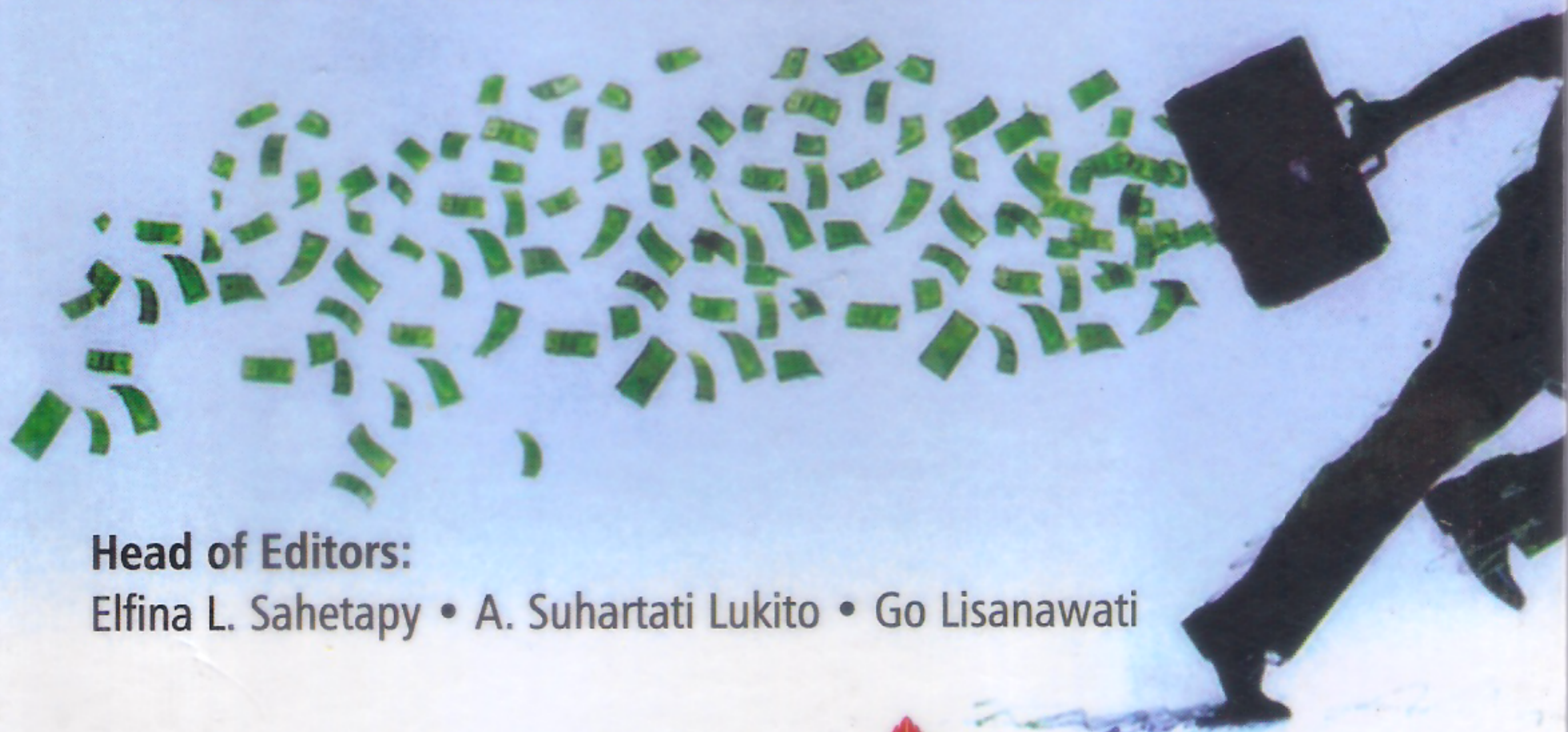


# TACKLING FINANCIAL CRIMES

VARIOUS INTERNATIONAL PERSPECTIVES



**Head of Editors:**

Elfina L. Sahetapy • A. Suhartati Lukito • Go Lisanawati

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**Various International Perspectives**

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# RAISING THE BAR FOR CORPORATE EXCELLENCE: A MILESTONE IN INDONESIAN ANTI-CORRUPTION STRATEGY

