

## Conference Paper

# Preventive Measures As Strategic Attempts to Cope with Criminal Acts of Corruption in Indonesia

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**ORCID**Tongat: <https://orcid.org/0000-0002-5587-5301>**Abstract.**

Corruption becomes a latent danger in almost all countries, including Indonesia. Therefore, any strategies to tackle it are always conducted. In some countries, imposing a serious punishment is the strategy chosen with the goal of giving deterrent effects to the perpetrator. In some countries, preventive measures are preferred to overcome corruption. It is intended to eliminate the root cause of corruption. This present article proposes the idea of preventive measures as a strategy to cope with corruption in Indonesia. Two main problems will be examined in this article: The first is why preventive measures become a strategy chosen to tackle criminal acts of corruption in Indonesia. The second is how theories justify the preventive measures to cope with criminal acts of corruption. Through a doctrinal approach, this study produced the following conclusions. First, preventive measures are the most strategic causative effort to cope with criminal acts of corruption in Indonesia. Second, preventive measures are justified by various theories in criminal law.

**Keywords:** preventive measure, strategy, coping with criminal act, corruption in Indonesia, criminal law

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## 1. INTRODUCTION

Debates about the strategies for coping with criminal acts of corruption in Indonesia have long been stingy.[1][2] The strategies in tackling criminal acts - including a criminal act of corruption - are usually conducted in two ways, namely penal and non-penal attempts. A penal attempt is an effort made through criminal law as the main facility. It is intended to give deterrent effects either to the perpetrator (special prevention) or to society (general prevention). Theoretically, one of the goals of imposing a criminal law is to prevent the perpetrator from repeating his/her criminal act (special prevention) and to avoid others to commit the same act as the perpetrator has done (general prevention).[3][4][5] Special prevention as the deterrent effect on the perpetrator is aimed at making him/her not repeat his/her criminal act. Whereas, general prevention

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as the deterrent effect on society is intended to make them afraid of doing criminal acts like the perpetrator. In the perspective of criminal law policy, a penal attempt is an effort symptomatic in nature namely treating symptoms after a criminal act of corruption occurs. The non-penal attempt is an effort other than the criminal law. It is intended to eradicate any conducive factors causing corruption. Remembering that corruption is not merely a legal problem, but also a complex social one, non-penal efforts may be applied in all aspects of social life.

Although since 2002 Indonesia has possessed an independent institution for eradicating corruption. The Corruption Eradication Commission was established in 2002 based on the Laws of the Republic of Indonesia a Number 30 the Year 2002 On the Corruption Eradication Commission. However, up to now, the level of corruption in Indonesia is still high. Up to 2019, the corruption perception index in Indonesia has not been satisfactory yet.[6] Even, debates about the effectiveness of the Corruption Eradication Commission (KPK) arose. On the one hand, some say that the Corruption Eradication Commission should focus its attention on the aspects of repression. On the other hand, some state that this Commission should give emphasize the aspects of prevention. Even, though there is an extreme opinion that reducing the authority of the Corruption Eradication Commission in the field of repression is the same as the dissolution of the Corruption Eradication Commission. In the effort to position the two points of view, this article tries to find its urgency. It will present theoretical-academic arguments of how far preventive measures adequately become a strategy chosen in eradicating the criminal acts of corruption in Indonesia.

## 2. METHODOLOGY/ MATERIALS

This research is juridical or normative research. The main data of this research is secondary data which is excavated through literature study, especially in the form of primary and secondary legal materials. This research will also explore the values contained in the law, therefore this research is also philosophical.[7] This research will not only look at the law in its textual appearance but will see the law in its appearance as ideas, ideals, values, morals, and justice which are referred to as ideological, philosophical, and moralistic legal concepts.[8] The collected data were analyzed qualitatively and then described systematically.

