



## Research Article of the Policy for Tackling Corruption Based on Corruption Court Competency Perspective Fast, Simple, and Low Cost

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### **Abstract**

Corruption has been a problematic crime destroying various aspects of life of communities, nations, and countries that efforts to prevent and eradicate corruption need to be endlessly implemented. The existence of Tripikor (Regional Corruption Court) located in the provincial capital is currently under the spotlight due to long distance and high cost problems. However, eradication of corruption has not met three principles; fast, simple and low-cost. This is according to factors of the Act, Law Enforcement Officers, Community, and Culture. In the future, the settlement of corruption needs to be carried out through the general court to reduce numbers of cases in Tripikor court, save operational costs, and guarantee safety, security and health for law enforcement officers.

**Keywords:** *Corruption; Corruption Court; The Principle of Fast; Simple; Low Cost Trial*

### **Introduction**

The crime of corruption has destroyed life of community, nations and countries that efforts to prevent and eradicate corruption need to be carried out continuously demanding maximum capacity of resources; institutional, human resources, and other resources as well as developing awareness, attitudes and behavior of the anti-corruption community so that they are institutionalized in the national legal system (Eko Sopoyono Hikmah, Vol. 1 No. 1, 2019: 79). However, enforcement strive of corruption has currently been unsatisfactory. Endeavor to eradicate corruption in Indonesia has been implemented since Indonesia fled from colonialism and became independent nation, especially during reformation era (Diana Yusyanti, Vol. 1 No 2, 2015: 87). Improving eradication of criminal acts of corruption, reforming the legal substance related to corruption and the structure by establishing a special institution is manifested. Renewal of the legal substance is enacted by changing the law on corruption which was originally based on Law Number 3 of 1971 replaced by Law Number 31 of 1999 Juncto Law Number 20 of 2001 (Corruption Law). Indonesian government has established a special commission to prevent and eradicate corruption which is the Corruption Eradication Commission (KPK) (Septiana Dwiputrianti, Vol. 6 No. 3, 2009: 242). In addition, a Corruption Court (hereinafter referred to as the Corruption Court) has been formulated based on Law Number 46 of 2009 concerning Corruption Court (Maroni, 2011:11).

The existence of Corruption Court is crucial as a remedy improvement for effectiveness and efficiency of law enforcement against corruption, in addition to the examination stage in court that there is a legal proof process by the judge to determine guilt of the defendant and be accountable for the actions he is accused of by the public prosecutor (Maroni, Rini fathonah, Nenny Dwi Ariani, Mashuril Anwar, 2020:940). Article 3 of Law Number 46 of 2009 concerning Corruption Courts states that Corruption Court is domiciled in every district/city capital whose jurisdiction covers relevant district court. Nevertheless, the implementation of corruption trials has not been conducted in each district/city capital but is still being conducted in the provincial capital. This is contained in the Transitional Provisions, Article 35 of Law Number 46 of 2009 which basically states that this law for the first time, a Corruption Court is established in every district in the provincial capital. Besides that, unavailable facilities and infrastructure to support the formation of corruption courts in each district/city capital are still challenging.

In spite of what preceded, the General Courts once had the authority to decide corruption for regional cases. Delegation cases to general court have been unsettling as the sentences given by district courts are generally insubstantial, and tendentious, some of them are acquitted so that the authority they have is handed over to the Corruption Court. Based on the records of Indonesian Corruption Watch (ICW), from 2005-June 2008 there were around 1184 defendants in corruption cases brought to the general court, and around 450 defendants were acquitted. The opposite situation exists at the Corruption Court, most or nearly none of the defendants tried at the Corruption Court are declared to have escaped corruption charges (indiscriminately) (Topo Santoso, 2011:8).

The prosecution of corruption is submitted to the Corruption Court in the provincial capital causing insubstantial case-control. This is when there is a cessation of corruption examination by investigators because they want to stop the case, as the consideration of operational costs for corruption is greater than state loss so that if the case continues to be prosecuted there is an assumption that the state will lose 2 (two) times. The existence of a regional Corruption Court which is located in the provincial capital is currently receiving criticism. For example, the corruption case in Merauke must be taken over at the Corruption Court in Jayapura, which costs a lot, for that there needs to be a reconsideration of the existence of the Corruption Court in the region due to high-cost problem. This also occurs in other provinces outside Java, which are hundreds of kilometers away and take a long time to reach the Corruption Court (Maroni, Rini fathonah, Nenny Dwi Ariani, Mashuril Anwar, 2020:941). Such conditions certainly do not meet the principles of fast, simple, and low-cost.

