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INSERTING A HUMAN RIGHTS APPROACH INTO PENAL SYSTEM AND CORRUPTION JUDICIAL DECISION IN INDONESIA

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ABSTRACT

The Indonesian Anti Corruption Act perceives corruption not only related to state financial loss, but also as a violation of economic and social rights. However, penal system and corruption judicial desicions ignore this philoshopical framework. Forms of criminal sanction and their impositions merely consider the rights of an accused and eliminate the economic and social rights of the society as a whole. These also reflect in the corruption judicial desicions where corruption cases become the scope of criminal law. The paper analyses deeply the factors why the dimension of human rights violations resulted from corruption is elimanated in the Indonesian penal system and corruption judicial desicion. Furthermore, it examines the implication of inserting a human rights approach into Indonesian penal system and corruption judicial decision. The methodology employed in the research is libary research and deep interview, while the approach used in the research is conceptual. The paper is both empirical and normative research. This research reveals that human rights approach changes the paradigm of Indonesian penal system and corruption judicial desicion.

Keywords: Corruption, Economics and Social Rights, Penal System, Judicial Desicion.

INTRODUCTION:

In the last decade, it has become almost universally accepted that the development is based on and framed by core human rights, as international norms that protect all people from severe political, legal, and social abuses. Corruption is a central issue of human rights and vice versa. Corruption, even in its most minimal understanding as the waste of public recources, is both a primer source and facilitator of obstacles to development, which constitutes a human right in itself. Corruption is also a cause and facilitator of specific human rights abuses, undermining such core rights as equality before the law and nondiscrimination. Although this fact is not operationalized, it is recognized by Transparency International, as is expressed in the Seoul findings: 'we condemn corruption as immoral, unjust and repugnant to the ideals of humanity enshrined in the Unversal Declaration of Human Righss and we confirm our conviction that all human beings have a basic human right to live in a corruption-free society (Lucy Koechlin, 2007).

Considering that corruption relates closely to human rights violation, the preamble of United Nation Convention Against Corruption (UNCAC), 2003 starts by referring to the concern about the 'seriousness of the problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law'. Conceptually, democracy is not identhical to human rights, but this principle has long had a close association with the ideas of human rights (Matthew Lister, 2012). Respecting and protecting human rights is one of the core elements in suppressing and eradicating corruption. The idea of substainable development shifts from an idea of sustainability as primarily ecological, to a framework that also emphasizes the economic and social context of development. The preamble then couples sustainable development with the rule of law. Therefore, it can be argued that the convention begins by recognizing the economic and social rights as well as the civil and political rights of people that the human rights based approaches seek to promote and protect (United Nations Development Programme, 2004).

Under Indonesian context, The Indonesian (Anti Corruption Law number 20 of 2001) perceives corruption not only related to state financial loss, but also as a violation of economic and social rights, as stated clearly in the consideration that 'the widespread cases have not only inflicted losses on the state but also violated the social and economic rights of the general public so that corruption needs to be categorized as a crime that must be eradicated in an extraordinary way'. In this sense, a human rights based approach in eradication corruption is one of the extraordinary ways. This approach is taken into account in suppressing corruption in Indonesia because traditional ways appears unsuccesfull to minimize the rate of corruption cases committed by state officials. In some corruption cases showing to public, there is also a fact that corruption has a close connection to human rights violation.

In the case of former general secretary of ministry of sport, Wafid Muharram, it is proved that the accused received bribery of 3,2 billion IDR from marketing manajer of Duta Graha Indah Ltd, Mohammad El Idris and manajing director of Anak Negeri Ltd, Mindo Rosalina Manulang. This money was given as a reward for directing Duta Graha Indah as a winner of public procurement of Asean Games athlete building in Palembang. By this bribery the apportunity of parties to obtain the same right for public service does not appear. It is also proved that former governor of Banten, Ratu Atut Chosiyah was legally quilty of corruption in the procurement of medical equipment of Banten province. In this case there is a close connection between corrupt practice of the accused and violation of the right of healthy. If, for instance, a medical patient passaways because of unavailibility of particular medical equipment corrupted by the accused, then right to live is also violated. Unfortunately, it is difficult to find corruption judicial decisions that consider corruption not only a matter of criminal law but also a human right violation. Corruption cases are eliminated from human right violation.

This paper analyses deeply the factors why the dimension of human rights violations resulted from corruption is elimanated in the corruption judicial decision. Furthermore, it examines the implication of inserting a human rights approach into Indonesian penal system and corruption judicial decision.

