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Abstract

There has been an uncommon phenomenon during the timeline of criminal justice system in Indonesia when it comes to involve the handling of corruption cases. The Corruption Eradication Corruption (KPK) which receives the obligation from the state to eradicate or cope with corruption is frequently sued by suspects through pretrial. Some of the lawsuits filed by the suspect won. The investigator, committed to upholding the authority in eradicating corruption, is committed to continue the investigation by issuing a new Investigative Warrant (Sprindik). The step which is performed by this investigator is definitely protested by the suspect or his legal counsel. Judicial review to the Constitutional Court (MK) is then carried out by the suspect. The Constitutional Court has presented a verdict in relation with the presence of pretrial. When observed more thoroughly, this verdict given by the Constitutional Court is substantially related to corruption mitigation.

Keywords

verdict, constitutional judges, pretrial, corruption

Introduction

Corruption, a malady characterized by the abuse of power, has been demonstrated to require the time and effort of numerous facets of a nation, particularly in terms of legal solutions. A individual or group of people who are

implicated in corruption cases make efforts or take steps to oppose the law enforcement agencies' handling of the cases.[1] In general, they attempt to avoid legal entanglements, particularly those that have the potential to be more burdensome, and thus they demonstrate opposition or a number of legal and political responses in a variety of ways. A person or group of persons are accused of a corruption case of the octopus (grand corruption), the resistance or reactions of law enforcement agents such as investigators tend to differ in pattern. As a form of resistance against corruption suspects, judicial responses such as investigators' pretrial arguments are indicative of the suspect's wish to avoid corruption charges.[2]

Athol Moffit, an Australian criminologist, stated that once corruption is committed, especially if it is perpetrated by higher-ranking individuals, it can flourish. There is no greater national vulnerability than pervasive corruption at all levels of public service.[3] Corruption damages the back line in both peace and war, hence corruption's anatomical structure can be seen as a disease that undermines the nation in any circumstance. At least Moffit's thinking can be discerned in the instance of different attempts by suspected corruptors to escape legal entanglements through pretrial maneuvers. The public assumes that officials who are corruption suspects and whose pre-trial proceedings are favorable are possibly rampant in their corruption or other types of abuse of power, if their pre-trial proceedings are favorable (Uket, 2022).[4]

As a result of the pre-trial judge's judgment, which might determine the suspect's destiny, the public was first concerned about the political climate surrounding the KPK's efforts to eradicate corruption. After the Constitutional Court's judgment, however, this popular perception may shift.[5]

3 Research Methods

This paper is a research description of the Court's decision on a judicial review application on the existence of a pretrial as regulated in Law Number 8 of 1981 pertaining to the Criminal Procedure Code (KUHAP) submitted by a corruption suspect and the implications of the Constitutional Court's decision on a judicial review application. The subject of study is the existence of pretrial in relation to overcoming

[1] Rayhan Dudayev, Lugas Lukmanul Hakim, and Indah Rufiati, 'Participatory Fisheries Governance in Indonesia: Are Octopus Fisheries Leading the Way?', *Marine Policy*, 147.September 2022 (2023), 105338 <https://doi.org/10.1016/j.marpol.2022.105338>.
[2] Tom S. Clark, B. Pablo Montagnes, and Jörg L. Spenkuch, 'Politics from the Bench? Ideology and Strategic Voting in the U.S. Supreme Court', *Journal of Public Economics*, 214 (2022), 104726 <https://doi.org/10.1016/j.jpubeco.2022.104726>.
[3] Stefan Voigt, 'On the Optimal Number of Courts', *International Review of Law and Economics*, 32.1 (2012), 49–62 <https://doi.org/10.1016/j.irle.2011.12.008>.
[4] Fabio Padovano and Nadia Fiorino, 'Strategic Delegation and "Judicial Couples" in the Italian Constitutional Court', *International Review of Law and Economics*, 32.2 (2012), 215–23 <https://doi.org/10.1016/j.irle.2012.01.002>.
[5] Nadia Fiorino, Nicolas Gavoille, and Fabio Padovano, 'Rewarding Judicial Independence: Evidence from the Italian Constitutional Court', *International Review of Law and Economics*, 43 (2015), 56–66 <https://doi.org/10.1016/j.irle.2015.05.002>.

corruption.[6] This form of research is categorized as normative or doctrinal legal research. According to Sutandyo Wignjosoebroto, who divides the nature of legal research into doctrinal and non-doctrinal legal research, this is the case. This doctrinal method is a legal investigation based on statutory requirements. This study employs secondary data sources in conjunction with primary, secondary, and tertiary legal sources.[7] The technique for collecting legal materials employs techniques for documenting or tracking various types of papers. The research analysis method employs content analysis, which examines the fundamental factors articulated by constitutional judges and reflected in their judgements.[8]

