

## CHALLENGING CORRUPTION: A VIOLATION OF HUMAN RIGHTS IN INDONESIA

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**Abstract:** *Corruption in the public sector can have a sever negative impact upon human dignity, however in the context of corruption as a violation of human rights is relatively new. Corruption is now recognized as the most challenging governance problem afflicting many countries. The crisis focused people's attention on the staggering impact of corruption in Asia particularly in Indonesia. This paper examined how corruption can threaten human rights; how weak human rights promotion and protection can create conditions increasing corruption. The important and timely work adopts a new approach for analysing corruption as a violation of human rights. Highlighting the inherent deficiencies in the existing institutions, mechanism, laws and law enforcement. The conceptual approach is used to study the views and doctrines that develop within the jurisprudence, to determine the challenge of controlling corruption in both public and private sectors remains formidable. The paper proposes the adoption of a multi strategy for eliminating corruption in Indonesia as one of Asean's most repressive, centralized and democratic nation.*

**Keyword:** *Challenging, Corruption, A Violation of Human Rights, Indonesia*

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### Introduction

Corruption is a problem that has serious implications for both protecting the rule of law and ensuring access to justice, corruption also promotes mis-governance as it affects the integrity of the legal, judicial, and administrative apparatus.<sup>2</sup> Corruption occurs when a person who is the agent of another person acts in a manner where they place their own interest ahead of those of their principle. Corruption therefore occur in any circumstances, whether in the public or private sector, where someone acts as the agent of another person or group. However, when we discuss

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<sup>2</sup> Kumar C. Raj (2011), *Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance* Oxford:Oxford University Press , p 2-4

corruption we almost look at the public sector. <sup>3</sup> Corruption occurs in people's day-today lives and in routine business activities as people navigate their relationship to the state.<sup>4</sup> The moment decisions affecting the life of one human being were taken from him by another human being, human rights made its appearance. It is hence as old as man. Human rights made its presence felt since time immemorial. It came to apply when governors started governing the governed, and when rulers started ruling the ruled. At its core, human rights represent the tension between the state and its citizenry.<sup>5</sup>

Following Soeharto's resignation from the presidency of Indonesia due to the economic crises which hit Indonesia in 1997, mass demonstrations, student demands for reforms, along with international pressures, were critical in the fall, after 32 years, of the Soeharto government. People of Republic Indonesia had to face all the major problems, such as system corruption, collusion nepotism, lack of accountability, transparency, and lack of protection for human rights. Indonesia has come a long way since the Suharto dictatorship and the government has made a lot of progress with regards to human rights. Government have signed up to numerous international human rights treaties, they have undertaken legal reforms, but over the last four to five years we've seen this reforms stagnate as well as an increase in some human rights violations happening in the country.<sup>6</sup>

Corrupt practise in Indonesia could be identified in almost areas of Government involvement. When the President came to power, promised to eradicate corruption, however, at the end of the day was not one of the priorities of all Indonesian President to end corruption, event worst they have no intention to prevent corruption. As Lord Acton said: *Power tends to corrupt and absolute power corrupts absolutely*. "Great men are almost always bed men, even when they exercise influence and not authority: still more when you superadded the tendency or the certainty of corruption by authority".<sup>7</sup>

The present paper aims to examine the human rights implications of corruption in Indonesia. It will discuss the existing legal and institutional frameworks for controlling corruption in Indonesia and in the context of human rights implication of corruption, the right to access justice without discrimination shall be examined. What we need to be recognized is that the fundamental problem of empowering the citizenry in the fight against corruption has been largely neglected in Indonesia. While preparing this paper, the author is mindful of the inherent weaknesses of legislative reforms in Indonesia, as well as the crises of law enforcement. Therefore this paper is based on the contention that a primary objective of democratic reform and law reform should be the promotion of *good governance* and *the rule of law*.

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<sup>3</sup> Congram, Mitchell, et.al., (2013). *The Policing Transnational Organized Crime And Corruption*, UK:Palgrave Macmillan, p 30

<sup>4</sup> Ackerman, Susan Rose, et.al., (2016), *Corruption and Government, Causes, Consequences, and Reform, 2<sup>nd</sup> Edition*, Cambridge:Cambridge University Press, p 267

<sup>5</sup> Thomas, Tommy, (2016), *Abuse Of Power-Selected Works on the Law and Constitution*, Malaysia:Vinlin Press Sdn Bhd, p 115

<sup>6</sup> DW News Current Affairs from Germany (2014), *Indonesian vote: 'An opportunity to improve human rights'* Available from:<https://p.dw.com/p/1Cxar>

