

## THE GOVERNMENT LEGAL POLICY IN THE ERA OF REFORMATION IN COMBATING CORRUPTION IN INDONESIA

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### ABSTRACT

*The issues addressed in this paper are 'How is the Legal Policy of the Government in the era of Reformation in Combating Corruption in Indonesia'. Corruption eradication movement was sporadically and extensively driven by students who continuously perform demonstrations since the beginning of the 1998 reformation movement.*

*Effort to reform laws that have been taken by the government in the eradication of corruption, especially in the aspect of legal substances which have been stipulated in the Law Number 31 Year 1999 on the Eradication of Corruption and Law Number 20 of 2001 on the Amendment of Act Number 31 of 1999 on the Eradication of corruption. In addition, the government has ratified the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. While in terms of institutional aspects of the law, it was established in the Corruption Eradication Commission (KPK) and Anticorruption Court.*

*Corruption has been defined as "extraordinary crime", therefore the countermeasures must be conducted in the extraordinary ways. In the era of reformation, the anti-corruption efforts have been one of the priorities in the agenda of development activities continuously optimized by the government since the administrations of President BJ Habibie (1998-1999), President Abdurrahman Wahid (1999-2001), President Megawati Sukarnoputri (2001-2004), President Susilo Bambang Yudhoyono (2004-2014) and now President Joko Widodo (2014-2019).*

**Keywords:** Legal Policy, Corruption Eradication, Era of Reformation

### INTRODUCTION

Historically, since the first decade after the proclamation of Indonesian independence, corruption has been rampant and became one of the serious problems faced by the government, so that on April 9, 1957 Military Authorities have issued Decree of Military Authorities Number: Prt / PM / 06/1957 on Corruption Eradication, which then resumed on May 27, 1957 the Military Authorities issued Regulation of Military Authorities No. Prt / PM / 03/1957 on Surveillance against Possessions. Likewise, on July 1, 1957 Military Authorities issued Regulation of Military Authorities Number: Prt / PM / 011/1957 on Confiscation and Deprivation of Goods.

Soedjono Dirdjosisworo explains that all of the three Military Authorities Regulations made during the hard time of the country were the government's commitment and political will to seriously eradicate corruption in Indonesia. All of the three Military Authorities Regulations are considered as a groundbreaking attempt of reforming the anti-corruption laws in Indonesia.<sup>1</sup>

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<sup>1</sup> Soedjono Dirdjosisworo, *Fungsi Perundang-undangan Pidana Dalam Penanggulangan Korupsi di Indonesia*, Penerbit Sinar Baru, Bandung, 1984, Hal. 54.

The further developments on April 16, 1958, the Ruler of War of the Center Chief of Army Staff also issued a regulation by Number: Prt. / Peperpu / 013/1958 on Investigation, Prosecution and Investigation Deeds of Corruption Crime and Surveillance of Possessions, which applied to territory controlled by the Army, while for the territory controlled by the Navy, the implementation of the abovementioned regulation was based on the Regulations of the Ruler of War, Chief of Naval Staff Center Number: Prt. / ZI / 1/7 dated 17 April 1958.

The government deemed that in terms of the substance, the Regulation of the Military Authorities and the regulation of Central War Authorities was very good to be applied in the prevention and eradication of corruption, but in terms of competence, the rulemaking and its power can no longer be maintained because of the state of emergency had been revoked by the government on December 17, 1957 by the Decree of the President of the Republic of Indonesia Number 225 of 1957, and as its substitution, the government established the Government Regulation in Lieu of Law (Perppu) Number 24 of 1960 on Investigation, Prosecution and Investigation of Corruption, hereinafter known as the Law No. 24 Prp. 1960.