### 3. RESULTS AND DISCUSSIONS

#### 3.1. Preventive Measures As A Strategy Chosen In Preventing The Criminal Act Of Corruption In Indonesia

Since its establishment in 2002, the Corruption Eradication Commission has been supported by a wide community. The support given by the community to the Corruption Eradication Commission even was always strengthening, especially when the government planned to revise the Law on the Corruption Eradication Commission.[9] A lot of resistance was made by groups of communities concerning the government's plan to revise the Law. One of the reasons for the resistance to the plan of the revision of the Law was that the revision is thought to weaken the authority of the Commission.[10] Disagreement with the urgency of the revision of the Law on the Corruption Eradication Commission was unavoidable, disagreement between the House of Representatives and the Corruption Eradication Commission. However, the revision of the Law on the Corruption Eradication Commission was passed by the House of Representatives. After the revision was ratified, at last three heads of the Corruption Eradication Commission acting as and under the name of individuals filled a lawsuit of judicial review to the Constitutional Court.[11]

One of the important materials in the revision of the Law on the Corruption Eradication Commission causing long debates among the society dealt with the strategies in eradicating corruption itself. Some people said that the Commission Eradication Commission should reinforce the aspects of prevention. Meanwhile, some others viewed that the Commission Eradication Commission should be strong in the aspects of repression. These two views actually are related to the outlook in the doctrine in the criminal law regarding efforts to cope with criminal acts. From the viewpoint of the criminal act doctrine, the conception of tackling criminal acts possesses at least two views. The first view states that to give deterrent effects on the corrupt, severe penalties should be imposed.[12] This view assumes that tackling corruption may be overcome through the working of criminal law (penal efforts). Meanwhile, another view states that to coping with corruption, prevention should be made. This may be committed by omitting the root cause of corruption. This is undergone through a mechanism out of the criminal law (non-penal efforts). Some suggested strategies among others are the improvement of integrity and ethics among state administrators, stabilization and acceleration of bureaucracy reformation, and strengthening the society's anti-corruption culture.[13] And improvement of the budgeting system. Budgeting transparency, e-budgeting, including the improvement of the state apparatus' prosperity. Besides the two views, a view

integrating the two arises. According to this view, coping with corruption should be integratively conducted through penal and non-penal efforts.[14]

Another fundamental reason dealing with the preventive measures that become a strategic choice in preventing corruption in Indonesia is the reality that corruption is not a merely legal problem. As a result, its prevention cannot merely depend on the working law. Therefore, in the last ten years, corruption eradication in Indonesia may be used as the most actual model where the effectiveness of the criminal law serving as the medium for preventing corruption starts to be doubted. During the last ten years, for instance, prosecutions of the corruption perpetrators have been massive. But, prevention as one of the goals of the conviction - either general or special prevention is not reached. Failures in giving sanctions with the goal of preventing corruption in Indonesia may be seen in the increasing criminal acts of corruption, although prosecutions of the corruption perpetrators are always carried out. The 2015-2019 data showing the tendency of the increasing criminal acts of corruption in Indonesia are presented in Table 1 below.[15]

TABLE 1: Data on Prosecutions against Criminal Acts of Corruption in Indonesia by the Corruption Eradication Commission (2015-2019).

ACTION	YEAR					TOTAL
	2015	2016	2017	2018	2019	
Examination	87	96	123	164	79	549
Investigation	57	99	121	199	63	539
Prosecution	62	76	103	151	73	465
Inkracht	38	71	84	104	87	384
Execution	38	81	83	113	78	393
TOTAL	282	423	514	731	380	2,330

Source: Corruption Eradication Commission: processed)

Based on Table 1, it is known that criminal acts of corruption in Indonesia always increase from year to year. Viewed from its handling stage, the criminal acts of corruption in Indonesia in a span of 5 years since 2015 have always increased either at the examination, investigation, prosecution stages or those led out by the court and got permanent legal force. If it is seen for each handling stage, the increase in corruption cases in Indonesia can be explained as follows. At the examination stage, since 2015 the corruption cases have increased in 2015, 87 cases were examined. In 2016, the cases increased to 96 in 2017, becoming 123 cases. In 2018 this number sharply increased to 164 cases and in 2019, 79 cases. This data showed that in the period of 5 years since 2015, the corruption cases always increased in a significant although fluctuating fashion.