### ***Research Methods***

The research method is a way of thinking to achieve the research objectives. Research may not be able to formulate, find, analyze, or solve problems without research methods (Soerjono Soekanto, 2008:43). Based on the background and objectives described, it can be concluded that this type of research is included in the category of empirical or non-doctrinal legal research, namely research using primary and secondary data. Empirical research is used to analyze law which is seen as patterned community behavior in people's lives who always interact and relate in social aspects (Bambang Sunggono, 2003:43), the focus of the study is the operation of law in society, so empirical legal research can also be said as sociological legal research because this research is taken from the facts that exist in society (Soerjono Soekanto, 1987:3).

## **Discussion**

### **1. Tackling Corruption Crimes Based on the Competence of the Courts from the Perspective of Trial Principles; Fast, Simple, and Low Cost**

The term principle in Criminal Procedure Code (KUHP) is the legal basis underlining Criminal Procedure Code in actualizing law. This principle will serve as a guide for everyone, including law enforcers, as well as communities who have concern in criminal procedural law. The Criminal Procedure Code is based on a legal principle which is interpreted as the ground for legal benchmarks and guideline for law enforcer agencies in actualizing articles of the Criminal Procedure Code. On the other hand, not only to the legal apparatus, but the principles that are intended to be the benchmark and basis are for every member of the community who concerns and involved in the implementation related to the Criminal Procedure Code (M. Yahya Harahap, 2001:35).

Trial principles contained in the Criminal Procedure Code relating to the judicial process are quick, simple, and low-cost. This trial must be conducted quickly, simply and at low cost. Furthermore, free, honest and impartial must be applied consistently at all levels of the judiciary (Ansori Sabuan, 1990:74). The purpose fast, simple, and low cost principles is to conduct efficient and effective settlement in the court. Efficiency means accuracy without wasting time, effort, and cost or the ability to carry out tasks properly and precisely. Effective means that there are consequences or influences that can bring results to the judicial process in the form of justice and legal certainty. Actualizing this principle during trial is paramount by considering the procedure or stage so that judges can examine the cases thoroughly and accurately for deciding and seeking justice (Maya Hildawati Ilham, Journal Vol. 7 No. 3, 2017: 215).

The legal basis for Corruption Courts in several provincial capitals is the Corruption Court Law. Then the Supreme Court issued the Decree of the Chief Justice of the Supreme Court R.I. Number: 22/KMA/SK/II/2011 dated February 7th, 2011 concerning the Operation of the Corruption Court at Medan District Court, Padang District Court, Pekanbaru District Court, Palembang District Court, Tanjung Karang District Court, Serang District Court, Yogyakarta District Court, Banjarmasin District Court, Pontianak District Court, Kupang District Court, Jayapura District Court. However, the settlement of corruption in Provincial Capital has not practically complied to the principles of fast, simple, and low cost. On the other hands, the settlement process is time consuming, lengthy, and operational costs are quite high. Those are the gaps of settlement process in Provincial Capital.

Lawrence M. Friedman argues that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the legal structure, legal substance, and legal culture. The legal structure concerns law enforcement officers, legal substance includes statutory instruments and legal culture is a living law adopted in a society. Meanwhile, according to Soerjono Soekanto, there are several factors that influence law enforcement: (Soerjono Soekanto, 2008: 8).

- a. Legislative factor means interference from law.
- b. Law enforcement factor means the parties that form and apply law.
- c. Facility factor means tools that support law enforcement.
- d. Community factor means the environment in which the law applies or is applied.
- e. Cultural factor means a result of work, creativity and taste based on human initiative in social life.

Settlement of Corruption Crimes Cases Based on the Competence of the Corruption Courts often encounters challenges during actualization of principles of fast, simple, and low-cost justice. The author applies the principles of fast, simple, and low-cost according to Soerjono Soekanto that covers law, law enforcement, facilities, society, and culture. The discussion is as follows:

### 1) Law Factor

It is preceded that in accordance with Article 3 of Law Number 46 of 2009 concerning the Corruption Court states that the Corruption Court is domiciled in every district/city capital in which jurisdiction covers relevant district court. However, up to now the trial of corruption has not been conducted in each district/city capital, but in provincial capital. This is contained in the Transitional Provisions, Article 35 of Law Number 46 of 2009 which proclaims that Corruption Court for the first time is established in every district in provincial capital. The implication of this Transitional Provision is that the settlement must be conducted in provincial capital court, yet cannot in district/city capital court. The provisions become legal politics in the settlement of corruption cases in Indonesia.

