THE ESSENCE OF JUSTICE ON JAKARTA HIGH COURT’S VERDICT OF CORRUPTION CASES

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THESIS ADVISOR RECOMMENDATION LETTER

This thesis entitled “THE ESSENCE OF JUSTICE ON JAKARTA HIGH COURT'S VERDICT OF CORRUPTION CASES” prepared and submitted by Miranti Putri Pratiwi in partial fulfillment of requirements for the degree of Bachelor of Law in The Faculty of Humanities has been reviewed and found to have satisfied the requirements for a thesis fit to be examined. I therefore recommend this thesis for Oral Defense.

Cikarang, Indonesia, January 16th, 2015

Yance Arizona, S.H., M.H.

Advisor
DECLARATION OF ORIGINALITY

I declare that this thesis, entitled “THE ESSENCE OF JUSTICE ON JAKARTA HIGH COURT’S VERDICT OF CORRUPTION CASES” is, to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, Indonesia, January 16th, 2015

Miranti Putri Pratiwi
The panel of examiners declares that the thesis entitled “THE ESSENCE OF JUSTICE ON JAKARTA HIGH COURT’S VERDICT OF CORRUPTION CASES” that was submitted by Miranti Putri Pratiwi majoring in Law from the Faculty of Humanities was assessed and approved to have passed the Oral Examination on Cikarang, Indonesia, February 2nd, 2015.

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ABSTRACT

Justice is abstract. Justice concept has various concept for experts to define about what justice is actually about. Including the essence of justice by the Judges as main actor in the court when adjudicating cases. For example there are two contradictive justice concepts such distributive justice and commutative justice. Distributive justice is a justice about comparison, while commutative justice is a justice about similarity.

Corruption cases which done by those who have position in government then abuse their authorities on them and harm the state, will get many attentions from the public through the media mass including their legal procedure for those who are being a defendants in court, such in first level, appeal level even in cassation level.

So, this research proposing to elaborates how The Judges of Jakarta High Court considerates legal considerations towards the corruptions cases and implemented the essence of justice in the verdict of Jakarta High Court using normative legal research and makes court verdict, in here Jakarta High Court’s verdict, as a primary law material and Judge of Jakarta High Court’s interview result as secondary law material.

Keyword: Corruption Case, High Court, Justice
ABSTRAK

Adil itu abstrak. Melihat konsep keadilan yang memiliki berbagai konsep bagi para ahli dalam mendefinisikan apa yang dimaksud dengan keadilan itu. Termasuk hakikat keadilan bagi Hakim sebagai aktor utama di pengadilan dalam menangani berbagai kasus. Seperti dua jenis konsep keadilan yang saling bertentangan yaitu konsep keadilan distributif dan keadilan komutatif. Keadilan distributif adalah mengenai perbandingan, dan dimana keadilan komutatif adalah keadilan yang mengenai persamaan.

Kasus korupsi yang banyak dilakukan oleh mereka yang memiliki jabatan di pemerintahan dengan menyalahgunakan kewenangan yang ada padanya dan merugikan negara, banyak menjadi perhatian masyarakat melalui media mengenai proses hukum bagi mereka yang menjadi terdakwa di persidangan, baik pada tingkat pertama, banding maupun tingkat kasasi.

Sehingga penelitian ini membahas bagaimana peran hakim tinggi Jakarta dalam menimbang pertimbangan hukum pada kasus korupsi dan mengimplementasikan hakikat keadilan di putusan Pengadilan Tinggi Jakarta dengan menggunakan metode penelitian hukum normatif dan menjadikan putusan pengadilan dalam hal ini putusan Pengadilan Tinggi Jakarta sebagai sumber hukum utama dan wawancara hakim Pengadilan Tinggi Jakarta sebagai sumber hukum sekunder.

Kata Kunci: Keadilan, Pengadilan Tinggi, Tindak Pidana Korupsi
For My Lovely Mom, Amazing Dad, and My Little Superb Brother.
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Alhamdulillahirabbilalamin......... Finally!

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Cikarang, February 2015

Miranti Putri Pratiwi
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CHAPTER I

INTRODUCTION

1.1 BACKGROUND

Justice, is a matter that guaranteed by the state as stated on Opening of Constitution 1945 “.....keadilan sosial bagi seluruh rakyat Indonesia” (social welfare for all citizen of Indonesia). State ensures justice for its citizen. The main purpose of whole issued regulation made for reached justice for citizen and based on Pancasila.

Regarding the definition yet the essence of the justice itself is a argued statement. Every individual will said different things even contra opinion to one another about justice. Aristotle Theory about justice generally has essential point which said:


Means, the most essential from his view is justice should be understand in the sense of equality. Aristotle makes different point between numeric equality and proportional equality. Numeric equality equalizes all human as one unit. This one we understand as equality and we mean by said about equality before the law. Proportional equality gives every individual of their own rights proper to their capacity, achievement, and so on.

Next definition of justice is from John Rawls which stated:

“penegakan keadilan yang berdimensi kerakyatan haruslah memperhatikan dua prinsip keadilan, yaitu, pertama, memberi hak dan kesempatan yang sama atas kebebasan dasar yang paling luas seluas kebebasan yang sama bagi setiap orang. Kedua, mampu mengatur kembali kesenjangan sosial ekonomi yang terjadi sehingga dapat memberi keuntungan yang bersifat timbal balik (reciprocal benefits) bagi setiap orang, baik mereka yang berasal dari kelompok beruntung maupun tidak beruntung”.2

Establishment of justice which has citizen dimension must pay attention to two justice principles, first, give same rights and chances of basic freedom till the widest freedom for every people. Second, capable to re-manage socio-economy gap that occurs so it can provide reciprocal benefits for everyone, whether they are derived from the lucky or unlucky group.

For Adam Smith:

“Yang disebut keadilan sesungguhnya hanya punya satu arti yaitu keadilan komutatif yang menyangkut kesetaraan, keseimbangan, keharmonisan hubungan antara satu orang atau pihak dengan orang atau pihak yang lain. Adam Smith menolak keadilan distributif sebagai salah satu jenis keadilan. Alasannya antara lain karena apa yang disebut keadilan selalu menyangkut hak semua orang tidak

2 ibid
boleh dirugikan haknya atau secara positif setiap orang harus diperlakukan sesuai dengan haknya”.

The real justice has only one meaning, which is commutative justice concerning equality, balance, harmony relationship between one person or party with another person or party. Adam Smith rejected distributive justice as one kind of justice. The reason is due to what is called justice is always a right for all people which should not be harmed rights or positively everyone should be treated in accordance with their rights.

Those three justice theories are the common and the most frequently used when define justice in legal philosophy. Justice that explained by those experts has essence about what justice about with different point of view.

When discussing about justice purposes that want to be achieved of a state to build their state, then to development of a state especially developing country which just recently liberate themselves from foreign hands and trying to control their society by people who act as a citizen’s representative, and appear some questions whether the justice back then that became basic establishment of a goal and rule of law in a state has already fulfill sense of justice for citizen and whether the issued verdict by government literally represented citizen’s willing or not.

Furthermore, regarding the verdict towards the corruption criminal perpetrators becomes one big attention of citizen in Indonesia nowadays. Corruption trends done by governor takes people’s attention, so the corruption verdict becomes highlight in court decision implementation.

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In broad outline, corruption perpetrators derived from the governor as we know that governor are they who has duty to serve citizen and has authority as citizen’s representative also to control the state.

State budget is actually comes from citizen, and for citizen’s interest and to manage the state which led to citizen’s welfare for state’s development. Corruption harm the state budget so gives massive impacts towards the stability of the country's economic growth and the balance of the state budget sustanably. More than that, corruption is one of the crime that hard to did it alone, it usually done by an ocnum in certain institution and involving many parties, by that corruption usually already systematic and massively done together.


It stated, nowadays corruption becomes an extra ordinary crime faced by Indonesia, seeing how wide, massive and systematic the corruption in Indonesia are. Also this deviant corruption behavior has through institutionalization process, so almost there are no government institution which sterile from that deviant behavior.

*Political and Economic Risk Consultancy Ltd. (PERC), sebuah perusahaan konsultasi yang banyak mengkaji dan mengulas masalah tingkat resiko ekonomi dan bisnis dari negara-negara di Asia, dalam studinya terhadap masalah korupsi, berkesimpulan dan menempatkan Indonesia pada posisi sebagai sebuah negara dengan kondisi korupsi*

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yang sangat serius dan memprihatinkan. PERC mengungkapkan hasil survei nya pada bulan maret 2010 lalu, dimana Indonesia diposisikan sebagai negara paling korup di Asia Pacific.⁵

Above explained, Political and Economic Risk Consultancy Ltd. (PERC), a consultant corporate that much study and review issues of economic and business risk level of the countries in Asia, in their study of the problem of corruption, finds and ranks Indonesia as a country with a very serious condition of corruption. PERC revealed the results of its survey in March 2010, where Indonesia is positioned as the most corrupt country in Asia Pacific.

Additional from Lontara Bugis said one of the sign of destruction of a state when judge received bribery and officer did trading.⁶ All the results make government takes big action in order to corruption completion. Law that regulates about Corruption in Indonesia is Law No. 31 year 1999 about Pemberantasan tindak pidana korupsi (Eradication of Corruption Case) as amended by Law no. 20 year 2001 about the amandment of Law no. 30 year 1999 about Pemberantasan Tindak Pidana Korupsi. In Law no. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi, it has various criminal threats but most of them gives criminal threats for minimum One year and maximum imprisonment for a lifetime. For example in article 2 Law no.31 year 1999:

“........ dipidana penjara dengan penjara seumur hidup atau pidana penjara paling singkat 4 (empat) tahun dan paling lama 20 (dua puluh) tahun dan denda paling sedikit Rp. 200.000.000,00 (dua ratus

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It stated, will be imprisonment for a lifetime or minimum for 4 years and the maximum for 20 years and penalty minimum Rp.200.000.000,- and maximum Rp.1.000.000.000,-.

Dari hal tersebut kita bisa menilai bagaimana ketekatan negara dalam memberantas korupsi di Indonesia saat ini. Ditambah, pembentukan lembaga yang diharapkan mampu memberantas atau paling tidak meminimalisir maraknya kasus korupsi salah satunya adalah dengan pembentukan Komisi Pemberantasan Korupsi (KPK).7

From that we can assess how state’s commitment to eradicate corruption in Indonesia lately. To be added, formation of institution which expected has capability to eradicate or at least to minimize this booming corruption cases, which is the establishment of KPK or Komisi Pemberantasan Korupsi (Corruption Eradication Commission).

KPK’s performance as big commision regarding the corruption eradication in Indonesia which established under Law also reveal the latest breakthroughs in the few years since it was formed, it seen from many news reports about the governor who became a suspect in the crime of corruption, especially in the case of large projects the state turns to appear in the mass media.

Then this was a word from vice of KPK: "Pada tahun ini untuk pertama kalinya, KPK menetapkan seorang jenderal Polisi aktif dan menteri aktif sebagai tersangka".8 (this year for the first time, set an active police

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generals and active minister as a suspect KPK). Some huge corruption cases such as *Hambalang, Century, Wisma Atlet* case and others are developing especially onto find the suspect and brought to the court. Lately, KPK also arrested an active chief judge of Constitutional Court while had some money transaction with a lawyer related to a case that has been hold by that chief judge. Next is about KPK received an award from Ramon Magsaysay 2013 Awards⁹ about their achievement for their conscientious to eradicate corruption criminal case. The award was given because KPK has assessed that they are devote the ability and energy to improve people's lifes a lot.

For additional, there is other institution in Indonesia in an effort to corruption eradication back then before KPK which is ICW. ICW or Indonesia Corruption Watch is non-governmental organization has aims to supervise and reporting to society regarding corruption action happened in Indonesia. ICW established in Jakarta, on June 21th 1998, this organization is present in the middle of the reform movement which requires pasca Soeharto’s governments, which are democratic, clean and free of corruption.

Imposed Final verdict in court for governor who became a suspect in corruption crimes often reported directly in the media so often become the public's attention. Globalization era nowadays just happened a paradigm changed in society in respond dynamic’s society that implicate through legal

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⁹ The Ramon Magsaysay Award Foundation (an organization from the Philippines) presented awards to individuals and organizations of Asia on achievement and excellence in their respective fields. The award is given in six categories, such as: Government Service; Public Service; Community Leadership; Journalism; Literature and Creative Communication arts; Peace and International Understanding; and Emergent Leadership.
awareness and regulation in society. So, the court actors especially judges will become the center of attention when adjudicate a corruption case which done by governor.

*Hakim mempunyai kedudukan sentral dalam proses peradilan, karena dipundaknya diserahkan keadilan yang diharapkan oleh para pencari keadilan (yusticiabenen).*

(Judge is the central in court procedures, in their shoulder there is justice which expected for justice seeker). As we know that a court institution acts important role because they are formal institution who given mandate to manage all legal disputes by every single citizen that having a hardness by looking for justice. Also this institute being a pledge for citizen even being a last remedy for those who looking for justice through law.

After receive final verdict by District Court, the defendant or prosecutors party willing to decide whether to continue to appeal level or not in High Court. In appeal level, the judge will decide final verdict based on District Court’s previous verdict and considering new evidence submitted by both parties even the defendant or the prosecutors one.

In decide a case especially in corruption cases, the judge has their own basic thinking and also legal knowledge especially about the essence of justice, even the reasons and/or the factors when deciding a corruption case in appeal level.

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10 Mohammad Askin, “Peran Hakim dalam Penerapan Pasal 2 dan Pasal 3 UU TIPIKOR pada Dakwaan Subsidiaritas atau Alternatif” *Varia Peradilan Majalah Hakum Tahun XXVII No. 311*, Oktober 2011, page 82
Seorang hakim senior mengatakan: Kualitas putusan pengadilan berkorelasi dengan profesionalisme, kecerdasan moral dan kepekaan nurani hakim. Dan putusan pengadilan tidak boleh bercanda dengan nasib pencari keadilan yang memiliki martabat kemanusiaan.13

Above explained that one of senior judge ever said the quality of court decisions correlated with professionalism, intelligence and sensitivity moral conscience of the judges. And judicial decisions should not be joking about the fate of justice seekers who have human dignity.

One of the legal references for judge is Law No. 48 year 2009 about Judicial Power. In that Law, there are many words of justice within the articles, means how the Law emphasizes the justice for the judges to implement their decision. For example in article number 5 (1) Law No. 48 year 2009 about Judicial Power:

“Hakim dan hakim konstitusi wajib menggali, mengikuti, dan memahami nilai-nilai hukum dan rasa keadilan yang hidup dalam masyarakat.”

Article above stated The Judge and Constitution Judge compulsory to explore, follow, and understand the legal values and sense of justice through society.

In appeal level such as Jakarta High Court, has 3 kinds of verdict that could be decided by the Judge, they are:

1) First is to corroborate (menguatkan). To corroborate means in this verdict, High Judge in High Court corroborate the previous verdict done by judge in first level. So there is no revision or differentiation yet additional aspect regarding the content of the

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13 Artidjo alkostar on Nawawi Pamolango “Dissenting Opinion (The Necessary Evil?)”, Varia Peradilan Majalah Hukum Tahun XXVII No. 323, Oktober 2012, page 44
verdict and also the final punishment. As conclude, final decision for defendant in appeal level as same as in first level.

2) The second, kind of Revision (mengubah). Revision in here means there is a difference in specific aspect when adjudicate the punishment to the defendant. The total of the punishment can be lower or higher.

3) The third is to revoke (membatalkan) a verdict. To revoke means High Judge in appeal level has difference opinion for the whole aspects that decided by district court so the final decision in appeal level, High Judge decides their own final decision.

In some cases in Jakarta High Court has various kind of criminalization. For example, where there are two cases that have same indictment article can have different final verdict and punishment. Besides that, there is a verdict by High Court is lighter than verdict in district court. So some questions come up about what are the factors that make those differences while these days, that verdict is a concrete evidence of professional performance of judges. So, how actually the definition and measure of justice for the High Court in Jakarta High Court, what factors which influence the High Judge while how nowadays the situation more inclined to impose suspect’s penalties to the heaviest for the shake of legal certainty, those are the reasons why the writer willing to raise a research related to above problems with title “THE ESSENCE OF JUSTICE ON JAKARTA HIGH COURT’S VERDICT OF CORRUPTION CASES”.