Results and Discussion

Discourse on Constitutional Court Decisions

The ruling of the Constitutional Court (MK) ensures that new Investigation Orders (Sprindik) may continue to be issued by law enforcement agencies, including the KPK, even after the preliminary hearing invalidated the suspect's conclusion. The new Sprindik might be issued by law enforcement agents to rectify errors made during the initial stage of an inquiry.[9] Anthony Chandra Kartawiria, the suspect in the tax restitution case involving PT. Mobile 8, made a petition for judicial review of Article 83, paragraph 1, of Law No. 8 of 1981 on the Criminal Procedure Code. The Constitutional Court issued its judgment in a decision addressing the petition. Initially, Chandra's status as a suspect was revoked by a court at a pre-trial hearing held on November 29, 2016 at the South Jakarta District Court. However, he was then handed a new Sprindik by the prosecutor's investigators. Chandra accused the new Sprindik of creating only a small amount of evidence for the investigation of his previous self (Van Sung & Savaspakdee, 2021).[10]

In response to the efforts of investigators (law enforcement officers), Chandra filed a petition for judicial review on the grounds that Article 83 paragraph (1) of Law Number 8 of 1981 pertaining to the Criminal Procedure Code (KUHAP) is unconstitutional or contrary to the 1945 Constitution and has no binding legal force. Chandra concluded that the provisions of the Criminal Procedure Code (KUHAP) caused him legal ambiguity or legal injury. With the pretrial judge's ruling, he no longer needs to cope with the name of the statute that will entangle him,

[6] Nuno Garoupa and Peter Grajzl, 'Spurred by Legal Tradition or Contextual Politics? Lessons about Judicial Dissent from Slovenia and Croatia', *International Review of Law and Economics*, 63 (2020), 105912 <https://doi.org/10.1016/j.irle.2020.105912>.
[7] Jan Fałkowski and Jacek Lewkowicz, 'Are Adjudication Panels Strategically Selected? The Case of Constitutional Court in Poland', *International Review of Law and Economics*, 65 (2021) <https://doi.org/10.1016/j.irle.2020.105950>.
[8] Nuno Garoupa, Marian Gili, and Fernando Gómez Pomar, 'Loyalty to the Party or Loyalty to the Party Leader: Evidence from the Spanish Constitutional Court', *International Review of Law and Economics*, 67 (2021) <https://doi.org/10.1016/j.irle.2021.105999>.
[9] Paola Bertoli, Adriana G. Garcia, and Nuno Garoupa, 'Testing an Application of the Political Insurance Model: The Case of the Mexican State-Level Administrative Courts', *Journal of Economic Behavior and Organization*, 195 (2022), 272–87 <https://doi.org/10.1016/j.jebo.2022.01.021>.
[10] Danko Tarabar and Andrew T. Young, 'What Constitutes a Constitutional Amendment Culture?', *European Journal of Political Economy*, 66.September 2020 (2021), 101953 <https://doi.org/10.1016/j.ejpoleco.2020.101953>.

according to his supposition. In its judgement, the Constitutional Court declared that it has dismissed Chandra's plea for judicial review in its entirety. A new inquiry can be conducted, in the opinion of the constitutional judge (Constitutional Court), so long as the investigative method is followed in line with the law. This means that investigators can issue additional Sprindiks against suspects based on the needs of the criminal court system (criminal justice system). With this fresh conviction of Sprindik, the corruption investigation will continue automatically.[11]

Obviously, the arguments offered by the constitutional judges are not consistent with the applicant's desires. The applicant is requesting that the determination of a suspect be based on the principle that the requirements for determining a suspect are met by including two new pieces of evidence that are valid, have never been presented in a pretrial hearing, and are distinct from the previous evidence in the case. In his conclusion, the constitutional judge opined that the prior investigation's evidence could be discarded only on the basis of formalities that had not been met. The evidence can only be fulfilled substantially by the investigator in a new inquiry, so that the authenticity of the evidence in question is now new evidence or significant findings that are progressive in the investigations they conduct.[12]

The opinion of the constitutional judges, among others, as expressed by Anwar Usman, the investigators' evidence cannot be thrown out and can still serve as the basis for a fresh investigation. This evidence may also be used to reclassify an individual as a criminal suspect. In the case of Setya Novanto, the dialogue on the issuing of a fresh Sprindik following the cancellation of the suspect's designation by the pretrial trial judge can be read. Judge Cepi Iskandar revoked Novanto's status as a suspect in the e-KTP case at a pretrial hearing.[13] The Corruption Eradication Commission (KPK) then issued Setya Novanto a new Sprindik. Obviously, the dialogue is inevitable, particularly among the suspect, his legal counsel, and legal experts who consider pretrial as a unique effort to preserve the suspect's rights. According to him, if investigators are publishing new sprindiks, what is the point of law reformers developing patriotic procedural law norms.[14]

Fredrich Yunadi, Setya Novanto's attorney at the time, even threatened to report five KPK commissioners if a fresh Sprindik was published for his client. The reason for this is that the issue of the new Sprindik was contrary to the court's pre-trial order. The activities of the KPK investigators and Setya Novanto are included in the efforts mandated by law. The creation of the criminal justice system (criminal justice system) has established a normative line that each party might cross to fight

