
| RESEARCH ARTICLE

Corruption as a Violation of Human Rights, Economic, Social and Cultural Human Rights Perspective

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| ABSTRACT

This study aims to analyze corruption as a violation of economic, social and cultural rights from a human rights perspective. The crime of corruption has been categorized as an extraordinary crime because corruption is not only detrimental to the state's finances but has also been a violation of the social and economic rights of the community. The research technique in this paper is a normative juridical type, and the research approach used is the *statute approach*. Based on this, it can be seen that there is a link between corruption and human rights violations, namely the basic social and economic rights of the community. The results of the study indicate that there is a relationship between corruption and human rights violations. Corruption is categorized as a violation of human rights if the consequences of corruption intersect with human rights that are harmed, so human rights violations caused by acts of corruption crimes should be taken into consideration by judges in their decisions because judges' considerations must be comprehensive in order to realize an ideal decision, namely a decision that reflects the values of justice, certainty, and legal expediency.

| KEYWORDS

Human rights, human rights violations, corruption.

| ARTICLE INFORMATION

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1. Introduction

That corruption in Indonesia is widespread in society. Its development continues to increase from year to year, both in terms of the number of cases that occur and the amount of state financial losses as well as in terms of the quality of criminal acts that are carried out more systematically and the scope of which enters all aspects of people's lives. State losses due to the proliferation of corrupt practices are already incalculable. Corruption in Indonesia has penetrated into all areas of governance, both executive, legislative, and judicial.¹ Looking at the above conditions, the development of corruption in Indonesia in the last year has shown a very concerning condition, even though there have been efforts to eradicate corruption. Corruption is not decreasing; in fact, it is increasing both in terms of quantity and quality. The modus operandi is getting more sophisticated; that is, it is carried out in an organized and very neat manner, both at the time of committing a criminal act of corruption and when facing an examination by law enforcement officers.²

The problem of corruption in Indonesia is no longer a mere legal problem but also a political, social, and economic problem that has never stopped, especially since the New Order government. Corruption is marked by leaks of state finances, and this has happened since the disbursement of the State Budget (APBN) every year and involves the executive and legislative branches.

¹ M H Roni Efendi, *Kebijakan Hukum Pidana Dalam Pemberantasan Tradisi Omerta Tindak Pidana Korupsi Di Indonesia* (Deepublish, 2021).

² Ahmad Yunus and Moh Ali Hofi, "Formulasi Kewenangan Penyadapan Komisi Pemberantasan Korupsi Dalam Upaya Pemberantasan Tindak Pidana Korupsi Di Indonesia," *HUKMY: Jurnal Hukum* 1, no. 1 (2021): 35–54.

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Various laws and regulations related to efforts to eradicate KKN (Corruption, Collusion and Nepotism) can be noted, among others:³

1. The first corruption eradication regulation was the Military Authority Regulation dated April 9, 1957 Number: Prt/PM/06/1957, dated May 27, 1957 Number Prt/PM/03/1957 and dated July 1, 1957 Number: Prt/PM/011/1957.
2. Law Number: 24/Prp/1960 concerning Investigation, Prosecution and Examination of Criminal Acts of Corruption.
3. Law Number 3 of 1971 concerning the Eradication of Criminal Acts of Corruption.
4. MPR Decree No. XI/MPR/1998 concerning State Organizers that are Clean and Free of KKN;
5. Law Number 28 of 1999 concerning State Organizers that are Clean and Free of KKN;
6. Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption.
7. Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning **the** Eradication of Criminal Acts of Corruption.
8. Law Number 30 of 2002 concerning the Corruption Eradication Commission.
9. Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission ("Amendment to the KPK Law").

In addition to these laws and regulations, several laws and regulations relating to efforts to eradicate corruption in Indonesia have been issued, namely:⁴

1. Presidential Decree No. 127/1999 on the Commission for Inspecting the Wealth of State Officials.
2. Presidential Decree No. 155/1999 on the Study Team for the Establishment of the National Ombudsman Institution.
3. Presidential Decree Number 44 of 2000 concerning the National Ombudsman Commission.
4. Government Regulation Number 20 of 2001 concerning the Guidance and Supervision of the Implementation of Regional Government.
5. Government Regulation Number 56 of 2000 concerning Reporting on the Implementation of Regional Government.

But ironically, corruption continues to show increase from year to year. The crime of corruption has become widespread in society, both in terms of the number of cases that occurred and the amount of state losses, as well as in terms of the quality of criminal acts that are increasingly systematic and have a scope that enters all aspects of people's lives. Like a disease, corruption in Indonesia has developed in three stages, namely elitist, endemic, and systematic. At the elitist stage, corruption is still a typical social pathology in the elite/official circles. At the endemic stage, endemic corruption reaches the wider community. Then at a critical stage, when corruption becomes systemic, every individual in the system is infected with the same disease. Perhaps, the disease of corruption in this nation has reached a systemic stage. Therefore, the crime of corruption has been considered a case of "*seriousness crime*," a serious crime that greatly interferes with the economic, social and state rights on a large scale, so that its handling must be carried out by means of "*extra ordinary treatment*" and the proof requires steps serious, professional, and independent.⁵

Corruption is considered an extraordinary crime or *an extraordinary crime*. With the magnitude of the impact, there is a link between corruption and human rights violations. Therefore, based on the things that have been described, the authors are interested in conducting an analysis of the relationship between corruption and human rights violations. The author will explain the meaning or intent of corruption, human rights, and human rights violations first. Broadly speaking, first, a criminal act of corruption is an act against the law with the aim of enriching or benefiting oneself, another person, or a corporation by abusing its authority or facilities because of its position or authority, which can harm state finances. Second, human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are a gift from God that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and protection of dignity and worth human dignity.⁶

³ Elwi Danil, *Korupsi: Konsep, Tindak Pidana Dan Pemberantasannya-Rajawali Pers* (PT. RajaGrafindo Persada, 2021).