It is not far different from the increase at the examination stage, at the investigation stage, the corruption cases also increased. In 2015 for example, there were 57 cases investigated by the Corruption Eradication Commission. In 2016, 99 cases were investigated by the Corruption Eradication Commission. Meanwhile, in 2017, a leap in the corruption cases investigated by the Corruption Eradication Commission occurred with a number of 121 cases. Viewed the number, from 2016 to 2017, the increase has almost doubled. This also occurred in the following years, namely 2017, when the corruption cases investigated by the Corruption Eradication Commission significantly increased to 199 cases. In 2019, some decrease in the investigation happened, namely the number of investigations was just 63 cases.

At the prosecution stage, in the span of 5 years, the Corruption Eradication Commission prosecuted various cases as follows. In 2015, the Commission filed 62 cases. In 2016, it filed a lawsuit of 76 cases, and in 2017, 103 cases. While in 2018, the number of cases filed by the Commission was 151. In 2019, the cases filed by the Commission decreased to 73 cases.

From the number the cases handled by the Corruption Eradication Commission in the span of 5 years (2015-2019), it is clearly shown that although the prosecution of corruption cases is continuously committed, corruption cases still increase. Such increasing cases handled by the Corruption Eradication Commission actually indicate that the corruption justice system does not fully give deterrent effects, especially to the society. From the total cases occurring in the span of 5 years (2015-2019), it is shown that the deterrent effects caused by the enforcement of corruption cases did fully not give significant results. The always increasing corruption cases handled by the Corruption Eradication Commission show that the prosecution of the perpetrators less or even did not result in effects of prevention on the people. It is at this point that the prevention strategy becomes greatly urgent to consider in the corruption eradication in Indonesia in the future. Therefore, it can be concluded that the choice of prevention strategies in eradicating corruption principally is based on empirical experiences in corruption eradication itself.

To provide a more complete picture of the increasing number of corruption, the following will be presented data on the criminal acts of corruption handled by other law enforcement agencies outside the Corruption Eradication Commission under the supervision of this Commission. To facilitate the comparison with the cases handled by the Corruption Eradication Commission, the data on the corruption cases handled by the agencies outside the Corruption Eradication Commission, data from the span of 5 years from 2015 to 2019 will be taken. The corruption cases handled by other

enforcement agencies - in this case, the Police and Attorney - in the span of 5 years (2015-2019) are presented in Table 2 below.[16]

TABLE 2: Data on the Prosecution of the Criminal Acts of Corruption in Indonesia by the Police and Attorney of the Republic of Indonesia under Supervision of the Corruption Eradication Commission (2015-2019).

POSITION	YEAR					TOTAL
	2015	2016	2017	2018	2019	
Police	196	202	371	535	289	1,593
Attorney	876	628	833	681	515	3,533
TOTAL	1,072	830	1,204	1,216	804	5,126

Source: Corruption Eradication Commission: processed)

Based on Table 2 above, it is known that the total number of corruption cases in Indonesia handled by the Police and Attorney in the last five years (2015-2019) are 5,126 cases. If the total number of the corruption handled by the Police and the Attorney in the last five years (2015-2019) is summed up with that by the Corruption Eradication Commission in the same span of time, the total number of corruption cases handled by all enforcement agencies in Indonesia is 7,456. If 5,126 cases handled by the Police and the Attorney in the span of five years (2015-2019) are detailed, the cases handled for each year are as follows. The cases handled by the Police in 2015, 2016, 2017, 2018, and 2019 are 196, 202, 371, 535, and 289 cases, respectively. Meanwhile, those handled by the Attorney in 2015, 2016, 2017, 2018, and 2019 are 876, 628, 833, 681, and 515 cases, respectively.

Paying attention to such a high number of cases each year, it is natural if one perceives that the effectiveness of the criminal law starts shifting. The reality shown by the performance of the law enforcement officers becomes good evidence that the effectiveness of the criminal law as a tool to cope with criminal acts of corruption has not still shown significant results. Responding to such a reality, the President of the Republic of Indonesia Joko Widodo during his administration has always emphasized the importance of preventive efforts to eradicate corruption. Once, in his speech at the anniversary event of the anti-corruption day all over the world on December 4, 2018, he firmly stated that the success of an anti-corruption nation is when there is no suspicion of corruption. The success of an anti-corruption nation is not measured by how many people are arrested. But no one corrupts.[17] This kind of statement is also explicitly repeated in his state speech before the annual session of the People’s Consultative Assembly (MPR), House of Representatives (DPR), and Regional Representatives Council (DPD) on August 14, 2020. At this opportunity, President Joko Widodo stated that the government would really be serious in the efforts to eradicate corruption. Preventive

efforts should be boosted through a simple, transparent, and efficient governance. Laws must be enforced without any discrimination.[18]