During the Old Order, it was recorded twice the establishment of two anti-corruption agencies, namely: the first one was Retooling of Administrative Committee established based on the Law on the State of Emergency. The agency was led by Abdul Haris Nasution and assisted by two members, namely Muhammad Yamin and Ruslan Abdulgani. Retooling of Administrative Committee could not perform their duties properly because of the opposition of corrupt officials at that time under the juridical reason, namely, the accountability report should be directly reported to the President so that a report on the wealth list was not to be submitted to the Committee for Administrative Retooling, but directly to the President. Because of political turmoil and lack of cooperation among officials, then PARAN ended tragically, deadlock, and finally handed back the performance of its duties to the Cabinet of Djuanda.<sup>2</sup>

The second one was through Presidential Decree No. 275 of 1963, the government once again appointed A.H. Nasution, who was then serving as Coordinating Minister of Defense and Security / Chief of Staff of the Armed Forces, assisted by Wiryo Prodjodikusumo with a new institution known as "*Operasi Budhi*".

*Operasi Budhi* had saved the country's financial approximately Rp 11 billion, but then it was terminated with the announcement of its dissolution by Soebandrio and subsequently renamed the Supreme Command of the Revolution Retooling forces with President Sukarno became its chairman and assisted by Soebandrio and Lt. Gen. Ahmad Yani. But even this attempt was unsuccessful and stalled<sup>3</sup>.

At the beginning of the New Order era, through the state speech on August 16, 1967, Suharto openly criticized the Old Order regime, which was not able to eradicate corruption in connection with guided democracy. The speech seemed to give great hope along with the establishment of the Corruption Eradication Team, chaired by the Attorney General. However, it turned out the seriousness of this team had been questioned and led to Soeharto's policy to appoint committee consisted of four elderly figures; they were considered clean and respectable, like Prof. Johannes, IJ Kasimo, Mr Wilopo, and A. Tjokroaminoto, with the primary task of cleaning the Department of Religion, Bulog, CV. Waringin, PT Mantrust, Telkom, Pertamina, and others.

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<sup>2</sup> [http://id.wikipedia.org/wiki/Komisi\\_Pemberantasan\\_Korupsi\\_Republik\\_Indonesia](http://id.wikipedia.org/wiki/Komisi_Pemberantasan_Korupsi_Republik_Indonesia), diunduh pada hari Senin, 6 April 2015, Jam : 16.40.

<sup>3</sup> *Ibid.*

The work of the "Committee of Four" was completely ignored by the government, because of the weakness of its position. Then the government established the Orderly Operation / *Operasi Tertib* with the task, among others, also to combat corruption led by Admiral Sudomo as Commander for the Restoration of Security and Order. But in reality the Orderly Operation was more oriented to the interests of the continuity of the Suharto's regime.

One of the agenda of the reformation movement in the early 1998 was the eradication of corruption, led by the students sporadically and extensively performed demonstration demanding the resignation of President Suharto, who was accused of corruption, collusion and nepotism during the 32-year reign. This effort succeeded in forcing President Suharto stepped down as president on May 21, 1998.

The problem of corruption has long been coloring the various aspects of community life. For decades this phenomenon has become a national issue that is extremely difficult to overcome. In fact, there are comments in a foreign journal to review the condition of corruption in Indonesia, by saying that "corruption is a way of life in Indonesia," which means that corruption has become a way of life and the view of Indonesia.<sup>4</sup>

This view was first put forward by Muhammad Hatta, one of the characters who proclaimed the independence of Indonesia who said that corruption tends to be entrenched, or have become part of Indonesian culture. The scale of corruption was "severe". Corruption in Indonesia has not only entrenched but also institutionalized. These deviant behaviors have undergone a process of institutionalization, so that almost no state institutions are free from such aberrant behavior.<sup>5</sup> Etty Indriati stated that almost all sectors of government agencies from central to local officials involved in corruption as well as the executive, legislative and judicial.<sup>6</sup>

Muhammad Yusuf, chairman of the Center for Financial Transaction Reporting and Analysis (PPATK) said that corruption in Indonesia has reached the nadir. Corruption in this country is worst, rooted, in fact already entrenched. Corruption occurs in almost every layer of society and bureaucracy, whether legislative, executive and judicial, and it has spread to the business world.<sup>7</sup>

## FORMULATION OF THE PROBLEM

The problem studied in this paper: 'How is the Legal Policy of the Government in the era of Reformation in Combating Corruption in Indonesia'.

