

CHAPTER I

INTRODUCTION

1.1 Background

“Power tends to corrupt, and absolute power corrupts absolutely” is a famous saying by English politician John Dalberg-Acton, in a letter he wrote to Bishop Creighton concerning the moral standards imposed on those in positions of power. He argues that people with higher authorities should be held and judged to a higher standard.¹ One study demonstrated that “leaders were most corrupt when having the highest level of power”², making it imperative for leaders to have a set of rules to adhere to when positioned in high levels of power.

The saying “*homo homini lupus*” by Thomas Hobbes, meaning “man is a wolf to another man”, rings true when applied in the context of corruption. When corruption takes place, the corruptor is like a ‘wolf’, acting ruthlessly to pursue and satisfy his own self-interests, disregarding the interests of others. Hence the importance of having sound regulations, strong supervisory bodies and an orderly legal culture to eradicate the issue of corruption once and for all.

¹ "Lord Acton's Famous Remark - The New York Times."
<https://www.nytimes.com/1974/03/13/archives/lord-actons-famous-remark.html>. Accessed 16 Feb. 2021.

² "Leader corruption depends on power and testosterone ... - CORE."
<https://core.ac.uk/download/pdf/77183047.pdf>. Accessed 16 Feb. 2021.

Corruption crimes are not unfamiliar in Indonesia. Indonesia's legal system is plagued with corruption, its acts are normalized as a culture. It has seeped into all aspects of life has created poverty and social inequality.

The seeds of corruption have been in Indonesia since its colonization era, where corrupt business practices, like embezzlement and lack of transparency, played a big role in the downfall of the Dutch East India Company or VOC (*Vereenigde Oostindische Compagnie*).³

According to its typology, corruption can be divided into seven types: transactive corruption, extortive corruption, investive corruption, nepotistic corruption, defensive corruption, autogenic corruption, and supportive corruption.⁴ As of 2021, Transparency International calculates Indonesia's CPI (Corruption Perceptions Index) is 38 out of 100, where 0 means highly corrupt and 100 means very clean.⁵ This score is comprised of the different types of public sector corruption, including: bribery, diversion of public funds, officials using their public office for private gain without facing consequences, excessive red tape or bureaucracy in the public sector and nepotistic appointments in the civil service.⁶

³ King, Dwight Y. "Corruption in Indonesia: A Curable Cancer?" *Journal of International Affairs* 53, no. 2 (2000): 603-24. Accessed February 17, 2021.
<http://ezproxy.library.uph.edu:2056/stable/24357767>.

⁴ Anas Salahudin, *Pendidikan Antikorupsi*, (Bandung: Pustaka Setia, 2018), p.53

⁵ "Corruption Perceptions Index", <<https://www.transparency.org/en/cpi/2021>>, accessed 3 March 2022

⁶ "The ABCs of The CPI: How The Corruption Perceptions Index is Calculated", <<https://www.transparency.org/en/news/how-cpi-scores-are-calculated>>, accessed 3 March 2022

While there is an increase of one point from the previous year, this is still an indication that corruption is a serious matter in Indonesia.

Under Indonesian Law, corruption is classified as an extraordinary crime due to its endemic and widespread nature, not to mention its detrimental consequences, like undermining the state economy by depriving the state of enjoying the true benefits of their resources.⁷ It is also defined as an extraordinary crime because it also requires extraordinary measures to eradicate it.

The government has made efforts to eradicate it, for example, through the establishment of a government agency called the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*/"KPK") by way of Law No. 30 of 2002 concerning KPK and later amended to Law No. 19 of 2019 ("KPK Law"). This agency is focused on prevention of corruption crimes and to serve as a "trigger mechanism" to help strengthen existing institutions such as the Indonesian National Police (*Kepolisian Negara Republik Indonesia*) and the Indonesian Public Prosecution Service (*Kejaksaan Republik Indonesia*) in the fight against corruption.⁸

Lawrence M Friedman's theory of a legal system requires three elements: legal substance, legal structure, and legal culture.⁹ Legal substance encompasses the framework of laws within the Indonesian legal system, legal structure entailing the

⁷ Martini, Maira. "Causes of Corruption in Indonesia" U4 Expert Answer 338. Accessed February 19, 2021. <https://www.u4.no/publications/causes-of-corruption-in-indonesia>

⁸ "Sekilas KPK", <<https://www.kpk.go.id/id/tentang-kpk/sekilas-komisi-pemberantasan-korupsi>>, accessed 31 October 2021

⁹ Lawrence M. Friedman, *Hukum Amerika: Sebuah Pengantar, Terjemahan dari American Law An Introduction*, 2nd Edition, (Jakarta: Tatanusa, 2001),p. 6-8

enforcement of such rules and legal culture are the attitudes of the society. In the context of corruption, Indonesia has enacted Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001 (“Indonesian Anti-Corruption Law”) to show its seriousness in combatting the issue of corruption. This law is quite holistic, as it characterizes corruption into 30 different forms. However, these 30 acts can be further classified into seven categories, such as: causing loss to the state economy (illegally enriching oneself and abuse of power), bribery, embezzlement, extortion, fraud, conflict of interest and gratification.

