

# CONSTITUTIONAL COURT ,,,,,,CORRUPTION ACT - *by Azis Setyagama*

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## Constitutional Court Decree No. 21/PUU-XII/2014 Trigger The Political Law Problems toward Indonesian's Corruption Act

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**Abstract:** The emergence of the Constitutional Court Decree No. 21 / PUU-XII / 2014 brings a new chapter in the protection of human rights in the decision which entitles the accused to apply Pre-trial process toward the determination of the suspect by the KPK or others investigator in the criminal case of corruption or other criminal cases. This resulted in a long process to be followed in criminal cases, especially for corruption cases in Indonesia. It is anxious we have to think together, on one hand, the ruling sends a positive impact on the respect for human rights, which are not easily assigned investigators to suspect a person accused of committing a crime. But on the other hand, the more lengthy process of law to be followed in terms of the rule of law, especially corruption cases in which corruption has become a flourishing plague in Indonesia. This research is a normative approach through legislation and also by the sociological approach, especially regarding the impact of the Constitution of the Court's decision on the eradication of corruption in Indonesia.

**Keywords-**Constitutional Court, Politics, Law, Corruption, Indonesia.

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### I. INTRODUCTION

The emergence of the Constitutional Court Decree No.21/PUU-XII/2014 on criminal suspects which was bear new constitutional system to apply for pre-trial, turn up following the friction between (Corruption Eradication Commission) KPK and (Indonesian Police Officer) POLRI Getting sharper, whereas, both institutions function equally as law enforcement in Indonesia. The emergence this Constitutional Court started from designated a suspect by KPK to the Commissioner General Budi Gunawan on the establishment as a suspect in a case of alleged gratification, in the efforts to legitimate suspect sued Pre-trial at the South Jakarta District Court, and finally, Budi Gunawan's pre-trial was granted by Judge Sarpin Rizaldi. The judges' decision Sarpin Rizaldi have caused controversy in the community, because it violates the rule of law set forth in the Code of Criminal Procedure which the determination of the suspect is not regulated in the Criminal Code, where the law does not regulate the right of suspects to take legal action by filing pretrial State Court. In addition, the judge's decision granting Budi Gunawan's pre-trial also wounded sense of justice, where the eradication of corruption in Indonesia is intensively implemented by the government in order to create a clean and authoritative government.

This Rizaldi Sarpin judge's controversial decision turned out to acclaim the justification of the Constitutional Court in the case of judicial review of the case of project Biomediasi PT Chevron filed by the convict Bachtiar Abdul Fatah, then stated determination of the suspects included in the pre-trial jurisdiction. In consideration of the Constitutional Court stated that Article 77 of the Criminal Procedure Code including pre-trial objects added that the determination of the suspect, search, and seizure as a pre-trial object. Besides that, the Constitutional Court was also amending the Article 1 paragraph 14, Article 17 and Article 21 paragraph (1) on Criminal Procedure Code by adding phrase "at least two items of evidence" in the process of determination of the suspect. Likewise, the initial evidence sufficient in Article 1 paragraph 14, Article 17 and Article 21 paragraph (1) contains the interpretation of vague or unclear, the Constitutional Court to clarify the evidence is sufficient is based on a minimum of two items of evidence contained in Article 184 Criminal Procedure Code are: a. Witness statements, b. Expert statements, c. Letters, d. Hint, e. Defendant statements.

Concerning the emergence of Constitutional Court Decree No.21/PUU-XII/2014 the measures inquiry and investigation that will be conducted by the Inquirer and the investigator must always base their decisions in assign someone as the suspect on valid evidence in accordance with Article 184 Criminal Procedure Code and cannot assign someone suspects based only on mere allegations but not on evidence constituted under the Criminal Procedure Code. Thus, this Constitutional Court gave the room to someone for not treated arbitrarily by the inquirer or investigators to establish someone as a suspect, on the other hand, give a warning to law

enforcement officials in order to improve his skills in carrying out his profession as an investigator or investigators.

As matter of fact, Constitutional Court Decree No.21/PUU-XII/2014 influences the Indonesian's corruption combat, where corruption has become a culture of the nation that must be taken seriously. The effect of the decision of the Constitutional Court the longer the process that must be followed in handling corruption cases in Indonesia, and indirectly provide space toward corruptor to escape from the law because there is enough space to bring a legal action through the pre-trial. So that the Constitutional Court's decision to eradicate corruption in Indonesia instead of the more effective but has led to many state officials who engage in corrupt activities as a result of giving too much space to take legal actions.