⁴ Antoni Putra, "Pembentukan Peraturan Perundang-Undangan Yang Baik Dalam Revisi Undang-Undang Tentang Komisi Pemberantasan Korupsi," *Supremasi Hukum: Jurnal Penelitian Hukum* 30, no. 2 (2021).

⁵ Amalia Fadhila Rachmawati, "Dampak Korupsi Dalam Perkembangan Ekonomi Dan Penegakan Hukum Di Indonesia," *Eksaminasi: Jurnal Hukum* 1, no. 1 (2021): 12–19.

⁶ Fakhruddin Odhy, "Perspektif Budaya Hukum Dalam Perkembangan Kasus Korupsi Di Indonesia," *Dharmasiswa* 1, no. 1 (2021): 30.

Meanwhile, thirdly, human rights violations, in Article 1 point 6 of Law Number 39 of 1999 concerning Human Rights, are every act of a person or group of people, including state apparatus, whether intentional or unintentional, or negligence which unlawfully reduces, hinders, limit, and/or revoke the guaranteed human rights of a person or group of people, and do not get, or fear that they will not get a fair and correct legal solution, based on the applicable legal mechanism.

With the proof of a criminal act of corruption, then there are several things that have been violated by the perpetrator. First, the perpetrator has abused his authority or position for personal interests that benefit or even enrich himself or others. This is evident in one of the cases of corruption that has occurred in Indonesia. Second, acts of corruption can harm state finances because the state budget to be used has been planned in advance to benefit a person/group, so state finances or the state budget are not fully used for the development of state facilities and infrastructure. This creates a state financial loss. Third, not using the state budget properly can have implications for the state's *obligation to fulfill* human rights.⁷

This corruption has reduced the fulfillment of the economic and social rights of the community to obtain and enjoy sports facilities and infrastructure to the fullest and in full. In addition, this also has implications for the state's *obligation to protect* the basic economic and social rights of the community because by accepting the bribe, people's economic rights are deprived, even in this case, they are confiscated by state officials and this, indirectly, has implications for the state's obligation to respect the basic economic and social rights of the community. This act also causes state finances not to be used properly but instead obtained for personal gain, thereby robbing the community's rights that should be fulfilled by the state, namely the economic and social rights of the community.⁸

The relationship between Corruption and Human Rights (HAM) has not been discussed much among academics and practitioners, not even so much literature or textbooks on this subject. This may be due to the fact that the substance of corruption or the crime of corruption does not textually mention the substantive relationship between corruption and human rights directly. In fact, the correlation between the two is very clear because almost all corruption cases, directly or indirectly, will be followed by human rights violations. Corruption always begins with the abuse of power, meaning that the perpetrators of corruption are usually carried out by the holders of power. In other words, deviant acts committed by bureaucratic officials in the form of corruption can create misery for the small people in a country. It means that by acts of corruption, there has been a deprivation of people's rights to economic, social and cultural rights, and it means that human rights violations have occurred.⁹

Based on the brief description above, it is clear that corruption, which has been happening widely so far, is not only detrimental to the state's finances but has also been a violation of the social and economic rights of the community at large so that the criminal act of corruption needs to be classified as a crime whose eradication is done wonderfully. This means that at the national level, especially in Indonesia, corruption is a violation of human rights which generally violates the economic and social rights of the community. Furthermore, according to Artidjo Alkostar, committing a criminal act of corruption, this act also robs future generations of human rights potential. For example, the relationship between corruption and illegal logging.¹⁰ This not only harmed the people who were living at that time when illegal logging was carried out but also harmed future generations so that they could not live comfortably in order to obtain a decent living environment. According to him, the violation of human rights in the criminal act of corruption not only violates the economic and social rights of the community but, in some cases, can also violate rights related to civil rights, such as the right to life and society.

2. Research Methods

This research uses a normative juridical type technique, which examines the legal rules governing corruption and its relationship with human rights violations.¹¹ The research approach used is the *statute approach*, examining all laws related to the revocation of active and passive voting rights for convicted criminals of corruption.¹² In this case, there are still many people who do not know that revocation of rights is an additional crime regulated in the Criminal Code and the Anti-Corruption Law, as well as in the perspective of human rights, active and passive voting rights are also regulated.¹³

⁷ Ade Mahmud, *Pengembalian Aset Tindak Pidana Korupsi: Pendekatan Hukum Progresif* (Sinar Grafika (Bumi Aksara), 2021).

⁸ Adami Chazawi, *Hukum Pembuktian Tindak Pidana Korupsi: Edisi Revisi* (Media Nusa Creative (MNC Publishing), 2021).

⁹ Sayyid Umar Al Masyhur et al., "Pelaksanaan Peradilan In Absentia Dalam Penanganan Tindak Pidana Korupsi Dikaitkan Dengan Hak Asasi Manusia (HAM)," *Perspektif Hukum*, 2021, 16–35.