[11] Khudzaifah Dimyati and others, 'Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis', *Heliyon*, 7.8 (2021), e07865 <https://doi.org/10.1016/j.heliyon.2021.e07865>.
[12] Rodd Myers and others, 'Claiming the Forest: Inclusions and Exclusions under Indonesia's "New" Forest Policies on Customary Forests', *Land Use Policy*, 66.April (2017), 205–13 <https://doi.org/10.1016/j.landusepol.2017.04.039>.
[13] Martin Roestamy and others, 'A Review of the Reliability of Land Bank Institution in Indonesia for Effective Land Management of Public Interest', *Land Use Policy*, 120.February 2020 (2022), 106275 <https://doi.org/10.1016/j.landusepol.2022.106275>.
[14] Nicolas Suzor, 'A Constitutional Moment: How We Might Reimagine Platform Governance', *Computer Law and Security Review*, 36 (2020), 2018–21 <https://doi.org/10.1016/j.clsr.2019.105381>.

for the truth based on legal logic and facts. According to Romli Atmasasmita, the criminal justice system can be viewed from a normative perspective that views the four apparatuses (police, prosecutors, courts, and correctional institutions) as implementing institutions for applicable laws and regulations, making them an integral part of the law enforcement system. A management or administrative method that perceives the four law enforcement officers as a management organization with a mechanism or work order, as well as both horizontal and vertical relationships in accordance with the organization's organizational structure.[15]

Relevant to the ideas of Romli Atmasasmita, Muladi defined the criminal justice system as "the network of courts and tribunals that deal with criminal legislation and its execution." The criminal justice system contains a systematic movement from its supporting subsystems, especially the police, prosecutors, courts, and correctional or correctional institutions, which, as a unit, attempt to convert inputs into outputs, which are the system's goals. Muladi and Romli continue to agree that the four basic pillars of the criminal justice system are the police, prosecutors, courts, and correctional facilities. This opinion is legitimate because it was written long before the time of the Protestant Reformation. During the reform era, a number of judicial pillars, including the KPK, were established, thus the establishment of this ad hoc agency has a significant impact on the world of law enforcement, particularly in the handling of corruption cases.

The magnitude of the KPK's impact can be interpreted in at least numerous ways, including the efforts made by parties, particularly politicians and law enforcement agents who are "in trouble" with the KPK, to weaken it in various ways. The quarrel with the subject of Lizard and Crocodile is a sort of effort to weaken it, initiated by law enforcement officers. Meanwhile, from politicians in the council, for instance, there have been repeated attempts to deconstruct the role of the KPK by replacing a number of articles in the KPK Law, and secondly, the judicial review process proposed by the applicant to the Constitutional Court who is currently a corruption suspect, essentially rejecting the performance of the KPK or considering it to be unconstitutional. There is unconstitutional content within the legal framework upon which the KPK's performance is based.[16]

A corruption suspect's submission of a judicial review of a statute that he believes to be unconstitutional falls under his human rights. Any citizen, even those with legal issues, has the constitutional right to fair and equal treatment, including the ability to file a judicial review of the legislative body's harmful goods. Article 28D of the Constitution of 1945 declares, "Everyone has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment under the law."

Constitutionally, every citizen of the United States knows his place. The

[15] Giacomo Giorgini Pignatiello, 'Countering Anti-Lgbti+ Bias in the European Union. A Comparative Analysis of Criminal Policies and Constitutional Issues in Italian, Spanish and French Legislation', *Women's Studies International Forum*, 86.September 2020 (2021), 102466 <https://doi.org/10.1016/j.wsif.2021.102466>.
[16] Stefano Osella, 'The Court of Justice and Gender Recognition: A Possibility for an Expansive Interpretation?', *Women's Studies International Forum*, 87.April (2021), 102493 <https://doi.org/10.1016/j.wsif.2021.102493>.

universal concept recognizes that all individuals are equal, have equal rights before the law, and are entitled to equal legal protection without discrimination or treatment. If there is a breach of the rights protected by the provisions of national laws and regulations, everyone has the right to a fair trial before a national court. Equality before the law (equality before the law) signifies that all citizens are treated equally before the law and that all groups are subject to the "ordinary law of the nation" as administered by the "ordinary court." This means that neither state government officials nor regular persons are exempt from the obligation to obey the law. The commitment to abide by the law is equivalent to participation in upholding or safeguarding the constitution.[17]

Law No. 8 of 1981, the Criminal Procedure Code, is one of the legislative accomplishments (KUHAP). This KUHAP is considered by many to be a masterpiece of the Indonesian country when it was passed by the legislature, as it contains a number of substances that defend human rights, but also a number of flaws that result in losses for justice seekers (justiabelen), particularly those in litigation. in the system of criminal justice. Soedjono Dirdjosisworo also emphasized that the criminal procedure law serves a dual purpose, namely, on the one hand, to discover the truth about the commission of a crime so that the offender can be punished in the form of sanctions for his actions, and on the other, to prevent as much as possible the conviction of an innocent person. What determines a person's ability to obtain justice is whether or not he attempts to escape or defend himself from the labyrinth of criminal punishments, some of which are set by the legal process. If, during this process, he is found to have hurt or violated his human rights, then the legal rules governing this procedure are deemed to have denied him justice.[18]