1.2 RESEARCH QUESTION

1.2.1 How is the justice being understood and implemented by The Judge of Jakarta High Court in their authority to decide corruption cases?

1.3 OBJECTIVE OF STUDY

1.3.1 To know how concept of justice being understand by The Judge of Jakarta High Court in order to decide corruption cases

1.3.2 To know how The Judge runs their duties based on Law

1.3.3 To know how the tendency of Jakarta High Court’s verdict of Corruption Cases.

1.4 SIGNIFICANT OF STUDY

The result of this research hopes can bring the significant such as:

1.4.1 Theorical Significant

Can be used as a literature study and law material references for those who interest about legal theory generally, and criminal law about corruption criminal case erradiction and jurisdiction law procedure specifically.

1.4.2 Practical Significant

Can be used as an explanation and guidelines as thinking based for judges when decide corruption cases.
1.5 METHOD AND DATA COLLECTION

1.5.1 Research Method

The method of this research is socio-legal research. Socio-legal research is a research that observing the implementation of law in society. Using socio-legal because this research was using primary data as a source of analysis. The writer collected the data at Jakarta High Court for collecting the verdicts and did interview.

1.5.2 Legal Approach

Implemented legal approaching in this research is connection with research method of this research which is socio-legal research, so the proper approaches are statute approach and conceptual approach. Statute approach is an approach that using law and regulation while conceptual approach is an approach using comprehension of legal prospectives and doctrines then construct a legal opinion to solve the research question.

1.5.3 Source of Data

In socio-legal research, primary data has divided by three, which are primary law material, secondary law material and tertiary law material. Primary data in this research are:

a) Primary law material, consist of The Laws, formal notes, legal draft, and court verdicts. There are 5 verdicts used for this research such as:

(i) Verdict No. 64/Pid/Tpk/2012/PT.DKI
(ii) Verdict No. 41/Pid/Tpk/2012/PT.DKI
b) Secondary law material, consist of Law books that explain about primary law material including thesis, dissertation, and legal journal;

c) Tertiary law material is a source explains guidance or explanation towards primary and secondary law material such as law dictionary, encyclopedia, etc.

1.5.4 Data Collection Technique

Data collection technique done with these following steps:

a) Interview

The collection of data through interviews are very important where the writer directly met with the informants in this case is The judge of Jakarta High Court to see the response, opinions, reasons and feelings related with the consideration of final court verdict. The interview processes have been held for 2 weeks since June 15th, 2014 – 27th, 2014. The result of this interview is to strengthen the data analysis of the verdicts by Jakarta High Court. There are 5 judges have been interviewed, they are:

(i) Kresna Menon, SH., MH.,
(ii) Elang Prakoso, SH., MH.,
(iii) Humunta Pane, SH., MH.,
(iv) M. Hatta., SH., MH, and;
(v) M. Djoko., SH., MH.
b) Literature Study

Toward the data collected by using literature study, writer collect and looking for related regulation, jurisdiction and other article or journals which related to this research.

1.5.5 Data Analysis Method

From the interview, the writer asked the High Judges related to the essence of justice, then the comparison of two different cases which indicted by the same article, then about question where the reasons about adjudicated different types of verdict in Jakarta High Court. Those collected data from interview result described using qualitative descriptive method which is it elaborates the whole collected data clearly and thoroughly related to this research, then it will be analyzed to answers the research question.

1.5.6 Location

To achieve the necessary data and information related to this research, the writer conducted a research relating with the title of this research which is on the Jakarta High Court.
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1.1 Background
1.2 Research Question
1.3 Objective of Study
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A. Conclusion
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CONTENT AND RESEARCH ANALYSIS

2.1 VERDICT OF JAKARTA HIGH COURT ON CORRUPTION CASES

To find the answer about the essence of justice in Jakarta High Court on Corruption Criminal Case, the main sources of this research is the verdict of Jakarta High Court especially corruption criminal case’s verdict. So, below there are 5 kinds of verdict from Jakarta High Court. All the verdicts has been decided on year 2012. Because cases that have not in kracht yet can not be taken by public even for research purpose. And cases that have been decided by Jakarta High Court on 2012, on average all those cases already in kracht and can be published to public. These 5 kinds of verdict below have different kind of final verdict whether the verdict are to corroborate, to revised or even to be revoked by Jakarta High Court.

In all these explanations of the verdict below, each kind of verdict contains indictment by the prosecutor briefly, the final verdict from district court, considerations by High Judge including the legal facts, incriminate and relieving elements and last is the verdict of Jakarta High Court regarding the case.
1. Case of MD\textsuperscript{15} (Verdict No. 64/Pid/Tpk/2012/PT.DKI.)

A. Primary Indictment

Defendant MD together with HB as major of Kendal 2000/2005 period (case has been decided) because of his position is a Pemegang Kekuasaan Umum Pengelolaan Keuangan Daerah (Holders of General Power of Financial Management) has authority to organize an Anggaran Pendapatan dan Belanja Daerah (APBD) or Region Budget and Expenditure of Kendal and duty to deliver the responsibility of that authority to DPRD and WS as head of DPKD 2002-2006 period has one of duty to organize APBD Kendal administration, etc. That defendant has been done some criminal actions as seen as continuously action on purpose to enrich his self or other person or a corporation, that has been enrich defendant as total Rp. 4.750.000.000,-, abuse of power, chance or fasilities he has own because of his position of using Dana Alokasi Umum (General Allocation Fund) of Kendal Government together with HB And WS.

That harm state budget or economy state, done by these ways:

- The defendant said he would use budget of Kas Daerah (Kasda) of Kendal Government for his own interest;
- About 13 May 2003, defendant called WS which him already tell his will to HB as Major of Kendal as total Rp.3.000.000.000,-;
- After those money has been transfered, defendant took away money gradually worth Rp.1.000.000.000,- at first and then Rp.2.000.000.000,- away gradually;

\textsuperscript{15} For privacy reason, The name of the defendant will be camouflaged on this research
- In September 2003, defendant asked more money worth Rp.900.000.000,-, defendant received the money;

- On 25 Januari 2004, defendant called WS to loan money worth Rp.850.000.000,-

- From the points above has already benefit the defendant and harm state budget of Kendal Government around Rp. 4.750.000.000-

Defendant’s action threatened as criminal as stated in article 2(1) jo. Article 18 Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendment of Law no. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi (Eradication of Corruption Case) jo. Article 55 (1) point 1 Criminal Code jo. Article 64 (1) Criminal Code;

**B. District Court’s Adjudication**

1. Menyatakan Terdakwa MD tidak terbukti melakukan tindak pidana dalam dakwaan Primair;
2. Membebaskan Terdakwa oleh karena itu dari dakwaan Primair tersebut;
3. Menyatakan terdakwa MD terbukti secara dan meyakinkan bersalah melakukan tindak pidana TURUT SERTA SECARA BERLANJUT MELAKUKAN TINDAK PIDANA KORUPSI sebagaimana diatur dan diancam pidana dalam pasal 3 ayat (1) jo. pasal 18 Undang-undang Nomor 31 tahun 1999 sebagaimana telah diubah dengan Undang-undang Nomor 20 tahun 2001 jo Pasal 55 ayat (1) ke – 1 KUHPidana jo Pasal 64 ayat (1) KUHPidana;
4. Menjatuhkan pidana terhadap terdakwa MD berupa pidana penjara selama 2 (dua) tahun dan 6 (enam) bulan;
5. Menjatuhkan denda kepada Terdakwa sebesar Rp150.000.000,- (seratus lima puluh juta rupiah), dengan ketentuan apabila denda tersebut tidak dibayar diganti dengan pidana kurungan selama 3 (tiga) bulan;
6. Menetapkan masa penahanan yang telah dijalani oleh Terdakwa dikurangkan segenapnya dari pidana yang dijatuhkan;
7. Memerintahkan terdakwa tetap berada dalam tahanan;
8. Menyatakan barang bukti berupa:
- **Uang tunai sejumlah Rp. 4.750.000.000,- (empat milyar tujuh ratus lima puluh juta rupiah) Dirampas untuk negara cq. Pemerintah Daerah Kabupaten Kendal.**

9. **Membebankan kepada terdakwa untuk membayar biaya perkara sebesar Rp.10.000,- (Sepuluh ribu rupiah).**

The injunction of the district court’s verdict above explained:

1. To declare the defendant MD is not proved guilty towards a crime in primary indictment;
2. Release the defendant MD from primary indictment;
3. To declare the defendant MD is truly guilty conducted a corruption crime together and continuously as regulated on article 3 (1) jo. Article 18 Law No. 31 year 1999 as amendment to Law No. 20 year 2001 jo. Article 55 (1) point 1 Criminal Code jo. Article 64 article 1 of Criminal Code;
4. **State a sentence to the defendant MD imprisonment for 2 years 6 months;**
5. **State a penalty to the defendant for Rp. 150.000.000,- subsidair 3 months;**
6. To declare the period of detention that has been undertaken by the defendant deducted from the sentence imposed;
7. To order the defendant to remain in prisoners;
8. Declare evidence such as:
   - Cash amount Rp. 4.750.000.000, submitted to the state cq. Local Government of Kendal.
9. To charge the defendant to pay court costs Rp 10,000,-

**C. Legal Facts**

Prosecutor indictment created in *subsidairitas* indictment, so based on Criminal Procedural Law, The Judge Council has to prove primary indictment first, and when the proven facts that primary indictment has not proved, the *subsidaritas* indictment will be considered.

Considering first indictment:

1. every body
2. against the law
3. enrich his/her self or other person or a corporation;
4. Harm the state budget or state economies

Menimbang, bahwa pasal 55 ayat (1) ke-1 Kitab Undang-Undang Hukum Pidana (KUHP) adalah mengenai penyertaan (deelneming), yang rumusannya berbunyi: “Dipidana sebagai pelaku tindak pidana, orang yang melakukan, yang menyuruh melakukan dan yang turut serta melakukan”;

The Judge Council consider that article above about participation (deelneming), that the defendant can be considered as the participation, and the participation in an action is also a criminal.

Considering, the Judge Council was considering every element in the First Indictment and correlate with the proved facts in court process, as below:

1. Every body element

The Judge Council considers the defendant has his complete identity, so element of every body has been accomplished.

2. Against the law element

Based on the fact that proved in a court process, a defendant action as a participation (deelneming) in a criminal action against the law that has been done by HB as a Major of Kendal and witness, WS as Head of DPKD of Kendal.

Considering, based on that fact, the element of against the law has been accomplished.

3. Enrich his/her self or other person or a corporation

The facts in the court process seen that defendant has been asking and receiving money/budget from WS as Head of DPKD of Kendal, as much Rp.
3,000,000,000,- and Rp. 900,000,000,- and was receiving money as much Rp. 850,000,000,- from WS. Then this element has been accomplished.

4. Harm the state budget or state economies

Considering, as the budget report of state BPKP on 8 June 2012, has occurred damage of Kendal Government budget which sourced from Dana Alokasi Umum (General Allocation Fund) and Dana Eks Pinjaman (Loan Budget) of BPD Jateng cab. Kendal.

From the facts in court process, this element has been proved.

5. Whoever does the criminal action by himself, whoever demands other person to do criminal action, whoever does participate to do criminal action

Considering the defendant has done a criminal action independently as well together with others who witness WS as Head of DPKD Kendal and witness HB as Major of Kendal were for using budget of Kendal for self-interest so then turut serta (participating) element has been accomplished.

6. Pasal 64 ayat (1) KUHPidana

Menimbang, bahwa rumusan pasal 64 ayat (1) KUHPidana berbunyi : “jika antara beberapa perbuatan, meskipun masing-masing merupakan kejahatan atau pelanggaran ada hubungannya sedemikian harus dipandang sebagai satu perbuatan berlanjut, maka hanya diterapkan satu aturan pidana. Jika berbeda-beda yang diterapkan yang memuat ancaman pidana pokok yang paling besar”;

This article stated that as some actions which has correlation one another, would be considered as a continuously action and implemented a criminal regulation. If different action, so the regulation that will be applied is the heaviest penalty.

Considering the facts as below:
On 19 May 2003, 2 September 2003 and 29 January 2004 where the defendant has been asked and received budget APBD of Kendal for self’s interest continuously and in a short term, so it consider as a continuously criminal action.

Considering, the corrupted money as much Rp. 4,750,000,000,- has been returned by witness HB, a sibling of defendant, then defendant will not burden money substitution;

From the whole elements that has been considered above according to article 2(1) jo. Article 18 Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendement of Law no. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi (Eradication of Corruption Case) jo. Article 55 (1) point 1 Criminal Code jo. Article 64 (1) Criminal Code, all the elements have been proved completely, so defendant confessed to be guilty in primary indictment, so subsidair indictment will not be considered anymore.

D. Incriminate element (hal-hal yang memberatkan)

Defendant did not support the government in a context of eradication of corruption criminal case

E. Relieving element

- Defendant being polite and straightforward during the court process;
- Defendant never been jailed;
- Defendant has family burden;
- Defendant return the crime outcome;
- Defendant has long dedication to Ministry of Health’s environment.
Based on the considerations above, verdict of *Pengadilan Tindak Pidana Korupsi* at Central Jakarta District Court on 8 November 2012, No. 41/Pid.B/TPK/2012/PN.Jkt.Pst must be revoked and High Court will adjudicate at their own and the *amar* as below:

Considering article 2(1) jo. Article 18 Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendment of Law no. 31 year 1999 about *Pemberantasan Tindak Pidana Korupsi* (Eradication of Corruption Case) jo. Article 55 (1) point 1 Criminal Code jo. Article 64 (1) Criminal Code and other regulations related to this case;

**F. High Court Adjudication**

- Receiving appeal note from prosecutors;
- Revoke verdict of *Pengadilan Tindak Pidana Korupsi* at Central Jakarta District Court on 8 November 2012, No. 41/Pid.B/TPK/2012/PN.Jkt.Pst.

Self Adjudicates:
- Defendant is truly guilty conducted a corruption crime together and continuously;
- **State a sentence to MD, the defendant imprisonment for 4 years and penalty as total Rp. 250,000,000,- subsidair 5 months**;
- Money as much Rp. 4,750,000,000 returned to Kendal Government.
2. Case of MAR (Verdict No. 41/PID/TPK/2012/PT.DKI)

The second verdict below about the auction project, and the defendant in order to take self-advantages, he did action to do corruption that did not proper to his duties and harm the state budget.

A. Subsidiair Indictment

That defendant MAR as Deputi I of Natural Resources Development Sector KPDT together with TA as Pejabat Pembuat Komitmen (PPK) or Committing Officer, TJ Director of PT. Tunas Intercomindo Sejati (PT. TIS), SB to Deputy I Natural Resource Sector (separated case) has done participated to the action that enrich themselves or other person or a corporation, abuse of authority, opportunity and/or facilities on him because of his positions that can harm state budget or economic state, and defendant as program person in charge, has been asked for 22% from project budget as total Rp. 4.400.000.000,00 to partner PT. TIS through TA as PPK so partner PT.TIS did not do project suitable to Working References (Kerangka Acuan Kerja), with chronologies:

- Kantor Kementerian Negara Pembangunan Daerah Tertinggal Republik Indonesia (KPDT) or State Minister for Acceleration Development Backward Regions year 2006 held an activity about Preparing Data and Information Nature Resource Spatial on 30 Backward Region in order to establish local economy where the budget was allocated from APBN total Rp. 4.400.000.000,--;
- On 17 January 2006, to follow up the activity, Ministry of KPDT RI point up TA as Pejabat Pembuat Komitmen (PPK) or Committing Officer;
On 30 June 2006, the committee of Goods and Services Creation, asking the 3 corporation that has been passed of technic evaluation to propose the budget to committee of goods and services creation, with budget details as below:

1. PT. Tunas Intercomindo Sejati Rp. 4.325,513,000,00
2. PT. Exsa Internasional        Rp. 4.261,500,000,00
3. PT. Duta Astakona Girinda       Rp. 4.225,798,500,00

On 10 July 2006, committee of Goods and Services Creation was processing those 3 corporation’s negotiation and decided PT. TIS became the one who will hold the project.