¹⁰ Karnia A Tondatuon, "TINJAUAN YURIDIS MENGENAI TRADING IN INFLUENCE SEBAGAI SEBUAH TINDAK PIDANA DALAM SISTEM HUKUM PIDANA INDONESIA," *LEX CRIMEN* 10, no. 11 (2022).

¹¹ Mieke Yustia Ayu Ratna Sari et al., "Metodologi Penelitian Hukum," 2021.

¹² Yati Nurhayati, Ifrani Ifrani, and M Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20.

¹³ Al Masyhur et al., "Pelaksanaan Peradilan In Absentia Dalam Penanganan Tindak Pidana Korupsi Dikaitkan Dengan Hak Asasi Manusia (HAM)."

3. Results and Discussion

3.1 The Corruption and Human Rights Violations

Handling of extraordinary criminals must be carried out in an extraordinary manner, namely that the laws and regulations must be adequate. It must be able to reach all acts of corruption in various types and various levels; the implementing apparatus of the law must also be elected by people, namely, people who are very professional in that field and free from corruption, including the legal culture (legal awareness of the community) must support the implementation of this problem. The problem of corruption is a matter of human rights violations, so the treatment of this act must also be the same as the treatment of other human rights violations, even though the act is not directly the same as existing human rights violations, such as genocide or mass murder. But the impact or consequences of acts of corruption indirectly and continuously (systemically) can kill humans so that perpetrators of corruption can be categorized as perpetrators of extraordinary crimes or what are often referred to as perpetrators of *Extraordinary Crimes*.¹⁴

In the life of the state administration, especially in law enforcement in Indonesia, the provisions regarding the protection of human rights in this decade are increasingly progressing. The echo of human rights that almost sank and only became a topic of discussion for certain circles, such as academics and a few parties during the New Order era, began to rise after the 1998 reform. This can be seen in the 1945 Constitution of the Republic of Indonesia, which added a special chapter on the Rights of the Republic of Indonesia. Human Rights. Every aspect of national and state life today cannot be separated from the human rights aspect, as well as in law enforcement, in an effort to eradicate corruption.¹⁵

Human rights are rights that are owned by every human being solely because of his existence as a human being. This right has been attached to every human being since the human was born, even since someone was still in the womb in the form of a fetus. This right is universal and cannot be revoked. For the global world, the concept of human rights has undergone a very basic change. Nowadays, human rights are not only seen as a form of understanding individualism and liberalism, but human rights also need to be understood humanistically for rights that are inherent to human dignity. The form of human rights in the contemporary concept is based on something that prioritizes humanity.¹⁶

The origin of idea of human rights comes from the theory of natural law or *natural law theory*. This theory of natural law has existed since ancient times. According to the ancient Greek philosopher of Greek Stoicism proposed by Zeno (336-246 BC) that the universe is governed by logic (rational principles) which every human being has so that humans will obey these laws. Thus, humans have the freedom to choose, and it is impossible to violate them as long as their actions are under the control of their reason which means following the natural will. This conception shows that the universe, every movement of which is governed by eternal laws that do not change, gives rise to the concept of justice according to natural law and fairness according to custom.¹⁷

The conception of human rights in the 1945 Constitution of the Republic of Indonesia cannot be separated from the soul of the 1945 Constitution of the Republic of Indonesia itself, which is stated in its preamble.¹⁸ In the preamble to the 1945 Constitution of the Republic of Indonesia, it is stated:

"Indeed, independence is the right of all nations, and because of that, colonialism in the world must be abolished because it is not in accordance with humanity and justice. By the grace of Allah the Almighty and with the encouragement of a noble desire to live a free national life, the Indonesian people hereby declare their independence. Then from that, to form a government that protects the entire Indonesian nation and the entire homeland of Indonesia and promotes public welfare, educates the nation's life, and participates in carrying out world order based on independence, eternal peace and social justice, the Indonesian National Independence was drafted in a Constitution of the State of Indonesia....."¹⁹

¹⁴ Teuku Isra Muntahar, Madiasa Ablisar, and Chairul Bariah, "Perampasan Aset Korupsi Tanpa Pemidanaan Dalam Perspektif Hak Asasi Manusia," *Iuris Studia: Jurnal Kajian Hukum* 2, no. 1 (2021): 49–63.

¹⁵ Irwan Sapta Putra, "TINDAK PIDANA KORUPSI DITINJAU DARI HAM DI INDONESIA," *Res Justitia: Jurnal Ilmu Hukum* 2, no. 1 (2022): 87–105.

¹⁶ Tiara Yahya Deramayati and Satria Unggul Wicaksana, "Peradilan In Absentia Dalam Tindak Pidana Korupsi Dan Hak Pembelaan Terdakwa Dalam Perspektif HAM," *Jurnal Komunikasi Hukum (JKH)* 7, no. 2 (2021): 570–91.

¹⁷ Dian Ferricha, *HAK ASASI MANUSIA DIALEKTIKA UNIVERSALISME VS RELATIVISME DI INDONESIA* (Dian Ferricha, 2021).

¹⁸ Rabi Yati, "PERLINDUNGAN HAM (HAK ASASI MANUSIA) DALAM KONSEPSI NEGARA HUKUM," 2021.

