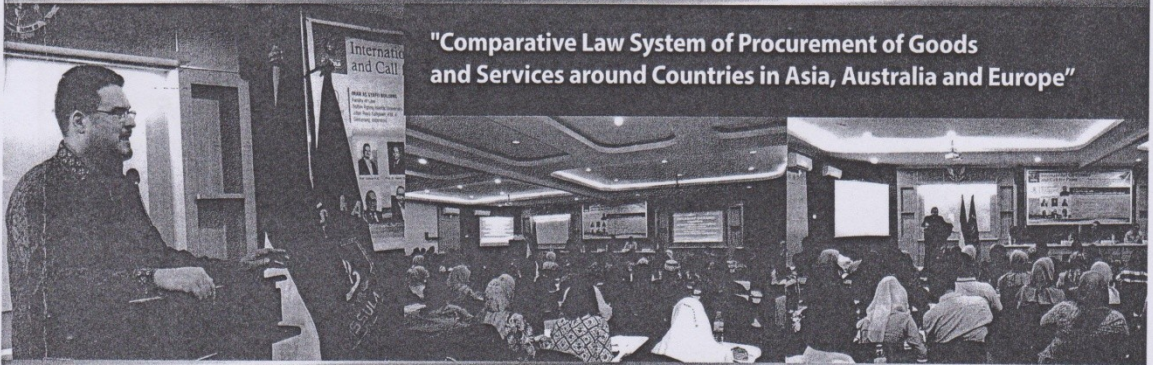


December **9th** 2016



The 2nd Proceeding

"Indonesia Clean of Corruption in 2020"



"Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe"

IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can provide this handbook without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers : (Prof. Simon Butt School of Law University of Sydey, Australia, Prof. Dr. Hikmahanto.,S.H.,LLM Professor of Faculty of Law Indonesian University, Siti Malikh Melek Feer Vrije Universiteit, Amsterdam, Dr. H. Jawade Hafidz, S.H., M.H The Dean of Faculty of Law, Sultan Agung Islamic University, Laras Susanti.,S.H., LLM PUKAT Gadjahmada of University.

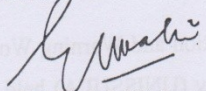
This is the second International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines for eradicating corruption in some countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in the Third International and call for paper next year.

Wassalamualaikum, Wr. Wb

Chairman of the Committee,


Dr. Sri Endah Wahyuningsih, S.H., M.Hum

NIDN : 0628046401

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: **“Comparative Law System of Procurement of Goods and Services around Countries in Asia, Australia and Europe”** which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on December 09th 2016.

On December 9, the world will commemorate the International Day against Corruption. Warning World Anti-Corruption Day is celebrated every year since the United Nations Convention against Corruption issued on October 31, 2003. The purpose of the Anti-Corruption Day is exactly why the issuance of this convention which is to promote anti-corruption strategies more efficiently and effectively, facilitate international cooperation and technical assistance in the prevention and the eradication of corruption, and enhancing integrity, accountability and good management of public affairs (United Nations Convention against corruption).

Corruption now spread in all sector in our country, including in procurement of goods and services. Since, promulgation of Law No. 5 of 1999 concerning on Prohibition of Monopolistic Practices and Unfair Business Competition was released and the purpose of establishment of Law No. 5, 1999 generally aims to maintain the climate of healthy competition among businesses, and prevent monopolistic practices.

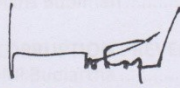
In connection with the indication of monopoly practices, there is also an assumption that it could have an impact that is not good against the bureaucracy in the government, because in it there is a hidden corruption and abuse of power to protect it. The statement contains a meaning, which behind the efforts of monopolistic practices there is a partnership that can not be "opened" between private business groups and bureaucrats who have economic interests. Indonesia fights for corruption and unfairness in conducting procurement of goods and services.

Thus, in order to celebrate the International Day against Corruption and Warning World Anti-Corruption Day, Faculty of Law, Sultan Agung Islamic University (UNISSULA) held an International Seminar and Call for Paper focusing on Indonesia Clean of Corruption in 2020.

Finally, we thank to the presenters, article senders, and committee who have contributed in this event, so that this international seminar ran well.