<sup>7</sup> Acton, Lord, (2013), *Essays on Freedom and Power*, CreateSpace Independent Publishing Platform, p 4

Method of this paper based on normative juridical research, McLeod said, "One of the major concerns of legal method is to identify 'the scope of the courts' power to develop the law. It follows from this that, although the study of constitutional law is a substantial exercise in its own right, the study of legal method must include at least an overview of the legal basis of the constitution as the foundation of any real understanding".<sup>8</sup> The approaches taken are statute approach, conceptual approach, and case approach. The conceptual approach is used to study the views and doctrines that develop within the jurisprudence. The idea is to find legal understanding, concepts, and principles relevant to the issues; we look beyond the law in the books to the law in action.. Thus the type of data used is secondary data covering primary law material, secondary law material, and tertiary law material.

According to Soerjono and Mamudji the objects of Normative Law Research Study includes: (i) research on legal principles; (ii) research on systematic law; (iii) research on vertical and horizontal synchronization levels; (iv) comparative law; and (v) legal history.<sup>9</sup> Reviewing the literature deals with number of aspects that have a direct or indirect bearing on this paper and use these aspects as a basis for developing the theoretical framework. Literature in this topic deal with two types of: *first*, 'general resource's such as books include dictionaries, academic journal, encyclopaedia, index and bibliographies. *Second*, 'universal resources' an introducing to the context of law such as culture influences, historical influences, political influences, ideology of morality, rapid social change, and philosophical influences.<sup>10</sup>

This paper, therefore consider the legal frame work of International and National law. The idea is to find legal understanding, concept and principles relevant to the issues of corruption and human rights. We look beyond the law in the books to the law in action. Oliver Wendel Homes (1841-1935) explained that the central tenet of which is that what actually happens in the courts is what really matters. Placing the emphasis of '*law in action*' rather than '*law in books*'. Holmes says 'the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.'<sup>11</sup>

The objective of the study is to provide a new framework of law, to apply the rule based on the morality Government political commitment for legal system and institutional reforms to fight corruption without violates human rights. Despite that corruption is a phenomenon that is widely prevalent in the administrative system of Indonesia and it is institutionalized. However this paper focus of the rights based approach to fighting corruption by introducing to the citizens the framework of understanding or the recognition of a human right against corruption. According to C.Raj Kumar, *first*, that human rights approach formulates strategies to deal with corruption bearing in mind that empowering the people in the fight against corruption is the key to addressing corruption. *Second*, the human rights approach to anti-corruption efforts seeks accountability for acts of corruption.<sup>12</sup>

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<sup>8</sup> McLeod, Ian (1999). *Legal Method*, UK:Macmillan Press LTD, p 57

<sup>9</sup> Soerjono, S., Mamudji, S. (1983). *Normative law research a brief review*. Jakarta: Raja Grafindo Persada, p 14

<sup>10</sup> Hanson, Sharon,(2003). *Legal Methods, Skills And Reasoning*, NY:Routledge Cavendish, p 69

<sup>11</sup> Holmes, Oliver Wendel. (1897), *The Path of The Law*, 10 harv LR457 as cited by McLeod, Ian. (1999). *Legal Method*, UK:Macmillan Press LTD, p. 4

<sup>12</sup> Kumar C. Raj (2011), Op.cit, p 9

Thus, understanding the link between corruption and human rights involves the existence of legal system in which its rule of recognition might incorporate moral standards as part of its criteria from legal validity, therefore people have to *criticism* of the law if you to want to understand between the laws we have and the law what we should have, between actual law and ideal law, between human law and God's law, between legal norms and moral norms, or between law and justice. The heart of legal positivism, according to Jeremy Bentham as well as modern positivist legal theorists:<sup>13</sup>

“was what is now confusedly called the “separability thesis”: the law that is, is not necessarily the same as the law that out to be. That a law exists, positivists insisted, then as now, does not imply anything one way or the other about its merits or demerits, about whether it is just, or about whether it is a good law: laws are not necessarily good simply by virtue of the fact of their existence; some laws are unjust or unwise but nevertheless law”.

There have been many challenges for the judiciary in dealing with corruption since a number of governance indicators reveal that corruption remains a significant obstacle to development in Indonesia. A challenge faced in all sectors of administration in this country. Indonesia has transformed from one of Southeast Asia's most repressive and centralized political system to its most decentralized and democratic.<sup>14</sup> Post Soeharto 1998 until present, Civil liberties are central to the Indonesian criminal justice process. Comprehensive human rights instruments make a massive contribution to understanding the essential dynamics of the process.<sup>15</sup> Yet, while not entirely hidden, human rights have rarely been centre state in Indonesia legal system. This paper is the product of ideas by the lives of Indonesian People who have been locked away for decades to access justice as fairness due to the new reforms and institutions have fostered corruption instead of corruption control.