¹⁹ I Wayan Pardi, "Kembali Kepada Undang-Undang Dasar 1945: Diskursus Pembukaan UUD 1945 Dalam Perspektif Sejarah," *Historia: Jurnal Pendidik Dan Peneliti Sejarah* 2, no. 2 (2019): 97–104.

Thus, it is not an exaggeration if, based on the mystical atmosphere, the essence of the 1945 Constitution of the Republic of Indonesia as the Indonesian constitution is to achieve and strengthen the protection of human rights towards a common goal. Then in the body of the 1945 Constitution of the Republic of Indonesia, a special chapter⁴ on human rights can be found, although, outside this chapter, it should be acknowledged that there are articles containing guarantees of human rights, such as Article 27 paragraph (2) which recognizes the rights of every individual. - every citizen to work and a decent living or Article 29 paragraph (2) concerning guarantees for every resident to embrace their respective religions and worship according to their religion and beliefs.²⁰

Since Indonesia's independence was declared on August 17, 1945, the Indonesian people have begun to recognize democracy. As a nation that is learning to implement democracy in its entirety, Indonesia does have a long history of trying to find a true democratic identity. Since the independence period, three phases of the order in Indonesia have been alternated. Starting with the old order, then the new order and then the reform order. Although there are some differences in the democratic achievements carried out by the old order and the new order, neither of them can permanently convince the Indonesian people to adhere to the democratic model adopted by these two regimes. Authoritarian behavior, authoritarianism, and power centered on one point made the democracy of the new order and the old order unable to survive.²¹

After the collapse of the New Order regime, democracy, freedom of speech and legal awareness began to increase in Indonesia. Academics, democracy activists, members of the People's Legislative Assembly (DPR) and reform leaders began to look for ways how Indonesia could change from the influence of the New Order regime, which was full of corruption, collusion and nepotism. The new government that was formed was looking for the best way how the rights of politics, economy, freedom of opinion, a decent life and people's education could be fulfilled. One aspect that has become the focus of attention in the reform era is law enforcement. Law enforcement is directed at least two things, first, how to create justice for the Indonesian people by enforcing the law against past mistakes. Second, how to create a strong, just and responsive legal system.²²

The legal aspect that became a serious concern after the collapse of the New Order regime was the eradication of corruption. The absolute power possessed by the New Order regime has been rooted and ingrained in the legal system in Indonesia. The weak role of legal institutions in eradicating corruption is one of the main problems for the growth of corruption in Indonesia. The provisions of laws and regulations in eradicating criminal acts of corruption are not able to raise the quality of the rule of law, especially when it is associated with eradicating criminal acts of corruption. This condition is exacerbated by the weakness of laws and regulations to support the eradication of corruption before the reform period. Public awareness to participate in eradicating corruption is completely unreliable because it has been trapped in a corrupt government culture for too long, so its awareness is very weak.²³

Corruption is a very complex problem in Indonesia. Corruption is ingrained and even entrenched. The impact of corruption is so great on the socio-economic life of the Indonesian nation that corruption is considered an *extraordinary crime (extraordinary crime)*.²⁴ A comprehensive legal system is needed to eradicate corruption. Eradication of criminal acts of corruption must also be shaded by an institution and a strong legal umbrella and have great authority. As an institution that focuses on eradicating corruption, the powers that were previously separated in other law enforcement agencies must be united as a form of extraordinary authority to deal with corruption which has been considered an extraordinary crime.²⁵

The presence of the Corruption Eradication Commission or better known as the Corruption Eradication Commission (KPK), has fostered new hope and confidence in the Indonesian people, who were initially pessimistic about eradicating corruption in this country. The success of this commission is not only due to its human resources, which are elected people who are known to have good moral integrity, but also because of the additional authority given to this state institution, including the authority to obtain information from related parties in addition to other powers granted by law.²⁶

The success of the KPK in uncovering cases, especially large cases that have attracted public attention, is largely supported by the results of wiretapping.¹³ Wiretapping is basically an audit technique to obtain information in an effort to uncover cases or as

²⁰ R B Sularto, *Pengadilan HAM (Ad Hoc): Telaah Kelembagaan Dan Kebijakan Hukum* (Sinar Grafika, 2022).

²¹ Amalia Nur Wahdani, "DINAMIKA KOMNAS HAM SEBAGAI STATE AUXILIARY AGENCIES DALAM SISTEM KETATANEGARAAN INDONESIA," n.d.

²² Wahdani.

²³ Danil, *Korupsi: Konsep, Tindak Pidana Dan Pemberantasannya-Rajawali Pers*.

²⁴ Ifrani Ifrani, "Tindak Pidana Korupsi Sebagai Kejahatan Luar Biasa," *Al-Adl: Jurnal Hukum* 9, no. 3 (2018): 319–36.

²⁵ R O Y GANDA MARBUN et al., "Tinjauan Yuridis Tindak Pidana Korupsi Sebagai Extra Ordinary Crime," *Jurnal Ilmiah Simantek* 4, no. 3 (2020): 234–43.