LITERATURE REVIEW:

Corruption as a Human Rights Violation:

Although all forms of corrupt practice may in the long-run have an impact on human rights, it cannot be concluded mechanically that a given act of corruption violates a human righ. This means that it is necessary to distinguish corrupt practices that directly violate a human right from corrupt practices that lead to violation of a human right, and from corrupt practices where a causal link with a specific violation of rights cannot practically be established. Therefore, there are three theoritical frameworks to link between corrupt practise and human right violation.

(Ardian, 2011) state that corruption is a direct violation of human rights. Corruption may be linked directly to a violation of human rights when a corrupt act ia deliberately used as a means to violate a right. For instance, a bribe

offered to a judge directly affects the independent and impartiality of that judge and hence violates the right to a fair trial. When an individual must bribe a doctor to obtain medical treatment at a public hospital, or bribes a teacher at a public school to obtain a place for his child at school, corruption infringes the right to health and education.

Corruption can also categorized as an indirect violation of human rights. Corruption can be an indirect cause for the violation of human rights when it is a necessary condition for the violation of the right. In this case, corruption will be an essential factor contributing to a chain of events that eventually leads to violation of human rights. Hence, the right is violated by an act that derives from a corrupt act and the act of corruption is a *sine qou none* for the violation (Berihun A Gebeye). Corruption can be an essential factor contributing to a chain of events that eventually leads to the violation of a right. This situation will arise, for example, if a public official allows the illegal importation of toxic waste from other countries in return for a bribe, and that waste is placed in, or close to, a residential area, the right to life and health of residents of that place would be violated, indirectly, as a result of the bribery. Or, bribery of pulic officials to secure permission for a project that subsequently gives rise to human rights violation such as forced relocation of community members without prior consultation.

Corruption often causes violation of women and children's rights in this way. When women or children are trafficked, those responsible commonly corrupt officials. Usually in return for bribes, the latter supplies documents for crossing borders, or turn a blind eye to the trafficking activity. In these cases too, corruptin is an essential condition and in its absense the violation would not occur.

Finally, corruption as a remote violation/where corruption is one factor among others. According to (International Council on Human Right Policy, 2009), Corruption can be one of several factors that result in the violation of human rights. Sometimes corruption will play a more remote role. When corruption during an electoral process raises concern about the accuracy of the final result, social unrest and protests may occur and these may be repressed violently. In such a case, the right to political participation may be violated directly, and repression of the social protests may also cause serious violation of human rights, for example, the rights to life, prohibition of torture and ill-treatment and freedom of assembly. Nonetheless, the electoral corruption would not necessarily be the only or determining cause of such riots or their repression. Many other factors might contribute and, to that extent, the corruption has a more remote link to the violation in question.

METHODOLOGY:

This research compromises of both normative and empirical legal research. To answer the first research question, the deep interview to several judges of corruption is used. The focus of interview is on the judge's opinion about the elimination of human rights approach in corruption judicial decision. Meanwhile, the second research question focuses on the analysis of substance of Indonesian Anti Corruption Act and the structure or format of corruption judicial decision that accomodate a human rights approach. That's why, the approarch used in the research is both statute and conceptual approach.

RESULTS AND DISCUSSIONS:

Finding the Factors:

The Human Right Approach in Corruption Cases is a Relatively New Discource:

When corruption law number 20 was issued and action into force in 2001, the discourse of corrupion as a human rights violation is a relatively new. Researchs, books, and academic conferences on the issue is rarely found. Many judges still consider that corruption case is a matter of criminal law. As the result, the scope of corruption judicial decisions has not been extended to cover human right dimension (Interview and discussion with GES, a judge of district court of Wonosari, 16th April of 2015). To prove each element of *delict*, theory of punishment, and aggravating circumstances, jugde stands for facts that correspond to them and eliminate indirect and irrelevant other circumstances.

Specifically, there are three steps followed by judge in proving the elements of *delict*; exploring the theoritical bases, proposing the legal facts that reveal before the court suitable with evidence, and taking a summary whether or not an accused is legally guilty. All facts that corrupt practices committed by an accused infringe certain right of individual citizen and all society as a whole had been ignored. In relation to the use of theory of punishment, it is generally found that punishment imposed to the accused is intended to prevent him from reoffending crime in the future, to deter people to commit similiar crime, and to educate and reform the accused. Punishment will be aggravated not only the accused does not admit his wrongdoing and fault, but also does not support the governement program in suppressing the corrupt practices of public officials (Interview and discussion with AM, a judge of district court of Sukabumi, 17 April of 2015). Therefore, it can be concluded that judges, in exploring the relation between corruption and human right violation, still rely on old fashion.