## APPROACH METHOD OF THE PROBLEMS

The approach methods used were the "statute approach" and "historical approach". The two approaches were used to examine the legislation made by the government since the era of reformation in 1998 until the present day.

## DISCUSSION

Corruption is an act detrimental to state finance, and also it violates the rights of the social and economic of broader community. Corruption is an extraordinary crime; therefore the

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<sup>4</sup>Amin Rais, Pengantar dalam Edy Suandi Hamid dan Muhammad Sayuti (ed.) *Menyikapi Korupsi, Kolusi dan Nepotisme di Indonesia*, Aditya Media, Yogyakarta, 1999, hal. ix,

<sup>5</sup> Elwi Danil, *Korupsi Konsep, Tindak Pidana dan Pemberantasannya*, Edisi I, Cet. 2, Rajawali Pers, Jakarta, 2012, hal. 65.

<sup>6</sup> Etty Indriati, *Pola dan akar Korupsi*, Penerbit PT Gramedia Pustaka Utama, Jakarta, 2014, hal.68-69.

<sup>7</sup> Muhamad Yusuf, *Merampas Aset Koruptor Solusi Pemberantasan Korupsi di Indonesia*, Penerbit Buku Kompas, Jakarta, 2013, hal. 1.

eradication measures to be carried out must be by means of the extraordinary ones. Various laws and institutions have been made by the Government in an effort to tackle corruption, but until now it has not shown satisfactory results.

The term of Legal Policy in English is called "legal policy" while in Dutch "*politiek recht*". There are various notions of legal policy proposed by scholars among others:

1. Padmo Wahjono argues the legal policy relating to the establishment of law, application of the law, and law enforcement.<sup>8</sup>
2. Soedarto states that the legal policy is an attempt to realize good legislations according to the circumstances and the situation at a time.<sup>9</sup>
3. Abdul Hakim Garuda Nusantara suggests that the legal policy includes :
  - a. enforcement of existing laws consistently;
  - b. legal development which in essence is the reformation of the existing obsolete laws, and the creation of new legal provisions required to meet the demands of developments in the society;
  - c. the assertion of the function of enforcement agencies or law enforcement and development of its members;
  - d. Improving public awareness according to the perception of the elite group of decision makers.<sup>10</sup>

Because of the scope of the legal policy is so broad; therefore the description in this article is limited to the aspects of the substance of the law on the legislation of anti-corruption, and on the institutional aspects of law, namely the establishment of legal institutions to eradicate corruption.

The reformation era in Indonesia is a period that initiated with the emergence and development of the idea of reformation initiated by the leaders of the reformation movement and the student demonstrations on a large scale which also involved various elements of society demanded that President Soeharto resigned from the post of President of the Republic of Indonesia to the term of office 1994-1999. This effort successfully forced President Suharto to resign from office on 21 May 1998. The period of the rule of President Suharto era is known as the 'New Order'. Meanwhile, the post-Suharto governments are called 'the Administrations of the Reformation Era'.

### **The Legal Policy on the Eradication of Corruption in the Administrations of the Reformation Era**

According to the provisions of Article 8 of the 1945 Constitution,; *If the President dies, resigns or failed to perform his/her duties in his/her term, he/she is to be replaced by Vice-President until the expiry time of the term of office.* Under these provisions, Vice President Bacharuddin Jusuf Habibie was sworn in by the Chief Justice as the President of the Republic of Indonesia.

#### ***Administration in the Era of President B.J. Habibie***

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<sup>8</sup> Padmo Wahjono, *Menyelidik Proses Terbentuknya Perundang-undangan*, Forum Keadilan, No. 29/April 1991, hal. 65.

<sup>9</sup> Soedarto, *Hukum dan Hukum Pidana*, Alumni, Bandung, 1986, hal. 151.