²⁶ Moh Fadhil, "Komisi Pemberantasan Korupsi, Politik Hukum Antikorupsi Dan Delegitimasi Pemberantasan Korupsi," *Al-Ahkam* 15 (2019): 7–36.

a basis for determining further audit/investigation steps. Although the recording of the wiretapping results based on the Criminal Procedure Code (KUHP) does not necessarily become legal evidence, the information on the wiretapping results has proven to be very effective in obtaining evidence according to which it is able to reveal the occurrence of criminal acts of corruption. For the current condition, the results of the wiretapping can be used as evidence that is submitted by the KPK to the trial. The results of the wiretapping only have value or benefits if they meet two conditions. First, the information obtained from the wiretapping must be natural (natural evidence); second, the substance of the information is relevant to the case being or will be handled by KPK investigators.²⁷

In an investigative audit, the auditor, with his intuition or instincts, is given the freedom to determine who should be tapped and when the wiretapping is carried out. This is what may be considered by certain parties as a violation of human rights. The problem of wiretapping through telecommunication tools is closely related to the points of human rights. Pretexting for the interest of the state and based on law, wiretapping can be carried out, but if wiretapping is carried out on public officials or anyone who is strongly suspected of committing a criminal act of corruption, there should be no violation of human rights. In this case, the government has the right and may regulate the issue of wiretapping, but it should be emphasized that wiretapping for the sake of the law is not carried out arbitrarily and risks violating someone's human rights.²⁸

Some parties are of the opinion that the principle of state interest, especially with the addition of the clause "for state security" or "for investigation of criminal acts of corruption", should not be a justification for wiretapping. This is also related to advances in science and technology in the telecommunications sector. As a state of law, law enforcement is important; not only the presence of a number of laws but also the contents of these laws do not conflict with human rights. Regarding the eradication of corruption, so far, the KPK has used its authority to wiretap related parties with strong indications of committing a criminal act of corruption. The investigation stage is the initial stage of finding preliminary evidence. A person suspected of committing a criminal act of corruption is required preliminary evidence so that it can then be forwarded to the investigation stage.²⁹

Yahya Harahap³⁰ stated that an investigation means a series of actions to seek and find a situation or event that is related to a crime and a violation of a criminal act or is suspected of being a criminal act. The search and efforts to find events suspected of being criminal acts are aimed at determining the attitude of the investigator and whether the events found can be investigated or not in accordance with the method regulated by the Criminal Procedure Code.

The KPK, in this case, as regulated in Article 12 paragraph (1) of the KPK Law, has the authority to conduct wiretapping starting from this stage of the investigation. Thus, a person who has just been indicated to have committed a criminal act of corruption may be wiretapped on his communication tools to search for and find a situation or an event related to the crime of corruption that is being investigated by the KPK. Or in other words, to find preliminary evidence that the suspected person has or will commit an act that can be charged with the anti-corruption law.³¹ The question is whether the act of wiretapping to seek preliminary evidence can be justified from a human rights perspective even though the law allows it. Does this not harm and endanger anyone whose communication devices can be tapped at any time on the grounds that the person is indicated to have committed a criminal act of corruption and no preliminary evidence has been found to strengthen the allegation? Isn't that an act of "justification" that actually violates the constitutional rights of every citizen protected by the 1945 Constitution, which is the highest law in the order of laws and regulations in Indonesia?³²

The reason that wiretapping is basically an act that can be categorized as violating the constitutional rights of citizens, then with the reason for controlling and protecting human rights, the government, through the Minister of Communication and Information (Menkominfo), states the need for regulations related to wiretapping which will be regulated by Government Regulation (PP).) in accordance with the mandate of Article 31, paragraph (4) of the Law on Information and Electronic Transactions (ITE). The draft received a strong reaction, especially from the KPK and Indonesia Corruption Watch (ICW), including

²⁷ Aguinaldo Marbun, "KEWENANGAN PENYADAPAN OLEH KOMISI PEMBERANTASAN KORUPSI BERDASARKAN UNDANG-UNDANG NOMOR 19 TAHUN 2019 TENTANG KOMISI PEMBERANTASAN TINDAK PIDANA KORUPSI DALAM PEMBERANTASAN TINDAK PIDANA KORUPSI," *Jurnal Perspektif Hukum* 2, no. 2 (2021): 230–46.

²⁸ Agus Suntoro, "Penyadapan Dan Eksistensi Dewan Pengawas Komisi Pemberantasan Tindak Pidana Korupsi," *Jurnal Legislasi Indonesia* 17, no. 1 (2020): 25–37.

²⁹ Cindy Rizka Tirzani Koesoemo, "Eksistensi Komisi Pemberantasan Korupsi (Kpk) Dalam Penanganan Penyidikan Dan Penuntutan Tindak Pidana Korupsi," *Lex Crimen* 6, no. 1 (2017).

³⁰ S H M Yahya Harahap, "Pembahasan Permasalahan Dan Penerapan KUHP Penyidikan Dan Penuntutan," 2019.

³¹ Yasmirah Mandasari Saragih, Teguh Prasetyo, and Jawade Hafidz, "Analisis Yuridis Kewenangan Komisi Pemberantasan Korupsi (KPK) Sebagai Penuntut Pelaku Tindak Pidana Korupsi," *UNIFIKASI: Jurnal Ilmu Hukum* 5, no. 1 (2018): 33–44.