Another impact of this Constitutional Court decision also affects the increasing number of pre-trial process to the District Court against the cases that the culprit has been named as a suspect by the investigator. According to Johan Budi, before the Constitutional Court ruled pre-trial determination of the suspect object, there are enough who filed a pretrial. The condition is quite exhausting power and mind. Furthermore, we predicted the more pre-trial proposed, but not only to the KPK but also to other law enforcement.

In the other hand, Moh Mahfud MD states the verdicts on this case bear rising disputes because it is happening not only the pro-cons of concrete cases but the emergence of conceptual complications over abstract rules. Two judges were Sarpin Rizaldi and Haswandi not just decide concrete cases, but also indirectly testing (Judicial Review) the body of law by not applying Article 77 of the Criminal Procedure Code. Furthermore, Mahfud said that Article 77 of the Criminal Procedure Code states that the determination of the status of the suspect is not included a pre-trial object, but by the two judges, for the sake of justice based on the deity Almighty is not enforced. That is substantively the two judges have revised the Law for the contents of the abstract laws cannot be applied in concrete cases handled. In fact, to revise the Act is the exclusive authority of the Constitutional Court.

With the problems in the law as a result of issuance of the Decree of the Constitutional Court, the author would like to know more deeply about the impact of positive or negative, on the decision of the Constitutional Court in particular in terms of combating corruption in Indonesia, authors interested in studying the issue with the title: Judgment of the Court Constitution Decree No. 21/PUU-XII/2014 Is a Political Law Problem toward Indonesian Corruption act.

## II. RESEARCH DESIGN

This normative juridical research contained in Constitutional Court Decision No. 21/PUU-XII/2014 on the permissibility of criminal suspects on a pre-trial in the District Court. In this decision normatively arranged on the object of determination of the suspect by investigators included in a pre-trial object in addition to searches and confiscations were also the subject of a pre-trial. In this study also examined in sociological analysis where the existence of a decision concerning the relation with the public response to the expediency and the negative impact on the eradication of corruption in Indonesia, where corruption in Indonesia has become the nation's culture and how to create a clean government and authority in the interest of the Nation Indonesia forward.

## III. RESULTS AND DISCUSSION

### 3.1. Intention for Commission eradication Corruption.

The problem of corruption in Indonesia has become an epidemic culture that has afflicted almost in all nation life, to the need for improvement in tackling the problem of corruption is widely rampant this country. One of the nation's efforts cut down the disease is through new state agency supporting (state auxiliary institutions). The establishment of supporting institutions is intended to assist the implementation of the tasks that had been done by the state institutions that exist but still less effective in the eradication of corruption in Indonesia.

The official board on corruption and other criminal acts already existed long ago such as the Police officers and the prosecution, but the presence of these two institutions less effective and even many officers of both organizations was trapped guilty so that public confidence in the police and prosecution on the wane in combating corruption in Indonesia. In an effort to realize that the state apparatus is clean and eradication of corruption is still running then there is no alternative but to form a new state agency, namely the Corruption Eradication Commission (KPK) with the juridical basis of Law No. 30 of 2002 on the KPK.

KPK has main Objective combating corruption, that is increasingly harmful to the mental apparatus of the state, especially the state officials should set an example to the people. Historically KPK was born from an assumption that law enforcement is carried out by the Police and the Attorney General does not run properly so that two state agencies have been less effective in the eradication of corruption in Indonesia. The high rate of corruption by state officials to make the public lose confidence in existing institutions and then responded by forming the government with the Corruption Eradication Commission. KPK is a state agency that was formed

with the goal of improving the effectiveness and efficiency of the efforts to eradicate corruption. KPK is independent and free from the influence of any authority in carrying out its duties and authorities. In performing its duties, the Commission guided by five principles, namely: the principle of legal certainty, transparency, accountability, public interest, and proportionality. KPK should respond to the public and periodically submits its report to the President, Parliament and BPK

KPK is headed by five chiefs consisting, a chairman and four members and the deputy chairman and members. KPK leaders hold office for four years and may be re-elected only for one more term. In making decisions, the KPK leadership is collective collegial. While the task and Functions as follows:

1. Coordinate of institutions authorized to eradicate corruption
2. Supervision of institutions authorized to eradicate corruption
3. Conduct inquiry, investigation, and prosecution of corruption
4. Measures to prevent corruption; and
5. To monitor the implementation of state government.