By

A. Suhartati Lukito

## I. Introduction

Indonesia, as one of developing country in the Asia region, has numerous prospective corporations dealing with various business activities. The significant growth of corporations in Indonesia has brought positive impact for government and society, particularly fulfilling the society needs. While the positive impact gained by the corporations, the negative impact such as corporate crime also ring a bell. Numerous corruption cases in Indonesia relating with corporation activities. The criminal act by corporations dealing with bribery and other corruption cases were significantly grow. The capital gain has driven the corporations to do all the necessary things even criminal acts specifically on corruption cases. Particularly in Indonesia, most corruption cases was relating with bribery cases as well as procurement of goods and or services cases. These type of cases are tightly connected with corporation interests. Hence, this was the reason of the involvement of corporate crime in conjunction with corruption cases in Indonesia. Transparency International even take noted that bribery persists in corruption cases. Almost a fifth of executives surveyed by Ernst & Young claimed to have lost business to a competitor who paid bribes. More than a third felt corruption was getting worse. Corruption distorts markets and creates unfair competition. Companies often pay bribes or rig bids to win public procurement contracts.<sup>1</sup>

The negative impact of corporate crime relating with corruption cases are much greater that individual cases. Considering the huge economic lost by corporate crime specifically on corruption cases become the urged way to overcome corporate crime itself. In economic terms at least, the costs of corporate offences far outweigh those associated with so-called conventional or traditional crimes.<sup>2</sup> It remains difficult to speak with any degree of confidence about the consequences of corporate crime. Hazel Croall as stated by Gary Slapper and Steve Tombs has written that no attempt has been made to estimate or even guesstimate the total amounts or costs of white collar crime in either financial or human terms, or to

<sup>1</sup> [http://www.transparency.org/topic/detail/private\\_sector](http://www.transparency.org/topic/detail/private_sector), downloaded 10 December 2015.

<sup>2</sup> Gary Slapper and Steve Tombs, 1999, *Corporate Crime*, Pearson Education Limited, UK, p. 54.

compare this with conventional crime, as both are equally as unmeasurable.<sup>3</sup> Therefore the corporate crime which has greater negative impact compared with conventional crime will definitely bring greatest negative impact on corruption cases.

Although Indonesian Law Number 31 Year 1999 jo Indonesian Law Number 20 Year 2011 concerning Corruption Eradication has explicitly acknowledged corporations as legal persons and corporate criminal responsibility for corporation who committed any corruption cases, apparently the increasing numbers of corporation illegal activities relating with corruption still show-up. Although the criminal sanction has place a huge sanction for corporation dealing with corruption cases, yet the reality does not change. Thus the prevention way from corporation needs to be raised to avoid any criminal acts. Therefore, as governmental institutions have developed many regulations to protecting economic life in Indonesia, the paper will analyze the obstacles and challenges in managing corporate integrity among business actors. This paper is try to analyze the characteristic concerning corporate crime in conjunction with corruption cases, the obstacles and reluctant on the law enforcement issues as well as to raising the integrity and compliance as key factors. Both on criminal law perspectives as repressive way and non penal policy as prevention way. Engaging the positive role of corporation to reduce the corporate crime sufficiently as well as to enforcing criminal and administrative sanctions in order to build anti-corruption regime in Indonesia.

## II. Corporate Crime and Corruption

One of the characteristic of new economic crimes that differs from other crimes is tend to generate huge profits, hence their description as "profit-oriented" crimes.<sup>4</sup> Especially when it related with corporation. Bribery, as one of the form of corporate crime and corruption, in the context of public / private corruption, payments that are required or demanded to make things pass either more swiftly, smoother or more favourably through bureaucratic machinery of the state. By 'greasing palms', corporations and businesses interest can buy, for instance, political or contractual favours, thus escaping the full burden of taxation and environmental regulation, or, alternatively, buy protected market and monopolies, import/export licenses etc.<sup>5</sup> Moreover DimitrisBatzilis mentioned about the evidence showed that companies from corrupt countries tend to bribe more often even when they operate abroad.<sup>6</sup>

<sup>3</sup> Ibid., p. 58-59.

<sup>4</sup> NdivaKofele-Kale, 2012, *Combating Economic Crime – Balancing Competing Rights and Interests in Prosecuting The Crime of Illicit Enrichment*, Routledge Research in Transnational Crime and Criminal Law, Routledge, New York, p. 2.

<sup>5</sup> Graham Brooks et.al., 2013, *Preventing Corruption, Investigation, Enforcement and Governance*, Palgrave Macmillan, London, p. 21-22.

<sup>6</sup> DimitrisBatzilis, 2015, "Bribing Abroad", *Greed, Corruption, and the Modern State – Essays in Political Economy*, Susan Rose-Ackerman and Paul Lagunes (Eds.), Edward Elgar, Cheltenham UK, p. 277.