Francesco Francioni is Professor at the European University Institute, Florence wrote ‘As in any domestic legal system, respect and protection of human rights can be guaranteed only by the availability of effective judicial remedies. When a right is violated, access to justice is of fundamental importance for the injured individual and it is an essential component of the system of protection and enforcement of human rights’.<sup>16</sup> By introducing a rights into the analysis of corruption case, the law must appear on the front line as a powerful tool, providing direction for corruption eradication efforts. The Indonesian people have great hopes that the rule of law will be able to result in State Administration which is clean and free from corruption, collusion and nepotism. By contrast, today almost all sectors of development in Indonesia, as well as people's daily lives, have been affected by acts of corruption.

According to the Human Rights Watch observed in 2017 President Joko “Jokowi” Widodo's rhetorical support for human rights has yet to translate into meaningful policy initiatives to address the country's serious rights problems. The Jokowi government is proving to

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<sup>13</sup> West, Robin (2011), *Normative Jurisprudence an Introduction*, Cambridge:Cambridge University Press, p 60-61

<sup>14</sup> Butt, Simon (2017), *Corruption and law in Indonesia*, NY:Routledge

<sup>15</sup> Hurst, William, *Ruling Before The Law The Politics of Legal Regimes in China and Indonesia*, UK:Cambridge University Press, p 83-84

<sup>16</sup> Francioni, Francesco (2007), *Access to Justice*, NYC:Oxford University Press, p1

be all talk and no positive action in terms of meaningfully addressing Indonesia's serious human rights problems.<sup>17</sup>

Today's challenges in facing corruption and human rights issues, the corruption prevention and eradication (CPE) have become two of the main focuses of the government of Indonesia following the reform era. The determination to carry out CPE began with the establishment of new implementing agencies and the consolidation of government policies and through community awareness. The administration of President Joko Widodo (Jokowi), elected in 2014, has reinforced Indonesia's commitment to CPE by issuing Presidential Instruction no. 10 of 2016 on the Prevention and Eradication of Corruption 2016–2017.<sup>18</sup> The people of Indonesia had higher expectation that President Joko Widodo would tackle Indonesia's corruption issues. Nevertheless over a year into his presidency, a Transparency International report suggests that little progress has been made in the crucial defence sector – casting doubts on the success of the anti-corruption push as a whole.<sup>19</sup>

In the face of corruption challenge, this paper research poses the questions, *why are so many high level public official, senator or politicians are being convicted of corruption in Indonesia?* and *whether it even makes sense to speak of human rights violations in corruption case?*. To answer this, we have to examine on what we sees as the failure of the judiciary to protect the individual against the power of the Executive and analysis of constitutional and human rights principles in the pursuit of justice in widest sense. It is an unfortunate fact of political reality in Indonesia that those who hold power enjoy the exercise of near absolute, unaccountable power, with corruption the inevitable result. Hence, abuse and misuse of power is a given in our society, and this paper have tried to address some of their manifestations.

### **What Is Corruption, Why Does It Matter In Indonesia**

Rose Ackerman gives the most common definition of corruption as the abuse of an entrusted power for private gain. This definition captures the principle agent problem at the root of all types of economic and political corruption; bribery, embezzlement, nepotism, influence peddling, conflict of interest, accounting fraud, electoral fraud. They term is 'entrusted power'.<sup>20</sup> How people understand corruption? Pippidi A.Mungiu wrote, 'the majority of citizens do not believe the enjoy corruption control, hence the growing frustration we see on the streets'.<sup>21</sup> More specific typologies of corrupt behavior, posed by Kaushik Basu, differentiates between 'harassment' bribes, those 'that people often have to give to get what they are legally entitled to', and 'non-harassment' bribes, which are those 'that are believed to occur when government gives

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<sup>17</sup> Human Rights Watch (2017), *Indonesia: Silence, and Complicity on Human Rights Abuses*. Available from:<http://www.hrw.org/news/2016/08/16/indonesians-president-jokowi-silent-human-rights> (Accessed 19 August 2018)

<sup>18</sup> Glen Maail, World Wide Web Foundation-Transparency International (2017), *Open Data and The Fights Against Corruption in Indonesia*. Available from:  
[http://webfoundation.org/docs/2017/04/2017\\_OpenDataIndonesia\\_EN-2.pdf](http://webfoundation.org/docs/2017/04/2017_OpenDataIndonesia_EN-2.pdf) (Accessed 21 August 2018)