There are also several motives for conducting corrupt acts, which are divided into three: corruption by greed, corruption by need and corruption by chance.¹⁰ Corruption by greed, commonly occur among high-ranking public officials, are committed by those who are wealthy but still have a desire to obtain more wealth.¹¹ Corruption is also committed by those who are in need to fulfill their basic needs of life.¹² An example of corruption by chance happens is when there is a chance or an easy way out to becoming wealthier through committing corruption.¹³

Additionally, Indonesia has also formed a court specifically aimed to adjudicate corruption cases. This was done to fulfill the mandate of Article 53 of the KPK Law which states that “by way of this law is the establishment of the Corruption Court which

¹⁰ Salahudin, *Op Cit.*, p.77

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

is in charge and authorized to examine and rule on corruption cases brought forward by the KPK”.¹⁴

There are several causes of why corruption crimes take place. According to former KPK advisor, Abdullah Hehamahua, there are eight main causes for the corruption in Indonesia, among others are, greed, lack of legal enforcement, and light punishment towards corruptors.¹⁵ There are several effects of corruption crimes as it affects the economy, politics, bureaucracy, individuals and society and general state welfare.¹⁶

In the context of the economy, corruption may reduce the value of investment, causing investors to be less interested to invest in Indonesia.¹⁷ Second, political power achieved by corruption will result in government and community leaders who are illegitimate in the eyes of the public, making it hard for the public to trust its leaders. Resulting in rebellion and lack of submission to authorities and leaders.¹⁸ Corruption also causes bureaucratic inefficiency and increases administrative costs.¹⁹ When corruption has affected bureaucracy, this will hinder the implementation of the basic principles of a rational, efficient, and qualified bureaucracy will never be conducted.²⁰

¹⁴ Dengan Undang-Undang ini dibentuk Pengadilan Tindak Pidana Korupsi yang bertugas dan berwenang memeriksa dan memutus tindak pidana korupsi yang penuntutannya diajukan oleh Komisi Pemberantasan Korupsi.

¹⁵ Gradios Nyoman Tio Rae, *Good governance dan Pemberantasan Korupsi*,(Jakarta: saberro inti persada, 2020) p.47-48

¹⁶ *Ibid.*, p.56-58

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

There may be a disparity of quality of service among the wealthy and poor, causing more inequality within society.²¹ Corruption also creates a culture where every individual in society will only be pursuing for their own interest, instead of the interest of the general public.²² Corruption means that government policies often only give benefit to certain parties, namely bribe givers, and not the public as a whole, for example, politicians may pass regulations that benefit or protect the interest of large companies but harm small companies.²³

Corruption in Indonesia develops systemically, for certain groups corruption is no longer a violation of the law but a habit that is easy and something society is accustomed to do. This is due to the lacking law enforcement system against those who commit corruption crimes. This demands the government to play an active and competent role to gain the trust of the public in order for the regulations that have been formed are effective so as to minimize corruption in Indonesia.

In order to eradicate corruption requires the work of many parties in synergy towards the same goal. It cannot be achieved by only through the efforts made by one party, all parties must be involved to strive in combatting this issue.

All means mentioned above are still not enough if courts still continue to issue erroneous court rulings. An example of an erroneous court ruling is Court Decision No. 39/Pid.Sus-TPK/2020/ PN Kpg, where the mayor of Kupang of 2012 to 2017, Jonas

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

Salean, during his term violated the law by authorizing the transfer of government-owned land, the size of 20.068 m², illegally to 40 people who were not in their rightful position to receive it (See Appendix Table 1.1). Out of the 40 recipients of the land, eleven people are family members of the defendant, six being those from his immediate family and the other five people are from his extended family.