The loss of the justice-seeker is the inability to attain (experience) justice. In a legal context, the nature of justice can be viewed from two distinct perspectives: the formal and the material. In the formal sense, justice requires that the law be broadly recognized, yet in the material sense, every law must be in conformity with the objectives of social justice. The demands that have relevance to the ideals of community justice can also become objects of discourse, such as the question of the meaning and elements of justice, as well as its parameters, so that it appears that the power of rationality, intelligent reason, and the judge's conviction are the determining factors when responding to such demands.[19]

Weaknesses in legal standards or legal goods are an issue in and of themselves, as well as an opportunity for corruption suspects to seek judicial

[17] Frank Louwen and others, 'European Journal of Obstetrics & Gynecology and Reproductive Biology The United States Supreme Court Ruling and Women ' s Reproductive Rights – A Position Statement Issued by The European Board and College of Obstetrics and Gynaecology (EBCOG)', 279.October (2022), 130–31 <https://doi.org/10.1016/j.ejogrb.2022.10.012>.
[18] Emre Mumcuoğlu and others, 'Natural Language Processing in Law: Prediction of Outcomes in the Higher Courts of Turkey', *Information Processing and Management*, 58.5 (2021), 102684 <https://doi.org/10.1016/j.ipm.2021.102684>.
[19] Fernando A. Correia and others, 'Fine-Grained Legal Entity Annotation: A Case Study on the Brazilian Supreme Court', *Information Processing and Management*, 59.1 (2022), 102794 <https://doi.org/10.1016/j.ipm.2021.102794>.

review. Multiple submissions of the Criminal Procedure Code to the Constitutional Court for judicial review indicate that there were fundamental flaws in the Criminal Procedure Code's construction, so that justice seekers are confronted with a product of the legislature that is incompatible with the Constitution. KUHAP lacks a system of checks and balances for the act of determining suspects by investigators because it does not recognize the m-criterion. This legal deficiency can be seen in the Constitutional Court's Decision Number 21/PUU-XII-2014 in the case of reviewing Article 1 point 2, Article 1 number 14, Article 17, Article 21 paragraph (1), Article 77 letter a, and Article 156 paragraph (2) on letter g page 102-103. As a result, it is evident that the Indonesian Criminal Procedure Code has not fully applied the idea of due process of law, as the conduct of law enforcement officers in seeking and acquiring evidence cannot be evaluated for their legality.[20]

The Constitutional Court's ruling number 21/PUU-XII/2014 also refers to the opinion of Paul Roberts and Adrian Zuckerman, who indicated that there are three elements that underlay the need for a testing process on the legality of gathering evidence: First, state protection of rights. This right was established because occasionally the efforts of investigators or investigators to find evidence violate the human rights of suspects or potential suspects. In order to restore or defend rights that have been violated, it is necessary to establish a method for assessing the acquisition of evidence to determine and confirm if the evidence was obtained legally. Second, deterrent (disciplining the police). The removal or waiver of illegally obtained or obtained evidence will prevent/impede investigators and public prosecutors from repeating their errors in the future. If judges frequently exclude/dismiss evidence collected illegally, it sends a very obvious message to law enforcement authorities that there is no reward to breaking the law. As a result, the officers' desire to violate the law will be significantly diminished. Finally, the validity of the verdict. In order for individuals to have faith in the legal or judicial system during criminal procedures, a trustworthy system is required. If judges are accustomed to accepting evidence obtained illegally from investigators and public prosecutors, the validity of the legal system will be questioned, and the public would immediately lose respect or credibility for the judiciary.[21]

The description demonstrates that a product of the legislative body, which is the heart of the construction of the current legal system in this country, particularly in the realm of criminal justice, will not become a strong legal system as long as it continues to permit investigators to conduct themselves in an unprofessional manner. In the absence of examination of evidence gathered by investigators, investigators may be able to take arbitrary measures on behalf of or for the "purpose of acquiring evidence," so damaging the human rights of a suspect. This does not, however, imply that the considerations outlined in the Constitutional

[20] Philipp Meyer, 'Transparency and Strategic Promotion: How Court Press Releases Facilitate Judicial Agenda-Building in Germany', *Public Relations Review*, 48.4 (2022), 102228 <https://doi.org/10.1016/j.pubrev.2022.102228>.
[21] Adriana A. Dragone Silveira, 'The Role Played by Courts in Promoting Equal Educational Opportunity Reforms: New York and São Paulo Cases', *International Journal of Educational Development*, 87.October (2021), 102495 <https://doi.org/10.1016/j.ijedudev.2021.102495>.

Court's ruling (Number 21/PUU-XII/2014) are liberal and exclusive in defending the suspect's interests.