Misunderstanding a Concept of Human Rights Violation:

Some jugdes urgued that both corruption and human rights violation have different concept and aplication. When a judde recieves bribary from an accused in order to release his guilty, it is a matter of corruption cases and there is no connection with human right violation. The judicial process of the case refers to Indonesian Corruption Law. Meanwhile, human rights violation refers to genocide and crime against humanity which are clearly mentioned in Human Rights Court Act Number 26 of 2000. All human rights violations will be proceed by referring to this act both substantive elements and procedural proceeding (Interview and discussion with FHS, a judge at district court of Maros, South Sulawesi, 16th of May 2015, and with EM, a judge of district court of South Jakarta, 20th of April 2015). This phenomenon indicates that some Indonesian judges cannot distinguish between the term of 'human rights violation' and 'the most serious crimes'.

According to (Olivier De Schutter, 2010), a human rights violatin concept relates to state obligation. It is commonly understood that states have three levels of obligation in relation to human rights: the obligation 'to respect', 'to protect' and 'to fulfil'. The obligation to respect requires the state to refrain from any measure that may deprive individuals of the enjoyment of their rights or their ability to satisfy those rights by their efforts. This type of obligation is often associated with civil and political right but it applies to economic, social and cultural rights too. With regard to the right to adaquate housing, for instance, states have a duty to refrain from forced or arbitrary eviction. The obligation to protect requires the state to prevent violations of human rights by third parties. This obligation is normally taken to be a central function of states, whicg have to prevent irrepable harm from being inflicted upon members of society. This requires states to prevent violations of rights by individuals or other non-state actor, to avoid and eliminate incentives to violate rights by third parties, and to provide access to legal remedies when violations have occured, in order to prevent further deprivations.

The obligation to fulfil requires the state to take measures to ensure that people under its jurisdiction can satisfy basic needs that they cannot secure by their own efforts. Although this is the key state obligation in relation to economic, social and cultural rights, the duty to fulfil also arises in respect to civil and political rights. It is clear, for example, that enforcing the prohibition of torture or providing the rights to a fair trial , to free and fair election, and to legal assistance, all require considerable costs and investments (Olivier De Schutter (2010: 242-243).

The human rights violation appears in relation to those three levels of state obligation. In other word, a violation of human right therefore occurs when a state's act or failure to act, do not conform with that state's obligation to respect, protect or fulfil recognized human rights of persons under its jurisdiction. Two forms of human rights violation by states; by commission and by ommission. State human right violation by commission is defined as a condition where states break the obligation to respect the rights of their citizens. Whereas state human right violation by ommission refers to state's ignorance to protect and fulfil the rights of citizens as a whole. Then the question arises is, who is state? State is any person given authority to do and/or not to do an activity on behalf of state.

Kinds of state obligations in relation to human rights are provided in the (Indonesian Human Right Act number 39 of 1999). This act also covers three categories of human right; civil and political rights; economic, social and cultural rights; and collective rights such as right to development, right to clear and fresh water and air, as well as right to healthy environment. This normative framework becomes legal basis to link between corruption and human right violation. Therefore, it is a mistake when some judges argued that no connection between corruption and human right violation by referring to corruption law and human right court act as the different laws

According to (Mahrus, 2011), the most serious crimes, on the other hand, is a legal term used in the field of international criminal law containing four international crimes recognized by civilized nation; genocide, crime against humanity, war crime, and crime by agression. The actors who can commit these crimes are not limited only to military, police, public official, president, ministry acting on behalf of a state, but also are extended to cover non state actor, such as individual. In international level, these four crimes are found in the Rome Statute 1998 which have been ratified by more then 60 countries. The criminal proceeding for the allegation of these crimes are known as international criminal court founded in Den Haag, Netherland.

The existence of Indonesian human right court act thus is recognized as a result of Roma Statute. Most of the substantive elements of crime refers to Rome Statute. The different is that the former limited kinds of crime to only genocide and crime against humantiy. Although the title used is human right court, but it is not like some human rights courts established in Europe (*European Court of Human Rights*), Latin America (*InterAmerican Court of Human Rights*), and Afrika (*African Court of Human Rights*). It is an actually national court of international crimes. Meanwhile, human right court in some countries has an anthourity to hear any state allegation related to its obligation to respect, protect and fulfil human right of citizen. By understanding the differences, it is difficult to include Indonesian human right court act similiar to human right court in some countries.

