

ANALYSIS OF DISPUTES JURIDICAL POLICE INVESTIGATORS AUTHORITY OF THE REPUBLIC OF INDONESIA THE ANTI CORRUPTION COMMISSION ON CRIME CORRUPTION LICENSE DRIVING SIMULATOR

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ABSTRACT

Criminal acts of corruption in Indonesia is widespread within the community. Its development continued to increase from year to year, the number of cases from both and the amount of the financial loss to the State, as well as in terms of the quality of the criminal acts carried out increasingly systematic in scope as well as entering all aspects of people's lives. The increased criminal acts of corruption which cannot be controlled would bring disaster not only to the life of the national economy but also, on the life of nation and State in General. Criminal acts of corruption were widespread and systematic as well a breach of the rights to social and economic rights of the community, and therefore all the criminal acts of corruption can no longer be classed as ordinary crimes, but rather has become an extraordinary crime. So in an effort can no longer be done on a regular, but prosecuted ways extraordinary.

Keywords: Crime, Corruption, the Prosecutor's Office, Police

INTRODUCTION

The Constitution of the Republic of Indonesia in 1945 asserts that Indonesia is a country of "State of law". Therefore, the State of Indonesia is not based on mere power. A logical consequence of this means that the Republic of Indonesia is a country of independent legal people or democracy, based on Pancasila and the Constitution of the Republic of Indonesia in 1945 (the Constitution So, 1945), upholding human rights, and guarantee all citizens at the same time its position in law and Government, as well as the obligation to uphold the rule of law and with no this state law, in it is contained the notion of any recognition of the principle of the rule of law and the Constitution, adhered the principle of limitation and separation of powers according to the Constitutional system provided for in the Constitution of 1945, SO the principle of a free and impartial judiciary which guarantees the equality of citizens in law, as well as provided the justice for

everyone including against abuse of authority by the rulers. In this law, the State understand judge who held high command in the country. Real took the lead in organizing state is the law itself, in accordance with the principles of the rule of law, and not of man, which is in line with the notion of nomocratie, which is run by the power of the law.

There are three functions of power known classically in the theory of law and politics, namely the legislative functions of the Executive, and the judiciary. Montesquieu third country's institutionalized power function in the three organs of the State. According to Montesquieu, in his book "L'Esprit des Lois" (1784) or in English "The Spirit of The Laws," oh the power of the State is divided into three branches, namely: the legislative power as lawmakers; the Executive power to implement; and judicial power to judge. And classification of Montesquieu's best known modern State power Division in three functions, namely the legislative, Executive, and judicial. One can only run one organ function, and must not intervene each other respectively in the absolute sense. If not so, then the freedom of citizens (Civil Liberty) will be endangered missing.

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Executive, and judicial. One can only run one organ function, and must not intervene each other respectively in the absolute sense. If not so, then the freedom of citizens (Civil Liberty) will be endangered missing.

At this time the eradication of criminal acts of corruption carried out by various institutions such as the police and the Prosecutor's Office and other agencies related to the eradication of criminal acts of corruption, therefore setting authority corruption eradication Commission in the Act is done by careful so as not to place any piercing power by the various agencies. But it turns out it is not as expected, news of which had horrendous public and cause a lot of outcry from the public not related police members suspected of committing corruption hold driving licences simulator tool (SIM) Police Dir Lantas of the Republic of Indonesia. Public authorities wonder, who is, and why it seems to be left well enough alone without any attempt at resolution of problems that occur.

Problem Formulation

Based on the above background, the issue is:

1. Whether the substance of article 8 on the MoU between the KPK, the national police, the Prosecutor's Office about the optimization of the eradication of criminal acts of corruption ?
2. How the validity of MoU KPK, police, Prosecutor's Office is is not about optimizing the handling of criminal acts of Corruption?

Destination Research

As for research purposes in this thesis is:

1. To find out which became the substance of article 8 on the MoU between the KPK, the national police, the Prosecutor's Office about the optimization of the eradication of criminal acts of corruption.
2. To find out the validity of MoU KPK, police, Prosecutor's Office is not about Optimizing the handling of the crime of corruption.

RESEARCH METHODS

Type of Research

This type of research on writing scientific papers this is normative research. Normative research i.e. research conducted based on legislation. Data obtained in this study is qualitative data, so data analysis techniques used also uses techniques of qualitative data processing, which is done in deductive, .