In carrying out the coordination function, KPK is authorized to:

1. Coordinate inquiry, investigation, and prosecution of corruption;
2. provided a reporting system activities of restraining corruption;
3. tracking information of relevant institutions activities;
4. Conducting hearings or meetings with institutions authorized to eradicate corruption; and
5. Request a report related agencies regarding the prevention of corruption.

While the task of implementing the Commission in accordance with Annex Leaders Corruption Eradication Commission Regulation No. PER-08/XII/2008 dated December 30th, on the Organization and Work Procedure of the Commission, the task of implementing the Commission consists of:

1. Deputy Prevention
2. Deputy for Repression
3. Deputy of Information and Data
4. Deputy for Internal Monitoring and Public Complaints
5. The Secretary-General.

In line with the KPK developments, it was born a public's new better hope towards the corruption eradication in Indonesia. A new agency with authority often referred to as a super body that has the authority extra body compared with other state institutions. At the beginning of the establishment of the Commission received a pretty good of society. Various cases of corruption can be completed by the Commission. It has led to a public opinion to establish the existence of KPK. In fact, some experts suggested that the position of the Commission as stipulated in the constitution of other countries such as South Africa.

Increased corruption uncontrolled is catastrophic not only to the national economic life but also the life of the nation in general. Corruption is widespread and systematic also a violation of the rights of social and economic rights of the people, and therefore all the corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. So even in the eradication measures can no longer be carried out normally, but demanded ways remarkable. Law enforcement to combat corruption was done conventionally has been shown to experience a variety of obstacles. It is necessary for law enforcement methods mightily through the establishment of a special agency that has broad authority, independent and free from any powers in efforts to combat corruption, the implementation is done optimally, intensive, effective, professional and continuously.

But the conditions of the last few years the Commission looked into decline. The setback both personal and institutional. Institutionally many cases that are still a chore for the Commission that did not meet the settlement. From the personal side of many organs and officials of the Commission were actually involved in cases of corruption and even murder cases. These conditions led to a lot of good responses from the government, parliament, and the public.

### **3.2. Anti-corruption Behavior Among state apparatus**

Humans are social beings who always interacting with one another in which then formed a society. Society was formed at the instigation of the man himself associated with the necessities of life are always dependent on another human being. In this interaction the need for order and the rule of law that set it so that interaction between individuals or groups prevent conflicts or conflicts arise in the community.

Indonesia is one country that is based on the law where the duty of every citizen to uphold the law, whether oral law and written law. Therefore, Indonesia is referred to as a state of law. Normatively, the legal discount repressive function as a social life control and stability as well as the state of the behaviors of its citizens are considered deviant.

Nevertheless, even though Indonesia is known as a country of law, does not mean that Indonesia is a country that is safe, orderly, and away from behaviors assessed deviate from the norms/laws. One of deviant behavior that many of us have encountered even considered "chronic" in Indonesia is the phenomenon of

corruption, collusion and nepotism continue to undermine the republic faces. Corruption, collusion, and nepotism in Indonesia may be said to have been heading to the stage of culture because of corruption seems to have become a virus that has been ingrained to be very difficult to eradicate the more severe this virus has attacked the organizers state that should the state apparatus is becoming an example for its citizens.

Corruption is a social parasite damaging government structure and the main obstacle to the running government and the country's development. Corruption as an immoral act, impartially common interests (selfish), ignoring ethics, violate the rule of law, and moreover violate religious rules.

The development of world civilization more day as if running towards modernization. Modernization turns on its development not only impacts that are positive, and even reverse. In other words, the changes that touch all walks of life, both positive and negative seem more real. Along with that, the forms of crime always follows the development period and are transformed into other forms of increasingly sophisticated and varied. Crime in the fields of technology and science always helped to follow. Crime today is no longer always use the old ways that have occurred over the years with the passage of the age of the earth. Can we see an example of, cybercrime, money laundering, corruption and other criminal acts?

Corruption, collusion and nepotism are the criminal acts which mostly faced by the whole nation in the world, especially in Indonesia. Indeed, the phenomenon of corruption existing in the community for a long time, but recently attracted worldwide attention since the second world war ended. In Indonesia alone, the phenomenon of corruption has existed since Indonesia is not yet independent. One piece of evidence showing that corruption already exists in Indonesian society, namely the colonial era with their tradition of giving tribute by some segments of society to the local authorities as well as the collapse of the VOC as rulers at that time was caused by the same behavior, namely corruption.