Then MAR as Deputi Bidang Pengembangan Sumber Daya Kementerian Negara Pembangunan Daerah Tertinggal (Deputy of Development Resources of State Minister for Acceleration Development Backward Regions) has abused his authority, chance or facilities on him and instructed TA as PPK to asked budget-sharing as big as 22% from the total of contract budget Rp.4.400,000,000,-

This project had done together by PT.Exsa with percentage 40% and PT.TIS with 60%, but on the written contract is made as if the whole project has been done by PT.TIS.

Along the project, TA received cheque and cash as total Rp. 441.222,553,- from TJ and from PT.Exsa total Rp.50,000,000,-, and TA gave to Defendant periodically

Defendant’s action has enriched himself and other person:

1. The Defendant MAR as total Rp. 454,000,000,-
2. TA, S.Sos as total Rp. 37,222,553,-;
3. TJ as total Rp. 2,415,873,347,-
4. IH as representative PT. Exsa sebesar Rp. 1.398.117.100,-

Total: Rp. 4.305.213.000,-

Defendant’s action threatened as criminal as stated in article 3 jo. Article 18 Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendment of Law no. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi jo. Article 55 (1) point 1 Criminal Code jo. Article 64 (1) Criminal Code;

B. District Court’s Adjudication

Salinan Putusan Pengadilan Tindak Pidana Korupsi pada Pengadilan Negeri Jakarta Pusat No.1436/PID.B/2009/PN.JKT.PST., tanggal 05 Mei 2010 yang amarnya berbunyi sebagai berikut :

1. Menyatakan terdakwa MAR tidak terbukti secara sah dan meyakinkan tidak bersalah melakukan Tindak Pidana Turut serta Korupsi dalam dakwaan primair ;

2. Membebaskan Terdakwa oleh karena itu dari dakwaan primair ;

3. Menyatakan terdakwa MAR terbukti secara sah dan meyakinkan bersalah melakukan Tindak Pidana Turut serta Korupsi dalam dakwaan subsidair ;

4. Menjatuhkan pidana terhadap Terdakwa dengan pidana penjara selama 1 (satu) tahun dan 4 (empat ) bulan dan denda sebesar Rp 100.000.000,- (seratus juta rupiah ) dengan ketentuan apabila denda tidak dibayar diganti dengan pidana kurungan selama 3 ( tiga ) bulan ;

5. Menghukum terdakwa untuk membayar uang pengganti sebesar Rp 324.000.000,-, jika uang pengganti tidak dibayar dalam waktu 1 ( satu ) bulan sesudah putusan berkekuatan hukum tetap maka harta benda terpidana disita dan dilelang untuk membayar uang pengganti tersebut, jika harta benda terpidana tidak mencukupi untuk membayar uang pengganti maka dipidana dengan pidana penjara selama 2 ( dua) tahun, jika terpidana membayar uang pengganti yang jumlahnya kurang dari seluruh kewajiban membayar uang pengganti maka jumlah uang pengganti yang dibayarkan tersebut akan diperhitungkan dengan lamanya pidana tambahan berupa pidana sebagai pengganti dari membayar uang pengganti ;

6. Menyatakan barang bukti berupa : surat surat , CD dan lain lain tersebut dalam tuntutan pidana penuntut umum dipergunakan Penuntut Umum dalam perkara lain atau IH /PT Exsa;

7. Menghukum Terdakwa untuk membayar biaya perkara sebesar Rp. 20.000,- ( dua puluh ribu rupiah ).
The injunction verdict above declared:

1. To declare the defendant MAR is not proved guilty towards a crime in primary indictment;
2. Release the defendant MAR from primary indictment;
3. To declare the defendant MAR is truly guilty conducted a corruption crime in subsidair indictment;
4. **State a sentence to the defendant MD imprisonment for 1 year 4 months then state a penalty to the defendant for Rp. 100.000.000,- subsidair 3 months;**
5. To punish the defendant for money substitution for 324.000.000,-
6. Declare evidence such as letters, CD, etc. will be used by prosecutor for other related case
7. To charge the defendant to pay court costs Rp 20,000,-

**C. High Court’s Considerations**

The Judge Council of Jakarta High Court considered that all the consideration and reasons from District Court already exact and right and agreed by Jakarta High Court, so those are the foundation to examine and adjudicate the case in Jakarta High Court.

Jakarta High Court decided to revise the verdict from district court related to the duration of the imprisonment of the Defendant and additional sentence. The reason is what defendant’s done is very devastating the citizen, because of the state budget which supposed to citizen’s welfare has been turned for Defendant’s interest, therefore, the duration of the imprisonment and additional sentence need to be added, equal with his crime.

High Court does not agree with District Court in context additional penalty about the substitution money as much Rp.454.000.000,- minus Rp.130.000.000,- for his driver’s salary. High court considered however those money has been spent for Defendant’s interest. **Subsidair** of this money substitution for 1 years only instead of 2 years.
So, the verdict of District Court would be REVISED by The Judge Council of High Court.

Defendant’s action threatened as criminal as stated in article 3 jo. Article 18 Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendement of Law no. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi jo. Article 55 (1) point 1 Criminal Code jo. Article 64 (1) Criminal Code and Law No.8 year 1981 about Criminal Procedural Law.

D. High Court’s Adjudication

- Menerima permintaan banding dari Terdakwa dan Penuntut Umum tersebut;
  1. Menyatakan terdakwa MAR tidak terbukti secara sah dan meyakinkan bersalah melakukan Tindak Pidana Turut serta Korupsi dalam dakwaan primair;
  2. Membebaskan Terdakwa oleh karena itu dari dakwaan primair tersebut
  3. Menyatakan terdakwa MAR terbukti secara sah dan meyakinkan bersalah melakukan Tindak Pidana Turut serta Korupsi dalam dakwaan subsidair;
  4. Menjatuhkan pidana terhadap Terdakwa dengan pidana penjara selama 2 (dua) tahun dan denda sebesar Rp 100.000.000,- ( seratus juta rupiah ) dengan ketentuan apabila denda tidak dibayar diganti dengan pidana kurungan selama 3 ( tiga ) bulan;
  5. Menjatuhkan pidana tambahan kepada terdakwa untuk membayar uang pengganti sebesar Rp 454.000.000,- (empat ratus lima puluh empat juta rupiah ) jika uang pengganti tidak dibayar dalam waktu 1 ( satu ) bulan sesudah putusan berkekuatan hukum tetap maka harta benda terpidana disita dan dilelang untuk membayar uang pengganti tersebut, jika harta benda terpidana tidak mencukupi untuk membayar uang pengganti maka dipidana dengan pidana penjara selama 1 ( satu) tahun,
Verdict from Jakarta High Court above explained:

- To received appeal notes from the defendand prosecutor;
- To revise Central Jakarta District Court’s verdict no. 1436/PID.B/2009/PN.Jkt.Pst. regarding the duration of imprisonment and additional punishment to the defendant:
  1. To declare the defendant MAR is not proved guilty towards a crime in primary indictment;
  2. Release the defendant MAR from primary indictment;
  3. To declare the defendant MAR is truly guilty conducted a participation of corruption crime in subsidair indictment;
  4. **State a sentence to the defendant MAR imprisonment for 2 years and penalty for Rp. 100.000.000,- subsidair 3 months**;
  5. **To punish an additional punishment to pay money substitution as total Rp.454.000.000,-**;
  6. Declare evidence such as letters, CD, etc. will be used by prosecutor for other related case;
  7. To charge the defendant to pay court costs in appeal level for Rp 2.500,-.

**E. Legal Facts**

Towards the revision of district court’s verdict by high court especially the duration of imprisonment and the amount of money substitutes, there is no any significant difference for the consideration of judge, while High Court does not state any similar parts in district court’s verdict. Below, the considerations from judge in district court:

Elements from article of law that has been indicted are:

1. every body;
2. Enrich himself or other person or a corporation;
3. abuse of power, chance or facilities on himself because of position

4. harm budget state or state economic state;

5. whoever does the criminal action by himself, whoever demands other person to do criminal action, whoever does participate to do criminal action.

Considering the elements:

1. Every body element
   
   This element has been accomplished

2. Enrich himself or other person or a corporation
   
   - Based on witnesses. The Defendant has been received money from project’s execution, so this element has been accomplished

3. Abuse of power, chance or facilities on himself because of position

   Considering from the witnesses’ explanation and proved letters, found the legal facts that
   
   - defendant’s position at Kementrian Daerah Tertinggal and has position which is Deputy I.
   - so, the Defendant abusing his position to take advantage and self interest.

4. Harm budget state or state economic state

   - During court process, The judge Council found facts stated:
   
   - Based on second element above, the Defendant received money as total Rp.454,000,000,- is part of project IDT’s budget and it is from state budget, and this element has been accomplished.
5. **Element for whoever does the criminal action by himself, whoever demands other person to do criminal action, whoever does participate to do criminal action**

- Based on article 55 (1) Criminal Code
- The facts, witnesses from PT.TIS who TA and TJ, their cases have been decided with imprisonment penalty for 1 year and 4 months and the fact where the Defendant received money from the witnesses so the conclusion there is a bond between defendant and the witnesses, and participation element has been accomplished.

Considering:

**F. Incriminate element (hal-hal yang memberatkan)**

The defendant’s action contradictive to government’s program to eradication of corruption case.

**G. Relieving element**

- As doctor’s analysis, the defendant is not in a good condition/heart disease and will affect in execute the punishment.
  - The defendant has many rewards in education area as a lecturer.
  - The defendant has family.

3. **Case of PR (Verdict No. 53/PID/TPK/2012/PT.DKI)**

Defendant on this next case has been enriched others and harm the state budget for about 6 billions rupiahs and and manipulate Budget Planning for self interest.
A. Primary Indictment

The defendant, together with RW, SI and SPS (case has been separated), has enriched his self or other person or a corporation which harm state budget or economic state with the chronologies as below:

- The defendant is civil servant and as *Kepala Unit Pelaksana Tugas (UPT) Balai Pelatihan Pendidikan Kejuruan (BPPK)* or Head of Center for Vocational Training Education at *Balai Pendidikan Pelatihan Kejuruan (BPPK)* or Center for Vocational Training Education and on 19 February 2010, defendant as *Kuasa Pengguna Anggaran (KPA)* or Representative Budget User at once as *Pejabat Pembuat Komitmen (PPK)* or Committing Officer at *BPPK East Jakarta*;

- In accordance, to make Budget Planning for Practicum Tools, defendant has done price survey;

- SI suggested the Defendant to call PT International Technicalindo (further mention as PT.IT) related the Practicum Tools. After defendant called Berto Krisnapati as Director of PT. IT, Berto explained the price for all the tools will get discount such 50%.

- Verbally, has been agreed to get discount for 50%, but the price on the paper will state as normal price on the market, as demanded by defendant.

- Defendant, in order to suggest Budget Planning that the tool’s grand total including the tax has not use efficiency principle and effectiveness principle of state budget usage through item and service project paid by APBD. Defendant suggest the price which extravagant and in the end
will harm state budget, because defendant did not count the discount given by the distributor.

- From the facts, defendant’s action has enriched other people such SI and SPS, because SI (as director of PT. Pane Putratama) who executed 5 project packages and SPS executed 1 package, they bought all goods from the distributor PT. International Technicalindo, and they received big profit until 100% from capital.

- From the report of audit result of Badan Pengawas Keuangan dan Pembangunan (Finance and Development Supervisory Board) the loss of state budget reached Rp. 6.031.729.023,00.

The effect of defendant’s action together with RW, SI dan SPS above, has harm state budget for Rp.6.031.729.023,-.

Defendant’s action threatened as criminal as stated in article 3 jo. Article 18 (1) point b Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendement of Law no. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi jo. Article 55 (1) point 1 Criminal Code.

B. District Court’s Adjudication

Menyatakan Terdakwa PR, tidak terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana korupsi sebagaimana dalam dakwaan Primair

1. Membebaskan Terdakwa dari dakwaan Primair tersebut

2. Menyatakan Terdakwa PR, telah terbukti secara sah dan meyakinkan bersalah melakukan Tindak Pidana Korupsi secara bersama-sama, sebagaimana diatur dan diancam pidana dalam Pasal 3 jo. Pasal 18 ayat (1) huruf b UU No. 31 Tahun 1999 sebagaimana telah diubah dengan UU No. 20 Tahun 2001 tentang perubahan atas Undang-Undang No. 31 Tahun 1999 tentang
Pemberantasan Tindak Pidana Korupsi jo. Pasal 55 ayat (1) ke-1 KUH Pidana, dalam dakwaan Subsidair

3. Menjatuhkan pidana oleh karena itu terhadap Terdakwa PR. dengan pidana penjara selama 4 (empat) tahun dan menjatuhkan pidana denda sebesar Rp. 200.000.000,- (dua ratus juta rupiah), dengan ketentuan apabila pidana denda tersebut tidak dibayar diganti dengan pidana penjara selama 3 ( tiga ) bulan;

4. Menetapkan barang bukti berupa
tetap terlampir dalam berkas perkara, untuk digunakan sebagai barang bukti dalam perkara lain

5. Membebankan kepada Terdakwa untuk membayar biaya perkara sebesar Rp. 10.000,- (sepuluh ribu rupiah)

District court’s injunction of verdict in this case explained:

1. To declare the defendant PR is not proved guilty towards a crime in primary indictment;

2. Release the defendant PR from primary indictment;

3. To declare the defendant PR is truly guilty conducted a participation of corruption crime together as regulated on article 3 (1) jo. Article 18 Law No. 31 year 1999 as amandment to Law No. 20 year 2001 jo. Article 55 (1) point 1 Criminal Code in subsidair indictment;

4. **State a sentence to the defendant PR imprisonment for 4 years and penalty for Rp. 200.000.000,- subsidair 3 months**;

5. Declare evidences will be used by prosecutor for other related case To charge the defendant to pay court costs in appeal level for Rp 10.000,-

C. Legal Facts

   Considering, The judge council has not agree with district court which conclude the defendant has proven did criminal action by subsidair indictment, so the verdict has to be revoked as the reasons:

   Considering, indictment from prosecutor arranged as subsidairity indictment such:
Primary: prohibit article 2 (1) jo. Article 18 (1) point b Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendment of Law no. 31 year 1999 about *Pemberantasan Tindak Pidana Korupsi* jo. Article 55 (1) point 1 Criminal Code;

Subsidair: prohibit article 3 jo. Article 18 (1) point b Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendment of Law no. 31 year 1999 about *Pemberantasan Tindak Pidana Korupsi* jo. Article 55 (1) point 1 Criminal Code;

Considering, because of the indictment in subsidairity indictment, so

The Judge Council has to prove the primary indictment at first;

The elements from primary indictment are:

1. Every Body;
2. Against the law
3. enrich his self, other person or a corporation
4. harm state budget or economic state.

Those elements are connecting to the facts during court process as below:

1 **Every body element**
   Has been accomplished

2 **Against the law**

   The Defendant as PPK has not do proper document checking, and corporate survey to the corporate which is as the auction (*lelang*) winner, because of those 4 corporates who are PT. Heradah Jaya Mandiri, PT. Irma Graha Pratama, PT. Indolife Prima Cemerlang, and PT. Farsindo Danatama, all these corporate’s name only borrowed by SI and did not do
the project examination, and PT Kharisma Tropisi’s name has been borrowed by SPS to machine project.

Considering, this element has been accomplished.

3. **Enrich himself, other person or a corporation**

   Total harm of state budget which taken by SI and SPS for Rp.6,813,429,483.-

   Based on the facts, truly seen project examination has been enriched SI for Rp.6,087,257,648,- and SPS for Rp.726,171,835,- From the result of BPKP’s audit, there is no money transfer for The Defendant

   This element has been accomplished.

4. **Element that harm state budget and economic state**

   From the report of *Hasil Pemeriksaan Perhitungan Kerugian Negara* (Examination of State’s Losses Calculation) by *Badan Pengawas Keuangan* (Financial Supervisory Board), there are loss from over expensiveness of the project that has been explained above and enriched SI and SPS.