Time and location Research

Research conducted in the offices of the corruption eradication Commission and the Office of State police of the Republic of Indonesia. Choice of location the study was based on the consideration that the KPK and the NATIONAL POLICE are the State agencies that have the authority regarding the criminal offence of corruption, so it's possible the occurrence of a dispute investigation authority between the State Institutions.

THE RESEARCH RESULTS

An Overview of the Location of Research

As it known that corruption eradication Commission (KPK), is an independent State institution, which in the discharge of duties and authority free from any power. As for the corruption eradication Commission tasks in question are the coordination with the authorized agencies conduct the eradication of criminal acts of corruption (TPK); supervision of authorized institutions conducting eradication TPK; investigations, investigation, and prosecution of TPK; Do the actions of prevention of Corruption and criminal acts committed against the State Government Organization monitors. In carrying out its task of coordination, corruption eradication Commission was given the authority to coordinate the investigation, investigation, and prosecution of TPK. also set reporting system in the eradication of TPK activity. Corruption eradication Commission (KPK) may also request information about the activities of the eradication of TPK to the relevant agencies as well as carry out hearings or meetings with authorized institutions conducting eradication of TPK and ask relevant agencies report about prevention of TPK.

In the vision of the corruption eradication Commission 2011-2015, mentioned "corruption eradication drive to become an institution that has integrity, effective, and efficient". To execute that vision, the corruption eradication Commission has the mission as follows:

1. Do the coordination with the authorized agencies conducting eradication of TPK;
2. Supervision of authorized institutions conducting eradication of TPK;
3. Investigations, investigation, and prosecution of TPK;
4. Perform preventive actions TPK; and
5. Do monitor the conduct of the Government of.

Vision and orientation will be run by a strong institutional machinery and authoritative. Without it it's hard to imagine a corruption eradication Commission could work effectively in the complete agenda for the eradication of corruption. Due to institutional corruption eradication Commission is committed in corruption

eradication efforts, therefore needed a strong institution with the support divisions and sections that have the professionalism and adequate human resources.

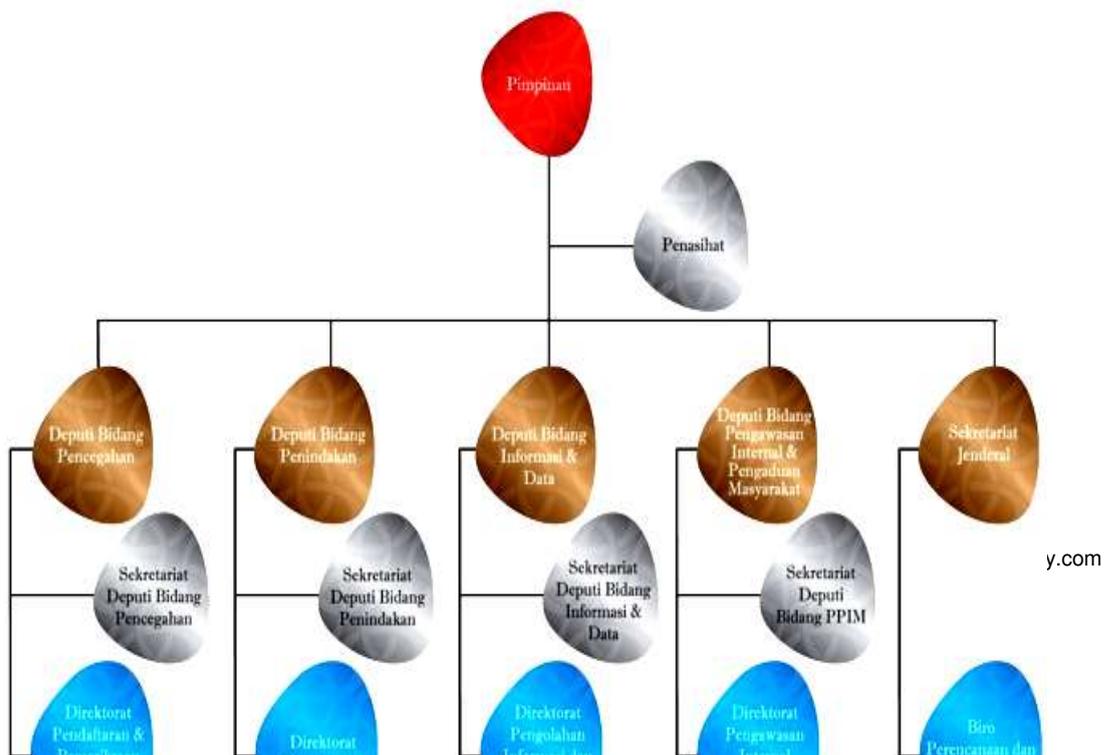
On the institutional aspect, the provisions regarding the organizational structure of the corruption eradication Commission is set in such a way so as to allow the public at large can still participate in activities and made the corruption eradication Commission. In addition, in order for the implementation of the programmed of public campaign can be done in a systematic and consistent so that the performance of the corruption eradication Commission be supervised community at large. Upon the attachment Of the corruption eradication Commission Regulation number: PER – 08/XII/2008 of 30 January 2008 regarding the Organization of Work and the corruption eradication Commission, the organizational structure of the corruption eradication Commission consists of Chairman, deputies and advisors, Secretary General, Director and head of the Bureau. Chairman of the corruption eradication Commission consists of five members, each of whom is a Chairman and members and four Deputy Chairman and interim members.