The side effect of corporate crime is much greater than the individual crime. This condition can be even bigger when corporate crime is relating with corruption cases as we all know that corruption and bribery are extraordinary crimes. Marshall B. Clinard and Peter C. Yeager has mention that corporate crimes not only involve financial losses but also injuries, deaths, and health hazards. They also involve the incalculable costs of damage done to the physical environment and the great social costs of the erosion of the moral base of society. Such crimes destroy public confidence in business and in the capitalist system as a whole, and they seriously hurt the public image of the corporations themselves and their competitors.<sup>7</sup> Moreover when corporate crime related with any other serious crimes, in New York Times said that government experts estimate that violations of antitrust, tax, fraud, bribery, pollution, and other federal laws by the nation's thousand largest corporations cost the economy billions of dollars.<sup>8</sup>

Similarly happened in Indonesia, many corruption cases such as bribery involving major local corporations or even multi-national corporations has potentially causing state economic loss. Several corruption acts and bribery have been regulated under Indonesian Law number 31 Year 1999 jo Indonesian Law Number 20 Year 2001 concerning Corruption Eradication such as Article 2, Article 3, Article 5, Article 6 Indonesian Law Number 31 Year 1999 and Article 12B Indonesian Law Number 20 Year 2001. Moreover the acknowledgment of corporations has explicitly mention in Article 1 point 3 Indonesian Law Number 31 Year 1999 as follows "Every person shall be considered an individual or a member of a corporation" and also there are some articles regulating on criminal responsibility for legal person as regulated in article 21 as stated that in the event of corruption is committed by or on behalf of a corporation, prosecution and sentencing may be conducted against the corporation and/or its officers.

Eventhough the aforementioned article was clearly stated the criminal responsibility goes to the corporations and or its officers. But yet numerous corruption cases by corporation activities still brought up as phenomenon in Indonesia. Assuming that the criminal sanction should be working effective and efficiently, the questioning thought is how does the criminal sanction failed to gain the deterrence effect. Criminalisation for corporate illegal behavior particularly on corruption cases has the purpose to get the deterrence effects for the perpetrator as well as for the society in general. As it was mentioned in United Nations Office on Drugs and Crime that the true cost of corruption far exceeds the value of assets stolen by the leaders of countries. This would include the degradation of public institutions, especially those involved in public financial management and financial

<sup>7</sup> Marshall B. Clinard and Peter C. Yeager, 1983, *Corporate Crime*, The Free Press, New York, p. 8.

<sup>8</sup> *Ibid.*

sector governance, the weakening if not destruction of the private investment climate, and the corruption of social service delivery mechanism for basic health and education programs with a particularly adverse impact on the poor.<sup>9</sup> Not to mention that corporate crime as part of white collar crime has two broad types of deception. They involve the presentation of misleading information and the concealment of information.<sup>10</sup> Therefore the corporate crime and bribery should be prioritize through National Strategy of Corruption Prevention and Eradication.

### III. Reducing Corporate Crime and Bribery Through Criminal Sanction

Notwithstanding on the article 20 Indonesia Law Number 31 Year 1999 on corporate crimes relating with corruption cases has clearly regulated that corporations and its officers can become offenders and punished under criminal sanctions, but based on the legal practices most of the criminal punishment goes only to the officers such as directors, commissioners or managers. Rarely corruption cases convicted corporations by its offences. This phenomenon triggered by some reason such as:

- (1) The orientation of law enforcement agencies straight away to natural person rather than legal person. Criminal law procedure under corruption cases beside trying to retrieve back the state economic loss is trying to imprisonment the person which will be definitely applied to natural person.
- (2) The difficulty to prove the involvement of the corporation. Although the corporation has the motive and interest on the offences yet still it will be shifted to individual offences rather than corporate offences.
- (3) The small amount of fine as criminal sanctions to corporation create even bad behavior of non deterrence effect of corporations.

The aforementioned weaknesses have created lack of criminal sanctions for corporation itself. The imprisonment of the corporate officers as commonly criminal sanction has proven to be non effectively and efficiently for reducing corporation crimes relating with corruption cases, since the corporation still can replace the officers and it will not affect the business activities of the company.

The aim of corporate criminal responsibility is to get the deterrence effect. The criminal sanction not only directing to the corporation officers but the most important is how to implementing criminal sanction to the corporation itself. To put the corporation officers to imprisonment is not sufficiently enough assuming that the illegal interest comes from corruption cases goes to the corporation. There has to be new orientation for the law enforcement agencies on corruption cases not only chasing the officer responsibility but also chasing the corporation criminal responsibility as prioritized concern.

<sup>9</sup> NdivaKofele-Kale, *Op.Cit.*, p. 5.

<sup>10</sup> Michael L. Benson and Sally S. Simpson, 2015, *Understanding White-Collar Crime, An Opportunity Perspective*, Routledge, New York, p. 146.