   Considering article 55 (1) point 1 Criminal Code divide participation (*penyertaan*) as three:

   - Whoever does the criminal action by himself;
   - Whoever demands other person to do criminal action;
   - Whoever does participate to do criminal action.

   Facts found the Defendant has done criminal action together with RW, Head of Project, SI and also SPS, so this element has been accomplished.
D. Incriminate element

- The defendant does not support government program in eradication of corruption criminal case.

E. Relieving element

- The defendant is polite and straightforward during court process;
- The defendant has never been criminalized;
- The defendant has family;
- The defendant does not enjoy his criminal result
- The defendant has long dedication in DKI Jakarta Government.

F. High Court’s Adjudication

M E N G A D I L I

- Menerima permintaan banding dari Penuntut Umum dan Terdakwa tersebut;
- Membatalkan putusan Pengadilan Tindak Pidana Korupsi pada Pengadilan Negeri Jakarta Pusat Nomor : 19/PID.B/TPK/2012/PN.JKT.PST. tanggal 27 Juni 2012 yang dimintakan banding tersebut

MENGADILI SENDIRI

1. Menyatakan terdakwa PR terbukti secara sah dan meyakinkan bersalah melakukan Tindak Pidana Korupsi secara bersama-sama sebagaimana dalam dakwaan Primair

2. Menjatuhkan pidana oleh karenanya, terhadap terdakwa PR dengan pidana penjara selama 6 (enam) tahun dan denda sebesar Rp.500.000.000,- (lima ratus juta rupiah) dengan ketentuan apabila denda tidak dibayar diganti dengan pidana kurungan selama 6 (enam) bulan

3. Memerintahkan terdakwa untuk ditahan di Rumah Tahanan Negara;

4. Memerintahkan barang bukti, yang diberi nomor, berupa
   Tetap terlampir dalam berkas perkara, untuk digunakan sebagai barang bukti dalam perkara lain

5. Membebankan kepada Terdakwa untuk membayar biaya perkara pada kedua tingkat pengadilan, yang pada tingkat banding sebanyak Rp. 2.500,- (dua ribu lima ratus rupiah);
Jakarta High Court’s injunction verdict above declared:

To Adjudicate:
- To receive appeal notes from prosecutor and the defendant;
- To revoke the district court’s verdict of central jakarta No. 19/PID.B/TPK/2012/PN.JKT.PST

To own adjudicate:
1. To declare the defendant PR is truly guilty conducted corruption crime together in primary indictment;
2. State a sentence to the defendant PR imprisonment for 6 years and penalty for Rp. 500.000.000,- subsidair 6 months;
3. To order the defendant to be arrested in State Prison;
4. Declare evidences to be attached on case draft and will be used for other related case;
5. To charge the defendant to pay court costs in appeal level for Rp 2.500,-

4. Case of SS (Verdict No. 59/PID/TPK/2012/PT.DKI)

This next has the same motive which is use his authority to enrich other people and/or corporation through auction project

A. Subsidair Indictment

The defendant I SS as Pejabat Pembuat Komitmen (PPK) based on Head of Medicine and Food Observation RI and IZ as defendant II selaku Ketua Panitia Lelang Pengadaan Barang Pusat Pengujuan Obat dan Makanan Nasional has enriched them selves for Rp.12.667.339., The chronology as below:

1. Arrange and signed document of auction which discriminative. The defendant add some additional requirement, based on law the only requirement is the corporate has to have SIUP (Surat Ijin Usaha Perdagangan) or Business License and it is contrary with law which Article 14 ayat (4) President Regulation No. 80 year 2003, stated: in
qualification process, the committee prohibit to add any requirements out of has been decided in this regulation or higher regulation.

2. The defendant I tell the Defendant II to proceed auction process for Package I and Package II and attach the Laboratorium Tools types and spesification.

3. Defendant II invited all the Penyedia Barang Jasa Non Kecil (Massive Providers of Goods and Services) to join the Auction of procurement laboratory equipment package I and II with budget for Package I as total Rp.45.000.000.000,- and package II as total Rp.15.000.000.000,-

4. Because of their additional requirement, producer and individual can not join the auction.

5. After all the process, defendant I has known CV Masenda Putra Mandiri did not have NPT (Nilai Pengalaman Tinggi) or High Experience Values and either Basic Knowledge, it has been reported by defendant II but defendant I ignored it and still decided CV Masenda Putra Mandiri as the winner of package I on 29 agustus 2008;

6. Defendant I and defendant II has enriched ES or corporation which C.V. Masenda Putra Mandiri and P.T. Bhineka Usada Raya for package 1 as total Rp. 9.275.757.712,- and SH or corporation PT Ramos Jaya Abadi for package 2 total Rp.3.392.058.627.339,00.-

   Defendant’s action threatened as criminal as stated in article 3 jo. Article 18 Law no. 31 year 1999 as amended to Law no. 20 year 2001 about Amendement of Law no. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi jo. Article 55 (1) point 1 Criminal Code;
B. District Court’s Adjudication


1. Menyatakan Terdakwa I SS dan Terdakwa II IZ terbukti secara sah dan meyakinkan bersalah melakukan Tindak Pidana Korupsi secara bersama-sama;

2. Menjatuhkan pidana terhadap Terdakwa I SS dan Terdakwa II IZ, masing-masing dengan pidana penjara selama 1 (satu) tahun dan 6 (enam) bulan dan menjatuhkan pidana denda terhadap Terdakwa-terdakwa dengan pidana denda masing-masing Rp.50.000.000,- (lima puluh juta rupiah) dengan ketentuan, apabila denda tidak dibayar, maka diganti dengan pidana kurungan selama 3 (tiga) bulan;

3. Menetapkan masa penahanan yang telah dijalankan Terdakwa-terdakwa dikurangkan seluruhnya dari pidana yang dijatuhkan;

4. Memerintahkan Terdakwa-terdakwa tetap dalam tahanan;

5. Membebaskan Terdakwa I SS dan Terdakwa II IZ, untuk membayar uang pengganti;

6. Memerintahkan barang bukti yang diberi nomor : 1 s/d 51 tetap terlampir dalam berkas perkara;

7. Membebankan biaya perkara kepada Terdakwa-terdakwa masing-masing sebesar Rp.10.000,- (sepuluh ribu rupiah)

Injunction Verdict from District Court regarding this case above explained:

1. To declare the defendant I SS and defendant II IZ is truly guilty conducted corruption crime together;

2. State a sentence to both defendants imprisonment for each 1 year 6 months and penalty for each Rp. 50.000.000,- subsidair 3 months;

3. To declare the period of detention that has been undertaken by the defendant deducted from the sentence imposed;

4. To order the defendant to remain in prisoners;

5. To release both defendants to pay money substitution;

6. Declare evidences to be attached on case draft;

7. To charge the defendant to pay court costs for Rp 10.000,-
C. High Court’s Considerations

The Judge Council of Jakarta High Court agreed with district court which subsidair indictment is proved and the consideration and reasons of district court is agreed by Jakarta High Court. But, the Judge Council has to revised and complete the verdict of district court about several points such:

1. **About consideration of primary indictment:**
   
   Considering the indictment has organized as *subsidairity*, which:
   
   - Primary indictment: Article 2 (1) Law. No. 31 year 1999 revised to Law No. 20 year 2001. jo. article 55 (1) point 1 Criminal Code
   
   - *Subsidair* Indictment: Article 3 Law. No. 31 year 1999 revised to Law No. 20 year 2001, jo. article 55 (1) point 1 Criminal Code
   
   Considering, the Judge council of High Court has not agree with The judge council of first level court which stated the *subsidair* indictment from prosecutor has to considered as alternative indicment by district court; according to Judge Council, if the indictment organized as subsidairity, it should be consider the primary indictmment first, if not proven, then *subsidair* indictment should be considered.

2. **About law consideration of *subsidair* indictment:**

   The judge council of high court agree with district court of their considerations except the element *abuse of power, opportunity and/or facilities on him because of his position* which stated that PT Ramos Jaya Abadi considered by district court is the false of defendant, but for High Court, based on the facts on court process, the defendants are right to determined PT Ramos Jaya Abadi as the winner, but the defendants are false to determined PT
Masenda Putra Mandiri as the winner because is not require the President Regulation No. 80 year 2003;

Considering, if one day PT. Ramos Jaya Abadi prohibit the contract then did sub-contract to PT.BUR that affect harm of the budget state, so it was the responsibility of PT. Ramos Jaya Abadi, not the defendants.

3. About verdict redaction

High court agree to not burden the defendant a substitution of money because they did not received the money from the corruption. But, the high court did not agree with district court to wrote on 5th amar to released the defendant to pay money substitution, high court think it is just exagarated, and about the imprisonment should be kept;

D. High Court’s Adjudication

So, the verdict of district court will be REVISED by high court only about verdict redaction.

MENGADILI

- Menerima permintaan banding Penuntut Umum, Terdakwa I dan Terdakwa II

1. Menyatakan Terdakwa I, SS dan Terdakwa II IZ, tidak terbukti secara sah dan meyakinkan bersalah melakukan Tindak Pidana Korupsi secara bersama-sama sebagaimana didakwakan dalam Dakwaan Primair ;
2. Membebaskan Terdakwa I, SS dan Terdakwa II IZ dari Dakwaan Primair tersebut ;
3. Menyatakan Terdakwa I, SS dan Terdakwa II, SS, terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana korupsi secara bersama-sama sebagaimana didakwakan dalam Dakwaan Subsidair ;
4. Menjatuhkan pidana terhadap Terdakwa I, SS dan Terdakwa II, IZ, masing-masing dengan pidana penjara selama 1 (satu) tahun dan 6 (enam) bulan, dan pidana denda masing-masing sebanyak Rp. 50.000.000,00 (Lima puluh juta rupiah) dengan ketentuan apabila denda tersebut tidak dibayar, diganti dengan pidana kurungan masing-masing selama 3 (tiga) bulan ;
5. Menetapkan para Terdakwa tetap ditahan
6. Menetapkan masa penahanan yang telah dijalani oleh para Terdakwa dikurangkan seluruhnya dari pidana yang dijatuhkan
7. Menetapan barang bukti Nomor : 1 sampai dengan Nomor 51 tetap terlampir dalam berkas perkara
8. Membebankan kepada para Terdakwa untuk membayar biaya perkara pada kedua tingkat pengadilan, yang pada tingkat banding sebanyak Rp.2.500,- (dua ribu lima ratus rupiah)

Verdict from Jakarta High Court above stated:

- To receive appeal notes from Defendant I, Defendant II and Prosecutor;
- To revise the Verdict of Central Jakarta District Court no. 26/Pid.B/TPK/2012/PN.Jkt.Pst regarding the verdict redaction
1. To declare the defendant I SS and defendant II IZ are not proved guilty towards a corruption crime in primary indictment;
2. Release both defendants from primary indictment;
3. To declare both defendants is truly guilty conducted a corruption crime together in subsidair indictment;
4. **State a sentence to both defendants imprisonment for each 1 year 6 months and penalty for each Rp. 50.000.000,- subsidair 3 months**;
5. To order the defendant to remain in prisoners;
6. To declare the period of detention that has been undertaken by the defendant deducted from the sentence imposed;
7. Declare evidences to be attached on case draft;
8. To charge the defendant to pay court costs for Rp 2.500,-

E. Legal Facts

Towards the revision of district court’s verdict by high court especially the duration of imprisonment and the amount of money substitutes, there is no any significant difference for the consideration of
judge, so in High Court’s verdict do not attach the aspects which same of. Below, the considerations from judge in district court:

Considering, the indicment material from prosecutor related to facts from the court, the judge council assumed that arrangement of subsidairity indictment must considered as alternative indictment, so the judge council can choose between primary or subsidair indictment which one is closest to the case. And it is subsidair indictment.

The elements of article 3 jo. Pasal 18 law no. 31 year 1999 jo. Law no. 20 year 2001 which are:

1. Every body
2. Enrich himself or other person or a corporation;
3. Abuse of authority, chance or facilities on him because of his position;
4. Harm state budget or economic state;
5. As a participation;
6. There is money substitution.

1. Element of every body

Considering the defendant I and defendant II are civil servant in POM RI’s environment, so element of every body has been accomplished.

2. Element of enrich himself or other person or a corporation

Considering, about the facts on court process what explained above, found that auction process did not based on procedure as specified on President regulation no. 80 year 2003, so enrich the candidate of auction which supposed to be nominated because there is
no Basic Capacity (*Kemampuan Dasar*), for witness Ediman Simanjuntak as Director of CV. Masenda Putra Mandiri on package 1.

Considering the facts that the winner which are CV. Masenda Putra Mandiri and PT. Ramos Jaya Abadi did not do the whole procurement project, instead of PT. Bhineka Usada Raya (PT.BUR) did it. That matter means they did sub-contract partially or entirely the project to PT. BUR, it prohibit the procedure as regulated on article 32 President Regulation No. 80 year 2003 if they do sub contract without knowledge by PPK

Considering, the profit received by PT. BUR for Rp.3.392.058.627,- for package 1, and for package 2 PT. BUR gained profit for Rp. 9.275.757.712,-.

Considering, CV. Masenda Putra Mandiri received profit Rp. 960.620.185,- and PT. Ramos Jaya Abadi for Rp. 260.494.270,-.

Considering, the defendant I and defendant II has enriched other person, so this element has been accomplished.

3. **Abuse of authority, chance or facilities on him because of his position**

   The duty and responsibility the defendant I as PPK are: (related to this case)
   - Issued determination of auction winner;
   - Making a contract;
The duty and responsibility of the defendant II as Ketua Panitia Lelang Pengadaan Barang Pusat Pengujian Obat dan Makanan Nasional are: (related to this case)

- Suggest candidates who appropriate as a winner;

And connected to the facts above, the defendant I and defendant II with their task, authority and responsibility abused their authority, opportunity and/or facilities on him because of his position which has made discriminative requirement which is SIUP for the candidates that prohibit article 14 President Regulation no.80 year 2003 and all the defendant has passed candidated that did not have Basic Capacity (Kemampuan Dasar) that prohibit article 11 President Regulation no.80 year 2003. So, this element has be accomplished.

4. Harm state budget or economic state

Facts found on court process, there is difference on payment for the project as total Rp. 9.275.757.712,- for package 1, and for package 2 total Rp. 3.392.058.627,- declared as state harm. This element has been accomplished.

5. As a participation

That the requirement where the candidates of auction have to be have SIUP is known and reported to the defendant I as PPK. Defendant II has passed CV. Masenda Putra Mandiri that did not have Basic Capacity (Kemampuan Dasar).
It can be concluded, the defendant I and defendant II has done action each or together. So this element has been accomplished.

6. **Element of money substitution**

Based on court process, found that each defendant did not consumed the profit from the action they did, so from that thought each defendant did not have to burden money substitution.

**F. Incriminate element**

- Towards the defendant I and defendant II even as PPK and as Head of Government Procurement of Goods and Services did not applied and guided stated regulations towards procurement of goods and services of government;
- Towards each defendant, even as PPK and as *Ketua Panitia Pengadaan Barang/Jasa Pemerintah* did not support the government program in eradication of corruption criminal case.

**G. Relieving element**

- Each defendant has polite manner;
- Each defendant never been punished before;
- Defendant I has responsibility to his old parent and defendant II has responsibility to his family.

5. **Case of MSG (Verdict No. : 56/PID/TPK/2012/PT.DKI)**

The case below where the defendant as the candidate of Deputy of Bank Indonesia and give the member of DPR some Travellers Cheque Bank International Indonesia (TC BII) regarding her election as Deputy of Bank Indonesia

**A. Indictment**

The defendant MSG together with NN (separated case), gave Travellers Cheque Bank International Indonesia (TC BII) for Rp.
20.850.000.000,- through AH aka AM, from total 480 pieces of TC BII values Rp. 24.000.000.000,-, to civil servant such as HY (Golkar Fraction), DM (PDI-P Fraction) and EA (PPP Fraction) as the Member of DPR RI for period 1999-2004, UD (TNI/Polri Fraction) as the Member of DPR RI for period 1999-2004, and some member of Comissio IX of DPR RI, related to the election of the defendant as Deputi Gubernur Senior Bank Indonesia (DGSBI) or Deputy of Bank Indonesia

- That the defendant knew about the gift of TC BII for Rp.20.850.000.000,- by NN to those member of commission IX of DPR RI within Fit and Proper Test related to the election of Deputy of Bank Indonesia year 2004 has choosen the defendant which contradict with duty of DPR RI not to do corruption, colusion and nepotism.