Chairman of the corruption eradication Commission oversees four areas, which consists of a field of prevention, Information, and Data (INDA), as well as the Internal Oversight and public complaints (PIPIM). Each area is led by a Deputy.

Meanwhile, in the discharge of duties and authority, KPK also helped the Secretariat-General headed by a Secretary General. The Secretary General is appointed and dismissed by the President of the Republic of Indonesia, but responsible to the Chairman of the corruption eradication Commission.

For more details, the institutional structure of the organization is the corruption eradication Commission, as the chart below.

**Chart 1:
The Organizational Structure of the Corruption Eradication Commission**



One of the deciding that sustain the performance of the corruption eradication Commission's human resources. Because of the very human resources determine the effectiveness and professionalism of the performance of an institution. So the number of HR, HR, welfare quality human resources are managed in the form of human resource management is the success rate of an institution or institutions. Therefore, the extent to which the existence of institutional underpinning human resources was seen from the resulting output. Despite the success or whether corruption eradication cannot be tested with the sheer quality of human resources, since the eradication of corruption will be associated with the political system, government bureaucracy and support from a variety of elements, both agencies or State agencies/Governments and community elements to fight together in the form of a commitment not to do corruption. (Book a 2011 CCA annual report).

On December 21, 2012, the author obtained the data that human resources (HR) in corruption eradication Commission totaled 652 personnel. Of that

amount, has many who follow various training or HR improvement program, either in the form of continuing education non formal school or another.

During 2009, the corruption eradication Commission implement training needs analysis at the organization level through cooperation with the Legal Development Facility (LDF, Australia), which held a Training Need Analysis (TNA) phase IV which has been implemented since 2006 to map the needs of training officers of the corruption eradication Commission. In addition to updating the TNA, the corruption eradication Commission also complement a variety of regulations, guidelines, and workflow that is required for the management of a wide range of training products (Report Annual corruption eradication Commission 2009)

The author holds that the human resources at the corruption eradication Commission has problems especially in the quantity. Currently Indonesia's corruption eradication Commission has approximately 700 employees. With the number of authors that argued it would be difficult to deal with cases of corruption in Indonesia which has a total population of 200 million more. Whereas in Hong Kong, with a population of 25 million people, the number of employees to about 1,300 people. Therefore, the need to increase the number of employees within the body of the corruption eradication Commission.

A. The substance of article 8 mutual agreement between Prosecutors, Police, corruption eradication Commission about the optimization of the eradication of criminal acts of Corruption

The dispute between the police authorities of the Republic of Indonesia with the corruption eradication Commission is certainly not without cause, it is actually at the start as both these institutions feel have the same authority regarding criminal acts of corruption. The incident preceded the shakedown of the corruption eradication Commission in the Corps of traffic on Monday, July 30, to Tuesday 31 July 2012 ago. The Police of the Republic of Indonesia does not make accept are those judging corruption eradication Commission violated the deal, manners, and no ethical. The head of The Criminal Police Headquarter Reserse Republik Indonesia, Commissioner General of the police, the Police of the Republic of Indonesia, Sutarman still will do the investigation before the case was any provision regulating the termination of investigation about the case through the Court decision that Police investigators of the Republic of Indonesia remain authorized case out cases that are being or simultaneously handled by the corruption eradication Commission (KPK).