On the basis of what is conveyed by the President, it is clearly shown that the government's political will in eradicating corruption is to adopt prevention strategies. This political is obviously expressed in the President's statement that the success of an anti-corruption nation is not measured by how many people are arrested but from the absence of people who do corruption. This message means that efforts to eradicate corruption should oriented into prevention efforts. The main orientation expected by the President is that in the future, no people do criminal acts of corruption. It means that people are prevented from any criminal acts of corruption because of the simple, transparent, and efficient governance. Therefore, under the administration of the President Joko Widodo, an orientation shift has occurred in the eradication of the criminal acts of corruption in Indonesia. The shift is from repression into a more strategic orientation, namely prevention efforts. Although in various occasions, the President still states the importance of law enforcement. Meaning that, corruption eradication is still carried out by integrative, either penal or non-penal, efforts, but the emphasis is on non-penal prevention efforts.

On the basis of the short description, it is clearly stated that the choice of the prevention strategies in corruption eradication in Indonesia is based on various reasons. Besides the reason for the ineffectiveness of corruption eradication through the mechanism of criminal justice - which can be seen among others from the increasing number of corruptions in Indonesia each year - it is also based on the government's political will. Besides the effectiveness of the criminal law described above and the ruler's political will, the choice of the preventive strategy in the corruption eradication in Indonesia, it also caused some other objective conditions in the Corruption Eradication Commission. Out of various problems, the efforts to eradicate corruption with the emphasis on the procreation- through the criminal justice system - will also encounter obstacles in dealing with the weak criminal acts of corruption law itself.

The following will be described how the condition of human resources of the Corruption Eradication Commission and the corruption law contributes to the support of the prevention strategies in corruption eradication in Indonesia. The number of human resources in the Corruption Eradication Commission is stated by the heads of the Corruption Eradication Commission from time to time. In 2012 for example, when Abraham Samad led the Commission Eradication Commission, he said that the number of investigators in the Independent Commission Against Corruption of Hong Kong-ICAC) reached 3000s persons. Meanwhile, the number of investigators in the Corruption

Eradication Commission of Indonesia was 100 persons.[19] It was also the case in 2017 when Saut Situmorang became the chief of the Corruption Eradication Commissions, he stated the same problems namely the minimal number of human resources in this Commission. According to him, the number of the Corruption Eradication Commission was still far from an ideal number. The number of staffs of the Corruption Eradication Commission was 1,500 persons. He judged that ideally the Corruption Eradication Commission should possess 8,000 staffs.[20] The statements made by two ex-chiefs of the Corruption Eradication Commission in different periods show that the problem of human resources in the Corruption Eradication Commission also become one of the obstacles in the corruption eradication process as a whole. Some persons also give the same opinions that the number of human resources in the Corruption Eradication Commission is really minimal compared with its task load and the width of the scope of authority of this institution.[21][22]

Besides the problem of human resources, there is also another problem that also gives a room for the choice of prevention strategies in eradicating corruption in Indonesia, namely the mess of the rule of law governing the criminal acts of corruption itself. Juridical hindrances in corruption eradication have much been discussed by various parties, either in the material or formal criminal law. Related to the juridical hindrances in the corruption eradication may mentioned some problems, namely among others, those concerning with an overlapping authority in handling corruption.[23] This overlapping authority also becomes hindrances in handling corruption especially if the handling is carried out by the prosecution through the criminal justice system. Besides the overlapping authority, another problem that may cause obstacles in the corruption eradication adopting the prosecution approach via the criminal justice mechanism is the adherence to the conventional approach, namely *follow the suspect*, namely the handle of a crime with the priority to the perpetrator. It is has not been oriented toward *following the money and following the asset*, where a crime is oriented into the results of the crime.[24] Another weakness of the law on corruption that often becomes an obstacle in law enforcement for corruption is the problem in using the less equivocal proof system between reverse and ordinary proof.[25] Another problem that potentially becomes the hindering factor in the process of the law enforcement of corruption through the criminal law is related to the unclear formulation of the criminal penalty.[26]