<sup>19</sup> Scott, Edward (2016), *Indonesia's struggle to end corruption is hitting snag after snag*, Journal of Law University of Birmingham. Available from:<https://www.birmingham.ac.uk/research/perspective/indonesia-corruption.aspx> (Accessed 20 August 2018)

<sup>20</sup> Ackerman, Susan Rose, et.al., (2016), Op.cit, p 9

<sup>21</sup> Pippidi, Alina Mungiu (2015). *The Quest for Good Governance, How Society Develop Control of Corruption*, UK:University of Cambridge, p 5

out big development contracts.<sup>22</sup> A mutual arrangement between a donor and a recipient, actively pursued by, and to the mutual advantage of both parties, whereas the latter entails some form of compulsion, usually to avoid some form or harm being inflicted on the donor or those close to him/her.<sup>23</sup>

Corruption in Indonesia is systemic and has a long history, even longer than the history of the Unitary State of the Republic of Indonesia itself. In the post-independence period, the new order era to the post-reform era, corruption remained rampant.<sup>24</sup> Corruption is a phenomenon that is widely prevalent in the administrative system of Indonesia and is one of Indonesia's most nagging problems, impeding growth and development. Indonesia has a long way to go in the fight against corruption.

Based on the Corruption Perceptions Index (CPI) measures in 2014 the perceived levels of public sector corruption in Indonesia among other Asia Pacific Countries, it paints an alarming picture.<sup>25</sup> Indonesia score indicates the perceived level of public sector corruption on a scale of 34 (highly corrupt) to 100 (very clean) index includes 175 countries. According to José Ugaz, Chairman of Transparency International Organization "Corruption is a problem for all countries. A poor score is likely a sign of widespread bribery, lack of punishment for corruption and public institutions that don't respond to citizens needs".<sup>26</sup> The question then becomes, What do we do about it? Due to the real impact of corruption crises, What can we do to transform Indonesia government to 'good governance'?

The term of good governance a popular topic for discussion is Asia particularly in Indonesia. The term 'good governance' has been popularized in Indonesia mainly due to the strong push by the World Bank and other international organization, particularly those active in the areas of development assistance and finance.<sup>27</sup> According to Wolfensohn a President of World Bank (1995-2015) in his speech at the parliamentary network of the World Bank conference, Athens, March 9, 2003, said:<sup>28</sup>

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<sup>22</sup> Basu, Kaushik (2011). *Why, for a Class of Bribes, the Act of Giving a Bribe should Treated as Legal*', Ministry of Finance, Government of India Working Paper No.1/2011-DEA p 3-8, as cited in Bussel, Jennifer in Ackerman, Susan Rose. Lagunes, Paul (2015). *Greed, Corruption, and the Modern State*, UK:Edward Elgar Publishing Limited, p 22

<sup>23</sup> Heywood, Paul (1997). *Political Corruption: Problems and Perspectives*, *Political Studies* XLV:417-35 as cited in Ibid.

<sup>24</sup> The Head of Indonesian Eradication Commission (2014), *8th Agenda Anti-Corruption for the President 2014-2019*, Jakarta: KPK, p 9

<sup>25</sup> Transparency International (2014), *Corruption is Threatening Economic Growth for all*. Available from: <https://www.transparency.org/cpi2014/results> (Accessed on 18 August 2018)

<sup>26</sup> Ibid.

<sup>27</sup> Tambunan, . (2000). *Indonesia's New Challenges and Opportunities: Blueprint for Reform after the Economic Crises, East Asia: An International Quarterly*, 18(2), pp.50 as cited by Rahman, Arief (2011). *Good Governance, Democracy and Economic Development The Case of Indonesia*, Germany: LAP Lambert Academic Publishing, p1

<sup>28</sup> World Bank (2005). *Voice For the World's Poor*, DC: The World Bank, p179

‘we cannot do the most effective work in countries on corruption by indicating how it should be health with or by setting forth reform mechanism. Of course, we do this, but corruption can only be addressed from the inside, in our experience.

It is only when the citizens themselves decide they want to rid the country of corruption that it really happens’.