After the second world war, nations come into a new era in which the turmoil of corruption is increasing in developing countries, the new country gain independence. The problem of corruption is very dangerous because it can destroy the social network, which indirectly weakens national defense as well as the existence of a nation. The climax of corruption, collusion and nepotism in Indonesia occurred in 1998, known as "The events of the Reformation Indonesia in 1998." One of the factors that led to the events of the 1998 reform, is the craze of corruption committed by Suharto and his cronies. How great was the impact of this behavior that caused the financial crisis? Thus in the reform era, this behavior becomes an important agenda to be considered as a monster that threatens the integrity of the Republic of Indonesia.

Corruption included as criminal behavior, corruption is not just stealing, but there are elements of abuse of authority/power on it, it gives moral corruption charge. Factors causing corrupt behavior is closely related to the environment, such as family, community-society, culture, and education system. From all these factors are the dominant factors cause a person or group of people corrupt the family and community factors, but did not look at the cultural factors and the educational system as something that is not important is precisely these factors contribute to preventing corruption of human behavior. Formally corruption defined in Law No. 31 of 1999 on the Eradication of Corruption, especially Article 2, paragraph 1 is any person who unlawfully enriches themselves and others, corporate finance which could harm the state or state economy. According to Transparency International corruption is the behavior of public officials, whether politicians or civil servants who are not fair and not legal to enrich themselves or enrich those close to him, by way of abusing the public power entrusted to them. Then Article 3 states, any person with the intention of enriching himself or another person or corporation, abuse of authority, opportunity or means available to him because of the position or positions that could harm the state finance and economy of the country. Thus, according to the law of corruption in Indonesia is an act which contains a number of elements, which is against the law, state financial harm, to enrich themselves, another person or corporation and misuse of authority. Many definitions looser but not eliminate corruption itself meaning that when a steal and when to cheat, it harms others for taking the rights of others. Corruption occurs because of the emergence of an act that wants to enrich himself and his group, who do corruption can be an individual and collective. Corruption individuals do alone, it's called corruption autogenic means the intention from the beginning or attempt to graft came from an individual. Collective corruption carried out by more than one person, it is often informally referred to as corruption in the congregation. The occurrence of corrupt behavior could be intended from the start, in one shot is no chance of corrupting an asset, and also the results of haggling two or more parties.

Corruption Behavior committed by state officials formed in various kinds including:

### 3.2.1. Losses over Gains Country

Falling into the category of causing losses to the state benefits should normally be carried out by people who have positions in government agencies. Included in this group that is profiting unlawfully and harm the country, as well as abuse of office-seeking and harm the state.

### 3.2.2. Bribery

Corruption form that flourished in the community. The practice of bribery could easily be encountered in everyday life, particularly those involving public and private officials to push certain interests. Included in this group are: bribing government officials or public officials, giving gifts to public officials because of his position, government officials who accept bribes, bribing judges, bribe advocates (attorneys), judges and lawyers who accept bribes. Some cases of bribery that occurred in Indonesia involving public officials or political figures have repeatedly expressed the Commission. As an example the case of Jamil Saeful, Case Rohadi etc. In a smaller scale, the practice of bribery in educational environments, for example, can be found in the practice of the parents told the teacher that her son passed, grade, and so on.

### 3.2.3. Fraud/Abuse of power

Included in this group are; civil servants or public officials who misuse the money or let the misuse of money, falsification of evidence for administrative, destruction of evidence or allow others to damage evidence or assist others damaging evidence. A simple example of acts of embezzlement in everyday work life as someone asks memorandum blank to write a different shopping evidence of that fact

### 3.2.4. Extortion

Extortion has become a popular term in the community. Extortion usually aims to enrich themselves at the expense of others. Beginning last October, the Corruption Eradication Commission (KPK) is to trace the property and assets of the Regent Karawang, Ade Swara and his wife Nurlatifah allegedly derived from criminal acts of corruption and extortion. Related to that search, the Commission in coordination with the Center for Financial Transaction Reporting and Analysis (PPATK). Rumors, the couple have a number of assets in the Falkirk area who rated unnatural as the organizer of the state, thus allegedly obtained of how not kosher, including allegedly from the street 'memalak' a number of private companies, one of which PT Tatar Kertabumi permit development related Mall Falkirk. Reportedly, extortion had been diverted into other forms. Ade and his wife are currently detained KPK as a suspect. Ade was detained at the Detention (Rutan) Guntur. Meanwhile, Nurlatifah KPK detained at the detention center. Both are alleged to have violated Article 12 e or Article 23 of Law No. 31 of 1999 as amended by Act No. 20 of 2001 in conjunction with Article 421 in conjunction with Article 55 Penal Code.