The long series of weaknesses of the corruption law opening the room about the hindrances of the law enforcement for corruption shows that substantially, the regulations serving as the basis for corruption eradication have not been sturdy and many weaknesses exist. Some other weaknesses in the law on corruption may be mentioned



among others, the use of an unclear definite sentence system by formulating special minimal criminal threats with unclear measures. The formulation of the corporate law subject is hard to apply, so that in practice, touching a corporate as a law subject of corruption is not easy work to do.[27] Besides the problems, one of the obstacles is that the functions and coordination of the Corruption Eradication Commission as one of the mechanisms for the corruption eradication using the criminal justice mechanism are not maximum yet.[21] The leniency of the death sentence in the law on corruption also completes the weakness of the law on corruption.[21] Another crucial problem in the efforts of eradicating corruption is the existence of some problems in the law on corruption some of the problems are among others related to the influence in trading, bribery in the private sector, foreign bribery, and illegal self-enrichment.[28] The four types of the crimes have not been regulated and become parts of the crimes forbidden in the law on corruption. Whereas the four types of the criminal acts of corruption are the mandate of the United Nation Convention Against Corruption ratified by Indonesia through the Regulation of the Republic of Indonesia Number 7 Year 2006 Regarding the ratification of the United Nation Convention Against Corruption, 2003.

### **3.1.1. Theoretical Justification of The Preventive Measures in Coping with The Criminal Acts Of Corruption**

The following will be described how far the choices of preventive and corruption eradication strategies obtain a theoretical justification. This section will discuss the effectiveness of the criminal justice especially in the prevention aspects. It means that the effectiveness of the criminal justice will be examined in giving either general or special effects of prevention. The reality of the effectiveness of the criminal justice in giving the effects of prevention will also be supported with the next reality of the occurrence of deviations from the nature of the (criminal) justice itself. This reality will provide a picture of the deep struggle in obtaining justice in an institution called (criminal) justice. The description dealing with the judicial deviation is due to the decision made by the Constitutional Court that has narrowed down the wiggle room of the corruption justice in interpreting any act against the law that at last also has placed the corruption justice mechanism becomes a legalistic-positivistic institution.

Various previous studies showed that the effectiveness of criminal justice as a tool to cope with criminal acts- especially the aspects of prevention- are much questionable not only in Indonesia.[28] But also in various countries. Historically, failures of criminal justice as the medium for tackling criminal acts- especially the aspects of prevention-

for instance, may be traced from a study conducted by Norval Morris and Michael Tonry who examined the level of crimes in America by studying the occupancy rate of the jail.[29][30] Norval Morris and Michael Tonry showed a high occupancy rate in America by providing the following findings:

*“When this book is published, there will be more than 1,000,000 Americans aged 18 and over in prison and jail, and more than 2,500,000 on parole or probation. If one adds those on bail or released awaiting trial or appeal and those serving other punishments such as community service orders, the grand total under the control of the criminal justice system exceeds four million, nearly 2 percent of the nation’s adult population”.*

Moreover according to Husak, Rates of incarceration provide the most familiar measure of the scale of state punishment. About 2.2 million persons were locked up in federal and state jails and prisons in 2005, a rate of 737 inmates per 100,000 residents.[31]

From the study made, the level of crimes in America—and also in other Western countries—tends to increase from year to year.[32][33][34] So it’s with Indonesia.[35] What is presented by Norval Morris and Michael Tonry above supports the argument that - coping with crimes - including corruption - cannot merely be carried out using a criminal justice mechanism. If it is related to the data presented in Table 1 and Table 2 above, what is conveyed by Norval Morris and Michael Tonry deals with the reality of corruption eradication in the span of the last five years in Indonesia (2015-2019).The tendency of the increasing number of corruption -although the procreation of the crime is always conducted - becomes an important part of arriving at a thought that the effectiveness of the criminal justice in coping with criminal acts - including corruption - should be evaluated. It means that the criminal justice mechanism as one of the mechanisms in coping with criminal acts needs a further evaluation. The effectiveness of the criminal justice mechanism is still doubted, especially in preventing criminal acts. Henceforth, the goal of “prevention” becomes the main rationality in coping with crimes. Some scientists name the theory dealing with prevention as deterrence theory, consisting of special deterrence and general deterrence.[36][37][34][5]