The Constitutional Court's decision must be interpreted in a progressive manner, such that the Court is not limited to informing the legislature of the inadequacies of its legal product, but also informing investigators that their performance must be improved or constructed so that it becomes a professional performance, because criminals are the adversary. classe professionnelle. The Constitutional Court reminded investigators, including those in the KPK, that pretrial is a specific avenue granted by the legal norm (KUHAP) to implement justice, both justice for suspects and justice for victims. People or the state have been injured if the suspect is acquitted, despite the fact that he or she might be demonstrated to be a corrupt individual. Similarly, if the suspect is not the perpetrator due to a mistake by law enforcement personnel in assessing his status as a suspect, followed by forced arrests, incarceration, etc., then it is evident that he has suffered a tremendous loss.[22]

Yahya Harahap, who has served as a Supreme Court justice for many years, stated that since the KUHAP's inception in 1981, there have been new and basic aspects, in comparison to the Dutch colonial government's Herziene Indische Reglement (HIR). The Pretrial institution is one of the new legal institutions formed by the Criminal Procedure Code that did not exist when the HIR was in existence. Based on the form and composition of the judiciary, the pretrial institution is not an autonomous institution; in this case, the Criminal Procedure Code devolved authority and functions (from the state legally) to each District Court. The new powers and functions are additional tasks to examine and decide: 1) whether or not an arrest and or detention is legal; 2) whether or not the termination of the investigation or the termination of the prosecution is legal; and 3) a request for compensation or rehabilitation by a suspect, his family, or another party on his behalf whose case has not been brought to court.[23]

In the judgment number 42/PUU-XV/2017 of the Constitutional Court, it is noted that the purpose of the pretrial is to examine the legality of the process procedures carried out by law enforcement against citizens suspected of committing criminal crimes. In addition, the balance (equilibrium) between the rights of the suspect and the investigator/public prosecutor is a priority throughout the pretrial phase. On the one hand, establishing the suspect as a subject with rights, as opposed to an object, does not impede or diminish the investigators'/public prosecutors' rights to carry out their duty. Pretrial proceedings are an inherent component of the Criminal Procedure Code, which was established for the same reason. The objective of the Pretrial is to conduct horizontal supervision of investigatory and prosecutorial acts of coercion against suspects/defendants to ensure that these actions do not violate the requirements

[22] Iswantoro Iswantoro, 'Strategy and Management of Dispute Resolution, Land Conflicts at the Land Office of Sleman Regency', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 1–17.
[23] Siti Rahma Novikasari, Duc Quang Ly, and Kerry Gershaneck, 'Taxing Micro, Small and Medium Enterprises in Yogyakarta: Regulation and Compliance', *Bestuur*, 9.1 (2021).

of the law and the law. The goal of this pre-trial proceeding is to control or supervise the development of criminal procedural law pertaining to the protection of suspects' rights. The management is conducted horizontally. Control between investigators, public prosecutors, suspects, their families, or third parties.[24]

Pretrial is designed from the start to be a legal tool that suspects, victims, investigators, public prosecutors, and other interested parties can utilize to bring claims. In the realm of authenticity, the pretrial institution's authority is "locked" for five reasons: whether or not the coercive effort is legal, whether or not it is legal to terminate an investigation or a prosecution, whether or not it is legal to examine claims for compensation (in the form of wrongful arrests, detention, search and seizure), and whether or not the confiscation action is legal.

The Constitutional Court intends to philosophically demonstrate the essence of this new institution in the Criminal Procedure Code through a number of its decisions (including the Constitutional Court's decision Number 42/PUU-XV/2017 and its decision Number 21/PUU-XII/2014). The KPK is included in the decision, as it can continue its investigations by publishing new research reports. The issue of the new sprindik positions the suspect or his legal counsel to have the investigator disregard the pre-trial ruling. Concerning the Constitutional Court's decision, the Petitioners are concerned about the possibility that investigators can repeatedly issue an investigation warrant and assign a suspect to the same legal subject with the same evidence and only make minor alterations to the case materials, according to the Court: this is not a question of the constitutionality of the provisions of Article 83 paragraph (1) of the Criminal Procedure Code, but rather an implementation issue.[25]

The Petitioner's concern is unnecessary if the investigator is guided by this Court's decision, particularly in using evidence that has been confirmed by the Court as the basis for a re-investigation; that is, even though the evidence is not new and is still related to the previous case, it is still evidence. It has been significantly refined and is not only a formality, so that the evidence has become essentially new and distinct from the earlier evidence. Thus, legal certainty will be achieved not just for suspects who cannot be simply re-identified as suspects, but also for law enforcement officials who cannot quickly release someone on criminal bond. The KPK makes inaccuracies in locating and collecting evidence, including those relating to the determination (determination) of the suspect, who was later defeated by the suspect at the pretrial stage, this condition does not thwart or eliminate its primary objective, namely the investigation of corruption cases. Herein lies the crux of the KPK's performance sustainability.[26]

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[24] Sri Wahyuni, Dian Luthviati, and Muhhamd Hayat, 'The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen', *Bestuur*, 10.1 (2022), 12–21.
[25] Nabiyla Risfa Izzati, Mas Muhammad, and Gibran Sesunan, '"Misclassified Partnership" and the Impact of Legal Loophole on Workers', *Bestuur*, 10.1 (2022), 57–67.
[26] Awaludin Marwan and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22–32 <https://doi.org/https://doi.org/10.20961/bestuur.v10i1.59143>.