Discussion of the term ‘good governance’ is part of a new discourse in Indonesia. The Post Soeharto’s Era in 1998 marked the beginning of governance reform process. Asian financial crisis has made the term “good governance a popular topic for discussion in Asia particularly in Indonesia. Two Australian scholars, Paul Dibb and Peter Prince, warned in 2001 that “The regional base for ethnic and economic jealousies in Indonesia lends substance to fears of a national breakdown along the lines of Yugoslavia or the former Soviet Union”. An American based scholar, Rajan Menon, issued a similar warning: “Indonesia is staggering like a heavyweight boxer who has absorbed too many blows in too many places. A faltering economy, a fractious and feeble central government, communal war and secessionism could culminate in the state’s collapse and the country’s fragmentation.<sup>29</sup> But Indonesia did not collapse. Instead, it showed remarkable resilience and strength by bouncing back to hold remarkably peaceful elections in 2004, defying all predictions. Since then Indonesia has undertaken several efforts to improve the commitment to governance. On the economic front, President Susilo Bambang Yudhoyono (2004-2014) has embarked on a three-prong economic strategy of “pro-growth” (revitalizing the business and investment climate), “pro-job” (creating jobs for the people), and “pro-poor” reducing poverty), his efforts have improved international confidence and helped Indonesia re-emerge on the radar screens of International investor.<sup>30</sup> The reform era has seen Indonesia’s criminal justice institutions re-establish their independence, upgrade their capabilities and improve their responsiveness to human rights In judiciary reform, the Supreme Court adopted a comprehensive Blueprint for Reform. As a result, the Indonesian judiciary has transformed into an independent branch of Government. Other Government of Indonesia entities, such as the Attorney General’s Office and Indonesian National Police as well as Commission Eradication Corruption (KPK) adopted their own reform plans. Ackerman wrote ‘despite the reforms and the many institutions and laws to improve governance, however the result seems ineffective at best. Indonesia has severe weaknesses in politics, finance, public procurement, court and security hidden behind its image of a modern democratic state. The country is still dependent on development and lending. Therefore, those who seek corrupt revenue need to hide their illegal transactions behind some kind of façade, typically a cosmetic reform that is too good to be true.<sup>31</sup>

Given the harm it is said to cause, the administration of President Joko Widodo (Jokowi 2014-  
presence), has reinforced Indonesia’s commitment in eliminating corruption by issuing  
Presidential Instruction no. 10 of 2016 on the Prevention and Eradication of Corruption 2016–  
2017. The regulation includes 31 action plans within seven high-priority areas according to the  
president’s programs, namely: (1) public procurement; (2) extractive industry; (3) infrastructure;

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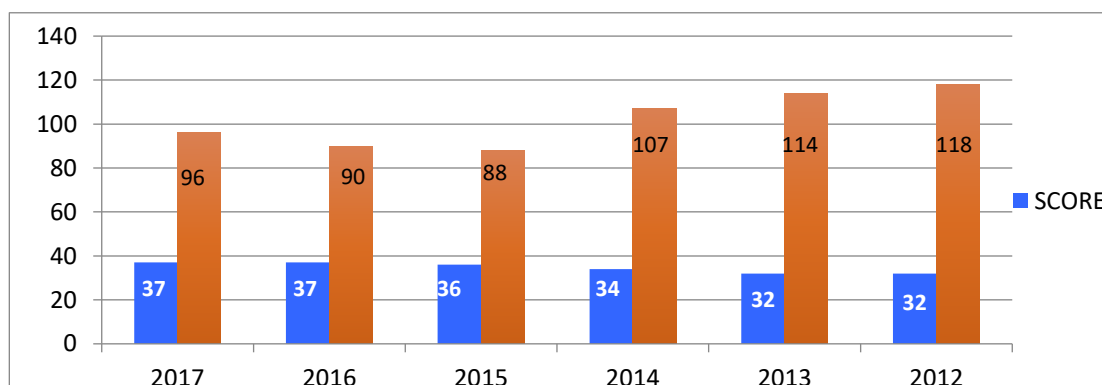
<sup>29</sup> Yudhoyono, Susilo Bambang., (2005). *President Of The Republic Of Indonesia, Transforming Indonesia*, Jakarta:Office of Special Staff of the President for International Affairs in co-operation with PT Buana Ilmu Populer, p 12

<sup>30</sup> Ibid.

