficking*, concerned the relationship between the conduct of corrupt public officials and the occurrence of human trafficking, referred to Article 8 of ICCPR.³¹
- 2.3. *The Right to Freedom of Movement*, its concern the existence of the address registration system violates the right to freedom of movement and choice of residence under Articles 12,³² 2 and 26 of ICCPR.³³
- 2.4. *Miscellaneous Observations*, remains concerned about the persistence of corruption and its negative impact on the full enjoyment of the rights guaranteed by the Covenant Article 2 of ICCPR.³⁴
- 2.5. *Committee On The Rights Of The Child (CRC)*, in its observation on Tajikistan (2000), the CRC found that the country had to face corruption problem, which had an especially severe impact on children belonging to the most vulnerable segments of society similar observations found in Kenya (2001), Georgia (2002), Malawi (2002), Zambia (2003), Kyrgyzstan (2004), Moldova (2009). The impact of corruption upon children's health was discussed by CRC in its observations on Pakistan (2003), Children right to education was addressed in its observations on Mozambique (2002), expressing the concern of the CRC that there is alleged corruption and sexual abuse on economic exploitation of pupils by professionals, including teacher, in the school system. With regards to a number of States, the Committee made more general remarks about the fight against corruption.³⁵
- 2.6. *Committee On The elimination of All Forms of Discrimination Against Women (CEDAW)*, in the observations on China (1999), its concern about corrupt public officials who were reportedly involved or colluding in the trafficking of women, including through payments from prostitutes, as well on Thailand (2006).³⁶
- 2.7. *Committee On The Elimination Of Racial Discrimination (CERD)*, The states concerned take measures to address corruption in the justice system and State Party must make the independence of the Judiciary and to eliminate corruption and organized crime in the country. Urge State Party to fully

²⁸ Boersma, Martin (2012), *Corruption A Violation of Human Rights and a Crime Under International Law*, UK: Intersentia Cambridge Business Park, p 92

²⁹ Ibid.

³⁰ Nowak, Manfred (2004), *U.N. Covenant on Civil and Political Rights CCPR Commentary 2nd revised edition*, Germany: N.P. Engel Publisher, p 305

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Boersma (2012), Op.Cit. p 120-121

³⁶ Ibid.

implement all anti discrimination policies that have been adopted, to closely monitor and evaluate progress in implementation at national and local level.³⁷

- 2.8. *Committee Against Torture* (CAT), addressed the topic of corruption in respect of some States that the existence of large number of public officials involved in acts of corruption is not a positive contribution. The majority observations are concerned with corruption in the criminal justice system (the police and judicial sector and urges the particular States to take the necessary measures including the adoption of legislation and preventive measures.³⁸

Kumar Raj C. wrote, the human rights framework has challenged the traditional understanding of sovereignty in the context of globalization. The goal of every sovereign state is to ensure national security for its people so that peace and stability prevail in society. Corruption has the potential to threaten this achievement of national security. A sovereign state ought to ensure that laws are enforced in a non discriminatory manner. Corruption does not allow this to happen. Hence, the criminalization of politics and politicization of crimes has become a common practice in South Asian Countries.³⁹

3. The Link between Human Rights and Indonesian Code of Criminal Procedure

Human rights can be said to be the “sweetest” fruit of the reform. The Amendment to the 1945 Constitution of the State of the Republic of Indonesia. In addition, Indonesia has ratified two of the most basic human rights instruments: the International Covenant on Economic, Social and Cultural Rights (ICESC) and the International Covenant on Civil and Political Rights (ICCPR) through Law No. 11 and Law No. 12 of 2005⁴⁰. While all rights set down in the ICCPR impact to some extent on the criminal justice system, here a brief overview is attempted only of those rights of most relevance to the investigation and prosecution of crime and their location in that process such as the right to life, the right to liberty and security of the person, the right not to be subjected to torture, inhuman or degrading punishment or treatment, the right to privacy; the right to silence and the right to a fair trial.