### 3.2.5. Gratuities (Gifts)

Accepting gifts can also be categorized as one of corruption. Examples of graft cases ever dismantled KPK ie gratification against former Democratic Party chairman, Anas Urbaningrum. In the trial in early 2014, Anas proved to receive gifts from various government projects as well as laundering money by buying a house in Jakarta and plots of land in Yogyakarta Rp 20.8 billion.

## 3.3. Law Enforcement Efforts toward Corruption cases In Indonesia

Talking about the behavior of the real corruption is the responsibility of all citizens to find solutions as well as its eradication because essentially the fruit of such behavior will harm everything is not fixed on one group, individual, or group. But the government's role as a container or a very responsible party should be maximized. Governments are required to facilitate and make it happen in the eradication of corruption, for example by establishing a body responsible for combating corruption.

In Indonesia, the agency or official boards with responsibility for the eradication of corruption known by the Corruption Eradication Commission (KPK). The commission was created by Act No. 30 of 2002 on the Corruption Eradication Commission to cope with, overcome, and combating corruption, an independent commission that is expected to become a "martyr" for perpetrators of acts of corruption. As for the agenda of the Commission are as follows:

1. Build a culture that supports the eradication of corruption.
2. Encourage the government to reform the public to realize good governance.
3. Build public trust.
4. Realizing the successful prosecution of perpetrators of corruption.
5. Stimulating the other law enforcement agencies to combat corruption.

Additionally, several ways that can be taken in combating corruption in Indonesia, among others, as follows:

#### 1). Prevention (Preventive)

- a. Installing a positive national spirit by emphasizing devotion to the nation through formal education, informal and religion.
- b. Hiring on the basis of technical skills.
- c. Officials are encouraged to adhere to a simple lifestyle and have a high responsibility.

- d. The clerks always endeavored adequate welfare and no guarantee of old age.
- e. Creating an honest civil service and high work discipline.
- f. The financial system is managed by officials who have high ethical responsibility and accompanied by an efficient control system.
- g. Registering the anniversary of the wealth of striking officials.
- h. Trying to do the reorganization and rationalization of government organizations by streamlining the number of departments along fold underneath.

## 2). Enforcement efforts (Curative):

Efforts action, which is done to those who are found to have violated the warning is given, do not honorable dismissal and convicted criminal. Some activities undertaken by the Commission:

- a. Allegations of corruption in the case of Bank Century.
- b. Cases of corruption brothers, Anggodo and Anggoro Widodo Radiokom related corruption.
- c. Corruption addressed to Commissioner General Susno Duedji security-related funding in the West Java gubernatorial election in 2008.
- d. Restraining Nazrudin, Angelina Sondakh, and Anas Urbaningrum related Hambalang project Bogor.
- e. Lutfi Restraining Ishak Hasan, President of the PKS in the case of imports of beef, and so on.

## 3). Efforts Public Education / Student:

- a. Have a responsibility to conduct political participation and social control of the public interest.
- b. Do not be apathetic and indifferent.
- c. Exercise social control on individual policies ranging from the village administration to the level of the central/national.
- d. Broaden the broadest understanding of the state government administration and legal aspects.
- e. Being able to position themselves as the subject of development and play an active role in decision-making for the benefit of the wider community.