Defendant’s action threatened as criminal as stated in Article 5 (1) point b Law no.31 year 1999 about Pemberantasan Tindak Pidana Korupsi jo. Law No. 20 year 2001 about Amendment of Law No. 31 year 1999 about Pemberantasan Tindak Pidana Korupsi jo. Article 55 (1) point 1 Criminal Code.

B. District Court’s Adjudication

Legal copy of Verdict of Corruption Case Court on District Court of Central Jakarta as below:

1. Menyatakan Terdakwa MSG terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana korupsi secara bersama-sama, sebagaimana dalam Dakwaan Pertama Pasal 5 ayat (1) b Undang-Undang No. 20 Tahun 2001 tentang Perubahan atas Undang-undang No. 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi jo Pasal 55 ayat (1) KUHPidana

2. Menjatuhkan pidana oleh karenanya terhadap Terdakwa MSG dengan pidana penjara selama 3 (tiga) tahun dan pidana denda sebesar
Rp.100.000.000,- (seratus juta rupiah) apabila denda tersebut tidak dibayar, diganti dengan pidana kurungan selama 3 (tiga) bulan.

3. Menetapkan agar masa penahanan yang telah dijalankan, dikurangkan seluruhnya dari pidana yang dijatuhkan

4. Memerintahkan agar Terdakwa MSG tetap berada dalam tahanan

5. Memerintahkan agar barang bukti Nomor: 
   Terlampir dalam berkas perkara

6. Menetapkan agar Terdakwa MSG membayar biaya perkara sebesar Rp 10.000,- (sepuluh ribu rupiah).

Injunction Verdict above declared:

1. To declare the defendant MSG is truly guilty conducted a participation of corruption crime together in primary indictment as regulated on article 5 (1) b Law No. 20 year 2001 about Amendment of Law No. 31 year 1999 about Eradication of Corruption Cases jo. Article 55 (1) Criminal Code;

2. State a sentence to the defendant MSG imprisonment for 3 years and penalty for Rp. 100.000.000,- subsidair 3 months;

3. To declare the period of detention that has been undertaken by the defendant MSG deducted from the sentence imposed;

4. To order the defendant MSG to remain in prisoners;

5. Declare evidences to be attached on case draft;

6. To charge the defendant to pay court costs for Rp. 10.000,-

C. High Court’s Adjudication

Considering, Jakarta High Court to CORROBORATE District Court’s verdict:

M E N G A D I L I

- Menerima permintaan banding dari Terdakwa tersebut
- Menetapkan agar Terdakwa tetap ditahan
• Membebankan kepada Terdakwa untuk membayar biaya perkara pada kedua tingkat pengadilan, yang pada tingkat banding sebanyak Rp. 10.000,- (sepuluh ribu rupiah);

High Court’s injunction verdict above stated:
• To receive appeal notes from the defendant;
• To corroborate interim decision of Central Jakarta District Court no. 39/Pid.B/TPK/2012/PN.JKT.PST;
• To corroborate the verdict of Central Jakarta District Court no. 39/Pid.B/TPK/2012/PN.JKT.PST;
• To order the defendant to remain in prisoners;
• To charge the defendant to pay court costs for Rp 10.000,-.

D. Legal Facts

So, the elements of the article will copied from the District Court’s verdict below:

“Dipidana dengan pidana penjara paling singkat 1 (satu) tahun dan paling lama 5 (lima) tahun dan atau pidana denda paling sedikit Rp. 50.000.000,- (lima puluh juta rupiah) dan paling banyak Rp. 250.000.000,- (dua ratus lima puluh juta rupiah) setiap orang yang memberi sesuatu kepada pegawai negeri atau penyelenggara negara karena atau berhubungan dengan sesuatu yang bertentangan dengan kewajiban, dilakukan atau tidak dilakukan dalam jabatannya.” article 5 (1) b Law No.31 year 1999.

(Imprisonment for minimum 1 year and maximum 5 years and/or minimum penalty for Rp.50.000.000,- and maximum penalty for Rp.250.000.000,- for those who give something to civil servant or governor because or related to something which contradict to their duties, to do or not to do in their positions)

Considering, the elements of article 5 (1) b Law No.31 year 1999 such:

1. Everybody;
2. Giving something;
3. To civil servant atau governor;
4. Because or related to something which contradict to their duties, to do or not to do in their positions.

1. **Element of Every body**

   The defendant as an individual because of her position.

   This element has been accomplished.

2. **Giving Something**

   Considering, if related to *locus* delictie and *tempus* delictie with defendant has been elected as Deputy of BII with gave TC BII are connected one another to make one incident and how the witnesses has bee adjudicated with separated jurisdiction and have permanent legal force. So, this element has been accomplished.

3. **To civil servant atau governor**

   Considering, from the facts above, the one who received the TC BII are the Member of DPR RI period 1999-2004 from Commission IX

   This element has been accomplished.

4. **Because or related to something which contradict to their duties, to do or not to do in their positions.**

   Considering, that the receipt of TCC BII by the member of DPR RI Commission IX, and has been adjudicated before, it is clearly seen that the member of DPR RI received the TC BII and it has contradicted with duty as DPR RI Commission IX, eventhough the witnesses in the court said the defendant is the most deserved to be
elected as Deputy of BII, but still the judge council consider that element of because or related to something which contradict to their duties, to do or not to do in their positions has been accomplished.

Considering, based on facts above, that element of participation (penyertaan) article 55 (1) point 1 Criminal Code has been accomplished.

E. Incriminate element

The defendant MSG has not support government program in eradication of corruption criminal case.

F. Relieving element

- The defendant has polite manner.
- The defendant never been punished.

All the cases above are the 5 verdict samples of this research about corruption cases that appealed to Jakarta High Court on year 2012 and already in kracht and published to public.

2.2 THE ESSENCE OF JUSTICE ACCORDING TO JUDGE OF JAKARTA HIGH COURT WHEN ADJUDICATE CORRUPTION CASES

In order to find the answer about this research, there is support data which is interview method. The informants are the judge of Jakarta High Court. There are 5 (five) judges as the informant.

Based on the result of the interview, there are some questions that have been asked. First, a question about factors behind when there are 2 different
cases, adjudicated with same article of law but the punishment such imprisonment, penalty and money substitution are different each other. Based on that question, a judge name Elang Prakoso gave assessment the case based on the context and background of someone did the corruption. Sir Elang stated that corruption appears because of needs, and also because of greedy. He continues that sometimes there is person who does not want do corruption, but because trapped situation, so he did it.

Next High Judge, Sir Hatta answered about the factors which are the essential point on his opinion why the punishment can be different it based on the criminal values. It can be seen if the corruption criminal case done towards vital object, such as road construction and medical tools project. As a standard, it seen the urgency of the object of corruption is how far if related to life intention or public needs.

Then, similar answer comes from Sir Humuntal Pane who emphasized that if defendant A harm state budget for example Rp.10,000,000,- while defendant B harm for total billion, then they will have different total punishment even they are same on harm the budget state. He considers incriminate elements for example the defendant ever been punished although not a corruption criminal case, then during court process does not be straightforward and not cooperative are matters that harm defendant. About relieving element he continues when defendant are open, tell the other doer related to the case, tell honestly and straightforward with some evidences he knew (he called as justice collaborator), then the punishment can be enlighten.
Sir Kresna Menon also said the same point about see the total of state budget’s loss. In his opinion, incriminate and relieving element divided into specific and general. Specific one is stated on Law, while the General ones are in the jurisprudence, and also the objective matters by the Judge. For example, a defendant did corruption because his daughter was in college then there is no enough money, this case is relieving the punishment subjectively but it is also an objectively because people can understand.

Second question is a situation when adjudicate case especially corruption criminal case, there will be kind of verdict such as to corroborate, revision and to revoke the case, then the question is what general factors when choose one of those kind of verdict towards the defendant.

Sir Hatta said he will see the criminal case aspect first. When someone corrupted tax budget, while tax is important sector of the state income, so when there is manipulation there, must be punished accordingly, because it such a human needs (hajat hidup manusia).

Then Sir Humuntal Pane explained in appeal court level is re-examine process, High Judge see the procedural law and also materiil law. To see the procedural during court process in district court and adapted to Criminal Code and Criminal Procedural Code, to examine if there were a step has not done. He added statement that The Judge is not mouth of Law.

According to Sir Kresna Menon, incriminating element for example someone corrupted budget for overcome the disaster such tsunami, nature disaster, and/or in economic crisis. The other example is governor that should act as role model, instead did corruption, this matter will incriminate the
punishment or someone who corrupt in big scale. He added, generally when
the total of the corrupted money is big, it could be seen how the greedy a
person is. For relieving element, if defendant gives back the state’s money,
then the total loss of a state is relative small, then he did not for greedy and
High judge assesses he is on urgent economic, example his daughter is on
college but there is no money.

Third question is similar with the question before, but more specific. The
question is the factors by Jakarta High Judge when the District Court punished
the defendant while High Court released the defendant from all the indictment
by prosecutor.

Sir Elang explained to see case based on the facts during court process.
Sometimes, prosecutors cannot prove the indictment so the defendant has to
be released, because indictment is Judge’s domain to adjudicate case.

For Sir Humantal Pane, this case can be happened when the indictment is
abstract or obscure libel, then the elements of indictment cannot be proved.
Then in this case, it is not called that defendant is release, but it called the
indictment can not be accepted.

For fourth question, about factors when High Judge revised the verdict
from District Court. Sir Elang emphasized in punish someone, it is aim to give
deterrent effect (efek jera) and to change condition. Then for him, to see
defendant when his partner who did the same criminal together, but his
partner’s punishment is lighter, then he thought fair is when two people did
one criminal, so the punishment should be same. For him also, to see the
matters which harm the state, as the big deal that worth to punish heavier. For
example, when BPN (*Badan Pertanahan Negara*) or National Land Agency do criminal and harm the state then it will be seen as matter to punish heavier, because BPN is pioneer of land, and it harm the citizen. He also added that fair does not mean always bring expediency, and judge is not mouth of Law who always prioritize certainty.

Fifth question asked how the High Judge knows, understand and implement justice concept especially in corruption criminal case.

First judge that gave his comment is Sir Hatta, he stated first is legal reference, understand the case completely including the motives, in implementation, after see legal basic then give justice involve expediency, expediency means general expediency, especially for state. When implement it, should be careful, ask conscience and think long, because it can not be learned, it based on experience. Meanwhile, to decide a case, it does not alone, among High Judges can complete each other from different opinions and point of view.

For Sir Humuntal Pane, he emphasized that judge is the one who make justice to be concrete. He added, when High Judges have different opinion about the total of imprisonment for the defendant, so the judge will discuss, if still different, then voting, if there is still no result, then will see the punishment which beneficial for defendant (see the lighter punishment).

Sir Kresna Menon answered that judge in adjudicate case, lean on 3 matters. He said that justice are 3 (three), which are legal justice, social justice and moral justice. The judge’s task is to uphold law and justice, these can not be separated. Then the Judge has to see the legal justice at first, second is
social justice then moral justice. Legal justice means justice based on legal, it is whether the law has already fulfilled based on the evidence or not, if fulfilled, then this is just one element which is legal justice. Second is social justice, to adjudicate the punishment, whether the weight and light of the total of punishment is already appropriate with justice for citizen. While in corruption case, citizen desire for weight punishment, but for Sir Kresna that weight punishment still has to appropriate to their guilty. After that, is moral justice, the judge when adjudicate the verdict, should be no other factors, their moral have to be innocent. Innocent moral means there is no bribery, and there is no internal interest.

Then about last question which ask about how High Judge when face the reality that have to choose between legal certainty or justice, two High Judges gave their opinion. First is Sir Humuntal Pane stated that justice is irrasional, so there the purpose of regulation means to be. He continued, justice helps to define Law. For him to determine whether someone is proved guilty or not, is easier than to determine the justice itselfs. Then he closed with statement that the main object of law is justice, as in verdict wrote “Demi Keadilan Berdasarkan Tuhan Yang Maha Esa” (For The Sake of Justice Under Almighty God).

Lastly, Sir Kresna commented which said our state law is a civil law system which prior the law, but our pancasila state law where law and justice can not be separated, but if legal certainty has not guarantee any justice, then for Sir Kresna justice should come first. Added question is what kind of basic to say this statement is. He replied in Judge’s verdict there is sentence “Demi
“Keadilan Berdasarkan Tuhan Yang Maha Esa” (For The Sake of Justice Under Almighty God) means our judication is fair. He copied Gustav Radburn’s word about priority theory which for Gustav, the priority is justice. He said, according to Plato also, Plato priors justice, but for Plato there are 4 (four) object of law where the fourth is morality. Then he added, according to Sudikno Martokusumo, why justice? If we looking for constitution 1945, that justice is the highest human right, so justice can not be sided. If Law can not guarantee legal certainty, so Judge has to find justice, by do legal discovery, legal discovery can be find through legal interpretation and legal construction.

For fifth Judge, Sir Djoko, he has not answered all the answers spesifically, he stated some different data which different with other answers from other judges, he said that he thinks the answers from One Council of Judges will not give big different answers, because they are One Council of Corruption cases, they will consider like what Judge Kresna said except different High Court. In High Court Jakarta is rarely to have different opinion, especially for case that has been investigated by KPK. For KPK who has done many of direct arrest operation, it would be easier. He added, in Jakarta High Court the total punishment will increase from punishment by district court on average, that is why rarely people do appeal. Because The Judge of Jakarta High Court see what decided by district court has not determine justice to see how the case are big, the state loss are also big and the consideration that the case done by people who supposed to be the role model. And those are just the main point of his statement regarding the interview.
All the High Judges have been interviewed with different times and places related to their schedules. All the interview process have been recorded by the interviewer.
CHAPTER III

JUSTICE AND CORRUPTION

3.1 THEORY OF LAW AND JUSTICE

3.1.1 Legal Theory on the Essence of Law

Law is broad and abstract, once Immanuel Kant wrote: Noch suchen die juristen eine Definition zuehrem Begriffe von Recht, no one of juris can give any definition exactly. The aspect of law is too broad, then how to define the law depends on from what aspect we see about the law).

People, usually define law from what they see in the court. They incline to identify the law as an anchor-black-robe-judge with some thick books contains hundred regulations; or a police who work to catch the villain. Listen to Law word, so the common people will pop those concrete things out suddenly.

Realization of law in front of the court is just one of kind of law implementation when appear a dispute or criminal case. Law itself is broader and more abstract than that court process and the actor who involved there.

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Rusli Effendy, et.al., Teori Hukum, Published by Hasanuddin University Press, 1991, page 6
There is also who identify law with Act. This point of view does not that exact, even though have to confess that Act is one of the instrument of law when law does the function.

So, to explain what law actually is, these are below the definitions of law from some experts, such as:

According to E.M Mayers, law is a whole regulations contains morality consideration send to human habits in society and be a guid lines for state authority when do their duties.\textsuperscript{17}

According to J.van Kan, law is a clump of force regulations conducted to rule people’s interest protection in society.\textsuperscript{18}

According to Duguit, law is a habits regulation of the citizen, which the utilization in a time as a guaranteed of public interest and if prohibited will create simultaneously reaction for those who did the prohibition.\textsuperscript{19}

According to Aristoteles, Laws are something different from what regulates and expresses the form of constitution; it is their function to direct the conduct of the magistrate in the execution of his office and the punishment of offenders.\textsuperscript{20}

Hugo Grotius gives opinion that law is a rule of moral action obliging to that which is right.\textsuperscript{21}

\textsuperscript{17} Ibid
\textsuperscript{18} Ibid
\textsuperscript{19} Ibid
\textsuperscript{20} Achmad Ali, \textit{Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)}, Kencana, Jakarta, 2009, page 418
\textsuperscript{21} Ibid
In Cirero’s opinion, law is the highest reason, implanted in nature, which prescribes those things which ought to be done, and forbids the contrary.\(^{22}\)

According to Immanuel Kant, Law is the whole requirements with one’s free desire could be deal with other’s desire, based on law regulation about independent. \(^{23}\)

According to van Vollenhoven, Law is a phenomenon in social continuously and collide one another unstoppable with other phenomenon.