Indonesian Criminal Procedure (KUHAP), when the law was enacted in 1981, it was considered to be significant improvements on the old criminal procedure contained in HIR 1941 (Dutch Regulation concerning the Procedural Law in Hindia belanda). KUHAP 1981 was to be nationally implement and applicable throughout Indonesia. KUHAP as the new Law utilizes the accusatorial system is considered as more humane than the old HIR 1941 applied the inquisitorial system because the old HIR considers the confession of the defendant as evidence. The old system has no limitation concerning the authority of the defendant’s confession, the investigator tortured the defendant if this was the only way to ensure that a confession was made. In contrast KUHAP as the new Indonesian Criminal Code since 1981 reflects the national aspirations and the national ideology, KUHAP honors and upholds the humans right of Indonesians in its substance.

To support KUHAP, Indonesia have Law No. 14 of 1970 concerning Basic of Justice Power stipulates a number of principles concerning competency of the court and how a fair trial is to be conducted:⁴¹

³⁷ Ibid.

³⁸ Ibid.

³⁹ Kumar C. Raj (2011), Op.Cit, p 61-62

⁴⁰ Indonesia. 2005 Act Number 11 for *Ratification of International Covenant on Economic Social and Cultural Rights*, signed in Jakarta 28 October 2005, LNRI 2015 Number 118 and Act Number 12 *International Covenant On Civil and Political Rights* (Jakarta 29 October 2005, state gazette 2005 Number 119

⁴¹ Indonesia, (1970) Law Number 14 *concerning Principal Provisions of Justice Power*, Ratified 1970 Number 74, Supplement State Gazette Number 2951

- 3.1. Equality before the law – everyone has the same position in front of law, no discrimination should be allowed.
- 3.2. Due process of law – as all legal enforcement before the trial such as arrest, detention, search, and seizure have to be conducted based on written orders or warrants from an authorized officer, and has to be done in accordance with the law.
- 3.3. Presumption of innocence – no one can be considered guilty before a judgment which is final and binding is rendered.
- 3.4. Everyone who is suspected, arrested, remanded, prosecuted, or tried without legal reason and or in error should be given compensation and rehabilitation. The officers who either deliberately or because of mistake cause this violation have to be charged or given an administrative sanction.
- 3.5. The court of justice should conduct matters expediently, simply and cheaply. The trial should be free, fair and impartial.
- 3.6. Everyone charged with a crime has a right to legal representation or legal aid.
- 3.7. The suspect has the right to be informed of what charges are contained in the indictment and the legal basis for the indictment.
- 3.8. The court hearing must be conducted in the presence of the defendant.
- 3.9. The court is open to the public, except where the law provides otherwise.

In order to uphold the human rights of citizens and to implement the principles contained in Law No. 14 of 1970, the KUHAP honors and guarantees some rights for the suspect (accused) and or the defendant. The most significant of these principles is the principle of a presumption of innocence. It means that every person who is accused of committing a crime that has led to their arrest, remand, prosecution or trial has the right to be presumed innocent until proven guilty, which in this case would be with the rendering of a final and binding judgment by the relevant court. As an innocent person, the accused has rights: the right to be examined immediately, the right to know the crime alleged to have been committed. The right to know, the content of formal charges, and the right to have legal representation.

4. Violation of Human Rights and Indonesian Eradication Corruption Commission

It is undeniable that current law enforcement practices in corruption eradication, especially in the post-reform era in Indonesia tend to violations of human rights, such as efforts to determine the act of Obstruction of Justice and the act of False Testimony or providing false information in a corruption case. From the point of view of Article 21 of Law No. 31/1999 on Eradication of Corruption, it formulates the legal norms as a behavior of “*deliberately preventing, inhibiting or foiling directly or indirectly*”, the provisions of Article 22 in conjunction with Article 28 paragraph (1) formulates the legal norms as a behavior of “*intentionally not giving information or giving false information*”, the provisions of Article 21 and Article 22 in the legal perspective of proof of formal offense or material offense tend to be “debatable”.