<sup>10</sup> Abdul Hakim Garuda Nusantara in Imam Syaukani dan A.Ahsin Thohari, *Dasar Dasar Politik Hukum*, PT. RajaGrafindo Persada, Jakarta, 2008, hal. 31

In the reformation era people's demands to the government to increase efforts to combat corruption continued to resonate because it was very detrimental to state finance or economy of the state and inhibited national development.

As the realization of the fulfillment of the demands of the reformation agenda, President BJ Habibie began efforts to eradicate corruption by issuing laws, namely (1) Law Number 28 of 1999 on State Administration of Clean and Free from Corruption, Collusion and Nepotism; (2) Law Number 31 of 1999 on Corruption Eradication, replacing Law Number 3 of 1971 on Eradication of Corruption considered to be no longer suitable to the development of law in society. In addition, the President also formed a Wealth of State Officials Supervisory Commission and the Ombudsman to participate in preventing and combating corruption.

The historic step was made by President B.J. Habibie when he issued Presidential Instruction of the Republic of Indonesia Number 30 Year 1998 on Corruption Eradication in which the content was an order to the Attorney General to: First, to immediately take proactive measures, effective and efficient in combating corruption, collusion and nepotism in order to facilitate and improve the implementation of national development in the framework of realization of national goals of the Indonesian nation, and Second: to immediately take legal action to examine former President Suharto, who was alleged to have practiced Corruption, Collusion and Nepotism by sticking firmly to the principle of presumption of innocence and respect for human rights. The reality resolution of this case was not complete until the former President Suharto died on January 27, 2008.

#### ***Administration in the Era of President Abdurrahman Wahid (Gusdur)***

President Abdurrahman Wahid's efforts in preventing and combating corruption were to establish a Joint Team of Eradication of Corruption under Government Regulation Number 19 of 2000. However, nothing much was done as the team was disbanded soon after a judicial ruling of the Supreme Court.

President Abdurrahman Wahid was president with the shortest term of office which began October 20, 2009 and ended on July 23, 2001 because his mandate was revoked by the People's Assembly.

#### ***Administration in the Era of President Megawati Soekarno Putri***

In the era of President Megawati Soekarnoputri, in criminal law reform related to the substance of the legal aspects in the field of combating corruption, the government has enacted Law Number 20 of 2001 on the Amendment of Law Number 31 of 1999 on the Eradication of Corruption.

Similarly, in the field of legal institutions, it has been established the Corruption Eradication Commission, based on Law Number 30 of 2002. The main consideration was that the government agencies that handle cases of corruption, in this case, the police and prosecutors, have not been functioning effectively and efficiently in the eradication of corruption.

The Corruption Eradication Commission has the tasks of:

- a. coordination with institutions authorized to eradicate corruption;
- b. supervision of the authorized institutions in the eradication of corruption;
- c. conduct an investigation, examination, and prosecution of criminal acts of corruption;
- d. perform actions of corruption prevention; and
- e. to monitor the implementation of state government.

The authority of the Corruption Eradication Commission (KPK) in conducting the investigation, examination and prosecution of corruption include corruption offenses that:

- a. involving law enforcement officers, state officials and others in connection with criminal acts of corruption committed by law enforcement officials and the state officials;
- b. get the attention that disturbing the public or;
- c. concerning the state losses of at least Rp. 1.000.000.000,00 (one billion rupiah)

Since its establishment until now the Corruption Eradication Commission has managed to carry out a good job in combating corruption, as shown in the following table:

**Table 1: Enforcement of Corruption By the KPK 2004 - 30 September 2015**

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
Investigation	23	29	36	70	70	67	54	78	77	81	80	67	732
Examination	2	19	27	24	47	37	40	39	48	70	58	31	440
Prosecution	2	17	23	19	35	32	32	40	36	41	45	47	374
In force	0	5	17	23	23	39	34	34	28	40	40	25	308
Execution	0	4	13	23	24	37	36	34	32	44	48	25	320

Source : <http://acch.kpk.go.id/statistik>, downloaded on 6 November 2015, at 17.20 Wita.