### 2) Law Enforcement Factor

Tackling corruption cases is actualized by the Prosecutor's Office through the Special Crimes Division. The unit of Attorney General's Office of the Republic of Indonesia consists of the Attorney General's Office, 33 High Courts, 437 District Attorney's Offices and 63 Branches Attorney's Offices (Document Jaksa Agung Muda Bidang Pembinaan Kejaksaan Agung, 2022).

In 2019, the number of prosecutors in Indonesia was around 10.000 prosecutors throughout Indonesia. It should have been 20.000 prosecutors, so that was far from ideal numbers (Charles Komaling, <https://manado.tribunnews.com/2019/06/17/jumlah-jaksa-di-indonesia-hanya-10000-jaksa-agung-minta-tambahan-10000>, 2022) Meanwhile, a number of judges in Indonesia in 2017 were around 3,895 people consisting of 2,872 men and 1,023 women. The number of judges since 2015 had continued to decline by 2.75 percent until 2018 (Direktorat Jenderal Badan Peradilan Umum, Mahkamah Agung, <https://lokadata.beritagar.id/chart/preview/jumlah-hakim-di-indonesia-2014-2017-1551344769>, 2022). Another problem is related to the existence of ad hoc judges. The recruitment of external ad hoc judges is due to public distrust of the integrity of Career Judges in tackling corruption cases. However, along the way, the integrity of ad hoc judges was not better than those of career judges. Just as career judges who were involved in legal issues, there are also several ad hoc judges were caught in a sting operation (OTT) by KPK (The East-West Center (EWC) Indonesian Institute for Independent Judiciary, 2021: 69).

Seizing ad hoc judges entangled in corruption cases shows that they do not possess integrity better than career judges and the purpose of recruiting ad hoc judges in order to obtain judges with more integrity has not been achieved. For some career judges and legal practitioners, this condition raises the assumption that corruption cases should be returned to career judges who are considered to be more familiar with the law and the trust issue of ad hoc judges is not better than those of career judges. In addition to that, scholars also argue that the lack of integrity of ad hoc judges cannot be separated from the selection process tactically is not optimal. This will be explained in the next section.

### 3) Facility Factor

Insufficient and unsupportive high-cost cities and infrastructure are the obstacles to the establishment of corruption courts in each district/city capital. The mileage and location factors cause tackling corruption to be less than optimal, especially outside Java Island or an archipelago territorial, such as Sulawesi, NTB, NTT, Maluku, and Papua. Long distance of prosecuting corruption cases to the corruption court while coordinating the logistical needs for the trip and the conduct of the trial, stated that the Public Prosecutor put a great pressure on them. The logistical challenges transferring files and the trial can be seen from the following situations revealed in the research (Institute for the Study and Advocacy of Judicial Independence, 2021: 166-167).

The distance often requires not only one type of transportation mode. In some areas, for example in Central Kalimantan; the usage land, water and/or air transportation is necessary. Likewise, in NTB,

NTT, Sulawesi, and Papua, access to the Corruption Court in the provincial capital is quite far. Flight schedules are not regularly provided in a full week, high sea waves, and geographical conditions of land travel also affect the process of settlement.

However, Central Java region is experiencing other problems considering its vast legal area, especially regencies/cities that are geographically far from the provincial capital, especially in mountainous area, such as in the Banyumas region and its surroundings. The Public Prosecutor's Team needs to manage logistics for the departure of the defendant and witnesses. In certain situations, the Public Prosecutor has to compromise his safety and comfort during the trip and conducting the trial, for instance, due to limited costs and logistical resources, the Public Prosecutor sometimes needs to travel in long distance with the Defendant or the witness. Whenever the defendant is jailed in detention house where the Corruption Court is located, Public Prosecutor's team must follow the procedures before taking the Defendant to the court.

#### 4) Community Factor

Far distance between witnesses' domicile and the Corruption Court is the consequence that people reluctantly attend becoming witness during the trial. Thus, examination process of witness takes a long time as the trial is delayed. Besides that, regarding of corruption case is dominated and controlled by powerful parties, witness reluctantly attend since he may get threats or intimidation whenever he gives information about the case.