<sup>31</sup> Op.Cit., Ackerman (2015) p.63

(4) the private sector; (5) state revenue; (6) commerce; and (7) state-owned companies.<sup>32</sup> How Jokowi mobilize and reform to control corruption have made Indonesia's score in the 2015 global Corruption Perceptions Index (CPI) improved from 34 to 36 points moving to 88th place in the ranking, from 107<sup>th</sup> the previous year. Moreover in 2016 and 2017 slightly improved score to 37 points, however in the ranking place moving to 96<sup>th</sup> from 90<sup>th</sup> the previous year. This is an encouraging development, although the nation is still quite low in the ranking. Judging by the latest string of corruption cases in Indonesia, it will be hard for the country to improve its lowly 2016 ranking of No 90 out of 176 countries on Transparency International's Corruption Index<sup>33</sup>

**Table-1 : Rank and Score Indonesia 2012-2017 Corruption Perceptions Index**



(source: Transparency International CPI 2012-2017-modified)

The losses suffered by the state in Indonesia's due to many biggest corruption cases from the level of Nation crime to the level of a diseases that permeates society. And it is felt by the poorest levels of society. For example; *First*, one of Indonesia's biggest scandals the collapse of PT Bank Century TBK in 2008 and its subsequent US\$710 million bailout – are playing out in a Singapore courtroom, where a Mauritius-based hedge fund is trying to find out what became of more than US\$115 million that the fund claims as its own. The Indonesian Commission Eradication Corruption (KPK) has just named the former Deputy Governor of Bank Indonesia (BI) Budi Mulya as a convict in the Century case.<sup>34</sup>

Budi has been named a suspect since 2013. The panel of judges at the Corruption Court sentenced Budi to 10 years in prison. At the cassation level, the Supreme Court escalated Budi's sentence to 15 years. At that time, the judge of Supreme Court declared that Budi was guilty of misusing his authority in the provision of short-term funding facilities (FPJP) and the determination of Bank Century as a failed bank created the systemic impact. The Century case is said to cause a state loss of up to trillions of rupiah involves Boediono the former Governor of Bank Indonesia and the Vice President of Republic Indonesia (2009-2014) and his colleagues were mentioned in Budi Mulya's prosecution document. Despite Budi has been subjected to a final legal verdict, however Boediono do not automatically become suspects since investigation

<sup>32</sup> Op.Cit. Glen Maail, World Wide Web Foundation-Transparency International (2017).

<sup>33</sup> Transparency International (2017). *Transparency International's Corruption Perceptions Index*. Available from: <https://www.transparency.org/cpi2017/results> (Accessed on 18 August 2018)

<sup>34</sup> Indonesian Supreme Court (2015). *Cassation Ruling* case number 861 K/Pid.Sus/2015 dated 8 April



into the Bank Century affair has been riddled with controversy and subjected to political pressure.<sup>35</sup>

*The Second*, grand corruption case Electronic Identity Cards involves Speaker of Indonesian Parliament and The Chairman of Golongan Karya Party, Setya Novanto. Finally Novanto's sentenced 15 years imprisonment. A fall from grace for Novanto as the Speaker of Indonesian Parliament became phenomenon to coalitions of political parties and business interest, powers and policy. As the profound words by all of the Indonesian President "*I believe in the supremacy of the Constitution*". However in practise the Constitution being framed by man can be changed to suite changing conditions, such law is inconsistent with it and if so to declare the same to be invalid.

Immanuel Kant said on his book *On The Old Saw*, "*That may be right in Theory but it won't work in Practise*". A set of rules, even practical rules, is called *a theory*, if the rules are conceived as principles of a certain generality and are abstracted from a multitude of conditions which necessarily influence their application. However complete the theory may be, it is obvious that between theory and practise there must be a link, a connection and transition from one to the other. Since we cannot always lay down rules for our judgment to observe in assumption, there may be theoreticians who, for lack of judgment, can never be practical. The theory may be incomplete, perhaps to be supplemented done by additional experiments and experiences from which the trained physician, agriculturist, or economist can and should abstract new rules of his own, to complete this theory.<sup>36</sup>

### **Corruption Debases Human Rights**

The concept of corruption has changed over the centuries and varies somewhat across cultures.<sup>37</sup> Growing evidence of climate change along with continuing threat of global corruption and memories of the meltdown of financial markets in 2008, has brought home to people around the world the complex problems we face today.<sup>38</sup> Corruption impacts upon individuals, groups and organizations (including the state) in numerous ways, while many of its negative effects are obvious, other are less so.<sup>39</sup> The many aspect of the relationship between corruption and human rights are, if anything more apparent in the relationship between human rights and criminal procedural.<sup>40</sup> Kumar Raj C. wrote, the human rights framework has challenged the traditional understanding of sovereignty in the context of globalization. The goal of every sovereign state is to ensure national security for its people so that peace and stability prevail in society. Corruption has the potential to threaten this achievement of national security. A sovereign state ought to ensure that laws are enforced in a nondiscriminatory manner. Corruption does not allow this to

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<sup>35</sup> Ibid.