Current procurement corruption suspects the simulator has been set, although a different version, either by the police of the Republic of Indonesia as well as by the corruption eradication Commission, therefore, this case is already

in the stage of investigation. Under article 14 paragraph (1) g of ACT No. 2 of 2002 on the State police of the Republic of Indonesia (the "Police ACT"), the police force is in charge of probing and case out all criminal acts according to the law of criminal procedure and other legislation. Authorities of the Republic of Indonesia Police investigators are regulated in article 7, paragraph (1) of the CODE of CRIMINAL PROCEDURE:

Investigators as stipulated in article 6 paragraph (1) letter a because of its obligations has the authority:

- a. Receive reports or complaints about the existence of a criminal offence;
- b. Do the first action when on the scene;
- c. Told to stop a suspect and examining self-identification of suspects;
- d. Arrests, detentions, searches and seizures;
- e. Perform inspection and seizure letters;
- f. Taking fingerprints and photograph a;
- g. Calling the people to be heard and examined as a suspect or a witness;
- h. Bring in the experts needed in relation to the proceeding;
- i. Hold a termination of investigation;
- j. Other actions held responsible according to the law.

On the other hand, the corruption eradication Commission authority to deal with cases of corruption is regulated in article 6 letter c of ACT No. 30 of 2002 concerning the criminal offence of corruption eradication Commission (KPK ACT), that the corruption eradication Commission has the task of conducting the investigation, investigation, and prosecution of criminal acts of corruption.

Thus, both the police force of the Republic of Indonesia as well as the corruption eradication Commission, under article 14, paragraph (1) the letter g of the ACT of the Republic of Indonesia Police as well as the article 6 letter c ACT–the corruption eradication Commission, both of which did have the authority to case out criminal acts of corruption.

However, the corruption eradication Commission has additional authority that can take over the matter of corruption despite being handled by the police or prosecution service as mentioned in article 8 paragraph (2) of the ACT the corruption eradication Commission. However, the takeover of the corruption cases should be for reasons set forth in article 9 of the ACT corruption eradication Commission. The sound of article 9 are as follows:

- a. The takeover of investigation and prosecution as stipulated in article 8, are performed by the corruption eradication Commission by reason of:
- b. Report of the public about the criminal acts of corruption are not actionable;

- c. The process of handling criminal acts of corruption in the protracted or for no reason which can be accounted for;
- d. The handling of corruption criminal act aimed to protect the perpetrators of criminal acts of corruption is real;
- e. Handling criminal act corruption contain elements of corruption;
- f. Obstacle handling criminal acts of corruption because of the intervention of the Executive, judicial, or legislative; or
- g. Other circumstances which, according to the police or prosecution service considerations, handling criminal acts of corruption is difficult to be implemented well and can be accounted for.

In addition to the authority to take over cases of corruption, there is another thing that became the authority on the corruption eradication Commission (KPK) i.e. as provided for in article 11 of the ACT corruption eradication Commission K and section 50 of the ACT corruption eradication Commission:

Article 11

In carrying out the task referred to in the article 6 letter c, the corruption eradication Commission is authorized to conduct an inquiry, investigation, and prosecution of the crime of corruption:

- a. involving law enforcement agencies, organizers, and others who have to do with the criminal acts of corruption committed by law enforcement officers or organizers of the State;
- b. getting noticed a troubling the community; and/or
- c. Concerning the country's loss of at least Rp. 1,000,000,000 b (one billion rupiah).

Article 50

- (1) In the event of a criminal offence of corruption to occur and the corruption eradication Commission has not made any investigation, while the case has been carried out of the investigation by police or prosecutors, the Agency is obligated to inform the corruption eradication Commission no later than fourteen (14) working days as from the date of commencement of the investigation.
- (2) Investigation conducted by the police or Prosecutor as referred to in paragraph (1) required continuous coordination with the corruption eradication Commission.
- (3) In terms of the corruption eradication Commission has already started to do the investigation referred to in subsection (1), the police or the Attorney General is not authorized to mention doing investigation.

- (4) In terms of the investigation was conducted simultaneously by the police and/or the Prosecutor's Office and the corruption eradication Commission, the investigation conducted by the police or the Prosecutor's Office immediately.

See the various provisions governing the handling of criminal acts of corruption at the top, the author can certainly conclude that the potential occurrence of conflict in the matter a criminal offence of corruption is very open, especially in the case of sim simulator, where the suspect is designated as members of the police force.