Implications for Combating Corruption

The discourse on the new Sprindik and the constitutional judge's ruling on the new Sprindik were still ongoing, Febri Diansyah (while serving as the KPK's spokesperson) believed that the contents contained a number of important points that supported efforts to handle (counter) corruption cases. According to him, the work of the KPK is affected by a number of crucial factors due to the KPK's frequent involvement in preliminary proceedings. One of the major concerns regarding the admissibility of evidence relating to the case's substance and material can still be employed. This point is seen as extremely beneficial to the KPK's performance. The KPK's continued issuance of new Sprindiks contributes to the political construction of combating corruption in Indonesia. In light of the nation's declaration that corruption is a shared foe, every effort must be made to combat corruption.[27]

The conceptually, when viewed from a semantic standpoint, the word "corruption" is derived from the English word corrupt, which is derived from the Latin words com, which means together, and rumpere, which means broken or shattered. Corruption can also refer to an act of dishonesty (unfair) or misappropriation or abuse (abuse) perpetrated as a result of a gift from one individual to another. In practice, corruption is characterized by the receipt of money related to positions without administrative documentation. Baharuddin Lopa, using the opinion of David M. Chalmers, characterizes the meaning or term of corruption in many domains, namely those linked to bribery concerns, those related to manipulation in the economic field, and those related to the public interest field.[28]

Andi Hamzah's opinions provide another evidence that corruption derives from the Latin corruptio or corruptus. Corruptio is derived from the earlier Latin term corrumpere. From Latin, it passed into a number of European languages, including English (corruption, corrupt), French (corruption), and Dutch (corruptie, korruptie). From Dutch to Indonesian, corruption refers to the behaviors of a person residing in a government setting who abuses his power in relation to money or other activities that are prohibited by law. Samuel Huntington, an expert who has extensively examined the dynamics of civilisation, views corruption as a sort of behavior exhibited by public officials who break from societal norms in pursuit of their own personal goals. In accordance with this Huntington definition, J.S. Nye defines corruption as behavior that deviates from formal ethical principles regarding the behavior of a person or group in a position of public authority due to personal considerations such as wealth, power, and status.[29]

Corruption as a phenomenon of deviation in social, cultural, social, and state

[27] Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68–83 <https://doi.org/https://dx.doi.org/10.20961/bestuur.v10i1.59098>.
[28] Ahmad Siboy and others, 'The Effectiveness of Administrative Efforts in Reducing State Administration Disputes', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 14–30 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.23>.
[29] Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, 'Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 31–44 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.24>.

life has been analyzed by scientists and philosophers for a considerable amount of time. Aristotle, who was followed by Machiavelli, for instance, from the start, used the term "moral corruption." Moral corruption refers to various forms of constitutional deviation or "cheating" in which the rulers of the government, even in a democratic system, are no longer governed by the law and do not serve the people's interests, but instead seek to serve or satisfy their own. In such a regime, legal presence cannot be used to defend and mediate the demands of the people; on the contrary, it is more prevalent as a weapon that erodes human rights.[30]

Corruption can be viewed via a cultural lens. The theoretical and practical connection between corruption and culture is extremely robust. Even in practice, corruption is connected to feudal traditions, gifts, tributes, and the extended family system. A civilization or nation with a feudal or neofeudal cultural past is prone to corruption because it lacks a value system that clearly divides public property (the state) from private property for the ruling class (ruling elite). Similarly, the kinship system promotes nepotism. Beginning with the design and construction of the system, it has been colored by numerous "entrustments" in the form of corrupt articles, paragraphs, and logics. They enter the halls of this particular power with the intention of destroying every power having the potential to endanger its survival and accelerating its drive towards destroying the nation.[31]

A theological standpoint, corruption is also regarded as a vile conduct. Hafidhuddin remarked that, from the standpoint of Islamic beliefs, corruption comprises behaviors that harm the benefit, the benefit of life, and the order of life. The culprits are classified as committing jinayah kubro (great sin) for large-scale looting or "theft" of public funds. Corruption is an act that contradicts the Islamic ideals of justice (al-'is), accountability (al-amanah), and duty. Corruption, a complex social issue, cannot be described in a single line. It is possible to create a credible description of the phenomena so that it can be distinguished from other symptoms (behavioral abnormalities) that are not indicative of corruption. The core of corruption is using a position of trust for private benefit. Syed Hussein Alatas has prepared a list of corruption traits based on case-by-case induction from ancient societies to the present day. According to him, corruption is the subordination of the public interest to private interests, which involves violations of norms, duties, and public welfare committed with secrecy, betrayal, deceit, and ignorance or indifference to the grave consequences that befall the people or nation.[32]