In the context of corruption, it is clear that corruption has a close connection to human right violation as mentioned in (Indonesian Human Right Act number 39 of 1999). The statement that 'corruption...violated the social and economic rights of the general public...' found in the consideration of Indonesia corruption law also refers to act number 39 of 1999. The term 'human right violation' must be distinguished with the term 'the most serious crimes'. Eventhough Indonesian Act number 26 of 2000 used 'human right court' as a titile, but it obviously refers to the most serious crimes in the Rome Statute, 1998.

The Influence of Legal Positivism:

Some judges also explain that although a discourse on the relation between corruption and human rights violation is promoted through research and legal training for judges, this tendency cannot be justified to change the paradigm of corruption judicial decision. The fact that consideration of corruption law explisitly mentions human rights dimension in an effort to prevent and eradicate corrupt practices of public officials, but it is not sufficient to framework corruption as a human rights violation since no wording text formulated and written in each article of law. No possibility to put human right consideration into form of corruption judicial decision because it is formulated in the fixed format. Besides, The judges are strictly prohibited to relate corruption to human right violation. As an executor of law, a judge has a duty to apply law as such, no authority to change and put human rights approach into his judicial decision (Interview and discussion with SM, a judge of distric court of center of Jakarta, 16th of April 2015, and with SH, a judge of district court of center of Jakarta, 20th of April 2015). This perspective shows that the judges still stand for legal positivistic fashion as proposed by John Austin and (Hans Kelsen, 1992).

Austin, well known of his analytical jurisprudence, introduced the concept that the law is a command of the sovereign, closed logical system, and consists of command, sanction, obligation, and sovereignity (Dias, 1985). Laws properly so called is positive law. Meanwhile, Kelsen argued that law must be separated from morality, politic, and culture. There must be separability between law and morality (Theo Huijbers, 2012). All law is enacted law (George P. Fletcher, 1996). A concret manifestation of law is the law that has been produced by legislature in the form of written law. When a law is issued by legislature, a judge is strictly prohibited to interprate it. According to legal positivism, a judge is nothing more then human being with no soul and feeling. Legal creativity must be avoided. In relation to corruption cases, linking to human right violation is also prohibited because the corruption law unables it to extend to human right approach in preventing and supressing corrupt practices.

The Implication of Inserting a Human Rights Approach into Indonesian Penal System and Corruption Judicial Decision:

The Fullfilment of Human Rights Approach to Corruption Penal System:

Penal system, as stated by (Barda, 2005), can be defined both in narrow and wide sense. In a narrow definition, penal system is seen as a norm of substantive criminal law, all statutory rules/norms relating to substantive criminal law to punishment, or entire statutory rules to criminal sanction imposition and execution. Whereas the sentencing system in the wide defintion according to (L.H.C. Hulsman, 2003) is the statutory rules relating to penal sanctions and punishment. In this paper, the scope of penal system is limited to formulation of criminal sanction as promulgated in Indonesian (Anti Corruption Law number 20 of 2001) which was amanded by number 20 of 2001.

The forms of primary sentence of Anti Corruption Law consist of capital punishment, imprisonement, and fine. Whereas the forms of additional sentence as stipulated in article 18 (1) a are as follow:

a. Confiscation of mobile good or immobile good or immobile goods used for or obtained from the criminal act of corruption, including the company owned by the accused, in which the criminal act of corruption is committed and any goods that have replaced the initial goods;
b. The compensation paid shall be to a maximum of the wealth obtainded from the criminal act of corruption;
c. Whole or partial closing of the company for maximum period of 1 (one) year; and
d. Revocation wholly or partially of rights or abolishment wholly or partially of profits, which have been or can be given by the government to the accused.

These formulations, in relation to human right approach, still have some weaknesses in the sense that all forms of the sentences do not correspond to the fulfilment of victim's rights. Eventhough the accused is imposed much fine or heavy imprisonement, the sentence still ignores the victim's rights. Therefore, it is necessary to change the sentence paradigm, from criminal law *per se* to human right approach. If imprisonement becomes

the primary sentence in the Indonesian criminal statutory laws, this tendency is percieved as elimination human right dimension.