In addition, another factor that is not less important is the effectiveness of investigation authority. Which institution is authorized to investigate the crime of obstruction of justice and false testimony. On the one hand, Article 26 of Law Number 31/1999 only specifies: “*investigation, prosecution and examination in court for corruption shall be conducted under the applicable criminal procedural law, unless otherwise provided in the Law*”. With regard to the foregoing, the Corruption Law does not make any special provisions. Therefore, in accordance with the legal principle adopted, the issue on effectiveness of crime of obstruction of justice and false testimony must be referred to as the provisions of the Indonesian Criminal Code.

It occurs when a law enforcement officer uses their discretion to take a legal action contrary to the Corruption Law and the Criminal Procedural Law itself. For example earlier 2015, Bambang Widjajanto former (suspended) Deputy Chief Corruption Eradication Commission Republic Indonesia or KPK, was arrested on grounds of allegedly directing witnesses in the West Kotawaringin election dispute to provide false testimony at the Constitutional Court in 2010, at a time when Bambang was still a lawyer. In addition to allegedly violating articles 55 and 242 of the Criminal Code (KUHP) on perjury, Bambang was also recently charged with Article 56 for being an accomplice in the alleged crime. Previously, in a related case, the Central Jakarta District Court sentenced Bambang's colleague Zulfahmi Arsyad to seven months in jail for his role in aiding Bambang in 2010, who was then a lawyer working on an election dispute case before the Constitutional Court, by recruiting witnesses to give false testimonies in court.

The Police also confirmed that three other suspects had been named in addition to Bambang, including Zulfahmi Arsyad, a relative of West Kotawaringin Regent Ujang Iskandar, who has won the election dispute case at the Constitutional court on July 2010. The police have been tried to question him since early 2015 but Zulfahmi failed to meet three summonses. Police finally caught up with him in Jepara, Central Java. Police said that as one of the three suspects, Zulfahmi Arsyad also allegedly asked witnesses to commit perjury and he was responsible for distributing money RP 2 million up to Rp 4 million (USD250) to the witnesses." Although Zulfahmi has been detained, however he remained tight-lipped about the identities of the other two suspects. The case dossiers of former (suspended) Corruption Eradication Commission (KPK) deputy Chief leaders Bambang Widjojanto have been submitted by Bareskrim Polri (National Indonesian Police) to the Attorney's General Office (AGO) in Jakarta on September 2015. Police investigators had sent summons letters calling on Bambang Widjajanto to come to Bareskrim Polri Office respectively, regarding the dossiers second phase submission.⁴²

Furthermore, Former (Suspended) Corruption Eradication Commission, or KPK, chief Abraham Samad was grilled by police over two historic criminal cases on February 2015. Abraham was questioned over his alleged involvement in counterfeiting state documents. After failing to abide by the first summons made by the South Sulawesi Police, Abraham arrived at police headquarters in Ujungpandang afternoon on February 2015. Abraham arrived in the provincial capital with his legal team amid tight security. A woman named Feriyani Lim has accused Abraham of falsifying state documents to obtain a passport, although Abraham adamantly denies he ever knew Feriyani. The interrogation lasted two hours before police suspended the session because Abraham said he was not feeling well.⁴³ By March 2015 Police have completed Abraham Samad's case dossier who was also named a suspect for allegedly falsifying documents. The South Sulawesi High Prosecutors Office has said that it has received the complete case dossier of Abraham Samad, the former (suspended) chairman of the Corruption Eradication Commission (KPK), who was accused of counterfeiting documents for an identity card for a woman named Feriyani Lim. The case dossier of Abraham Samad has been completed both formally and materially. The prosecutor's office were waiting for final document from the South Sulawesi Police to proceed further with the case. The prosecutor office expected that the police would immediately complete the second-level document in order to the prosecutors drafted a formal charge against Abraham to be submitted to the Makassar District Court. Both Abraham Samad and Feriyani were accused of counterfeiting facts when processing an ID for the latter, contravening both the Criminal Code and Law No. 23 of 2006 concerning population administration.