It would be rational if all state powers (existing state institutions) such as the KPK were deployed to abolish this condition of corruption. Corruption poses a severe threat to the Indonesian nation's security and stability, as well as to the

[30] Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 1–13 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.21>.
[31] Muhammad Ridwansyah and Asron Orsantinutsakul, 'The Strengthening of Guardian Institutions in Nanggroe Aceh During the Autonomy Era', *Journal of Human Rights, Culture and Legal System Vol.*, 2.1 (2022), 55–65 <https://doi.org/https://doi.org/10.53955/jhcls.v2i1.27>.
[32] Abdul Kadir Jaelani, 'The Standardization of Halal Tourism Management in West Nusa Tenggara', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 20.2 (2021), 74–87.

democratic principles of transparency, accountability, and integrity. Corruption, being a systemic crime that is detrimental to sustainable development, necessitates preventative actions on the national and international levels. In order to accomplish the efficient and effective prevention and elimination of corruption, it is required to promote excellent management or governance and international collaboration, including the return of assets derived through corrupt criminal acts. Good governance management can affect development goals, so when millions of people are still powerless in the midst of their daily lives, it is a sign that corruption among power elites is still pervasive or dominates the life of this nation.[33]

The inefficiency, injustice, the lack of public confidence in the government, the squandering of state resources, the absence of incentives for enterprises, especially international corporations, to build their businesses, political instability, and a number of other situations are far from conducive. Corruption does generate significant losses in national resources. As a result of being infected with the disease of corruption, a number of vital sectors have become paralyzed or have at least failed to satisfy the requirements of the people.[34]

Particularly, corruption has an effect on the occurrence of extreme poverty. The conclusion of a 2003 research by Eric Chetwynd, Frances Chetwynd, and Bertram Spector in "Corruption and Poverty: A Review of Recent Literature" was that corruption has direct effects on the governance and economic elements that ultimately cause and perpetuate poverty. According to this study, expanding or deepening corruption in a country will immediately lower economic investment, cause market distortions, impede competition, and lead to inefficiencies characterized by increased expenses associated with operating or managing a business. Corruption is a particularly hazardous problem because it can disrupt social networks and legal structures, so indirectly undermining or destroying national security and the existence and sustainability of a nation's life. Reimon Aron, a sociologist, says that corruption can engender revolutionary unrest, a potent instrument for destabilizing a nation.[35]

The Given the extent of the danger that must be carried by the people as a result of corruption, it is reasonable that the state attempts to safeguard the people through its pillars. The obligations stipulated by this state will be fulfilled successfully if people who earn trust strive to fulfill their roles to the utmost extent. If he is a judicial pillar in the area of the Constitutional Court or the KPK, then his position is of the utmost importance to the nation or the people. This country is neither a passive state nor a state known as a nachtwachterst aat; rather, it is a state of material law (which is the spirit of democracy in the twenty-first century and now) that mandates the duty of the state in generating the welfare of its

[33] Ni'matul Huda, Dodik Setiawan Nur Heriyanto, and Allan Fatchan Gani Wardhana, 'The Urgency of the Constitutional Preview of Law on the Ratification of International Treaty by the Constitutional Court in Indonesia', *Heliyon*, 7.9 (2021), e07886 <https://doi.org/10.1016/j.heliyon.2021.e07886>.
[34] G. Montanari Vergallo and M. Gulino, 'End-of-Life Care and Assisted Suicide: An Update on the Italian Situation from the Perspective of the European Court of Human Rights', *Ethics, Medicine and Public Health*, 21 (2022), 100752 <https://doi.org/10.1016/j.jemep.2022.100752>.
[35] Paweł Marcin Nowotko, 'AI in Judicial Application of Law and the Right to a Court', *Procedia Computer Science*, 192 (2021), 2220–28 <https://doi.org/10.1016/j.procs.2021.08.235>.

citizens, as well as safeguarding the rights of the people against the filthy hands that attempt to continue looting and devastation.[36]

Moreover, in the sphere of constitutional principles, the state's responsibility is not only to maintain order by enforcing the law, but also to attain or establish the people's welfare as a form of justice (welfare state) and the rule of law (supremacy of law). The mission of this state can only be accomplished when all elements of this nation, especially its pillars such as the KPK, the police, the prosecutor's office, and the judiciary, perform at their highest level, especially in combating corruption, which is a disease that hinders and even destroys the welfare of the people.[37]

Through its ruling, the Constitutional Court has offered a unique means for law enforcement agents (KPK, the Prosecutor's Office, and the Police) to uphold or achieve the state's mandate. He must demonstrate consistency and vigor in his fight against all types of legal and extra-legal actions performed by corruption suspects. The judgement handed down by the Constitutional Court was an expression of its duty in protecting the constitution, which consisted of carrying out its specified authorities and responsibilities. The capacity to conduct judicial review of laws deemed unconstitutional is evidence that the Constitutional Court is also a special law enforcement officer (ad hoc) who defends the constitution against normatively harmful attacks by corruption suspects and legislators. The jurisdiction of the Constitutional Court to nullify part or all of the contents of a statute that it deems unconstitutional through judicial review is equivalent to blocking a section of the legal "space" that corruption suspects can exploit.[38]