Was-salamu'alaikum Wr. Wb.

Semarang, December 09th 2016
Dean,



Dr. H. Jawade Hafidz, S.H., M.H.

NIDN.062004670

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THE EFFORT OF LAW ENFORCEMENT IN COMBATING CORRUPTION IN SOUTH SUMATERA

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Univeesitas Muhammadiyah Palembang

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ABSTRACT

Crime is social phenomena that happen in every time and place, the increasing levels of crime occur due to lack of facilities and infrastructure to cope with the development or increased crime or that could hinder the development of crime, at the same age of the human being as the abundance of criminal news coverage about the corruption committed by State officials.. The Attorney is the only institution of the Government of the country has a duty and authority in the field of prosecution in law enforcement and justice in the general judicial environment. In carrying out its duties, the Public Prosecutor bestows the case to the Court for the examination in order to prove that a person is guilty or not for the criminal offence that indicted. The Public Prosecutor's authority as a law enforcement element in proving the criminal acts that have been committed by the defendant that is should be assign the evidence as a complete proof material that probably related to the inference where has been a criminal offence. Similarly, what the Prosecutor did against to the law, it cannot be denied that the law itself is not sterile, pure and clean from any kind of interpretation when it implemented. The Prosecutor's role in these conditions is urgently needed mainly in law enforcement corruption in Indonesia. Related to the issue of social assistance that occurred in South Sumatra Prosecutor's role is extremely urgent because The State's loss which dates to achieve Rp. 2,38 Billion,¹ That's why the researcher interested to discuss it in a study because of the state and local financial managements that caused state losses so Prosecutor as well as the state prosecutor's investigation should carry out its duties in corruption.

The efforts to resolve the corruption based on Presidential Instruction No.10 of 2016 on the Prevention and Combating of Corruption Action 2016 and 2017 were published on 22 September 2016 contains 31 actions to be implemented by the Ministry / Agency and Local Government, in cooperation with the Corruption Eradication Commission (KPK) and the Presidential staff Office (KSP). There for the Politics, Law, Defense Deputy and Bappenas 'Security held a socialization about the substances such this Instruction There are three objectives of this Instruction: (i) to safeguard the government's priority programs; (li) to strengthen and focus the yearly action that has been implemented since 2011 to 2015, to ensure relevance and emphasis of action for achieving the outcome; and (iii) to improve the performance of the core business of the K / L which is in line with the President's priorities. The Action contained in the Instruction consists of 31 actions which also includes seven sectors. In this activity, will be sharpening relevant measure of success of the action undertaken, so that its activities can be more easily and detail during the implementation of monitoring and evaluation quarterly. Anti-Corruption Strategy indicators can be said to be successful if the public service runs transparently and effectively.

With the legal issues about How the implementation of Attorney of the Republic of Indonesia policy in implementing the social grants corruption case investigation in South Sumatra? And What is the obstacles of law enforcement in the investigation by the Prosecutor of the social grants corruption case in South Sumatera? Specifically against the corruption case, the General Attorney has issued Circular Letter about the Control of Handling of Corruption Case (SE-001 / A / JA / 01/2010) which limits the authority between

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the General Attorney, High Attorney and the State Attorney in handling criminal case corruption based on the amount of state laws. The provision indicates the boundaries of authority between the General Attorney, the High Attorney and the State Attorney in handling corruption cases. It is not in accordance with the provisions of Law No. 16 of 2004 relating to the scope of the prosecutor's authority, where the Attorney General's jurisdiction covers the territory of the Republic of Indonesia, The High Attorney covers include the provinces and the State Attorney covers an area of the district / city. But the handling of corruption cases has not run effectively and efficiently because there are many inactive corruption cases handled by the Prosecutor during this time. Although there is Presidential Instruction No.10 of 2016 on the Prevention and Combating of Corruption Action 2016 and 2017 were published on 22 September 2016 but it felt that the efforts of law enforcement officers in combating corruption is still not in accordance with the Instruction. Moreover, there are still many people who feel that the Instruction will have no effect on the work of the Ministry / Agency / Commission itself in the prevention and repression of acts of corruption in Indonesia.