In March 2012, the Prosecutor's Office of the Republic of Indonesia, the State police of the Republic of Indonesia and the corruption eradication Commission made a mutual agreement about the optimization of the eradication of criminal acts of corruption. Which article 8 clause on mutual agreement that confirms that:

1. If the parties do the same target in the investigation, in order to avoid duplication of enquiry and the determination of the Agency has an obligation to follow up the investigation is the first instance issued a warrant investigation or upon agreement of the PARTIES;
2. Investigation carried out the Prosecutor's Office and the POLICE notified to the KPK, and its development is informed to the KPK longest 3 (three) months;
3. The KPK received a monthly recap of the delivery of the activities of the investigation conducted by the Prosecutor's Office and the national police;
4. Investigations and criminal acts of corruption investigation by one party may be transferred to another party in accordance with the regulations, with the first conducted his case which was attended by the parties, which was poured in a news Event.

Observing the aforesaid Agreement substances, the author argues that there are several important points to analyze. The first is the content of the provisions of subsection (1) which in essence establishes the procedures for the determination of the mechanism of the institutions which are authorized in terms of grabbing a matter criminal acts of corruption. Asserted that "If the parties do the same target in the investigation, in order to avoid duplication of enquiry and the determination of the Agency has an obligation to follow up the investigation is the first instance issued a warrant investigation or upon agreement of the PARTIES". If this provision were investigated, and this provision does not provide a way out for the possibility of a conflict of authority. Following the exposure of the author:

- a. Warrant Inquiry is an official letter issued by each agency agreement. So that the determination of the date of the warrant investigation can be manipulated by each agency to the assignment as an authorized institution because it has a warrant investigation first. Certainly this would likely cause conflict in the future. What's more, that any investigation conducted each agency is certainly very confidential, due to some corruption cases involving high State officials, the inquiry process may not be known by the public in order to avoid the occurrence of efforts to eliminate onion evidence conducted by the party under investigation.
- b. Use of the clause "or the mutual agreement" is a clause which according to the author's view of eliminating the Agency which authorized the indicator in the handling of corruption cases. If it is said that the authorized institution, is an institution which issued the warrant investigation first, then with the clause "or upon agreement with" indicators are becoming meaningless. This indicates that when one party has issued a warrant for the investigation, but the other party does not agree with the existence of the letter, then again will cause conflict associated with the process of handling criminal acts of corruption. So in the end the turning will be returned to the rule of statutory.
- c. This clause is also contrary to the provisions of article 50, paragraph (4) Act No. 30 of 2002 about the corruption eradication Commission, which determined that "in terms of investigation was conducted simultaneously by the police and/or the Prosecutor's Office and the corruption eradication Commission, the investigation conducted by the police or the Prosecutor's Office immediately stopped." Therefore, the clause that specifies that the determination of the authorities is the most first party issued warrants investigation, it is an agreement that is contrary to regulations.

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In the view of the author, to create a pattern of work and coordination relationships are good, then he did a report on the investigation of a criminal

offence of corruption to be reported by the first investigations to all relevant parties. It is intended to be able to know which institution first conducts an investigation into a criminal offence of corruption. However, the mechanism of this kind, thus impeding the course of handling only criminal acts of corruption, as each criminal act corruption investigations are supposed to be confidential, in order to avoid the occurrence of efforts which are not required as the parties under investigation remove evidence, or even flee. The more the parties acknowledge has been carried out an investigation into the case of a criminal offence of corruption, then the chances of leaks of secret magnify such investigation, especially considering the criminal acts of corruption that occurs when it is managed in a professional manner and are very well planned and involve many parties. And of course do not cover the possibility of the perpetrators of corruption, using the services of certain people in the body of prosecutors, police and/or the KPK to find information relating to the corruption that he did. So according to author, save the existence of this MoU needs to be reviewed and returned using the legislation relating to criminal acts of corruption. The next clause of paragraph (4) of article 8 of this Mou, determined that "the investigation and the proceedings of criminal acts of corruption by either party may be transferred to another party in accordance with the regulations, with the first conducted his case which was attended by the parties, which was poured in a news event". The substance of the clause on mutual agreement referred to above, is actually a legal substance that has been set in Act No. 30 of 2002 about the corruption eradication Commission, the provisions of article 41, which determines that:

Corruption eradication Commission can carry out cooperation in the investigation, investigation, and prosecution of criminal acts of corruption by law enforcement agencies of other States in accordance with the applicable laws and regulations or international agreements has been recognized by the Government of the Republic of Indonesia.