This is not in accordance with Article 399(1) of Ministerial Regulation of Internal Affairs No. 19 of 2016 of Internal Affairs No. 19 of 2016 concerning the Management of Regional Property which provides the parties allowed to be granted regional property are the as follows²⁴:

- a. social institutions, cultural institutions, religious institutions, humanitarian institutions, or non-commercial educational institutions based on its deed of establishment, articles of association/by-laws, or a written statement from a competent technical agency that the institution concerned is the institution in question;
- b. central government;
- c. other local governments;
- d. village government;

²⁴ Pihak yang dapat menerima hibah adalah: a. lembaga sosial, lembaga budaya, lembaga keagamaan, lembaga kemanusiaan, atau lembaga pendidikan yang bersifat non komersial berdasarkan akta pendirian, anggaran dasar/rumah tangga, atau pernyataan tertulis dari instansi teknis yang kompeten bahwa lembaga yang bersangkutan adalah sebagai lembaga dimaksud; b. pemerintah pusat; c. pemerintah daerah lainnya; d. pemerintah desa; e. perorangan atau masyarakat yang terkena bencana alam dengan kriteria masyarakat berpenghasilan rendah (MBR) sesuai ketentuan peraturan perundang undangan; atau f. pihak lain sesuai ketentuan peraturan perundang-undangan.

- e. low-income individuals or communities affected by natural disasters, in accordance with the provisions of the legislation; or
- f. other parties in accordance with the provisions of the legislation.

The prosecution indicted the defendant of causing a state loss of Rp. 66.643.013.678,42. The Head of the Kupang Land office, Tomas More was also indicted for aiding and abetting in this crime which took place around 2016 to 2017. Both were charged of violating Article 2(1) and Article 3 of the Anti-Corruption Law, which provides that:

Article 2:

“(1) Anyone who illegally commits an act to enrich oneself or another person or a corporation, thereby creating losses to the state finance or state economy, is sentenced to life imprisonment or minimum imprisonment of 4 (four) years and to a maximum of 20 (twenty) years, and fined to a minimum of Rp 200,000,000, - (two hundred million Rupiahs) and to a maximum of Rp 1,000,000,000, - (one billion Rupiahs).”²⁵

Article 3:

“Anyone with the aim of enriching oneself or another person or a corporation, abuses the authority, opportunity or facilities given to him related to his post or position, which creates losses to the state finance or state economy, is sentenced to life imprisonment or minimum sentence of 1 (one) year and maximum sentence of 20 (twenty) years or the minimum fine of Rp 50,000,000.(fifty million Rupiahs) and maximum fine of Rp, 1,000,000,000 one billion Rupiahs).”²⁶

²⁵ *Setiap orang yang secara melawan hukum melakukan perbuatan memperkaya diri sendiri atau orang lain atau suatu korporasi yang dapat merugikan keuangan negara atau perekonomian negara, dipidana penjara dengan penjara seumur hidup atau pidana penjara paling singkat 4 (empat) tahun dan paling lama 20 (dua puluh) tahun dan denda paling sedikit Rp. 200.000.000,00 (dua ratus juta rupiah) dan paling banyak Rp. 1.000.000.000,00 (satu milyar rupiah)*

²⁶ *Setiap orang yang dengan tujuan menguntungkan diri sendiri atau orang lain atau suatu korporasi, menyalahgunakan kewenangan, kesempatan atau sarana yang ada padanya karena jabatan atau kedudukan yang dapat merugikan keuangan negara atau perekonomian negara, dipidana dengan pidana penjara seumur hidup atau pidana penjara paling singkat 1 (satu) tahun dan paling lama 20 (dua puluh) tahun atau denda paling sedikit Rp. 50.000.000,00 (lima puluh juta rupiah) dan paling banyak Rp. 1.000.000.000,00 (satu milyar rupiah).*

The majority judges ruled that the defendant was acquitted on all charges, based on the fact that the disputed plot of land was never initially recorded. However, the dissenting opinion of one of the judges explains that this fact alone cannot merely be justification for the defendant's actions. This is supported by the several statements from expert elucidations conducted during the court proceedings and other legal rules, facts and evidence.

Besides this reason, other reasons include those rights over disputed land have been revoked since 1994 and that approval of the regional parliament is not required for the land transfer. This court decision is erroneous as it deviates from current laws and regulations, namely two regulations which specifically regulate the management of government property: Government Regulation No. 27 of 2014 concerning Management of State/Regional Property and Ministerial Regulation of Internal Affairs No. 19 of 2016 concerning Management of Regional Property.