<sup>36</sup> Kant, Immanuel, (1974), *On The Old Saw*, Philadelphia:University of Pennsylvania Press, p 39

<sup>37</sup> Holmes, Leslie (2015). *Corruption A Very Short Introduction*, Oxford:Oxford University Press, p 1

<sup>38</sup> Karns, P. Margaret, Mingst A. Karen, Stiles, W. Kendall (2015). *International Organizations The Politics & Processes Of Global Governance*, UK:Lynne Rienner Publishers, Inc. p 1

<sup>39</sup> Holmes (2015). *Op.Cit.*, p 18

<sup>40</sup> Ivory, Radha (2014). *Corruption, Asset Recovery, and the Protection of Property in Public International Law The Human Rights of Bad Guys*, UK:Cambridge University Press, p 6

happen. Hence, the criminalization of politics and politicization of crimes has become a common practice in South Asian Countries.<sup>41</sup>

Corruption debases human rights, in practice corruption hurts the poor most of all, while the rich bribe for speed, the poor have to bribe for access, even to basic services. The poor pay a higher proportion of their income in bribes than any other income group, they find it harder to get jobs or start business, their property rights are more insecure and they suffer from poor services or no services at all.<sup>42</sup> Such as lack of access to get National Electronic Identification Card due to high-profile public officials and senator's being accused to the corruption scandal.

According to Indonesia's Commission Eradication Corruption (KPK), of the IDR 6 trillion (US\$450m) that was budgeted by Government for the roll-out of the project, some IDR 2.3 trillion (US\$172m) had been misappropriated. Corruption involving the procurement of electronic identification cards (e-KTP) is alleged to have affected the good public perception of a single identification system that the Indonesian government is trying to establish.<sup>43</sup> The Paper aims to demystify certain misconceptions as a complex phenomenon of corruption that are less well known and hence tend to be ignored. Sometimes behind closed doors, sometimes openly on the floors of parliaments, laws are passed, which allow corruption to be legally binding. Meanwhile, misleadingly termed 'petty corruption' can be just as, if not more, crushing as 'grand corruption', violates the rights of the poor people.

## Conclusions

Indonesian Government need designing a coherent anticorruption strategy focus on prevention. Given a fair governance environment to pursue reforms in all of areas at the same time (law enforcement, judiciary, politic and economy). One of the establishment the rule of law for fighting corruption is the Anti-Corruption Commission (KPK) and the Anti-Corruption Court (ACC), established in 2003. The team were designed to take particular types of corruption cases. In the Indonesian criminal justice system The KPK is one of the components to the systems beside the Police, the Attorney General and the Court. However KPK's authority to initiate and to take over corruption cases. Other power aimed at making KPK investigations and prosecutions easier and convictions more likely in the ACC. KPK appoints and dismisses its own criminal investigators and prosecutors. All of the enforcers are working under one roof called KPK. Despite all extra ordinary powers KPK has, in the criminal process the KPK is as a general principle subject to the Indonesian Code of Criminal Procedure Law No.8/1981 (KUHAP).

A rights based on analysis of criminal justice procedure in corruption cases is a complex task. This is because in Indonesia, rights reasoning and the application of human rights principles are largely not structured around and established and identifiable human rights enactment or framework. The relationships of Corruption and potential human rights debases are obvious.

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<sup>41</sup> Kumar C. Raj (2011). Op.Cit, p 61-62

<sup>42</sup> Bhargava, Vinay., Bolongaita, Emil (2004). *Challenging Corruption in Asia, Case Studies and a Framework for Action*, DC:The World Bank, xi

<sup>43</sup> Kompas (2017). *Corruption Destroys E-KTP Program*, (Online) 14-03-2017, Available from: <https://kompas.id/baca/english/2017/03/14/corruption-destroys-e-ktp-program/> (Accessed 24 August 2018)

Every crime is a form of human rights violation, since every crime is bound to disturb people's lives.

Establishing the new performance of political rule. An assessment of the political culture is needed to reveal the level of trust that people have, trust is an effective determinant of social capital and the capacity of community to coordinate their efforts.