⁴² The Jakarta Post (2015), *Case Against Suspended Corruption Commission Leaders Passed Prosecutor*
<http://www.thejakartapost.com/news/2015/09/17/case->

⁴³ Jakarta Globe (24 February 2015) *Suspended KPK Leader Answer Police Summon*
<http://jakartaglobe.id/news/suspended-kpk-leaders-answer-police-summons/>

Abraham has been declared a suspect by the South Sulawesi Police for allegedly abusing his authority by helping a Pontianak woman, Ferriyani Lim, obtain an ID card and family card for inclusion in her passport application at the Makassar Immigration Office in 2007.⁴⁴

Police investigators had sent summons letters calling on Abraham Samad to come to South Sulawesi Police Office respectively, regarding the dossiers second phase submission. According to their legal advisor, "Both Samad and Widjanto were ready to comply with the legal process as it is part of their responsibility as citizens," In view of the second side, law enforcement officer exercising the authority granted by law for other purposes contrary to the law containing the legal basis of the given authority is called Obstruction of Process or Abuse of Process. An "extraordinary" effort of a Law Enforcer to combat corruption sometime against the Law. And when the right to get an impartial and impersonal legal proceeding (fair trial) becomes violated, the state has three important tasks: to respect the human rights of its citizens, to protect the human rights of its citizens and to protect its citizens.

How the State action in facing the criminal case against (suspended) Head and Deputy of Commission Eradication Corruption? It took more than a year for the AGO to decide on terminating the prosecutions of the two, a procedure known in Indonesian legal terminology as deponing a legal action whereby the supreme prosecutor office halts a case with the backing of the House of Representatives based on recommendations from other relevant law enforcement institutions. Finally, based on legal considerations, prior consultations with other high ranking institutions Attorney General HM Prasetyo on 3 March 2016 dropped the cases of Abraham Samad and Bambang Widjojanto, respectively the former chief and deputy chief commissioners of the Corruption Eradication Commission (KPK), citing public interest. The General Attorney made the decision based on his prerogative right as stated in Article 35c of Law Number 16 of 2004 on prosecution, he has right to lay aside, drop the cases. In view of this, following the issuance of the decision, the two cases have been closed. The attorney general expressed hope that all parties would understand his decision and accept it.

If we look closely to the criminal process its called an 'error', according to Laudan Larry (2006) in related to Truth, Error and Criminal Law, he using the term 'error' in a more strictly logical and epistemic sense. Error has occurred, mean either a) in a case that has reached the trial stage and gone to a verdict, the verdict is false OR b) in a case that does not progress that far, a guilty party has escaped trial or an innocent person has pleaded guilty and the courts have accepted that plea. In short, *an error occurs when an innocent persons is deemed guilty or when a guilty person fails to be found guilty*. Laudan call the first sort of error a *false inculpatory finding* and the second a *false exculpatory finding* and the second a *false exculpatory finding*.⁴⁵

V. Conclusion

The quest for good governance is part of inside government departments, where much rule making happened, decision to make rules are not always taken on rational grounds. Rules are 'bargained over and they are built'; choice is constrained by the political, legal and regulatory context. However corruption cases are still must be settled in accordance with due process of law. Law enforcement cannot be done by feeling alone, but it must be by perfect legal control, according to the ratio. To do otherwise in any of this instances, would be to act to unfairly as to perpetrate an abuse of power.

⁴⁴ The Jakarta Post (2015), <http://www.thejakartapost.com/news/2015/09/03/police-have-completed-abraham-samad-s-case-dossier-prosecutor-says.html>

⁴⁵ Laudan Larry (2006), Truth, Error, And Criminal Law, New York:Cambridge University Press, p 10

The law enforcer who had made an error in adopting the restriction, because error in use of discretionary power is called *abuse of discretionary power* or *abuse power*. Unlawful discretionary power of the law enforcer must be so unreasonable since it might almost be described as being done in bad faith and it called unreasonableness. On the one hand, the Typology of States obligations are obligations to respect, to protect and to fulfil. Failure to perform any one of these three obligations constitutes a violation of such rights. Criminal Process of corruption and related offences should be free from improper political, economic or other influences. The Nations fail due to unfulfilled its obligations

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