According to Thomas Hobbes, whereas law, properly is the word of him, that by right and command over others. \(^{24}\)

Sudiman Kartohadiprodjo, once said law is an element related to human being in condition their relation to other human being. \(^{25}\)

And last, theory of progressive law has been explained by Satjipto Rahardjo that Law is not about legal structure, but also a structure of opinion, culture, and goals. \(^{26}\)

From many definitions of many experts above, it is seen that law aspect is a wide things and affects many different point of views about what law is.

\(^{23}\) Rusli Effendy, et.al, op.cit, page 7.
\(^{24}\) Ibid
For the references, wherever common people ask about what law is, it can be concluded: *Law is a set of regular which arranged in a system, contains guideline about what can be done and what don’t, order and prohibition for citizens, and followed by sanction.*\(^{27}\)

### 3.1.2 Objective of Law

Objectives of Law can be seen by three different points of view, such as:

1. *Dari sudut pandang ilmu hukum normatip, tujuan hukum dititikberatkan pada segi kepastian hukum,*
2. *Dari sudut pandang falsafah hukum, maka tujuan hukum dititikberatkan pada segi keadilan,*
3. *Dari sudut pandang sosiologi hukum, maka tujuan hukum dititikberatkan pada segi kemanfaatan.*\(^{28}\)

Therefore, recall by what Gustav Radbruch ever said once:

> **Tiga Nilai Dasar Hukum, masing-masing: keadilan, kemanfaatan dan kepastian hukum.**

> Sebenarnya yang disebut oleh Radbruch sebagai 3 nilai dasar hukum itu, itulah tujuan hukum dalam arti luas. Dengan lain perkataan, tujuan hukum dalam arti luas adalah: 1) untuk mewujudkan keadilan, 2) untuk memberikan kemanfaatan, 3) untuk mewujudkan kepastian hukum. secaras khusus, masing-masing jenis hukum mempunyai tujuan yang spesifik.\(^{29}\)

To implement the principle of priority according to Gustav Radbruch, that first of all justice must be prioritized, then expediency and legal certainty at last. Ideally it must be arranged so that in any kind of legal proceedings conducted by the judge, the prosecutor, by attorney or other law enforcement officer of the law that the three objectives of law can be implemented together, but when there is no possibility, then what must be prioritized first is justice, then the expediency and the last

\(^{27}\) Rusli Effendy, et.al, loc..cit.
\(^{28}\) Ibid, page 79
\(^{29}\) Ibid
is legal certainty. Only by applying the principle of this priority, legal system can remain upright and avoid internal conflicts that can destroy it.

3.1.3 Theory of Justice

*Keadilan berasal dari kata adil*[^30^], according to Indonesian Dictionary fairness is not arbitrary, non-partisan, and not one-sided. Fairness mainly implies that a decision and action based on the norms is objective, not subjective more over arbitrary.

Justice is basically a relative concept, everyone is not the same, justice according one person does not mean justice for the other, when someone insists that he did some justice, it must be relevant to public order in which the scale of justice is recognized. Justice scale varies greatly from one place to another, each scale is defined and fully determined by the society in accordance with the general order of the society.

For most people, justice is a general principle, that such individuals should receive what they deserve. Some call it as legal justice that refers to law enforcement according to the principles ruled in state law.

1. Plato

Muslehuddin in his philosophy book of islamic law and orientalism, mentioned Plato’s view[^31^]:

In his view, justice consists in a harmonious relation, between the various parts of the social organism. Every citizen must do his duty in his appointed place and do the thing for which his nature is best suited.

In interpreting justice, Plato is strongly influenced by the collectivist ideal that sees justice as a harmonious relationship with various social organisms. Every citizen must perform their duties in accordance with their position and nature habit.

Plato’s opinion means a class interpretation, justice by Plato is a duty of every single citizen must do their own duty without interfere other class. A law maker must put the proper position for citizen clearly. This opinion assumed that human is not an isolated human and should has freedom as their own, but human as an isolated human by regulation and universal order.

It can be concluded that this justice will be achieved when every single individual can place theirselves to the proper position and responsibility to their duties and not interfere other individual’s matters. The other conclusion, can be said that Plato was making a human boxes into different group (racist).

2. Aristotle

Karena hukum hanya bisa ditetapkan dalam kaitannya dengan keadilan\textsuperscript{32}. The essential point of his opinion is that justice must be understood in definition of similarity. But Aristotle made an important differentiation between numeric similarity and

proportional similarity. Numeric similarity equalizes every individual as one unit, it is known as an equality before law. While proportional equality give every individual what they deserve appropriate with their capability, achievement and so on.\textsuperscript{33}

Furthermore, Aristotle distinguishes justice into distributive justice and corrective justice. Distributive justice and corrective justice both is vulnerable towards similarity matter and equality, can be differentiate in their structure. In distributive justice, important matter is same and equal reward can be given for the same achievement. But the problem, when inequality happens, it would be corrected and removed.

On the other hand, corrective justice is focusing to the mistake repairing. If one prohibition was infringed, so corrective justice would give sufficient compensation for those who have been disadvantaged, so the proper punishment can be given to the doer. However, injustice can causing the disturbance of equality that has been established. From this analysis, it is clear stating that corrective justice is area of judiciary, while distributive justice is area of government.

3. **John Rawls**

Rawls answer justice as a fairness or term in Black’s law dictionary as equal time doctrine, means one justice that can be accepted by logic in certain time about what is right. Rawls’ theory

\textsuperscript{33} Ibid
established from hypothesis which said every individual enter the social contract has their liberty and called as original position. One of the form of justice can be called as fairness when consider the position of every individual is netral. Rawls explain about justice as a fairness as this: I then present the main idea of justice as a fairness, a theory of justice that generalizes and carriers to a higher level of abstraction the traditional conception of the social contract”.

Then he continue, the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantage from social cooperation.

Rawls conclude that the basic structure of society is a public system of rules that can be looked in two forms, set of public norms and set of institution. The other word, basic structure of society consist of a justice system of institution and justice system political constitutions, then the justice as a fairness can be achieved.

Rawls continue that formal justice can increase become materiil justice. If formal justice is about obedient to system of regulation, so it was just one aspect from rule of law, rule of law is one concept support and guarantee legitimate expectation of society for justice.

Concretely, injustice can be felt by every individual if there was failure by judge to follow the Law and false interpretation when decide a case. This injustice can be more if compared judge does corruption or abuse of power when examine a case. Therefore, formal justice that just obedient to system of regulation can be felt if judge consistent to follow substantive justice of institution. In other word, verdict which follow the living law which is legitimate expectation that has been explained in justice political institution, and called by living law and develop inside the society and become a jurisprudence so as become law resource so it will increase the level of formal justice. So, John Rawls said that can be happen where we find formal justice, the rule of law and the honoring of legitimate expectations, we are likely to find substantive justice as well.

Briefly, according to John Rawls that justice is fairness. But justice is not same with fairness. And about the question how to know and find fairness and justice, Rawls said first how the basic structure of the society. From the certain basic structure will result certain public rules. If public rule is a justice political constitution and justice system institutions so justice as a fairness is possible to be achieved. But it realized after those whole aspects, it can just achieve a formal justice, or the exact is justice as regularity. But, if in their procedure there is hope from society through impartiality and there is open court to make rechtvinding and recht vorming
towards constitutional rights because substantive is open-ended character, so formal justice can be transform as a substantive justice. In other word, substantive justice can be found on verdict of a case.

According to Rawls, how to achieve justice, firstly must understand that what can be done by individual depends on what has been regulated upon him towards law. This basic concept is a matter of procedural justice. So, it needs a public rule and also the procedural as well. Justice can not be achieve only with has been followed the whole procedural honestly, but it still needs an institutional system which support justice basic structure of law and politic determination.

If all those matter can be found, so perfect procedural law can be achieved. This justice called also as substantive. In other word, this justice is a justice based on public rule.

4. Gustav Radbruch

Gustav Radbruch mengartikan kembali nilai keadilan sebagai mahkota dari setiap tata hukum, nilai keadilan adalah materi yang harus menjadi isi aturan hukum. sedangkan aturan hukum adalah bentuk yang harus melindungi nilai keadilan.36

(Gustav Radbruch defines justice value as a crown of legal system, justice value must be a core material for regulation, while regulation is a matter to protect justice value).

Law itself, according to Radbruch carries out justice value for concrete live of human being. Justice values as basic of law as a

36 Ibid, page 29
law. Therefore, justice has normative and constitutive characteristics for law. For normative, it becomes a law morality platform as well benchmark (tolak ukur) of positive law system, to the justice where the positive law was originated. And also for constitutive characteristic, because justice must be an absolute element for law as law. Without justice, a regulation is inappropriate to become law.

So, according to Radburch, law has three aspects, such as justice, finality (finalitas), and certainty. Justice aspect refers to equality before the law. Finality aspect refers to purpose of justice which advancing goodness in human life; this aspect determines content of law. While certainty aspect refers to guarantee law that contains justice will be work as regulation to be obeyed.

Radburch confess there is nature law principle in positive law, such as: (i) every individual must be treated under justice before the judiciary, (ii) recognition and respect for human rights that cannot be violated, (iii) balancing between prohibition and punishment. Based on those three aspects of nature law, Radburch sure that justice towards individual is a basic for embodiment of justice in a law. Those three aspects arranged by justice, certainty and finality as last, it useful to avoid arbitrariness.

3.1.4 Kind of Justice

1. Procedural and Substantive Justice

Keadilan prosedural adalah keadilan yang didasarkan pada ketentuan-ketentuan yang dirumuskan dari peraturan hukum formal,
seperti mengenai tenggat waktu maupun syarat-syarat beracara di pengadilan lainnya. Keadilan substantif adalah keadilan yang didasarkan pada nilai-nilai yang lahir dari sumber-sumber hukum yang responsif sesuai hati nurani.37

a. Procedural Justice

“Refers to the idea of fairness in the processes that resolve disputes and allocate resources. One aspect of procedural justice is related to discussions of the administration of justice and legal proceedings. This sense of procedural justice is connected to due process (US), fundamental justice (Canada), procedural fairness (Australia) and natural justice (other common law jurisdictions), but the idea of procedural justice can also be applied to non-legal contexts in which some process is employed to resolve or divide benefits or burdens. Procedural justice concern the fairness and the transparency of the processes by which decisions are made, and may be contrasted with distributive justice (fairness in the distribution of rights or resources), and retributive justice (fairness in the rectification of wrongs). Hearing all parties before a decision is made is one step which would be considered appropriate to be taken in order that a process may then be characterized as procedurally fair”.

Explain about kind of justice which is procedural justice like stated on quotes above said that shortly and generally procedural justice reached when all the procedural as stated on regulation in this case especially during court procedure has fulfilled. As stated, a procedural justice can reached fair when judge during court procedure is hearing all parties equally before decide final verdict.

b. Substantive Justice

“Keadilan yang diberikan sesuai dengan aturan-aturan hukum substantif, dengan tanpa melihat kesalahan-kesalahan procedural yang tidak berpengaruh pada hak-hak substantif Penggugat”. Ini berarti bahwa apa yang secara formal-prosedural benar bisa saja disalahkan secara materiil dan substansinya melanggar keadilan.”

(Substantive justice on Black’s Law Dictionary 7th Edition defined as: Justice Fairly Administered According to Rules of Substantive Law, Regardless of Any Procedural Errors Not Affecting The Litigant’s substantive Rights.)

Substantive justice is more abstract when compares to procedural justice. Substantive justice is a justice by the judge when trying to create justice that lifes on society in his verdict without tied from articles on applicable Law. So, two similar cases can have different final decision of punishment.

2. Justice According to Thomas Aquinas

In Middle Age, appeared Thomas Aquinas’s statement which distinguish justice among general justice and special justice. General justice is justice according to law willingness based on public interest, then special justice is a justice based on similarity or proportionality. Special justice divided into:

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40Muh Erwin, et.al., Pengantar Ilmu Hukum, PT. Refika Aditama, Bandung, 2012, page 110
a. Distributive justice (*justitia distributive*), as one of justice which gives to individual as their rights so then justice is a comparison instead of equality.

b. Commutative justice (*justitia commutativa*), a justice has been received of individual without look what they have done, means this justice is equality.

c. *Vindikatif* justice, (*justitia vindicativa*), is a justice when pass a punishment and compensation in criminal cases. A person called justice if jailed and got penalties proper to their amount of penalties that he has committed.

3. Interactional justice

In interactional justice assumed human as a society member and very concern with the symbol and the signs which reflect to their position in a society. Therefore, human has effort to understand and maintain the society relationship.

*Oleh karenanya, manusia berusaha memahami, mengupayakan, dan memelihara hubungan social. Pada kelompoknya, hal ini dilakukan tidak hanya kepentingan pribadi, tetapi juga merupakan upaya untuk memelihara identitas kelompok.*

One of the essential argument of interactional justice is an argument when a person has relation to the one who has authority are respect and appreciate as sensitivity reflects to the authority. But then, some experts said that horizontal relation is more important than vertical relation in this kind of justice.

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During analysis of verdict on Jakarta High Court and interview result, there are some justice that have been implemented by High Judges on Jakarta High Court, which are: proportional justice, procedural justice, theory of justice by Aristotle which are distributive justice and corrective justice, next is vindicative justice, and last is theory of justice by John Rawls.

3.2 CORRUPTION

3.2.1 Definition of Corruption

Word of Corruption is a familiar thing heard by everyone. Many cases of corruption that appears in the media makes corruption being a common thing to society to be spoken about. Definition of corruption has long been trying described by experts, but the definition of corruption has many various aspect from one another to explain what the corruption is. Although it has the same core of point, which means damage or something negative or harmful. Here are some definitions from the experts:

Menurut Fockema Andreae, kata korupsi berasal dari bahasa Latin yaitu dari kata corruptio atau corruptus. Selanjutnya disebutkan bahwa corruptio itu berasal pula dari kata asal corrumpere. Suatu kata latin yang lebih tua.32

(According to Fockema Andreae, word of corruption comes from latin which is corruptio or corruptus. And corruptio comes from word corrumpere, older language from latin).

Henry Campbell Black defines corruption as:

32 Andi Hamzah, Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional, Cetakan ke V, Raja Grafindo Persada, Jakarta, 2012, page 4
“an act done with an intent to give some advantage inconsistent with official duty and the rights of other”. 43

Sementara itu di dalam Kamus Umum Bahasa Indonesia, kata korupsi diartikan sebagai perbuatan yang buruk seperti penggelapan uang, penerimaan uang sogok dan sebagainya.44

(In Indonesian Dictionary, word of corruption defined as bad action such as fraud, bribe and so on)

Some definition of corruption also mentioned by Muhammad Ali, that:

(1) Korup artinya busuk, suka menerima uang suap/sogok, memakai kekuasaan untuk kepentingan sendiri dan sebagainya;
(2) Korupsi artinya perbuatan busuk seperti penggelapan uang, penerimaan uang sogok, dan sebagainya; dan
(3) Koruptor artinya orang yang melakukan korupsi. 45

(Definition of corruption by Muhammad Ali:

(1) Corrupt means foul, enjoy to receive bribes, using authority for self interest, etc.

(2) Corruption means foul action such fraud, bribes and etc.

(3) Corruptor means the one who did corruption).

Selain itu, korupsi dapat didefinisikan sebagai penyalahgunaan kekuasaan dan kepercayaan untuk keuntungan pribadi.46 (Besides that,

44 W.J.S. Poerwadarminta, Kamus Umum Bahasa Indonesia, Balai Pustaka, Jakarta, 2005, page 342
corruption can be defined as abusing of power and trust for self interest). Corruption conclude behavior of public officers, even politician and civil servant, who enrich themselves inappropriately and violate the law and abuse their authority that has been trusted to them.