## **Reference**

### **Books**

- Ackerman, Susan Rose, et.al., (2016), *Corruption and Government, Causes, Consequences, and Reform, 2<sup>nd</sup> Edition*, Cambridge:Cambridge University Press
- Bhargava, Vinay., Bolongaita, Emil (2004). *Challenging Corruption in Asia, Case Studies and a Framework for Action*, DC:The World Bank
- Butt, Simon (2017). *Corruption and law in Indonesia*, NY:Routledge.
- Congram, Mitchell, et.al., (2013). *The Policing Transnational Organized Crime And Corruption*, UK:Palgrave Macmillan
- Global Investment Center (2015). *Indonesia Criminal Justice System Laws, Regulations and Procedures Handbook Volume 1*, USA:International Business Publications
- Francioni, Francesco (2007), *Access to Justice*, NYC:Oxford University Press
- Hanson, Sharon,(2003). *Legal Methods, Skills And Reasoning*, NY:Routledge Cavendish
- Holmes, Oliver Wendell (1897) *The Path of the Law*, 10 Harv LR 45, as cited in McLeod, Ian (1999), *Legal Method*, UK:Macmillan Press LT
- Holmes, Leslie (2015). *Corruption A Very Short Introduction*, Oxford:Oxford University Press
- Hurst, William. *Ruling Before The Law The Politics of Legal Regimes in China and Indonesia*, UK:Cambridge University Press
- Ivory, Radha (2014). *Corruption, Asset Recovery, and the Protection of Property in Public International Law The Human Rights of Bad Guys*, UK:Cambridge University Press.
- Karns, P. Margaret, Mingst A. Karen, Stiles, W. Kendall (2015). *International Organizations The Politics & Processes Of Global Governance*, UK:Lynne Rienner Publishers, Inc
- Kumar, C. Raj (2011). *Corruption and Human Rights in India: Comparative Perspectives on Transparency and Good Governance* Oxford:Oxford University Press.
- McLeod, Ian (1999). *Legal Method*, UK:Macmillan Press LTD.
- Pippidi, Alina Mungiu (2015). *The Quest for Good Governance How Societies Develop Control of Corruption*, United Kingdom:Cambridge University Press.
- Tambunan, . (2000). *Indonesia's New Challenges and Opportunities:Blueprint for Reform after the Economic Crises*, *East Asia: An International Quarterly*, 18(2), pp.50 as cited in Rahman, Arief (2011). *Good Governance, Democracy and Economic Development The Case of Indonesia*, Germany:LAP Lambert Academic Publishing
- World Bank (2005). *Voice For the World's Poor*, DC:The World Bank

### **Article/Paper/Journal**

- Basu, Kaushik (2011). *Why, for a Class of Bribes, the Act of Giving a Bribe should Treated as Legal'*, Ministry of Finance, Government of India Working Paper No.1/2011-DEA p 3-8, as cited in Bussel, Jennifer in Ackerman, Susan Rose. Lagunes, Paul (2015). *Greed, Corruption, and the Modern State*, UK:Edward Elgar Publishing Limited

- Glen Maaail, World Wide Web Foundation-Transparency International (2017), *Open Data and The Fights Against Corruption in Indonesia*. [online] Available from: [http://webfoundation.org/docs/2017/04/2017\\_OpenDataIndonesia\\_EN-2.pdf](http://webfoundation.org/docs/2017/04/2017_OpenDataIndonesia_EN-2.pdf) (Accessed 21 August 2018)
- The Head of Indonesian Eradication Commission (2014), *8th Agenda Anti-Corruption for the President 2014-2019*, Jakarta: KPK 2010
- Scott, Edward (2016), *Indonesia's struggle to end corruption is hitting snag after snag*, Journal of Law University of Birmingham. [online] Available from: <https://www.birmingham.ac.uk/research/perspective/indonesia-corruption.aspx> (Accessed 20 August 2018)
- United Nations Office for Drugs and Crimes (2016), *Indonesia Criminal Justice System*. [online] Available from: <https://www.unodc.org/indonesia/en/issues/criminal-justice.html> (Accessed on 20 August 2018)

### **Court Ruling**

Indonesian Supreme Court (2015). *Cassation Ruling* case number 861 K/Pid.Sus/2015 dated 8 April

### **Web Source**

- DW News Current Affairs from Germany (2014), *Indonesian vote: 'An opportunity to improve human rights'* Available from: <https://p.dw.com/p/1Cxar> (Accessed 15 August 2018)
- Human Rights Watch (2017), *Indonesia: Silence, and Complicity on Human Rights Abuses*. Available from: <http://www.hrw.org/news/2016/08/16/indonesians-president-jokowi-silent-human-rights> (Accessed 19 August 2018)
- Kompas (2017). *Corruption Destroys E-KTP Program*, (Online) 14-03-2017, Available from: <https://kompas.id/baca/english/2017/03/14/corruption-destroys-e-ktp-program/> (Accessed 24 August 2018)
- Transparency International (2014), *Corruption is Threatening Economic Growth for all*. Available from: <https://www.transparency.org/cpi2014/results> (Accessed on 18 August 2018)
- Transparency International (2017). *Transparency International's Corruption Perceptions Index*. Available from: <https://www.transparency.org/cpi2017/results> (Accessed on 18 August 2018)