#### 5) Cultural Factor

According to the author culture does not significantly affect the accomplishment of the principles of fast, simple, and low-cost during the settlement of corruption case in the court. However, the author argues that the culture of law enforcement officers tend to be a mouthpiece of the law. They do not concentrate on benefits, justice, and legal certainty in the regulation, such as being reckless upon the effectiveness of Corruption Court in the provincial capital. It is assumed to have connection to the principle of legality where the actions of law enforcement officers are limited by law so that in Indonesia they seem very legalistic or positivist.

Based on previous researches about settlement of corruption is in Semarang and Kupang. The investigation result from the Case Tracing Information System (SIPP) of the Semarang District Court and Kupang District Court can be concluded that the Corruption Court in the Provincial Capital has more cases delegated from the District Attorney's Office in the provincial capital than from State Prosecutor's Office outside the provincial capital. This includes cases from the High Prosecutor's Office where most of the locus delicti are in the Prosecutor's Office outside the provincial capital.

In 2019-2021, it proved that Semarang Corruption Court tried 277 (two hundred and seventy-seven) cases. The delegation of cases outside District Attorney's Office was 265 (two hundred and sixty five) cases, more than the delegation from the Semarang District Attorney's Office of 12 (twelve) cases. Data from 2019-2021 shows that the Palembang Corruption Court tried 136 (one hundred and thirty-six) cases. The delegation of cases from outside the Palembang District Prosecutor's Office was 120 (one hundred and twenty) cases more than the delegation from the Palembang District Attorney's office of 16 (sixteen) cases.

Meanwhile, also in 2019-2021, Kupang Corruption Court tried 202 (two hundred and two) cases. The delegation of cases outside District Prosecutor's Office was 175 (one hundred and seventy five) cases more than cases delegated from District Attorney's Office of 27 (twenty seven) cases. The corruption trial from all regencies/cities is conducted in one location which is in provincial capital. As a result, cases pile

up since all of the cases end up in provincial capital. In addition, the trial mostly conducted late at night reducing quality of settlement and the human rights of the parties involved.

## **2. Ideal Policy for Tackling Corruption Based on the Competence of Corruption Courts in the Future**

Corruption has always received more attention than other crimes in various parts of the world. This phenomenon is obvious considering the violation affected by that crime which is possibly harmful for various aspects of life. Corruption is an intense issue that this crime can potentially endanger the stability and security of society, socio-economic and political development, and damage democratic values and morality if this crime occurs in a very long time and manifests as a culture. Corruption is a threat to ideology of a nation to achieve prosperous society. Anyone in both public and private sector may have attempt to commit corruption that apparently becomes a phenomenon. This crime is not only detrimental to the state's finances, but it is also violation of the social and economic rights of the community (Evi Hartanti, 2009: 1).

Corruption in Indonesia is still relatively high, while its eradication is still crawling. Romli Atmasasmita stated that corruption in Indonesia has become a virus breaking out inside the government since the 1960s. Furthermore, it is said that corruption is also relevant to the power possessed by certain parties to dictate regulation for personal, family and cronies interests (Romli Atmasasmita, 2004: 1). Throughout 2019-2021, Attorney General's Office of the Republic of Indonesia and the High Prosecutor's Office, the District Attorney's Office and the District Attorney's Branch had performed their duties, functions and authorities (Data on Case Handling for 2019-2022 for Special Crimes at the Attorney General's Office). In 2019, the Attorney General of the Republic of Indonesia has completed cases for the investigation stage as many as 1,089 cases, investigations of 570 cases, prosecution of 1,063 cases, and execution of 1,130 cases.

Furthermore, in 2020, the Prosecutor's Office of the Republic of Indonesia has completed the investigation stage of 1,366 cases, 1,091 cases of investigation, 1,466 cases of prosecution, and 1,027 cases of execution. Then in 2021, the Prosecutor's Office of the Republic of Indonesia has completed the investigation stage of 1,318 cases, the investigation of 1,856 cases, the prosecution of 1,633 cases, and the execution of 975 cases. Budgeting for investigation and prosecution of each case at the Prosecutor's Office is Rp. 200,000,000 (two hundred million rupiah) for 2 (two) cases, both cases from the Police and that tackled by Prosecutor's Office itself (Ramli, Treasurer of the issuance of the Luwu District Attorney, South Sulawesi, 2022). The budget covers all operational costs during the trial, starting from transportation, lodging, meals, expert's fees, security, and so on. Often the cases tackled by one institution are far from the setting budget, resulting in a budget shortfall.