Generally the obstacles that arise in solving the corruption includes three principal constraints, namely: 1. The limited number of human resources at the Investigator, Attorney Investigator and Public Prosecutor. 2. The limited of financial resources / budget of the case handling in the activities of investigation, and prosecution. 3. The limited of facilities / infrastructure that supports and promotes activities of investigation, and prosecution.

A. Introduction

Law as function controls all the aspects of the nation and a country life gives the strong contribution if it's done on the implementation of development maximally including if law enforcement officers and all the elements of society conform and obey to the rule of law. But in fact, not all the elements of society ready for obeying to the rule of law that already exists. Therefore often occurs the crime or lawlessness that committed by intentionally or due to negligence.

Crime is social phenomena that happen in every time and place, the increasing levels of crime occur due to lack of facilities and infrastructure to cope with the development or increased crime or that could hinder the development of crime, at the same age of the human being as the abundance of criminal news coverage about the corruption committed by State officials.

In the state of life one of the things that have to be enforced is a law of life in society, where the law does not only serve as society's safety and order, but also the more important is to create a better welfare for the people. The existence of an order for the people who crave security, with the inclusion of law into the people's life that increases the role played by the State in the society's life.² Because the law is not only just related to one aspect of human life

² Satjipto Rahardjono, *Hukum dan Masyarakat*, Angkasa, Bandung, 1980, page, 15.

and justice seekers expect the fair and necessary treatment and on the resolving problems effectively, efficiently completely and final.

Thus the rule of law meant that anyone who violated the law indiscriminately to be tried before the law. But the problem that arises is ideal (the law) inherently with the law, which is the Attorney General of the Republic of Indonesia is one of the pillars of law enforcement agencies that are expected to achieve this, because the Attorney as a manifestation of its role as a public prosecutor or investigator in a corruption case. With the authority of existing institutions in which the Prosecutor has personnel as one of the institutions engaged in law enforcement. When the Prosecutor carries out its duties and functions often faces obstacles and barriers in the Society. Because not only concern about the law, about Law Bachelor Degree, but also about the behavior of all the people of Indonesia. Hence, the Law is a normative norm³. Besides, many more of the other reality, that is behavioral, social structures, institutions and others. If we want the legal studies to be true, then we should also be willing to accept anything that happens on and relate to the fact that the law is full of itself.

Related to the enforcement of the criminal law that exist in Indonesia, to prove the existence of a criminal offence committed by the suspect, then the law enforcement measures that must be taken is a long process runs from start to finish. According to the system used in the CODE of CRIMINAL PROCEDURE, preliminary examination is an examination conducted by the investigators included in his additional checks on the basis of instructions from the public prosecutor in order to complete the results of his research. The Attorney is the only institution of the Government of the country has a duty and authority in the field of prosecution in law enforcement and justice in the general judicial environment. In carrying out its duties, the Public Prosecutor bestows the case to the Court for the examination in order to prove that a person is guilty or not for the criminal offence that indicted.

The Public Prosecutor's authority as a law enforcement element in proving the criminal acts that have been committed by the defendant that is should be assign the evidence as a complete proof material that probably related to the inference where has been a criminal offence. As the purpose from the completeness of this evidence is to affirm the evidence that the defendant has actually committed a criminal offence. As the legal evidence, according to the law No. 8 of 1981 regulated about Code of Criminal Procedure under article number 184

³ Satjipto Rahardjo, *Ilmu hukum Pencarian Kebebasan dan Pencerahan*, Muhamaddiyah University Surakarta, t 2004, page 25.

that consist of witnesses, expert information, letters, reference and an information of the defendant.⁴

Definition of evidence related to the Article 38 paragraph (1) Code of Criminal Procedure are objects related to a criminal offence, whether it is in the hands of the perpetrators and the time after seizing. Evidence later referred to as objects confiscated at the time of the object / the evidence seized by investigators based on the chairman's license of the local district court.

The type of evidence provided in article 39 paragraph (1) of the CODE of CRIMINAL PROCEDURE No. 8 of 1981 includes:

1. Object and bills suspect or defendant that allegedly obtained all or part of a criminal act or as a result of a criminal offence;
2. Objects that have been used directly for committing a criminal offence or to prepare it;
3. Objects used to hinder the investigation of a criminal offence;
4. Special objects created or allocated to do criminal offence;
5. Other objects that have a direct relationship with the crime committed.