Bagi A.S Hornby, untuk mengartikan istilah korupsi sebagai suatu pemberian atau penawaran dan penerimaan hadiah berupa suap (the offering and accepting of bribes), serta kebusukan atau keburukan (decay)........47

Paragraph above explains A.S Hornby’s thought about corruption as a gift or offering and accepting of bribes, and also a decay.

Bagi Wertheim dia cenderung menggunakan pengertian yang agak spesifik. Menurutnya, seorang pejabat dikatakan melakukan tindak pidana korupsi, adalah apabila ia menerima hadiah dari seseorang yang bertujuan mempengaruhinya agar mengambil keputusan yang menguntungkan kepentingan si pemberi hadiah. Kadang-kadang pengertian ini juga mencakup perbuatan menawarkan hadiah, atau bentuk balas jasa yang lain.48

For Wertheim he tends to use a specific definition. According to him, a governor said as a corruptor when he received a gift from someone who aims to influence him in order to take a benefit decision to the giver. Sometimes this definition also includes action to offer some gift or present, or other forms such as services.

From point of views of some experts above, can be concluded briefly eventhough can not be covered all definitions in one, but briefly can be said that corruption is a governor’s action who use their

authority to do or not to do something which is not accordance with their duties as a governor.

3.2.2 Corruption Criminal Case

*Tindak Pidana* or Criminal case has own specific definition, it can be explained as below that:

“perbuatan yang dilarang oleh suatu aturan hukum, larangan mana disertai dengan ancaman (sanksi) yang berupa pidana tertentu, bagi barangsiapa yang melanggar larangan tersebut”. \(^{49}\)

Criminal case is forbidden action who prohibited by the regulations, a prohibition following by certain sanctions for those who prohibited those prohibition.

So, relating the word of corruption and criminal case, which are below the phrase of corruption cases that explained by some experts:

*Baharuddin Lopa* mengemukakan pengertian umum tentang tindak pidana korupsi sebagai berikut : "Korupsi ialah suatu tindak pidana penyuaapan dan perbuatan melawan hukum yang merugikan/dapat merugikan keuangan atau perekonomian Negara, merugikan kesejahteraan atau kepentingan rakyat. Perbuatan yang merugikan keuangan atau perekonomian Negara adalah korupsi di bidang materiil, sedangkan korupsi di bidang politik dapat terwujud berupa memanipulasi pemungutan suara dengan cara penyuaapan, intimidasi, paksan dan atau campur tangan yang dapat mempengaruhi kebebasan memilih, komersialisasi pemungutan suara pada lembaga legislatif atau pada keputusan yang bersifat administratif di bidang pelaksanaan pemerintah". \(^{50}\)

Baharuddin Lopa expresses general definition about corruption criminal case: corruption is a bribe criminal action and against the law

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\(^{50}\) Baharudin Lopa. *Kejahatan Korupsi Dan Penegakkan Hukum*, Kompas Media Nusantara, Jakarta, 2001, page 46
which harm the state budget or economic state, harm citizen’s welfare and interest. An action which harm the state budget is a corruption in material area, while a corruption in politic area can be realized such manipulating voting in way such as bribery, intimidation, compulsion and/or intervention which affect freedom, voting ommercialization on legislative institution or administrative decision in governmental.

According to Djoko Prakoso Corruption Criminal Case define as:

“Tindak pidana korupsi meliputi perbuatan-perbuatan memperkaya diri sendiri atau orang lain atau suatu badan yang dilakukan secara melawan hukum yang secara langsung atau tidak langsung dapat merugikan keuangan negara atau diketahui atau patut disangka bahwa perbuatan tersebut merugikan keuangan Negara.”

Corruption criminal case includes self enrichment action or other person or a corporation which against the law direct or indirectly can harm state budget or known or assumed that action can harm budget state.

All explained corruption definition of corruption by experts above, can be seen the corruption done by the governor which harm the state and such an actions that prohibit the rule and totally corruption as a crime, an extra ordinary crime that affect citizen’s welfare especially in Indonesia.

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51 Djoko Prakoso, Kejahatan-kejahatan yang merugikan Negara, Bina Aksara, Jakarta, 1987, page 448
3.2 KINDS OF HIGH COURT’S VERDICT

3.2.1 Definition of Court’s verdict

Verdict definition stated on article 11 number 11 Criminal Procedural Law, which stated:

"Putusan Pengadilan adalah pernyataan Hakim yang diucapkan dalam sidang Pengadilan Terbuka, yang dapat berupa pemidanaan atau bebas atau lepas dari segala tuntutan hukum dalam hal serta cara yang diatur dalam Undang-Undang ini”.

Putusan yang dijatuhkan Hakim dimaksudkan untuk mengakhiri atau menyelesaikan perkara diajukan kepadanya. Untuk memutus suatu perkara pidana, maka terlebih dahulu hakim harus memeriksa perkaranya.52

In handling a case, Judge has independency from Law and then other parties has no rights to interfere or influence the Judge. Judge has to be fair and impartiality, in order to create justice. The verdict depends on result of discussion based on proved indictment during court process. The fact during the court process can be found that indictment is proved, moreover indictment also can not be proved and the case is not a crime.

3.2.2 Kinds of High Court’s Verdict

4. (three) types of High Court’s verdict clearly stated on Article 241 of Criminal Procedural Law: “Setelah semua hal sebagaimana dimaksud dalam ketentuan tersebut di atas dipertimbangkan dan dilaksanakan, pengadilan tinggi memutuskan, menguatkan atau mengubah atau dalam hal membatalkan putusan pengadilan negeri, pengadilan tinggi mengadakan putusan sendiri.” (After all the elements have been

52 See Mohammad Taufik Makara and Suhasril, Hukum Acara Pidana dalam Teori dan Praktek, Ghalia Indonesia, Jakarta, 2004
considered and applied, High Court decide, corroborate or revise or even revoke the district court’s verdict, then high court makes their own verdict).

a. **Corroborate the High Court’s Verdict**

First type of High Court can be decided in appeal level is to corroborate verdict that has been done before from district court room. It can be used when:

- All the investigation procedures of district court are right and agreed by high court. High court assumed that all procedures already are based on formal law procedural.
- Applied evidence law by district court is on the right track.
- Condition consideration and proofing are already based on proofing system and proofing minimum duration, assumed by high court, already based on procedural.
- Argumentation and consideration conclusion are obviously right.
- *amar putusan* (injunction) that has been decided by district court, has no revision from high court.

Using this authority, there are various kinds:

1) **Corroborate the High Court’s Verdict Purely**

This kind of verdict by High Court has been totally right in whole aspects. No need for additional, revision or reduced. High court takes over all the consideration and reasons even the conclusion and *amar* (injunction) in district court’s verdict. The consideration, reason and conclusion also *amar* become implicit
consideration, reason and conclusion into the verdict by high court. It would be stated: “pertimbangan, alasan dan kesimpulan putusan Pengadilan Tingkat Pertama sudah dianggap tepat dan adil, dan Pengadilan Tinggi menjadikannya sebagai pertimbangan, alasan dan kesimpulannya dalam putusan”\(^{53}\) (consideration, reason, and conclusion of first level court’s verdict has obviously right and fair, and High Court making it as consideration, reason and conclusion of their verdict).

2) Corroborate the Verdict plus Additional Consideration

This one when high court has some additional or need to complete the consideration and the reason yet conclusion of District Court’s verdict. Means that principally, high court is agree with district court’s verdict, but then there are some points which less explanation in consideration or reason that be used, so it needs to be fixed or completed, and the high court assumes that the verdict is not complete in consideration of fact parts. For example, district court’s verdict is too short and not comprehensive.

About this kind of verdict, this is similar with kind of verdict which corroborate the high court’s verdict purely.

3) Corroborate Verdict with Different Consideration.

It has variable such as:

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- Principally, high court is totally agree with distric court’s verdict;
- But, totally disagree with their considerations and the reasons stated in district court’s verdict. So, along all the *amar*, high court is agree with district court, but district court’s consideration and reason to support injunction (*amar*) can not be agreed. Possibly high court will evaluate district court’s consideration which that consideration deviates from the true fact.

b. Revision Injunction (*amar*) of High Court’s Verdict.

This kind of verdict is happened with some conditions:
- Along the considerations and the reasons that stated on district court’s verdict has been agreed and considered to be proper by high court. But, about the injunction, high court does not agree. So the injunction need to be revised.
- Or, even the consideration needs some additional, also *amar* putusan district court need to be revised.
- It also could be, besides revising the consideration of district court’s verdict with new consideration, high court revise the *amar* as well.

Matters that could be revised by high court\(^{54}\):

a) Revision or improvement the criminal action qualification;

b) Revision or improvements about the list of evidence;

c) Revision or improvement about the punishment.

\(^{54}\)Ibid, page 507
c. **Revoke the District Court’s Verdict**

The third kind of High Court’s verdict as an appeal level court is to revoke the district court’s verdict. High court has authority to revoke district court’s verdict. Below two matters which has correlation of the revocation by high court:

2) **About the Reason of Revocation**

The point of view from this kind is high court totally disagree with district court, disagree here is a wide aspect. So, revocation can be seen from some aspects:

b) **Disagree with burden of proof**

For example, district court assume the fault of the defendant is proved enough legally and convincing, then high court assume disagree with district court when comes to evaluate burden of proof of the defendant.

c) **What is indicted not a criminal act**

Other reason, high court assumes what has been indicted to the defendant by prosecutor is not a criminal act.

d) **Indictment are null**;

e) **Indictment can not be accepted**

One example indictment can not be accepted where the case has been proceed and decided before, also the
indictment has been expired then the district court has no right to adjudicate the case.

f) Has a family relationship or one of the judge has interest in the case that he is involved.

3) In revocation, court make their own verdict.\(^5\)

Deciding the revocation of district court’s verdict, high court will make their own they assumed is right and absolute towards the decision that their canceled.

All the explanations above are elaboration of conceptual aspect of justice and corruption generally, yet justice and corruption in Indonesia specifically. Elaboration of explanation about implementation of law and justice practically as explained on the previous chapter.

\(^{55}\) Ibid, page 515
CHAPTER IV

ANALYSIS

4.1 THE IMPLEMENTATION OF JUSTICE CONCEPT BY

JAKARTA HIGH JUDGES

Hasil pemikiran Lothar Gundling bahwa dalam negara hukum yang demokratis, maka partisipasi masyarakat adalah sebagai bagian sentral dalam strategi penegakan hukum. Bila masyarakat telah peduli dan ikut beperan serta dalam mengawali penegakan hukum, maka supremasi hukum akan membuka hasil dalam bentuk keadilan.56

Paragraph above stated, Lothar Gundling expressed that in democratic state, citizen’s participation is a central point in order to law enforcement strategic. If the citizen cares and takes role to supervise law enforcement, then law supremacy will produce a justice.

The court also can aware about many interests and what citizen wants in law enforcement for today and the future.

In deciding all cases that are adjudicated in court especially in Jakarta High Court, The judge when deciding a case, will consider indictment elements that indicted by the prosecutors. In subsidarity indictment, which indictment that gives alternative articles, The Judge will consider the elements of primary articles first. If it has been proven, so The Judge will decide based on that proven article. If not proven, The Judge will continue considering the second article or subsidair elements.

From the interview result of The Judges before as explained in previous chapters, after the indictment elements has proven, so the next matter to be considered is to consider the Incriminate and Relieving Element. These are the concrete concept of justice which implemented by the judges, because the judges are the one who make concrete of a justice concept.

For the judges of Jakarta High Court, the judges are not the mouth of Law, which always prior the legal certainty, instead of the justice who is the prior matter in consider the sanction or penalty.

The judges of Jakarta High Court when processing the verdict will understand the legal reference at first, then understand the whole cases completely including the motives, next is when implement the verdict, must see the legal basic then in the end implement justice concept which contains an expediency. The expediency here is an expediency for the state. It emphasizes by Sir Hatta’s statement that for Jakarta High Judges, to find a justice in a case, it can not be learned, but it based on the experiences. Even to find justice, it has to decide exclude other interests which can affect the decision because some factors outside the case, for example bribes or internal interest within the judges.

In MRD case which has subsidairity indictment, Jakarta High Judges revoked the district court’s verdict which gave punishment of the defendant for 2 years and 6 months, also penalty for Rp.150.000.000,-, with district court’s considerations which stated the primary indictment has not proven because the verdict from the main defendant (split case) in different court, they punished with subsidair indictment, so for there are no contradiction of
this case with previous cases that has legally binding, so district court’s considered subsidair indictment’s element to be considered. So Jakarta High Court has to revoked and decided their own verdict to punish the defendant for 4 years and penalty Rp.250.000.000,- with considerations because for Jakarta High Judges, in subsidairity indictment as explained in early paragraph of this chapter, that the primary indictment has to be consider first. In this case for Jakarta High Judges, primary indictment’s elements have proven so no need to consider the subsidair indictment. Then, the judges assessed the incriminate and relieving element of the defendant as regulated on article 8 Law No. 48 year 2009 stated that: Dalam mempertimbangkan berat ringannya pidana, hakim wajib memperhatikan pula sifat yang baik dan jahat dari terdakwa. (in considering the severity of the punishment, the judge also obligatory to pay attention of their good and bad nature).

The relieving element of this case is the defendant has returned the corrupted money as total as the losing money. Then, the other relieving element is when the defendant has polite and straightforward manners. As explained by Sir Humuntal Pane in his interview that it will relieving when the defendant straightforward to tell the evidences he knows or even tell the other perpetrators who may involved in the same case. Has a role as breadwinner also consider as a relieving element where that matter as a judge’s concretin a justice for defendant’s right to life and have a family.

Next, has a track record never punished before as a relieving one, consider that defendant was first time to did crime, then has a long dedication to the state is the last relieving element for this defendant. So, in deciding this
case after consider the considerations above, especially that the defendant has returned the corrupted money and consider about the aim of a criminalization in corruption case are comprehensive, integrative and teleological which cares the defendant (to socializing the defendant and release the guilty feeling), or to protect the citizen (to prevent the criminal for citizen’s protection and return the defendant to society). In this case has seen that Jakarta High Judges also considered justice aspect and considerations of deterrent effect so it will become a verdict’s reference on next similar corruption cases. Also seen the High judges considered thoroughly about the defendant’s goodwill especially about returning the state losses. So the justice which want to be found by the high judge also can include the expediency generally especially for citizen and state. In this case seen that The Judge Council has implemented proportional justice concept to the defendant, where in here defendant’s position as a participation (deelneming), where in judge’s consideration stated that as a participation (deelneming), total punishment to the defendant can not be more than the total punishment of the other defendant as the main defendant in this case. So, the considerations of judge’s point of view in this verdict involve the considerations, reasons and the sanctions are already right.

Next is second case done by defendant MAR which the brief explanation of his case explained in previous chapter. The final verdict from district court regarding this case has been revised by Jakarta High Court relating additional sanction which is money substitution, and total imprisonment from 1 year 4 months while in Jakarta High Court become 2
years. For the penalty there is no revision which is 100 millions. Regarding the defendant’s money substitution for High Judges, defendant’s action that spent corruption money for total around 400 millions, has betrayed and harm the citizen for self interest. In this case, High Judges incriminating the money substitution as total as the state loses, where the district court’s decrease those total with Rp.130.000.000,- because for district court’s, those money did not spent by the defendant but defendant has given those money to his driver as driver’s salary, while in this matter, for High Judges assessed that however those money spent for the defendant’s interest, so for High Judges those money have to be substitute by the defendant. Then the imprisonment of the defendant also has increased by High Judges.

Regarding the legal considerations by district court, all agreed by the High judges so there are no need for additional or revision. Relieving element in this case is first the defendant was suffers for heart disease which will affect the imprisonment process by the defendant. Besides that, see the defendant’s contribution to the state that defendant as a lecture in a certain university in Indonesia. Next relieving element is the defendant as the breadwinner. Correlated with statement by Sir Elang Perkasa that fair does not mean bring the expediency, this can be related that severity of the punishment can bring nothing of expediency especially for defendant. Eventhough for the sake of deterrent effect, it will give hard situation for the defendant who had seriously ill. So aspect of expediency can not be reached even the justice aspect has reached. So it is exact if the high judges considered about the relieving element regarding defendant’s situation.
Remember justice theory by John Rawls about two principles of justice, one of them stated justice is a same opportunity for the basic freedom for every individual, then it can be related that all the human being has totally same for the opportunity to live.