³² M Ali Imron and Agus Surono, "KEWENANGAN DEWAN PENGAWAS KPK DALAM MEMBERI IZIN PENYADAPAN," in *National Conference on Law Studies (NCOLS)*, vol. 2, 2020, 687–96.

people who care about eradicating corruption. The opposition is particularly related to the provision that there is a need to "ask for permission" first from the District Court and "tapping is carried out in the investigation stage". In Indonesia, the need for investigators to ask for permission beforehand can open up opportunities for the leak of wiretapping plans so that the KPK cannot obtain natural information. It also benefits the legal mafia because their crimes are difficult to uncover. Likewise, wiretapping, which can only be carried out at the investigation stage, will make it difficult for the KPK to obtain the expected wiretapping results. Wiretapping should be very useful if it is done early; in this case, it is the investigation stage.³³

These provisions tend to conflict with the KPK Law, namely Law Number 30 of 2002, which also regulates the wiretapping authority carried out by the KPK; namely, wiretapping has been carried out since the investigation stage. If the new provisions are enacted, of course, it will greatly weaken the KPK because if wiretapping is carried out at the investigation stage, it will be considered illegal. Whereas evidence obtained illegally cannot be accepted according to law.³⁴

3.2 Corruption in Correlation with Human Rights (HAM)

The constitution was actually formed to limit power so that it is not applied arbitrarily. Regulations regarding human rights will always be aligned with other materials in a state constitution; even one of the characteristics of a state of the law is the guarantee of human rights, in addition to the separation of powers, the legality of government, and an independent judiciary. There are several cases of corruption related to the determination of status as a suspect, which becomes a problem when viewed from the perspective of protecting human rights and legal certainty, namely regarding the length of time the suspect's status is experienced and the process of determining the status of a suspect.³⁵

Corruption is a very serious problem (*Extra Ordinary Crime*) because corruption can endanger the stability and security of the state and its people, endanger the social and economic development of society and politics, and can even damage democratic values and national morality. Law No. 30 of 2002 concerning the Corruption Eradication Commission assigns the Corruption Eradication Commission (KPK) to carry out investigations, investigations and prosecutions of criminal acts of corruption. Other duties of the KPK are coordination with agencies authorized to eradicate corruption, supervising agencies authorized to eradicate corruption, taking steps to prevent corruption, and monitoring the administration of state government.³⁶

Indonesia is currently trying to implement it; it can be proven by continuing to make amendments to the laws and regulations governing corruption issues,³⁷ starting with changes to Military Authority Regulation No. PRT/PM/06/1975 by Regulation of the Central Army War Authority No. PRT/PEPERPU/03/1958, subsequently amended by Law no. 24/Prp/1960, subsequently amended by Law no. 3 of 1971, then during the reign of President Megawati Soekarnoputri, Law no. 3 of 1971 amended by Law no. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, and as a refinement of the law above, it is equipped with Law no. 20 of 2001. In the Corruption Crime Act no. 31 of 1999, there were 4 (four) fundamental reforms, namely:³⁸

1. The crime of corruption has been formally formulated, namely, even though the proceeds of corruption have been returned to the state, the perpetrators of corruption are still prosecuted and brought to trial and can be punished (given criminal sanctions);
2. The adoption of a pure reverse proof system requires the defendant before a court hearing to prove that his assets are not the proceeds of corruption. If he can prove that his assets are not the proceeds of corruption, and the judge believes in the evidence he has presented, then the defendant is acquitted. On the other hand, if he cannot prove it and the judge believes that the defendant is guilty of his actions, then he is sentenced to various punishments, a minimum of 1 (one) year to 3 (three) years, and a maximum of 10 years or 15 years or evidence according to the Criminal Code which has been adopted in the criminal justice process approximately 20 years ago;
3. Giving money above a certain amount (Rp. 10,000,000,-) must be considered a bribe unless it can be proven otherwise. In this regard, bribery is a formal offense.
4. The confiscation of the defendant's assets can be carried out both before and after the court decision is handed down and is not limited by the expiration period.

³³ Tamara Laurencia, "Penyadapan Oleh KPK Dalam Perspektif Due Process of Law," *Jurnal Mercatoria* 12, no. 2 (2019): 122–38.

³⁴ Laurencia.

³⁵ Yati, "PERLINDUNGAN HAM (HAK ASASI MANUSIA) DALAM KONSEPSI NEGARA HUKUM."

³⁶ MARBUN et al., "Tinjauan Yuridis Tindak Pidana Korupsi Sebagai Extra Ordinary Crime."

³⁷ Fahmi Ramadhan Firdaus, "Pencegahan Korupsi Legislasi Melalui Penguatan Partisipasi Publik Dalam Proses Pembentukan Undang-Undang," *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 282–93.

³⁸ Yasmirah Mandasari Saragih, "Problematika Gratifikasi Dalam Sistem Pembuktian Tindak Pidana Korupsi (Analisis Undang-Undang Nomor 31 Tahun 1999 Jo Undang-Undang Nomor 20 Tahun 2001 Tentang Pemberantasan Tindak Pidana Korupsi)," *Jurnal Hukum Responsif* 5, no. 5 (2018): 76–86.