According to Anti Corruption Law, the amount of fine has also been set its maximum and minimum sum which is no more than 1 billion IDR and no less than 50 million IDR. The judges have no authority to exceed or decrease its amount imposed to the accused. Furthermore, the fine paid by the accused is not directed to repair or give legal access for remedy for victims. This formulation, once again, igored human right dimension in preventing and suppressing corruption. From a human righth perspective, (Nuno Garoupa dan Daniel Klerman, 2002) stated that fine needs to place at the front of sentence of anti corruption law by changing its formulation referring to the concept of mazimizing social welfare. In this context, social welfare is the sum of the offenders' benefits from committing offences, minus the harm caused by offences, minus govermental law enforcement expenditures.

In more detail explanation, the amount of fine must consider the following aspects:

a. The factual loss of state from the corrupt practice of the accused;
b. The expense of the potential victim in order to prevent from being a victim in the future;
c. The expense of law enforcements in investigation, prosecution, and criminal proceeding.

(Richard A. Bierschbach, 2005) argued that those expenses are then multiplied by maximum of three times to prevent overpenalization and overenforcement. The principle of multiplicity of fine is not something new in the Indonesian penal system. There are three statutory penal laws imposed to the company who commits certain offences that accomodate the principle; article 130 of 35 of 2009 on Drug Act, article 15 of 21 of 2007 on Preventing And Suppressing Human Trafficking Act, and article 40 (7) of 44 of 2008 on Pornography Act. By applying the principle, the compensation paid shall be to a maximum of the wealth obtained from the criminal act of corruption as it mentioned in article 18 (1 b) above is not needed. In addition, it must ascertain that the fine paid by the accused is used to repair the harm of the victims. For example, if the amount of money corrupted by the accused is actually for building the public schools and their facilities in certain areas, then the fine paid by him must be alocated to build those schools and their facilities.

Another change that should be made is introducing the community service order as an alternative sentence to fine. To be franked, this form of sentence has not been recognized in the Indonesian penal code and other statutory penal systems. Nevertheless, this sentence has a big chance to apply because the draft of Indonesian penal code as discussed by the house of representative today recognizes community service order as one of the forms of sentences. Under the principle that work is a penalty, the sentence can be imposed to public servants or judges who corrupt state budget, receive money, goods, or promise and involve in unfair public procurement with private actor. The forms are varied ranging from being a cleaning service in certain district court or in public areas under the control of police other legal institutions, to be involved in building public facilities.

The last is revoking the right of the accused to occupay as a public servant such as governor, ministry, or member of house of representative. When a governor corrupts state budget, one of the adequate sentences to him is revoking his right to occupay in public occupation permanently. This sentence removes the opportunity of the accused from being a public servant. According to (Siracusa Principle on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1985), this kind of right can be limited under the law.

Human Rights Approach in the Corruption Judicial Decision:

Generally the format or formulation of judicial decision in all criminal cases including corruption is similiar each other. It begins with the indictment and legal basis used to sue an accused in the first step, then followed by an exploration of testimony of eye witnesses, experts, and other evidences. By referring to the legal facts revealed before the court, the judges make legal summary of all evidences to ease them asses and evaluate the relevant facts in accordance with the elements of *actus reus* and *mens rea*. Whether or not an accused has *actus reus* and *mens rea* depends on the conformity of legal facts to elements of crime. The *actus reus* is sometimes said to be that physical element of a crime which is prohibited by law (Harris's, 2000). To commit most offences the accused must have either: (1) done an act, in the sense of executing some bodily movement, or (2) omitted to do an act. *Mens rea* is the mental element required by the definition of a particular crime. The doctrine of *mens rea* originated in the idea that a man should not be held criminally responsible and so liable to punishment unless he is morally blameworthy (Russell Heaton, 2006); (Molan, Bloy, & Lanser, 2003); (Sue Titus Reid, 1995).

In relation to the aggravating circumstances and the use of theory of punishment the judges, as mentioned before, did not involve human right perspective in his consideration as a result that corruption is merely a matter of criminal law. The severity of punishment imposed to an accused considers the fact that he did not admit his

wrong doing and guilt as well as no support for the governement program in preventing and suppressing corruption. These considerations are generally found in most corruption judicial decisions. This means that the right of the victims is not taken into account in corruption judicial decision. Therefore, the right of the victims as a whole is ignored and eliminated.