The provision implementation is still having some legal issues that must be faced. Not seldom the provision implementation form of a policy that is a compromise or otherwise so it is a decision that will be implemented despite the contrary, to the provisions of the existing law rules or otherwise, the law is not enforced for reasons of insufficient evidence. This can also occur due to a provision of legislation is totally deviate from the basic ideas contained in the academic plan. Even in fact it often happens at the moment when the provision in the legislation will be implemented in practice. Here's where ultimately the provisions will be carried out in practice, for the sake of implementation of these provisions, although eventually deviate from the basic idea of that the aims and provisions.⁵ one of the ways that can be done in creating coherence that is to establish the law community, *law society*. The law is not indeed regardless of what is done to it society. Similarly, what the Prosecutor did against to the law, it cannot be denied that the law itself is not sterile, pure and clean from any kind of interpretation when it implemented. The Prosecutor's role in these conditions is urgently needed mainly in law enforcement corruption in Indonesia. Related to the issue of social assistance that occurred in South Sumatra Prosecutor's role is extremely urgent because

⁴ C. Djisman Samosir, *Segenggam Tentang Hukum Acara Pidana*, Nuasa Aulia, Bandung 2013, page. 127

⁵ Loebby Loqman, *Bunga Rampai Pembangunan Hukum Indonesia*, Eresco, Bandung, 1995, page. 64.

The State's loss which dates to achieve Rp. 2,38 Billion,⁶ That's why the researcher interested to discuss it in a study because of the state and local financial managements that caused state losses so Prosecutor as well as the state prosecutor's investigation should carry out its duties in corruption.

B. Issues

Based on the introduction that have been described above, which became the principal issues in this paper are as follows:

1. How the implementation of Attorney of the Republic of Indonesia policy in implementing the social grants corruption case investigation in South Sumatra?
2. What is the obstacles of law enforcement in the investigation by the Prosecutor of the social grants corruption case in South Sumatera?

C. Research Result.

The Increasing of the uncontrolled corruption could be disasters not only for the national economy but also for the nation. The failure of Indonesia's political elite when made a serious effort to combat the corruption would clearly endanger democracy. People will blame democracy for the difficulties, thus the difficulty was caused by corruption.⁷

According to Sudarto that the investigation, prosecution and sanctions in the criminal law is a set of policies that are in one system.⁸ As a system, it couldn't be said that each step of the criminal sentencing could stand alone, but it interrelated that could not even be separated from one another. Policy using the new criminal law can be implemented by namely criminal law. According to Marjono , criminal law enforcement is a crime control system consisting of police agencies, prosecutors, and correctional institutions, starting from the investigation activities, prosecution until the court decision and the execution of court decisions.⁹ On the criminal justice system, there are goals to be achieved. try to reduce the criminality among the society who commit crimes and the prevention is through the detection process, Criminalization and the implementation,¹⁰ for the judge as well as the criminals

⁶ Merdeka com, mei, 31, 2016.

⁷ Chaeruddin,dkk, "*Strategi Pencegahan dan Penegakan Hukum Tindak Pidana Korupsi*", Bandung,2009, Refika Aditama, page 6.

⁸ Sudarto, *Kapita Selekta Hukum Pidana*, Alumni, Bandung, 1981, page. 11.

⁹ Ansori Sabuan, Syarifuddin Pettanase, Ruben Achmad, *Hukum Acara Pidana*, Angkasa Bandung, 1990, page 11.

¹⁰ Muladi dan Barda Nawawie Arief, *Teori-teori dan Kebijakan Pidana*, Alumni, Bandung, 2992, page. 21.