Furthermore, at the level of the law implementing apparatus, a corruption investigation agency has now been established, which has the authority as an investigator and prosecutor for criminal acts, namely the Corruption Eradication Commission (KPK). And the last thing that must be considered is legal culture; this is very important because overcoming corruption will not succeed without the support and legal awareness of the community; as stated by Sudarto, a clean government in which there are no or at least not many actions. Corruption cannot be realized only by legal regulations, even though it is criminal law with sharp sanctions. The scope of criminal law is limited.³⁹

In criminal law reform, it should be remembered that political crimes are not only committed by individuals or organizations against the government, especially those who try to change the political system and are against the law, but also political crimes committed by the government against the people, for example, secrecy and advice used by government officials to manipulate public opinion, for example regarding the controversial issue of Supersemar's birth process, and even at this time it is not clear where, missing or missing, which state apparatus should be responsible is what many people are concerned about. Also, abuse of power by government officials also related to political prisoners and its relationship with international conventions and extradition, all of which are required to be formulated with a democratic process, populist substance, hypothetical construction of articles of the rule of law that are juridical, not political such as the Subversion Act. In addition to the independence of the judiciary and the existence of conducive socio-political control, and the formulation of criminal law in the political field.⁴⁰

Political corruption is correlated with the enforcement of human rights because the more corrupt a government regime is, the more repressive the character of its government will be, which at the same time, the authorities will ignore the rule of law and violate human rights of their people. The Human Rights Court in Indonesia is one part of the Justice System in Indonesia. The Human Rights Court has an important task to build the confidence of the Indonesian people and the international community about the sovereignty and legal certainty in Indonesia today.⁴¹

Based on the understanding given by Law Number 8 of 1981 concerning the Criminal Procedure Code or better known as the Criminal Procedure Code (KUHAP), a suspect is defined as a person who, because of his actions or circumstances based on preliminary evidence, is reasonable to suspect that he is the perpetrator of a crime. As with criminal acts in general, the Criminal Procedure Code is also applied to suspected perpetrators of corruption in addition to the special procedural laws regulated by law. A person who is indicated to have committed a criminal act of corruption is named a suspect after going through a number of investigation processes by KPK investigators. A person suspected of committing a criminal act of corruption cannot simply be designated as a suspect without going through a process that ultimately leads to being named a suspect. Even so, it does not mean that the person concerned can certainly have committed a criminal act of corruption.⁴²

The presumption of innocence must still be put forward and respected until a court decision with permanent legal force declares that he is guilty of committing the criminal act of corruption that he is accused of. The principle of the presumption of innocence from a technical juridical point of view as well as from a technical investigation point of view is called the accusatory procedure/accusatorial system. This principle places the position of the suspect or defendant at every level of examination, not as an object but as a subject. As a subject of examination, a suspect or defendant must be seated and treated in his position as a human being who has dignity, worth and self-respect. While the object is the error or crime.⁴³

From the aspect of human rights, a suspect, let alone still in his status as a person suspected of committing a criminal act of corruption, still has basic human rights. His status as a suspect does not reduce his human rights, so he must be treated the same as any other human being. However, because the crime of corruption is a special crime that requires special handling, the law allows for deviations from human rights to the extent specified. The intended deviation is related to the act of wiretapping people suspected of committing a criminal act of corruption. Deviations made must be based on law because this is related to a person's human rights and also their rights as citizens guaranteed in the Constitution.⁴⁴

Indonesia is a state of law in which all actions taken by the state must be based on definite and clear laws. In the crime of corruption as part of public law, the state is given the power to regulate and limit the rights and freedoms of every individual in

³⁹ Firdaus, "Pencegahan Korupsi Legislatif Melalui Penguatan Partisipasi Publik Dalam Proses Pembentukan Undang-Undang."

⁴⁰ Muhammad Habibi, "Independensi Kewenangan Komisi Pemberantasan Korupsi Pasca Perubahan Undang-Undang Komisi Pemberantasan Korupsi," *Cepalo* 4, no. 1 (2020): 41–54.

⁴¹ Al Masyhur et al., "Pelaksanaan Peradilan In Absentia Dalam Penanganan Tindak Pidana Korupsi Dikaitkan Dengan Hak Asasi Manusia (HAM)."

⁴² Roni Efendi, *Kebijakan Hukum Pidana Dalam Pemberantasan Tradisi Omerta Tindak Pidana Korupsi Di Indonesia*.

⁴³ Nirmala Sari, "Trial by the Press Terhadap Proses Peradilan Tindak Pidana Korupsi Dalam Perspektif Asas Praduga Tidak Bersalah," *Rio Law Jurnal* 1, no. 2 (2020).

⁴⁴ Al Masyhur et al., "Pelaksanaan Peradilan In Absentia Dalam Penanganan Tindak Pidana Korupsi Dikaitkan Dengan Hak Asasi Manusia (HAM)."

society for the sake of creating order in social life in a nation and state, which is the main goal of criminal law. The existence of state interference in every freedom of individual life in social life, of course, in its application, there are often things that clash with human rights issues, especially violations of the human rights of the suspect/defendant, especially if it is still suspected or indicated to have committed a criminal act.⁴⁵

The government, as the executor, is given the authority to regulate the running of the government for the sake of the sustainability of the country; it is also its obligation to protect the human rights of its citizens, including those who are suspected of committing criminal acts of corruption. As in the Preamble to the 1945 Constitution, the fourth paragraph states, "Then from that to form an Indonesian state government that protects the entire nation and all of Indonesia's bloodshed...". This is also emphasized through Article 8 of Law Number 39 of 1999 concerning Human Rights, which states, "The protection, promotion, enforcement and fulfillment of human rights are primarily the responsibility of the government." Thus, it is clear that the government has an obligation to protect the human rights of every citizen without exception. Indonesia, as a country that has been undergoing a democratic transition since the fall of the authoritarian New Order regime, has indeed had positive developments in the field of human rights enforcement.⁴⁶