Any doubt of the use of the criminal justice mechanism as one of the efforts to cope with criminal acts comes to the fore in line with some deviations in the criminal justice process. The justice process which is often indicated to be unfair, dishonest, not transparent, and discriminative becomes another reason for the importance of evaluating the use of the justice mechanism as one of the mechanisms in solving social problems. In many articles, it has been shown how the court at present does not

become a place to find justice anymore. A court becomes a place for a “fight” to get a victory.

Such a fight to obtain such a victory essentially serves as a reflection of the legal and procedural games, a court changes into a place to play “silat”. Therefore, “a trial of laws and procedures” occurs, instead of “a trial of justice.” Cynically, people say “trials without justice.” The public cynicism expressed in the phrase “trials without justice” indicates that judicial institutions do not have any place in the heart of the people as institutions used to solve problems. The people start turning away from the world of justice. Although up to now, an outlook that places the criminal law as a tool for social control still exists.[38] The idea of always looking for alternative tools for the criminal justice is still going on. One of the alternative tools offered to find another mechanism out of the criminal justice is the idea of restorative justice which is continuously developing and going global, even though its implementation is also varied. Studies carried out by many parties showed that restorative justice has gone global.[39][40][41] The idea of restorative justice is stronger in line with the strengthening of criticism of criminal justice. The idea of restorative justice emerged over a quarter of a century ago.[42]. The increase of criticism of negative impacts of the criminal justice - such as stigmatization,[43] Dehumanization,[44] And prisonization.[45] That tend to be criminogen, has born various alternative concepts in solving criminal cases. Criminal Justice is also criticized because it tends to be *expensive, unjust, immoral*, and failed.[45]

Modern judicial institutions with more legalistic-formalistic in nature with the main jargon “legal certainty” often prioritize procedures than substances. Consciously or unconsciously, ideas that give emphases on procedures have placed human beings under regulations or laws. This kind of thought naturally is not compatible with the reality of the Indonesian people who tend to obtain justice from merely procedures. Dealing with this matter, it is necessary for all to think of an idea presented by Satjipto Rahardjo - a professor in University of Diponegoro - in his concept of progressive law. In the perspective of the progressive law, a law should devote to human interest. Therefore, the idea of a progressive law becomes an alternative law that may be offered. Different from a liberal law - deifying positivistic thoughts - progressive laws start from the basic assumption - very human - that law is for human beings, not the other way around.[46] Through its assumption, progressive laws intend to place human beings to become central in the context of the relationship between human beings and law. As a result, laws do not exist for themselves, but for something wider and greater. Therefore, each time one is under and with laws, it is the laws that should be reviewed and improved and it is not human beings who are forced to be entered into the schema of laws.[46]

In the history of the law enforcement of the criminal acts of corruption in Indonesia, an emergence of a decision of the Constitutional Court - which is by some people - is considered to have placed the corruption court locked up in a legalistic-formalistic pattern namely the decision of the Constitutional Court No. 003/PUU-IV/2006. The decision of the Constitutional Court Number 003.PUU-IV/2006 annulling the explanation Article 2 (1) of the Law on the Criminal Act of Corruption is also considered as a controversial decision. The decision of the Constitutional Court Number 003.PUU-IV/2006 that does not give any room for the effectuation of the laws living in the society in the mechanism of corruption justice system is regarded to keep the society away from the sense of justice. So, as shown by the progressive laws.[47] When a law including the decision made by the Constitutional Court— is thought to tarnish the sense of justice of the people, it should be “demolished” to be reviewed and improved, so that it will not force human beings to adapt to the scheme of the Constitutional Court. Remembering that erasing the explanation of Article 2 (1) of the Law on Corruption means omitting unwritten criminal law from the land of Indonesia and being irrelevant with the basic social values of Indonesian people who are struggling to defend their legal identity. Meanwhile, in the context of criminal law in Indonesia, legal practices that “rule out” unwritten laws as the legal source cannot be accepted anymore. According to Satjipto, a law is a complex phenomenon. The complexity becomes clearer in line with the people’s increasing complexity. Laws and thoughts studying them have been hundreds of years. So far, there is not merely one methodology used to study laws. In other words, various ways of studying laws. We have taken a lesson that laws are really complex phenomena. It is a necessity that various methodologies in studying laws are given place.[48][7] Remembering that up to now, the existence of unwritten laws as the source of the criminal law has gained legitimacy formally. Some laws have confirmed unwritten laws as the source of positive laws that may be used as the reference in solving various legal problems, including those of criminal laws.[49] The laws that have reinforced the effectuation of the laws living in the society as the source of positive laws are among others Exigent Law No. 1 1951, Law No. 14 Year 1070 regarding The Principles of Judicial Power which was at last changed with the Law No. 48 Year 2009 on Judicial Power, explicitly formulated in Article 5 (1) an Article 50 (1).