**Administration in the Era of President Soesilo Bambang Yudhoyono**

President Susilo Bambang Yudhoyono proved his commitment to the prevention and eradication of corruption by making many legal products as follows:

- 1) Instructions of the President of the Republic of Indonesia Number 5 of 2004 on the Acceleration of Corruption Eradication,
- 2) Decree of the President of the Republic of Indonesia Number 11 of 2005 on the Coordinating Team for the Eradication of Corruption,
- 3) Law of the Republic of Indonesia Number 7 of 2006 on Ratification of the United Nations Convention Against Corruption, 2003,
- 4) Law of the Republic of Indonesia Number 5 of 2009 on Ratification of the United Nations Convention Against Transnational Organized Crime,
- 5) Law of the Republic of Indonesia Number 46 of 2009 on the Anticorruption Court,
- 6) Law of the Republic of Indonesia Number 8 of 2010 Concerning Prevention and Eradication of Money Laundering,
- 7) Instructions of the President of the Republic of Indonesia Number 9 of 2011 on the Action Plan for the Prevention and Eradication of Corruption in 2011,
- 8) Instructions of the President of the Republic of Indonesia Number 17 of 2011 regarding, Action of Prevention and Eradication of Corruption in 2012,

- 9) Indonesian Presidential Regulation Number 55 of 2012 on the National Strategy for Prevention and Eradication of Corruption in Long Term (2012-2025) and in Medium Term (2012-2014),
- 10) Instructions of the President of the Republic of Indonesia Number 1 of 2013 on the Action of Prevention and Eradication of Corruption in 2013,
- 11) Instructions of the President of the Republic of Indonesia Number 2 of 2014 on the Action of Prevention and Eradication of Corruption in 2014.

An important note on the administration of President Susilo Bambang Yudhoyono that there were hundreds of regional heads who were prosecuted for a criminal offenses of corruption<sup>11</sup>, including the Democratic Party cadres like Anas Urbaningrum who was in the position as Chairman of the Democratic Party and Jero Watjik<sup>12</sup> who was serving as Minister of Energy and Mineral Resources.

#### *Administration in the Era of President Joko Widodo*

Joko Widodo President's commitment to eradicate corruption can be found in the document's vision and mission that is called *Nawacita*, especially in point 4 stated "*We will prioritize the eradication of corruption; judicial mafia eradication and decisive action against corruption within the judiciary ...*"<sup>13</sup>

In an effort to eradicate corruption, President Joko Widodo has set a Presidential Instruction Number 7 Year 2015 on the Action of Prevention and Eradication of Corruption 2015.

#### **CONCLUSIONS**

In the era of reformation, the government has made the development and renewal of the law in efforts to combat corruption, namely the aspect of legal substance, the government has enacted Law Number 31 of 1999 and Law Number 20 of 2001. While in the field of legal institutions, the Government has established the Corruption Eradication Commission and the Anticorruption Court specifically dealing with corruption cases.

The administrations of the reformation era have made the rule of law and legal policies that are beneficial to the prevention of corruption in the form of Presidential Instructions and Decrees while for the repressive actions are in the form of the Law.

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<sup>11</sup> <http://www.merdeka.com/peristiwa/sby-izinkan-ratusan-kepala-daerah-terlibat-korupsi-diperiksa.html>, Diunduh pada Jumat, 6 Nopember 2015, Jam 01.26 Wita.

<sup>12</sup> [https://id.wikipedia.org/wiki/Jero\\_Wacik](https://id.wikipedia.org/wiki/Jero_Wacik), Diunduh pada Jumat, 6 Nopember 2015, Jam 01.36 Wita.

<sup>13</sup> [http://kpu.go.id/koleksigambar/VISI\\_MISI\\_Jokowi-JK.pdf](http://kpu.go.id/koleksigambar/VISI_MISI_Jokowi-JK.pdf), diunduh 18 Maret 2015, Jam 16.05 Wita

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