This is where the constitution becomes an important meaning in people's lives. The constitution is made as the embodiment of the highest law that must be obeyed by the state and even government officials, in accordance with the proposition "government by laws, not by men". This is confirmed through the 1945 Constitution as a result of the third amendment, namely Article 1 paragraph (3), which states, "The State of Indonesia is a state of law." As a state of law, the constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, it has included what is included in the category of human rights. The Preamble to the 1945 Constitution of the Republic of Indonesia, although it does not explicitly mention human rights in words "that independence is the right of all nations...".⁴⁷

Returning to the discussion of corruption, they must still be treated equally before the law, and their rights should not be stripped away. Even if the law authorizes investigators to commit irregularities by wiretapping, this should be done with clear rules and a strong legal basis. Do not let the act of wiretapping, with reasons for the sake of law and the handling of criminal acts of corruption, be carried out without procedures and procedures that are not clear so as to have the opportunity to violate someone's human rights. This is related to the principle of the rule of law adopted by our country, where everyone must be treated equally before the law, and there is legal certainty. The Universal Declaration of Human Rights also affirms the right to be treated equally before the law and is entitled to legal protection without discrimination, as can be seen in the following article:

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any intention to such discrimination."⁴⁸

Apart from that, it also regulates the right not to be arbitrarily disturbed by his personal affairs, his family, his household or his correspondence, nor is it allowed to violate his honor and good name, as can be seen in the following article:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."⁴⁹

We can also find the same protection in Human Rights Law as seen in the following article:⁵⁰

1. Everyone has the right to recognition, guarantee, protection and fair legal treatment as well as legal certainty and equal treatment before the law.
2. Everyone has the right to the protection of human rights and basic human freedoms without discrimination.

⁴⁵ Odhy, "Perspektif Budaya Hukum Dalam Perkembangan Kasus Korupsi Di Indonesia."

⁴⁶ Nyoman Mas Aryani and Bagus Hermanto, "Gagasan Pengaturan Yang Ideal Penyelesaian Yudisial Maupun Ekstra Yudisial Pelanggaran Hak Asasi Manusia Di Indonesia," *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 369–83.

⁴⁷ Ridwan Arifin and Lilis Eka Lestari, "Penegakan Dan Perlindungan Hak Asasi Manusia Di Indonesia Dalam Konteks Implementasi Sila Kemanusiaan Yang Adil Dan Beradab," *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (2019): 12–25.

⁴⁸ Septin Prameswara Willy, Rosra Deswita, and Elvardi Jean, "KAJIAN YURIDIS PERLAKUAN DISKRIMINASI PEMERINTAH TIONGKOK TERHADAP ETNIS UIGHUR DITINJAU DARI UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948" (UNIVERSITAS BUNG HATTA, 2020).

⁴⁹ Willy, Deswita, and Jean.

⁵⁰ Majda El-Muhtaj, *Hak Asasi Manusia Dalam Konstitusi Indonesia* (Prenada Media, 2017).

The provisions in the 1945 Constitution of the Republic of Indonesia, which regulate human rights issues, all of them lead to the principle of equality before the law. The consequence that must be carried out from the regulation of human rights in several articles of the 1945 Constitution of the Republic of Indonesia is that both the court and the government treat people fairly.

4. Conclusion

Based on the description of the main problem and analysis conducted on aspects of corruption as a violation of human rights law. In relation to this problem, the following conclusions can be drawn:

1. Corruption is a special crime that requires special handling as well. The KPK is a special institution created to deal with criminal acts of corruption in Indonesia, which is given very large powers by law. One of the powers of the KPK is related to human rights issues.
2. The realization of a democratic rule of law with corruption, crimes and human rights violations can be handled fully. Corruption is related and can even be part of and qualified as a human rights crime because the impact of corruption can cause people to be denied, dumped and deprived of their "human dignity". Corruption is one of the reasons why the state has not been able to fulfill its obligations and has not been able to fulfill its obligations to ensure the fulfillment of the human rights of citizens. Eradication of corruption must begin by considering the perspective of the human rights of Indonesian citizens in order to restore the Indonesian state in order to restore economic and social rights that have been violated so far.
3. There is a link between corruption and human rights violations. This is because committing a criminal act of corruption by people who have positions or authority in the government, in fact, has injured the realization of the state's obligation to protect, fulfill, and respect the basic or human rights of the community. Criteria for criminal acts of corruption are considered as violations of human rights if the consequences of criminal acts of corruption intersect with basic rights regulated in Law Number 39 of 1999 concerning Human Rights, Law Number 11 of 2005 concerning International Ratification Covenant On Economic, Social and Cultural Rights, and Law Number 12 of 2005 concerning Ratification of the International Convention On Civil and Political Rights.
4. The need for criteria for criminal acts of corruption as a violation of human rights is used as a consideration by judges in determining the verdict on cases of criminal acts of corruption so that the things taken into consideration by judges are more comprehensive. The more comprehensive the judge's consideration in his decision, the more realized decisions that reflect the values of justice, certainty, and legal benefits. In addition, which is no less important, the consequences of criminal acts of corruption, in addition to harming state finances, are the violation of the basic rights of the community; human rights are something that is fundamental in nature, so they should be taken into consideration by the judge.

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