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itself in addition to the Society¹¹. How the rule maker act that look as a function of the rules that govern their behavior, sanctions, socio-political power and ideology. and others that are about themselves, as well as the feedback comes from the holders of the role of the bureaucracy.¹²

Oleh karena itu dapatlah dikatakan bahwa penegakan hukum bukanlah semata-mata berarti pelaksanaan perundang-undangan, walaupun didalam kenyataannya di Indonesia adalah demikian, sehingga *Law Enforcement* begitu populer selain itu ada kecenderungan yang kuat untuk mengartikan penegakan hukum sebagai pelaksanaan pengakan hukum seperti Jaksa dalam membuat tuntutan dalam perkara korupsi Therefore, it can be said that law enforcement is not merely meant the implementation of legislation, despite the fact in Indonesia like that, and Law Enforcement is so popular on the other hand, there is a strong tendency to interpret the rule of law as the implementation of Law Enforcement like as Attorney when make a demand in a corruption case. It should be noted that those opinions are rather narrow and have weaknesses in the implementation of the legislation or the Prosecutors' demands instead it will disturb the peace of life. Law enforcement problem is actually located on the factors that may be affected, the factors namely : The Law Factors itself; The Law Enforcement factor, where the parties forming and applying the law; Facility Factors or Supporting Facilities that support The Law Enforcement; Societal factors which is the place where the law could be applied or The cultural factors which as creativity and taste based on human initiative in social life.¹³) *The affecting factors of law enforcement above can be summarised into a system of law (Legal System) which, according to Friedman: the substance of the law (legal Substance). The structure of the law (Legal Structure) the culture of law (Legal Culture).*¹⁴ Because the Attorney as a manifestation of his role as a public prosecutor or investigator in a corruption case. By the Attorney's authority in which the institution has personnel of the Prosecutor is as one of the engaged institution in law enforcement..

Attorney as an authorized institution as a public prosecutor and the investigator in the eradication of corruption. As the base of Attorney in carrying out its duties and authorities to conduct investigation and prosecution of corruption refers to Law Act No.31 of 1999 jo. Law Act No.20 of 2001 regarding the Amendment of Law Act No.31 of 1999 regarding The

¹¹ E.Y. Kanter dan S.R. Sianturi, *Asas-Asas Hukum Pidana di Indonesia Dan Penerapannya*, Jakarta : Stora Grafika, 2002, page. 63.

¹² Ibid, page.9

¹³ Ibid, page.32.

¹⁴ Satjipto Rahardjo, *Op.Cit.*page.38

Corruption Eradication as material law and Law Act 8 of 1981 regarding Criminal Proceedings (criminal Procedure Code) as a formal criminal law, and Law Act No.16 of 2004 regarding the Prosecutor of the Republic of Indonesia, has a very important role in the settlement and the eradication of this criminal case.¹⁵

When handling the corruption The prosecutors could act as investigators and as well as the public prosecutor, the role in the eradication of corruption as a penal is so dominant, As a penal means the eradication of criminal offense when handling, using the criminal law facility. Besides handling the criminal offense in penal , that known also as non penal handling that used non-criminal means, such as by administrative law. Professional expertise must be owned by the State Attorney's officials, both regarding the understanding and the understanding and mastery of the regulations and also on the development of technology. Corruption is a criminal offense required special handling and a collaboration with other parties, so that this matter can be resolved by the Prosecutor. Attorney as an investigator concurrently as a public prosecutor when handling the corruption, then to complete its obligations Prosecutors should cooperate with other relevant parties.¹⁶

The Attorney when carrying out its duties and functions often encounters obstacles and barriers in society. Because the law is not only about the legislation, law bachelor degree, but also about the behavior and the affairs of all Indonesian people.¹⁷ Because the law is a normative norms¹⁸. Besides many more the other fact, that is behavioral, social structures, institutions and others. If we want the Legal Studies to become so right as it was, then we should also be willing to accept what is happening and relating to the fact that the law is full of itself. Mahkamah Agung has provided an answer to respond to the legal issues with an opinion number KMA / 102 / III / 2005 dated March 9, 2005, that the prosecutor has the authority to investigate corruption cases after the validity of Law Act No.31 of 1999 jo.Law Act No.20 of 2001 by :

- Article number 26 Law Act No.31 of 1999 jo.Law Act No.20 of 2001
- Article number 27 Law Act No.31 of 1999 jo.Law Act No.20 of 2001.
- Article number 284 part (2) KUHAP by the explanation.
- Article number 17 Government Legislation Number 27 of 1983

¹⁵ Bambang Sujatmiko, ".Eksistensi Tugas dan Wewenang Jaksa dalam Tindak Pidana Korupsi di Kabupaten Kotawaringin Barat." *Sosioscientia*. volume 3 No. 1, 2011, page. 39-50

¹⁶ Ibid.