The examination procedure at the Corruption Court uses common examination procedure. The settlement usually consume much time due to complexity of ascertaining the truth. Exceptions for criminal acts such as bribery or extortion according to the author are considerably uncomplicated so that a Brief Examination Procedure can be applied, but such practices are not commonly applied so that the principle of fast, simple, and low-cost is difficult to realize. According to Richard A Posner, analysis economic of law is an acculturation between law and economics that aims to provide rationality in law enforcement and economic efficiency (rational maximizer) because of resource constraints where human desires are limited by the availability of resources (scarcity) faced with rational and conscious calculations. Economic scarcity is assumed that individuals or society will try to maximize what they want to achieve by doing the best within limited resources (Richard A Posner, 1986).

From the economic aspect, the operational costs of the corruption trial are very high including transportation costs, lodging, meals, and so on so that the realization of justice with low costs cannot be fulfilled. In the future, searching for solution upon the issue of corruption trials in provincial capitals can

be conducted in general court so it is more effective and efficient to apply the principles of fast, simple, and low-cost justice. Considering the settlement of corruption cases in the provincial capital, there are several notes as described above.

The suspension of the authority of the general court to adjudicate corruption cases due to a large number of acquitted cases causing pressure after the establishment of the corruption court needs not to be done, according to author. Regarding to acquittal, the public prosecutor can still take legal action on cassation to prove that the charges against the defendant are true. If the release of the decision is suspected to indicate that the prosecutor is handling unprofessional cases in accordance with the internal Standard Operating Procedure (SOP) and rigid regulatory provisions, an examination of the case can be conducted or a supervision to find out the stages of case taken by the prosecutor.

Moreover, whenever the judges unprofessionally adjudicate the case, public can submit it to the Judicial Commission or supervisory judge to examine the judges. Public can actually be involved in overseeing the legal process to make it transparent and professional. From the aspect of Human Resources (HR), the corruption courts located in special Class 1A district courts certainly consist of judges with great experience and have attended corruption education and training compared to human resources in the District Courts. Therefore, in the future integrated corruption education and training or collaborative training needs to be done by the Police, Prosecutors, Advocates, and Judges in order law enforcement officers have the same vision and mission in resolving corruption cases in their respective regions.

From the aspect of the case settlement quality, Boyolali District Court and the Semarang Corruption Court tried the same case which was 2005 retirement fund corruption case of Boyolali Regional People's Representative Assembly year 1999-2004 period with state losses reaching Rp 3.2 billion. The perpetrators were 11 (eleven) members of the council consisting of Miyono (Chairman of Regional People's Representative Assembly), Subakir (Vice Chair of Regional People's Representative Assembly), and 9 members of Boyolali Regency Regional People's Representative Assembly (members of the budget committee).

In 2016, Boyolali state attorney submitted 9 (nine) cases to Semarang Corruption Court. There are some benefits why settlement of corruption cases conducted in the general court; 1) it can reduce the accumulation of cases in the provincial capital corruption court, 2) the operational costs of the trial become more affordable, 3) easier access in providing information for witness, 4) realize the right of the defendant to be immediately justified, 5) minimize the termination of the investigation due to high operational cost is greater than the state's loss, 6) as well as guarantee the safety, security, and health for prosecutors, judges, and advocates. The Prosecutor's Office as *dominus litis* also has the responsibility to realize the principles of fast, simple, and low-cost justice during trials. Similar to the settlement of corruption cases, Attorney General has duties and authorities given by the law to streamline the law enforcement process. The duties and authorities of the Attorney General are stated in Article 35 Paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

## Conclusion

1. Observing previous researches about theoretical review relating to Tackling Corruption Crimes Based on the Competence of the Courts have not fulfilled the Perspective of Fast, Simple, and Low Cost Judicial Principles. This can be observed from the factors of the Act, Law Enforcement Factors, Community Factors, and Cultural Factors.
2. There are some benefits why settlement of corruption cases conducted in the general court; 1) it can reduce the accumulation of cases in the provincial capital corruption court, 2) the operational costs of

the trial become more affordable, 3) easier access in providing information for witness, 4) realize the right of the defendant to be immediately justified, 5) minimize the termination of the investigation due to high operational cost is greater than the state's loss, 6) as well as guarantee the safety, security, and health for prosecutors, judges, and advocates.

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