## 4). Efforts Educational NGO (Non-Governmental Organization):

- a. Indonesian Corruption Watch (ICW) is a non-governmental organization that oversees clicking and reporting to the public about corruption in Indonesia and consists of a set of people who are committed to eradicating corruption me-through empowerment of the people to engage in corruption. ICW was born in Jakarta on June 21, 1998, in the midst of the reform movement will clicking the post-Soeharto freeholder corruption.
- b. Transparency International (TI) <sup>4</sup> is an international organization that aims to combat political corruption and set up in Germany as a non-profit organization throughout the coral becomes non-governmental organizations are moving toward a democratic organization. The annual publication by the famous TI Global Corruption Report. Indonesian IT survey that forms the Corruption Perception Index (CPI) of Indonesia in 2004 stated that Jakarta as the most corrupt city in Indonesia, followed by Surabaya, Medan, Semarang and Batam. While IT survey in 2005, Indonesia was sixth most corrupt country in the world. Indonesia is a 2.2 GPA level with Azerbaijan, Cameroon, Ethiopia, Iraq, Libya, and Uzbekistan, as well as just the better of the Congo, Kenya, Pakistan, Paraguay, Somalia, Sudan, Angola, Nigeria, Haiti and Myanmar. While Iceland is a country free of corruption.

So it can be concluded that the application of ethics in bureaucratic circles very important role in dealing with acts of corruption. Here are preventive and repressive actions that can be applied ethics bureaucrats involved in building good:

### 1. Preventive.

- a. Build and deploy ethics officers and employees in both the public and private sectors on a clear separation and sharp between privately owned and state-owned company
- b. Seek redress income (salary) for officials and civil servants in accordance with economic progress and the progress of the private sector, so that officers and staff uphold the dignity and integrity of each position and not get carried away by the temptation and the opportunity provided by the authority.
- c. Fostering pride and self-respect attributes of each position and job. officials and employees are not that they are rich and abundant, but they were honored for their services to the community and the state.
- d. That the offender is exemplary and superior leadership and more effective in the dissemination of views, votes and policies.
- e. Fostering understanding and political culture that is open to control, correction and warning, because the powers it was likely to be abused.
- f. It is no less important is how to foster a "sense of belongingness" among officials and employees, so that they feel the company is proprietary and does not need corruption, and always tried to do the best.

## 2. Repressive.

- a. Need to face criminals serving in various media.
- b. Re-registration (re-registration) of the property of officials.

According to Gerald E Corden, outlining in detail the forms of corruption are commonly known are:

1. Treacherous, subversive, illegal foreign transactions, smuggling.
2. Embezzlement of property agencies, privatization of government budget, cheat and steal.
3. The use of money is not correct, document forgery and embezzlement, poured money institutions to private accounts, tax evasion, misuse of funds.
4. Abuse of authority, intimidation, torture, persecution, pardon and clemency are not in place.
5. Deceptive and deceive, to give the wrong impression, cheat and deceive, squeeze.
6. Ignoring justice, in violation of the law, giving false testimony, detained illegally, trapping.
7. Do not run errands, desertion, live attached to others as a parasite
8. Bribery and bribery, blackmail, citing the charges, asked the commission.
9. Scuttle the elections, falsified sound card, divide the territory of the elections in order to excel.
10. Using internal information and confidential information for personal gain, making a false report.
11. Selling unauthorized public office, government property, and permits the government.
12. Regulations fraud, purchase of goods, provision, contract and money loan.
13. Escaping taxes, gaining excessive profit.
14. Selling influence, offering brokerage service, conflicts of interest.
15. Receive gifts, fees, bribes and entertainment, inappropriate travel.
16. Dealing with crime organizations, black market operations.
17. Confrontation, hiding of crime .
18. Spying unlawfully, abusing telecommunications and mail.
19. Abusing stamps and office paper, office and privileges.

### 3.4. Impact Of Constitutional Court Decision No. 21 / PUU-XII / 2014 Against Corruption In Indonesia

As described in the previous chapter, corruption, collusion and nepotism carried out urgent implications for the country growth, such state detrimental, the togetherness decimation and lack of national goals as stated in the Preamble to the Constitution 1945. Furthermore, causing the breakdown of the country's economic growth and ultimately resulting in the destruction of the state.

It is recognized that the problem of corruption is a national issue that should be given priority handling. The impact of corruption has emerged a variety of issues, among others:

#### 3.4.1. Political Affairs (Democratic)

Corruption shows a serious challenge to development. In the political realm, it undermines democracy and good governance (good government) by subverting formal processes. In short, causing the collapse of the institutions and values of democracy. Corruption in elections and in legislative bodies reduces accountability and representation in policymaking; corruption in the court system to stop the rule of law and corruption in public administration resulted in an imbalance in community service. Generally, corruption erodes the ability of institutions of government as procedures are disregarded, resources are siphoned off, and officials appointed or elevated positions, not because of feat. At the same time, corruption undermines the legitimacy of government and such democratic values as trust and tolerance.