The Constitutional Court that neither grants nor denies the applicant's request for judicial review can mean, on the one hand, that corruption suspects are prevented from gaining access to certain avenues, and, on the other hand, that law enforcement officials are able to continue and develop (progressive) countermeasures. corruption. The interpretation of the Constitutional Court's ruling embodies a prophetic moral ethos that encourages every law enforcement official to personally inflame or engage in militancy at every stage of combating corruption. Such a measure can be regarded as a genuine effort to oversee the constitution's implementation.[39]

The ruling of the Constitutional Court in connection to Law No. 8 of 1981, which is primarily aimed at pretrial cases, is merely a reminder that among the legislative body's products with flaws, it is inappropriate to weaken the politics of fighting corruption. Not every legal product is flawless, especially if it was crafted with political engineering from the outset or if there are legislative corruption

[36] Crina Mihaela Verga, 'Aspect of Romania's Representation at the European Council', *Procedia - Social and Behavioral Sciences*, 149 (2014), 990–96 <https://doi.org/10.1016/j.sbspro.2014.08.330>.
[37] Normawati Binti Hashim, 'Constitutional Recognition of Right to Healthy Environment: The Way Forward', *Procedia - Social and Behavioral Sciences*, 105 (2013), 204–10 <https://doi.org/10.1016/j.sbspro.2013.11.021>.
[38] Daniela Cristina Valea, 'The Role of the Romanian Constitutional Court in Protecting and Promoting Human Fundamental Rights and Freedoms', *Procedia - Social and Behavioral Sciences*, 46 (2012), 5548–52 <https://doi.org/10.1016/j.sbspro.2012.06.473>.
[39] Sergio Puig, 'Investor-State Tribunals and Constitutional Courts: The Mexican Sweeteners Saga', *Mexican Law Review*, 5.2 (2013), 199–243 <https://doi.org/10.1016/s1870-0578(16)30024-5>.

patterns in place. Mahfud MD has conveyed such concerns, that there are serious problems or problems that plague the formation and enforcement of law in Indonesia, that laws are made and enforced as if they have lost their lives, and that laws are easily possessed by momentary interests that are antithetical to the ideals and objectives of the law, which are thereby compromised. This cannot be divorced from its components' mental and intellectual levels.[40]

This position confirms the notion that the failure of law enforcement in corruption cases is mostly attributable to the professionalism and integrity of law enforcement officials, but it can also be caused by the inferior quality of legal norms. Various sorts of law enforcement are likely to occur as a result of the product's poor quality and the equipment's inadequate capabilities and structural integrity. In a separate article, Mahfud MD stressed that the Constitutional Court's primary responsibility is to preserve the constitution, hence in fact it always gives precedence to constitutional provisions based on the Constitution of 1945. When carrying out this duty, the Constitutional Court will prioritize the enforcement of justice in accordance with the spirit of the constitution, because Pancasila emphasizes the significance of fairness and justice. The presence of law enforcement officers in guiding the construction of the criminal justice system is a representation of Indonesia's constitutionality ideals in the realm of the supremacy of law, such that when dealing with suspects from any ethnic, group, party, or class, they must demonstrate themselves not as a collection of officers from the nachtwachterstaat or pillar of the night watchman state, but as a fundamental force of the rule of law that provides subordination to the law.[41]

Conclusion

The development or dynamics of the criminal justice system in Indonesia when handling corruption cases is increasingly attractive. The KPK, which has a mandate from the state to tackle corruption, is often sued by suspects through pretrial proceedings. Some of the lawsuits filed by corruption suspects have won, so this victory is a separate record for the performance of law enforcement officials (KPK), especially in determining someone as a corruption suspect. The KPK, determined to show its commitment to dealing with corruption, does not want to be outdone by suspected corruptors. The KPK proves this by issuing a new Investigation Order (Sprindik). This step taken by the investigator was, of course, protested by the suspect or his legal representative and placed the KPK as a party that did not heed (respect) the court's decision. In addition to criticizing the KPK's move, he also submitted a judicial review to the Constitutional Court to thwart the efforts made by the KPK in eradicating or combating corruption. The Constitutional Court itself, through its decision, has shown its role as a representative of the state

[40] Zora A. Sukabdi, 'Bridging the Gap: Contributions of Academics and National Security Practitioners to Counterterrorism in Indonesia', *International Journal of Law, Crime and Justice*, 65.February (2021), 100467 <https://doi.org/10.1016/j.ijlcj.2021.100467>.
[41] Siboy and others.

in maintaining the constitution, including by rejecting applications for corruption suspects. The Constitutional Court's consistency in guarding the constitution, which has implications for the commitment of other law enforcement officers in overcoming corruption, should be responded to as an ethical and juridical spirit to militancy and progress the fight against corruption.

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