What should be existed in corruption judicial decision that accomodates human right approach? To find the answer of the question, we need to reformulate the corruption judicial decision that inserts human righs approach in certain parts of judge's consideration. If the legal facts of all judicial decisions still refer to the relevant facts which correspondance to element of *actus reus* and *mens rea*, a judge, in accomodating the human rights perspective in his decision, then must mention clearly the rights of the victim which are violated by the accused committing a corrupt practice placed at the end of every element of crime. In doing this, a judge is deemed to have a deep understanding of a theoretical framework of corruption as a human rights violation and applies it to a case. Furthermore, he must find which human rights are violated by the corrupt practice of an accused. In this sense, only corruption that directly violates human right that is included in his consideration. It is important to note that abviously all corrupt practices committed by state officials connect to human right violation in widest scope, but what a judge needs is to select which is categorized and included in the direct human right violation.

In the case of bribery, for instance, a judge has to find a direct human rights violation as a result of an accused corrupt practice by identifying who bribes and receives money or promise, the position of public official, as well as the goal and motive underlying the bribery. Several human rights violations might be found; right to a fair trial if bribery is given to release the accused from punishment, right to healty and medical treatment if bribery is given in context of procurement of medical equipment, right to equal appportunity to public service if bribery is given to get favourable service from public servant in term of public procurement, and right to education if bribery is given to a teacher/lecturer at a public school (university) to obtain a place in that school.

It is also necessary to argue that a judge needs to extend the categories of an expert to including a human rights expert. Under article 186 of Indonesian Criminal Procedure (Indonesian Law of Criminal Procedure Numer 8 of 1981), there are three categories of expert whose duties are to clarify certain cases; legal expert, medical and psychological expert, and other experts that can further assist judges in connecting a theoritical framework and relevan legal facts to elements of *actus reus* and *mens rea*. Human right expert can actually be included in the legal expert since his legal opinion related to doctrine of law and human rights. Although he never becomes an expert in criminal proceeding particularly corruption cases, it is beneficiary to represent him before the court in order to explain more clearly which direct human rights and their forms are infringed by corrupt practice of the accused. The legal opinion of human right expert before the court is more practical for a judge than obligh him to have a formal certificate in corruption and human right training. The fact that few judges have participated in the training cannot be rejected.

A judge also needs to put in the aggravating circumstances the kinds of human rights violated by the accused. A good example of this indicated in the corruption case of Angelina Patricia Pinkan Sondakh, former of a member of house of representative. In this case, the accused is legally guilty for receiving 12,58 billion IDR as bribery from Permai Grup Ltd in the project of athlete building and state universities. In one of the aggravating circumstances, the court urgued that the accused infringed economic and social rights of society (Corruption judicial decision number: 54/Pid.B/TPK/2012/P.Jkt.Pst). In detail, the accused infringes a right to education. Notwithstanding the general term used to indicate a human rights violation, the court begins to connect between corrutption and human rights violation. If the court mentions and finds that the accused also violates a human right besides corruption, then this indication can be made to severe the scale of punishment. The more the human rights violations are found, the severer the punishment is imposed.

From the explanation above, it can be concluded that the format of corruption judicial decision needs to insert a human rights approach in order to satisfy and accomodate a sense and right of victims as expresssed in the consideration of anti corruption law. This, of course, leads to the change of a format of corruption judicial decision that accomodates a human rights approach.

CONCLUSION:

Based on the explanation and analysis on the issues above, this paper concludes that some factors causing the dimension of human rights violations resulted from corrupt practices of public officials is eliminated in the corruption judicial decision, namely a human rights approach that corruption as a human right violation is a relatively new discource, misunderstanding a human rights violation concept, and the judges still consider them selves as the law executor as expressed in the idean of legal positivism. In relation to human right approach on corruption penal system, the finding of the paper reveals that it is necessary to make fine at the front of sentence

of anti corruption law by changing its formulation referring to the concept of mazimizing social welfare and adopting the principle of multiplicity. The community service order and revoking the right of the accused to occupay as a public servant permanently should be made as the alternative sentences to fine.

Human right approach can also be applied in the corruption judicial decision by mentioning clearly the rights of the victim which are violated by the accused committing a corrupt practice placed at the end of every element of *actus reus* and *mens rea*. In addition, it is also importent to extend the categories of an expert to including a human rights expert. In the context of aggravating circumstances, each corruption judicial decision must mention the kind of human rights violated by the accused. The more the human rights violations are found, the heavier the punishment is imposed.

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