Based on the above, the provisions of clause of article 8 paragraph (4) mutual agreement between Prosecutors, police and the KPK doesn't need to exist. Because it is only a reiteration of the rules that have been set up in the Act.

On April 1, the author does an interview with Ahmad Wiyagus Initializing as a criminal act Corruption Wadir Bareskrim Mabes Polri related subtans article 8 Mou between Prosecutors, police and the KPK. According to him, the substance in article 8 MoU between the KPK, the national police and the Prosecutor's Office was "Synergy in the handling of criminal acts of corruption." The goal is not to law enforcement agencies (APGAKUM) who did the handling of the same corruption criminal act because it would be a waste of time and money. Ideally at the time would do the investigation, the law enforcement officers of mutual informing him that would carry out investigations so that no other law

enforcement investigations of the same case. For it was agreed in the MoU that law enforcement officers are investigating predates the institution that takes care of things. The KPK still had control over the implementation of handling criminal acts of corruption committed by other law enforcement agencies through the activities of "coordination and supervision".

According to the author, saving the substance of article 8 mutual agreement clause, it does not provide a legal update in implementing the eradication of criminal acts of corruption, so sinegritas in the handling of corruption as a criminal offence is meant not Wiyagus Ahmad Initializing materialized. In the absence of an agreement, the actual handling of the criminal offence of corruption has been clearly provided for in the legislation of the eradication of criminal acts of corruption and legislation the corruption eradication Commission and the law the handling of corruption and other criminal acts. Live how the law enforcement authorities must understand the rights and obligations in the law specifically about who is more competent in cases of criminal acts of corruption by looking at the characteristics of each case according to which has been set in the legislation regarding the handling of the crime of corruption.

CONCLUSION

Conclusion

Based on the results of the study and discussion of the author's done, it can be concluded that:

1. The substance of article 8 mutual agreement between Prosecutors, Police, corruption eradication Commission about the optimization of the eradication of criminal acts of Corruption constitute an agreement which was formed in order to realize the synergy of the authorities in the handling of the crime of corruption.
2. Mutual agreement between Prosecutors, Police, corruption eradication Commission about the optimization of the eradication of criminal acts of Corruption contain provisions that are contrary to the laws and regulations, in particular article 8 clause in the MoU set about working relationships and reporting time lag is contrary to the provisions of article 50 Act No. 30 of 2002 about the corruption eradication Commission, as well as article 9 MOU relating to the supervision authority, which weakens the position of the KPK as its substance independent agencies in eradication of criminal acts of corruption so that according to the author on a clause of article 8 MOU was annulled by law as opposed to Statute No. 30 of 2002 about the KPK and also emphasized by the presence and order of the President of the national police to

hand over the case to the KPK simulator and police must follow the laws and regulations in this regard Act No. 30 of 2002 about the KPK on article 50 paragraph 3 and 4.

Recommendations

As for some of the author's recommendations related to the writing of scientific papers is as follows:

1. Mutual agreement between the Prosecutor's Office, the Police and the KPK regarding optimization of handling criminal acts of Corruption are weakening the KPK as Independent Institutions in the handling of criminal acts of corruption, therefore we recommend the necessary mutual agreement on the review of its existence.

In the make changes to deal with, so presumably the parties need to pay attention to the applicable statutory provisions, particularly with regard to criminal acts of corruption in order to avoid the occurrence of an agreement contrary to the legislation.

As an institution that serves to conduct supervision and monitor existing institutions in terms of the handling of the crime of corruption, the corruption eradication Commission is expected to make a good coordination with the police forces of the Republic of Indonesia in order to avoid the occurrence of overlapping authority in regards to the handling of criminal acts of corruption. In addition, it is necessary also held to give settings changes the clarity of basic tasks and functions of each institution, especially in terms of the takeover the authority possessed by the corruption eradication Commission in terms of the handling of the crime of corruption.

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LAWS AND REGULATIONS

Undang-Undang Dasar Negara Republik Indonesia 1945

Kitab Undang-Undang Hukum Acara Pidana

Kitab Undang-Undang Hukum Perdata

Undang-Undang nomor 31 Tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi

Undang-Undang nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi

Undang-Undang nomor 2 Tahun 2002 tentang Kepolisian

Undang-Undang nomor 30 tahun 2002 tentang Komisi Pemberantasan Korupsi