Globally, since 1960, has also emerged efforts to revive conflict solutions based on the people’s tradition. Various social and political movements such as informal justice movement, the restitution movement, the victims’ movement, penal abolition, peacemaking criminology, the women’s movement, the growth of interest in native

justice traditions of indigenous people—have contributed either directly or indirectly to the emergence of the idea and the application of restorative justice.[50]

On the basis of the description above, it is clearly stated that, theoretically, no one denies that the most strategic effort in coping with criminal acts is to use non-penal efforts.[14] Criminal Acts, including corruption, are essentially complex social problems. Their solution cannot merely make use of a legal approach, but it should adopt various approaches. According to Hoefnagel, coping with criminal acts can be conducted through two approaches, namely using a criminal law mechanism and out of a criminal law mechanism. According to G.P Hoefnagels cited by Barda Nawawi Arief, efforts to tackle crimes may be carried out by.[51] :

1. Criminal law application;
2. Prevention without punishment;
3. Influencing views of society on crime
4. And punishment/mass media

Theoretically, prevention is a strategic effort to cope with crimes (including corruption). But practically, giving prominence of preventive measures without repressive ones may potentially be ineffective. Therefore, the most ideal is to make countermeasures integratively through penal and non-penal efforts synergistically. Penal wisdom is still needed to cope with crimes. Remembering that criminal law is one of the social wisdom tools to channel social dislike or social disapproval/social abhorrence which also expected to become a medium of social defence.[52]

According to any wisdom or efforts to tackle crimes essentially is an integral part of efforts to make social defense and efforts to reach social welfare.[53] So, coping with crimes is impossible to merely involve one mechanism in the solution. As a part of the efforts to gain social welfare, tackling crimes is felt to be urgent to be synergistically carried out using various efforts. It may not merely depend on one solution mechanism, including using a criminal justice system. In the same vein Ashworth also states, that Perhaps one of the great mistakes of the modern period has been the assumption that crime control can be achieved by means of specialist state agencies which monopolize the field and drive out other forms of social control.[54]

## 4. CONCLUSION AND RECOMMENDATION

On the basis of the descriptions above, the following conclusions are taken. First, preventive measures are the most strategic causative effort to cope with criminal acts of corruption in Indonesia. It said to the most strategic because prevention efforts - as one of the non-penal efforts - is the nones to avoid people to do corruption. Rooms that give opportunities to the people to do corruption are tightly closed, so that it will not ope any opportunity for anyone to do corruption. Simple, transparent, and efficient

Bureaucracy through simple, transparent and efficient bureaucracy. It is expected that there will be no room for bribing state apparatus. Therefore, preventive efforts made are oriented into omitting factors causing corruption. By improving bureaucratic governance, it indirectly has discarded factors causing someone to do corruption especially in the form of bribery to state apparatus. Secondly, theoretically, giving an emphasis on the preventive efforts in eradicating corruption - without ignoring repression aspects- will get wide support in the perspective of the criminal law theory. As stated by Barda Nawawi Arief by elaborating Hoefganel's concept of coping with crimes, non-penal effort - oriented into prevention - is a strategic effort in tackling crimes. Because non-penal efforts - preventive in nature - are oriented into omitting factors causing crimes.

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