The acquittal of the defendant sets out a message that a corrupt act causing a state loss of Rp. 66 billion is only a minor issue and that public officials can distribute government assets as they please and still walk away free from punishment, which is completely contrary to the spirit of corruption eradication which Indonesia has built over time. It is yet again another example of a weak enforcement in resolving the issue of corruption. In 2020, the Indonesian Corruption Watch has outlined that the total amount of state loss has increased four times over the course of one year, from 2019 to

2020, and with less than half of those losses being replaced.²⁷ This case is a clear depiction of ICW's data that illustrate Indonesia's rising state losses are not only increasing but also not being compensated for. To ensure there is consistency between legal rules and its enforcement, the defendant should not have been acquitted, instead sentenced in accordance with the prevailing rules and regulations. It is also important to note that Indonesia is a rule of law state, pursuant to the Article 1(3) of the 1945 Indonesian Constitution.²⁸ Therefore, any acts that violate the law must be punished and court decisions must not deviate from the law.

The application of law is seen through court decisions, making the judiciary a vital body in a legal process.²⁹ It has the power not only to uphold the law, but also uphold justice for the society.³⁰

Moreover, this case was also filed for a cassation appeal to the Supreme Court by the prosecution, but the cassation appeal was rejected.

This thesis will mainly focus on the decision generated at the District Court level, the detrimental effects of an erroneous decision, such as: legal uncertainty, injustice, encourages potential offenders to commit corruption and bad precedence.

²⁷ "Tren Vonis Kasus Korupsi" <https://www.antikorupsi.org/id/article/tren-vonis-kasus-korupsi-2020>, accessed 20 October 2021

²⁸ *Negara Indonesia adalah negara hukum.*

²⁹ H. Margono, *Asas Keadilan, Kemanfaatan, dan Kepastian Hukum dalam Putusan Hakim*, (Jakarta: Sinar Grafika, 2020), p. 123

³⁰ *Ibid.*

It also explains that a court decision should provide legal certainty, justice, protect the state from loss and have a deterrent effect, in hopes to prevent more corruption crimes from happening in the future.

1.2 Formulation of Issues

Based on the background above, the Author has formulated two issues with aims to further explore the topic of this thesis:

1. Why is Court Decision No. 39/Pid.Sus-TPK/2020/ PN Kpg erroneous and what are its consequences?
2. How should a court decision ought to be?

1.3 Research Purposes

Regarding the previously mentioned research questions above, the purposes of this thesis are as follows:

1. Identify why Court Decision No. 39/Pid.Sus-TPK/2020/ PN Kpg is erroneous and its consequences
2. Explain what a court decision ought to be

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, this thesis aims to assess what makes a court decision erroneous by analysing between what a court decision ought to be (*das sollen*) and court decisions in reality (*das sein*). The author hopes this thesis can provide insight and understanding about the importance of a sound court decision and the detrimental consequences of an erroneous decision. Further, the author hopes this paper can be a reference for future research on erroneous decision and corruption in Indonesia.

1.4.2 Practical Benefits

Practically, the author aims to point out the errors in the decision and can be of benefit to the judges of the Kupang District Court in issuing their verdicts. The author is views erroneous decisions to be a serious issue that must be addressed to solve the bigger problem Indonesia is facing – corruption. Without judicial decisions that do not provide legal certainty and justice will lead to bad precedence, belittles the seriousness of the issue of corruption and goes against the spirit of eradicating corruption in Indonesia which has been promoted by the government.

Additionally, this paper also aims to specifically help the Kupang regional government in assessing its application of regulations and supervision

of assets as well as help lawmakers add clarity in regards to transfer of land to third parties.

1.5 Framework of Writing

This thesis is divided into five main chapters which will guide the readers through the discussion of this paper:

CHAPTER I: INTRODUCTION

In the introduction, the Author divides the chapter into five sections, which are background, formulation of issues, purpose of research and benefits of research.

CHAPTER II: LITERATURE REVIEW

In the literature review chapter, the Author has structured this chapter to consist of two parts: the theoretical review and the conceptual review. This chapter generally underlines the laws that govern corruption crimes, transference, and management of government-owned property.

CHAPTER III: RESEARCH METHODS

In this chapter, the Author discusses the methods conducted for the research of this paper, the data collected from the methods carried out and its analyses. The chapter is split into five components, which are: the type of research, type of data, data collection method, research approach and data analysis.

CHAPTER IV: RESEARCH RESULTS AND ANALYSIS

The fourth chapter will answer the formulated issues previously mentioned in this chapter. The chapter will be further divided into two parts, each section dedicated to answering each research question.

CHAPTER V: CONCLUSION AND RECOMMENDATIONS

In the final chapter of this thesis, the Author will conclude the results of her findings and answer the research questions previously stipulated in the Formulation of Issues. Secondly, the Author will also give recommendations in the form of possible measures or rules which can be implemented to prevent corruption crimes in the future as well as a recommendation for the Kupang regional government and lawmakers.