Then about the incriminate element of this case is the defendant’s action contradictive to government’s program of eradication of corruption case, this element that would like emphasized by the high judges. For vindicative justice, is a justice when penalize the punishment or compensation as much as the total of punishment has been fulfilled. The High Judges also added money substitution for defendant as much as the loss the defendant made. So, High Judges have tried to fulfill vindicative justice.

Third High Court’s verdict which revoked district court’s verdict of the defendant PR punished imprisonment in district court for 4 years and penalty for 200 millions subsidair 3 months become imprisonment 6 years and penalty for 500 millions. Defendant PR has proven which enrich other people and harm state budget for 6,8 billions because of defendant’s action who not followed Budget Planning’s procedure for the sake of self interest. In first level, district court released defendant from primary indictment and proved subsidair indictment. Where for High Judges did not agreed with district court’s considerations so High Judges decided to revoked district court’s verdict and made own decision with consider the primary indictment first. Considering the primary indictment, High Judges to see the primary indictment has been proven so subsidair indictment does not need to be proved. Then regarding the relieving element are the defendant has polite and
straightforward during the court process, never punished before, has a family burden and the defendant has not spent those corrupted money, besides that the defendant has long dedication to Jakarta’s government. About the incriminate element, the defendant did not support government’s program to eradicate corruption practice. By punished the defendant for 6 years and penalty for 500 millions, seen the High Judges in this case gave the deterrent effect so can be a jurisprudence for next similar cases. Distributive justice in this case also considered by the High Judges that considering defendant’s contribution towards the state can relieves the defendant. Because distributive justice is a comparison, it based on contributions given by every individual. Then there is court’s role as corrective justice which stated by Aristotle that corrective justive is a court’s area as an institution who punished a proper punishment for the defendant.

Fourth case by the defendant named SS who proven guilty on subsidair indictment did corruption together and punished by district court for 1 year 6 months and penalty for 50 millions and the loss of the state reached 12 billions. Then defendant also did not burden a money substitution because defendant did not spent any of those corrupted money while the defendant has enriched other people or a corporation, and this consideration agreed by Jakarta High Judges. In this case, the element that revised by High Judges is about verdict redaction. In here, district court once again considered subsidairity indictment with chosen the indictment whether which one is the closer article towards the defendant’s action. While High Court stands to consider primary indictment first in kind of subsidairity indictment. so High
Court must **revised** this verdict. Incriminate element for the defendant is he as a government instrument who has duty and authority, has not implemented and followed binding written regulations of procurement of goods and services’s procedure. Also the defendant did not support government’s program of eradication of corruption, this element is always be the incriminate element especially on corruption case. For relieving elements are the defendant has polite manner during court process, proper to Sir Humuntal Pane’s statement stated that incriminate elements are when during court process has no straightforward and do not cooperative, and be not cooperative will create a hardness by the judges to examine the fact and can distract the smooth process of a court. So, when the defendant is polite and cooperative, those are the relieving element. The other relieving element is the defendant has never committed a crime before and defendant has a family burden (breadwinner).

Considering the total of the punishment for someone who abused his authority for enriched others is quite small where it is just 1 year and 6 months and give little deterrent effects even for defendants and for society. Once Plato said that justice will be achieved when every single individual can place theirselves to the proper position and responsibility to their duties. Considering Plato’s statement is in line if the defendant and/or society realized their positions and take responsibility to the duties they hold and did not abuse the authority they have.

When the Judges through their verdict to adjudicate a minimum sanction to the certain crime’s actors, and it wil influenced citizen’s point of
view to not afraid do that certain crimes. So, here it is the Judges were
required their integrity as law and justice’s enforcer as contained on Law no.
14 year 1970 jo. Law No. 4 year 2004 about Judicial Power stated will for
justice while deciding, constantly to consider the values in society.

Regarding the fifth verdict towards defendant MAG, which prosecuted
of article 5 Law No. 31 year 1999 amandment by Law no. 20 year 2001
because defendant has given or promised something to the Civil
Cervant/Governor to do something in their authority. In this case, High Court
corroborates district court’s verdict so there is no additional or revision
about the considerations and total punishment. Relieving element is the
defendant is polite and has never committed a crime, while for incriminate
element the defendant did not support government’s program of eradication
of corruption cases in Indonesia. In here, vindicative justice has fulfilled by
High Judges where the indictment article which indicted to the defendant has
determined regarding maximum and minimum of total imprisonment. So, for
the sake of legal certainty, High Judges determined an imprisonment under 5
years as stated on the article. But, correlated to the big amount of the bribes
defendant has done, it is not obvious concept of justice. Habit that has been
established by the defendant to bribes the governor is such a bad example for
the citizen. So for the writer, except legal certainty, The High Judges actually
can fulfill justice in the way maximize the imprisonment as maximized by the
Law, so legal certainty and justice can be reached both. It can be related to Sir
Humuntal Pane’s statement said to punish someone is to give deterrent effect,
also to change situation. Situation here can means situation related to our
country, that situation called habit. these situations or habit that have to be changed by court so repetition of the similar case can be reduced and there is no mindset by citizen that this crime is able to do.

4.2 DUTIES OF JUDGE BASED ON LAW

In adjudicating a case, Judges decides a decision based on indictment letter by prosecutor. Then, Jakarta High Judges in deciding a case including corruption cases, will consider legal facts during court process. After legal facts, High Judges considers the elements on indictment article, then considers incriminate and relieving elements then at last to determine the punishment to the defendant on the basis of judge’s thought for justice and proven facts, parallel to the statement by Sir Hatta when being asked about how High Judges implement concept of justice, then he answered first is legal reference, stated first is legal reference, understand the case completely including the motives, in implementation, after see legal basic then give justice involve expediency, expediency means general expediency, especially for state.

When High Judges runs their authority and duties, The High Judges have to have broader knowledge and insight, because they do not want to be claimed as mouth of Law in line with Sir Humuntal Pane’s statement that The Judge is not a mouth of Law, so when try to find justice in every single case, is not only about idealist thought and knowledge about regulations, but it has to see the reality in society, belief and experience owned by Judge, Sir Hatta convinces this with statement that in implementing (a justice) is hard, should be careful, ask conscience and think long, because it can not be learned, it based on experience.
Keyakinan hakim dalam suatu kasus sangatlah penting, karena dalam sistem civil law, hakim adalah pemberi keputusan tunggal. Dari 44 responden hakim mengatakan sumber dari keyakinan hakim adalah semua persepsi yang diyakini hakim, baik yang berasal dari norma dan aturan hukum seperti UUD, UU dan penjelasannya, penghalusan hukum melalui penafsiran dan konstruksi, yuriprudensi, doktrin, nilai-nilai yang hidup dalam masyarakat, seperti moral, agama kesusilaan, kesopanan dll. 57

Paragraph above stated Judge’s belief in a case is very important, because in the civil law system, the judge is the only decision giver. From 44 respondents of judges said that source of their belief is all perception that the judge believed even derived from the norms and also the rule of law such as the Constitution, Law and explanation, refining the law through interpretation and construction of a law, jurisprudence, doctrine, values that live in society, such as moral, religious morality, polites etc.

When runs their duties, Jakarta High Judges emphasize they will prior justice in every verdict’s implementation, as stated by Sir Kresna Menon who said our state of law is a civil law system which prior the law, but our pancasila state of law is where law and justice can not be separated, but if legal certainty has not guarantee any justice, then for Sir Kresna justice should come first. What kind of basic to say this statement is. He replied in Judge’s verdict there is sentence “Demi Keadilan Berdasarkan Tuhan Yang Maha Esa” (For The Sake of Justice Under Almighty God) means our judication is fair. He copied Gustav Radburch’s word about priority theory which for Gustav, the priority is justice. To considers that Jakarta High

Judges to lean on Law that regulated them as stated on Law no 48 year 2009 about *Kekuasaan Kehakiman* (Judicial power), especially article 5:

*Hakim dan hakim konstitusi harus memiliki integritas dan kepribadian yang tidak tercela, jujur, adil, profesional, dan berpengalaman di bidang hukum.* (Judge and Constitution Judge must have integrity and personality which blameless, honest, fair, professional, and experienced in legal field).

According to this article, except the verdict decided by Judge has to be fair, Law also regulates that The Judges has fair personalities. Talking about fair, fair personality emphasized on article 5 Judge Code of Ethic year 2009, mentioned:

*Adil pada hakekatnya bermakna menempatkan sesuatu pada tempatnya dan memberikan yang menjadi haknya, yang didasarkan pada suatu prinsip bahwa semua orang sama kedudukannya di depan hukum. Dengan demikian, tuntutan yang paling mendasar dari keadilan adalah memberikan perlakuan dan memberi kesempatan yang sama (equality and fairness) terhadap setiap orang. Oleh karenanya, seseorang yang melaksanakan tugas atau profesi di bidang peradilan yang memilik tanggung jawab menegakkan hukum yang adil dan benar harus selalu berlaku adil dengan tidak membeda-bedakan orang.*

Above stated Fairness basically means putting something in place and providing they are have rights to, which are based on the principle that all people are equal before the law. That’s why, the most fundamental demands of justice is to provide treatment and equal opportunities (equality and fairness) to any person. Therefore, people who does the task or profession in area of judicial, responsibility to enforce the law that is fair and right, yet must always be fair with no distinguishing any other people.
Then, in this code of ethic which regulated about what justice is in its implementation. One of fair in its implementation as regulated on article 5 point e on Judge Code of Ethic, mentioned:

_Hakim harus memberikan keadilan kepada semua pihak dan tidak beritikad semata-mata untuk menghukum_. (Judges gives justice to all parties and not simply to punish).

There is also in article 54 (3) law No.48 year 2009 about Judicial Power stated that:

_Putusan pengadilan dilaksanakan dengan memperhatikan nilai kemanusiaan dan keadilan_. (Court decisions implemented with attention to the value of humanity and justice).

These basic regulations are could be relating to Jakarta High Court in deciding a case especially Corruption Case which gives access to implementation of justice as the priority when there is conflict between justice, legal certainty and expediency. Sir Humuntal Pane emphasizes the main object of law is justice, as in verdict wrote “_Demi Keadilan Berdasarkan Tuhan Yang Maha Esa_” (For The Sake of Justice Under Almighty God). But, does not means justice simply asides the essence from legal certainty itself. Legal certainty also takes essential points to enforce the law especially in court procedures, it supported by Sir Kresna Menon’s statement which The judge’s task is to uphold law and justice, these can not be separated. He added that justice is irrasional, so there the purpose of regulation means to be. So, judge’s task to maintain and implemented both, so The Judges are required to be more progressive and wiser.
According to articles and Judge Code of Ethics above, is unavoidable that justice as a basic The judge’s considerations. Because, various cases totally have different legal facts and sometimes there is a legal facts where revealed in court, it is can not be reached by the Law. So, this is where judge’s role as not a mouth of Law to implement expediency justice.


Former of Hakim Agung (Grand Judge) Bisma Siregar said "doing law properly is doing law with meaning, it means we can not stop at one point, but must constantly look for deeper meaning. Justice is far more than legal certainty. So, try to looking for the meaning of a law, in more than one procedure.

During the elaborations of those 5 verdicts above, all the court procedures done by Jakarta High Judges. There are no any elements or considerations that skipped by The High Judges. So for procedural justice, which is a justice where giving a justice in legal pocedures, Jakarta High Judges already done it procedurally.

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4.3 THE TENDENCY OF JAKARTA HIGH COURT’S VERDICT OF CORRUPTION CASES

In deciding corruption cases by Jakarta High Judges there are various kinds of verdict taken by High Judges, even to corroborate, to revise or to revoke the verdict by district court. When revising or revoking any verdict, not often Jakarta High Judges added total punishment more than district court decided. For real example cases on this research, 3 from 5 of these verdicts, Jakarta High Judges added total punishment of the defendants. While 2 others, Jakarta High Judges to corroborated district court’s verdict regarding the total punishment, no additional nor decreasing. And there are no verdicts from those 5 verdicts that the total punishment has been decreasing from district courts. So, it can be seen Jakarta High Judges when adjudicated case particularly corruption case tends to increasing the total punishment of the defendant who went to appeal level in Jakarta High Court.

In first verdict of MD case, where district court punished imprisonment for 2 years 6 months and penalty for 150 millions, after appeal process, Jakarta High Judges revoked district court’s verdict then punished the defendant imprisonment for 4 years and penalty for 250 millions. Then verdict 2, case of MAR, while district court’s punished defendant for 1 year 4 months and penalty for 100 millions, then parties were going to appeal level, then Jakarta High Court revised district court’s verdict regarding the legal considerations and total punishment became imprisonment for 2 years and penalty 100 millions. For these both cases, seen High Court was
incriminatory the imprisonment for both cases and case 1 Jakarta High Court added the total penalty to the defendant.

Then in case 3, case of PR, where the defendant decided a punishment for 4 years and penalty 200 millions by district court. Jakarta High Court revoked that verdict and decided own verdict for punished the defendant for 6 years and total penalty for 500 millions. Towards this case, Jakarta High Judges added imprisonment and penalty punishment in a big range rather than two previous cases.

For fourth case, case of SS, district court punished imprisonment for 1 year 6 months and penalty 50 millions. In appeal level, High Court revised district court’s verdict regarding verdict redaction, there is no revision for total punishment. And last verdict, MSG’s case, who punished 3 years and 100 millions by district court, is purely corroborated by Jakarta High Court which is there is no additional and/or revision. For these fourth and fifth verdicts, there is no revision especially in total punishment for imprisonment and penalties.

Correlating to the statement by fifth judge who is Sir Djoko, confesses that in Jakarta High Court the total punishment will increase from punishment by district court on average, that is why rarely people do appeal. Because The Judge of Jakarta High Court see what decided by district court has not determine justice to see how the case are big, the state loss are also big and the consideration where the case done by people who supposed to be the role model.
So it could be seen the tendency of Jakarta High Court’s verdict of corruption cases is that Jakarta High Court tends to revised the total for inprisonment and penalty to the defendant more than final verdict by district court. Then it can be concluded also that Jakarta High Court supports the eradication process of corruption and aims to give deterrent effect to the defendants with judge’s legal considerations but yet prior the justice in every court process and listen to both parties, and also considers the effects to the state, not simply aims to decide heavier punishment without justice and the defendant’s sides.
CHAPTER V

CONCLUSION

5.1 CONCLUSION

Concept of justice is the main pillar or the main foundation for the judges especially Jakarta High Judges in adjudicate any corruption cases. Harmonizing between the ethical principles of judges and implementation of justice to society are something that can be adjusted and it is such has one aim and they are not contradictory to each other. Prioritizing Justice is the basic foundation for the judge in adjudicate case specifically corruption cases. Where specifically for the Jakarta High Judge, justice is the most important thing that should be prioritized towards the decision, without aside the essence and significance of legal certainty itself, justice which brings the expediency is the basis and purpose for the verdict that has been decided.

Justice is an abstract concept, but it can be concreted and measured through the real considerations towards a judge’s legal considerations. Where the tendency of Jakarta High Judges when adjudicate a corruption case in High Court, the judge will decide the defendant imprisonment and penalties heavier or equal towards the previous district court’s verdict, means they support the eradication of corruption cases in Indonesia. So, a justice that is implemented by Jakarta High Judges is a justice which considering and listening to both parties during court process for the sake of citizen and state’s interest. Then those justice implemented by Jakarta High Court are suitable with proportional justice, procedural justice,
theory of justice by Aristotle which are distributive justice and corrective justice, next is vindicative justice, and last is theory of justice by John Rawls.

5.2 SUGGESTIONS

For The Judges Council

- To always be able to position theirselves as an independent role, not as mouth of law. To prioritize justice yet balancing between justice, legal certainty and expediency in every decision.

- To always pay attention and to consider the input from society’s participation which can improve the quality of the verdict so can bring a sense of justice and social welfare.
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