#### 3.4.2. Economics

Corruption also complicates economic development and reduces the quality of government services. Corruption also complicates economic development by creating distortions and inefficiency are high. In the private sector, corruption increases the cost of trade due to losses from illegal payments, management fees in negotiations with corrupt officials, and the risk of cancellation of the agreement or for the investigation. While there assert that corruption reduces costs (commercial) to simplify the bureaucracy, the emerging consensus concluded that the availability of bribes caused officials to create new rules and new obstacles. Where corruption led to the commercial cost of inflation, corruption also disrupts "commercial grounds". Companies that have a connection protected from competition and as a result maintain companies that are not efficient. Corruption caused distortion (chaos) in the public sector by diverting public investment into community projects where bribes and wages are more readily available. Officials may increase the complexity of the project communities to conceal corruption, which ultimately results in more chaos. Corruption also reduces the fulfillment of safety requirements, environmental, or other rules. Corruption also reduces the quality of government services and infrastructure; and added pressures on government budgets. Economic experts give an opinion that one of the factors of economic underdevelopment in Africa and Asia, especially in Africa, is the corruption in the form of rental billing which allows displacement investments abroad, instead of investing in



<sup>2</sup> the country. In stark contrast to Asian dictators like Suharto, who often take a piece of all of them (ask for a bribe), but rather provide conditions for development, through infrastructure investment, law and order, and others.

### 3.4.3. Welfare State

Welfare State political corruption also take place in worldwide countries and provides a major threat to its citizens. Political corruption means that government policy is often advantageous bribe giver, rather than the people at large. One more example is how politicians make laws that protect large enterprises, but detrimental to smaller enterprises (SME). Politicians "pro-business" is only restore aid to large companies who give large donations to their election campaigns.

Mc Mullan stated that due to corruption is the inefficiency, injustice, people do not trust the government, wasting state resources, does not encourage companies to strive especially foreign companies, political instability, restrictions in government policy and not repressive.

Based on expert opinions above, it can be concluded the impact of corruption above are as follows:

1. Tata economy as capital flight out of the country, the disruption to the company, impaired capital investment.
2. Rules such as socio-cultural social revolution, social inequality.
3. Tata political takeover of power, the loss of foreign aid, the loss of government authority, political instability.
4. Tata administration as inefficient, lack of administrative capacity, loss of skills, loss of state resources, limited government policies, taking repressive measures.

Associated with the negative impact of acts of corruption committed by state officials could undermine the foundations of national and state the act of corruption should be not be allowed anymore because of the impact was so great to damage joints in the Bohemian nation-state. Eradication of corruption should be at the forefront of the state apparatus in order to create a clean and dignified.

By decision of the Constitutional Court No.21/PUU-XII/2014 on the establishment of suspects into the jurisdiction of the pre-trial, led to the eradication of corruption in Indonesia experienced legal barriers, it is extending the process to be followed when a person is suspected of committing acts of corruption by inquirer/investigators and the suspect has the right for filing pre-trial court related to a legitimate and whether the determination of the suspect. And the legal process as this would prolong and impede the running of the eradication of corruption in Indonesia.

According to the Chairman of the Legal Aid Center Peradi, Rival Kusumanegara, investigators could not resolve the case in a short time because the suspect will sue in a pretrial hearing for two weeks. It is feared that this burden will decrease the performance of the investigator to complete a criminal case which is always ahead in terms of quality and quantity. Likewise, according to the Workers' Council member Indonesia Corruption Watch (ICW), Emerson Yuntho, said pretrial for the determination of the suspect not only hinder the process of law in the field of corruption, but also will hinder the process of the law on other legal cases, whether handled by police or prosecutors.

## IV. CONCLUSION

The decision of the Constitutional Court No. 21 / PUU-XII / 2014 on the establishment of suspects, searches and confiscations is the jurisdiction of the object pretrial is a decision containing the legal problems which on the one hand useful for the protection of Human Rights, in which suspects are protected regarding the rights of his own from arbitrary action party investigators to establish as a suspect, but on the other hand will hamper the eradication of corruption in Indonesia. This resulted in tackling corruption must go through a long process and the possibility of the investigation process against corruption can be stopped because of pretrial suspects in the grant by the court. So that the suspects vying filed a pretrial court that due to finally eradicate corruption in Indonesia can be inhibited so as to create a clean state apparatus and authoritative increasingly distant from reality.

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