¹⁷ Ibid., page. 46.

¹⁸ Satjipto Rahardjo, *Ilmu hukum Pencarian Kebebasan dan Pencerahan*, Universitas Muhammadiyah Surakarta, tahun 2004, page 25.

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- Article number 30 part (1) title d Law Act number 16 of 2004. (*Source of Varia Justice XXI numberr 243 February 2006, page. 34*).

Through this Mahkamah Agung could obtained the legal construction that based on Article number 26 Law Act No.31 of 1999 jo.Law Act No.20 of 2001 investigations, prosecutions and court trial against corruption carried out based on the Code of Criminal Procedure (KUHAP), so, because in the CODE of CRIMINAL PROCEDURE there are rules in article number 284 part (2) of CRIMINAL PROCEDURE CODE and the explanation jo article number 17 Governmenr Legislation number 27 in 1983 then obviously the Prosecutor has the authority in corruption investigation.

Specifically against the corruption case, the General Attorney has issued Circular Letter about the Control of Handling of Corruption Case (SE-001 / A / JA / 01/2010) which limits the authority between the General Attorney, High Attorney and the State Attorney in handling criminal case corruption based on the amount of state laws. The provision indicates the boundaries of authority between the General Attorney, the High Attorney and the State Attorney in handling corruption cases. It is not in accordance with the provisions of Law No. 16 of 2004 relating to the scope of the prosecutor's authority, where the Attorney General's jurisdiction covers the territory of the Republic of Indonesia, The High Attorney covers include the provinces and the State Attorney covers an area of the district / city.

But the handling of corruption cases has not run effectively and efficiently because there are many inactive corruption cases handled by the Prosecutor during this time. Although there is Presidential Instruction No.10 of 2016 on the Prevention and Combating of Corruption Action 2016 and 2017 were published on 22 September 2016 but it felt that the efforts of law enforcement officers in combating corruption is still not in accordance with the Instruction. Moreover, there are still many people who feel that the Instruction will have no effect on the work of the Ministry / Agency / Commission itself in the prevention and repression of acts of corruption in Indonesia.

That the implementation of the functions from prosecutor in the Corruption's investigation and prosecution has not run optimally because there are many factors that hinder the handling of this case. The Factors that constrain the Attorney institution in carrying out its functions on the handling of corruption cases among others:¹⁹Lack of Attorney personnel number, operational funds and infrastructure are inadequate, The Attorney's authority General in terms of the investigation is still limited, Need quite a long

¹⁹ Firman Wijaya, "Peradilan Korupsi", Jakarta, 2008 Penaku bekerjasama dengan Maharini Press,page.23

time to do the calculation of the financial loss of the State, the calling of the witnesses repeatedly because witnesses are outside the city, or even have been relocated

Generally the obstacles that arise in solving the corruption includes three principal constraints, namely: 1. The limited number of human resources at the Investigator, Attorney Investigator and Public Prosecutor. 2. The limited of financial resources / budget of the case handling in the activities of investigation, and prosecution. 3. The limited of facilities / infrastructure that supports and promotes activities of investigation, and prosecution.

D. Conclusion

Based on the results of the above, the conclusion namely :

1. the handling of corruption cases has not run effectively and efficiently because there are many inactive corruption cases handled by the Prosecutor during this time. Although there is Presidential Instruction No.10 of 2016 on the Prevention and Combating of Corruption Action 2016 and 2017 were published on 22 September 2016 but it felt that the efforts of law enforcement officers in combating corruption is still not in accordance with the Instruction. Moreover, there are still many people who feel that the Instruction will have no effect on the work of the Ministry / Agency / Commission itself in the prevention and repression of acts of corruption in Indonesia.
2. Generally the obstacles that arise in solving the corruption includes three principal constraints, namely: 1. The limited number of human resources at the Investigator, Attorney Investigator and Public Prosecutor. 2. The limited of financial resources / budget of the case handling in the activities of investigation, and prosecution. 3. The limited of facilities / infrastructure that supports and promotes activities of investigation, and prosecution.

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