As the criminal corporate responsibility has been explicitly drawn in regulations on Corruption Eradication, the purpose of criminal sanction sentenced to the perpetrator is to create deterrence effect both for the perpetrator himself/herself and also for the whole society. Smith and Hogan clearly stated that the sentencing court must have constant regard to the "seriousness" of the offence.<sup>11</sup> Even mentioned that sometimes the court's aims were not limited to punishing and deterring the offender. They wanted to impose a sentence which would deter others from committing offences of this character.<sup>12</sup>

Criminal sanctions related with corporate offences has the similar purpose as its stated by A. P. Simester and W.J. Brookbanks as follows : Corporate criminal liability has been provided for by extending the meaning of the word "person" to include bodies corporate, implying that all criminal statutes are presumed to apply to artificial as well as natural legal persons.<sup>13</sup> Even when the arguing concerns about mens rea which only provided in natural persons, yet the corporations through its officers, directors should have knowledge and intention to do the criminal offenses. The objection that a corporate body has no mind or soul and, as such, is incapable of possessing the mental element necessary for most serious offences, can be met by saying that a corporation can have knowledge and form an intention through its human agents, so that the knowledge and intention of its agents may be imputed to the body corporate.<sup>14</sup> Hence corporation still be held liable as a perpetrator to offences committed by its officers or directors.

Furthermore Penny Crofts said that a corporation is a legal person and may be convicted of a crime. The acts of a corporation's officers or employees are attributed to the corporation. Currently, a corporation will be liable for the criminal acts of its officers or employees if it can be proven that those acts were, in reality, the acts of the corporation. Corporations cannot be imprisoned, but can be fined or have their license revoked.<sup>15</sup> Moreover Herbert L. Packer express his views that there are two and only two ultimate purposes to be served by criminal punishment: the deserved infliction of suffering on evildoers and the prevention of crime.<sup>16</sup> Specifically upon corruption cases done by the corporations which are parts of the economic offenses, the use of criminal sanctions in dealing with economic offenses could, if properly studied, be an excellent proving ground for deterrence theory.<sup>17</sup>

<sup>11</sup> Smith and Hogan, 2002, *Criminal Law, Tenth Edition*, Butterworths Lexis Nexis, UK, p. 6.

<sup>12</sup> *Ibid.*, p. 8.

<sup>13</sup> A.P. Simester and W.J. Brookbanks, 2002, *Principles of Criminal Law* (Brookers Ltd, Wellington), p.214.

<sup>14</sup> *Ibid.*, p. 212.

<sup>15</sup> Penny Crofts, 2005, *Essential Criminal Law- Third Edition*, Cavendish Publishing, USA, p. 14.

<sup>16</sup> Herbert L. Packer, 1968, *The Limits of The Criminal Sanction*, Stanford University Press, California, p. 36.

<sup>17</sup> *Ibid.*, p. 356.

Although long-term imprisonment seems to be an effective way to get deterrence effects as explained by Ian Marsh: essentially, on frightening people into not offending; and it is, therefore, generally associated with severe penalties such as long prison sentences. One problem with this notion is that what one person may feel to be severe might be viewed by another as mild. Another is that for general deterrence to be effective, the punishment has to be severe, and painful, enough to outweigh the potential pleasure that the particular offence might give the offender – a difficult assessment to make. It is also necessary that there is adequate publicity so that would-be offenders are aware of the particular punishments meted out. Indeed, any publicity that leads to an increased awareness that many crimes are not being solved or that highlights an increase in what are seen as lenient punishments can work against the effectiveness of deterrent punishments.<sup>18</sup> But these ideas should be reconsidered based on the high quantity of corruption cases even where lots of long-term imprisonment had been applied. The punishment should be fit with the characteristics of corporate crimes.

As already explained earlier, corporate crimes relating to corruption cases commonly happen for the purpose of achieving profit/interest. Hence it is clearly stated in Article 2 and 3 of Indonesia Law Number 31 of 1999 and Indonesia Law Number 20 of 2001 that one of the elements of corruption is for the purpose of obtaining a benefit/interest. Therefore, this purpose will be the criminal intent for the criminal acts. In order to reduce corporate crimes in corruption cases, it is necessary to reduce the criminal intent.

Robert Cooter said that crimes can be ranked by seriousness, and punishments can be ranked by severity. The schedule of punishments is such that the more severe punishments attach to the more serious crimes.<sup>19</sup> Concern over the crime wave is motivated by widespread fear of criminals and the urgent wish of ordinary people to avoid being victimized. These considerations bring the matter of deterrence to the forefront of the policy debate.<sup>20</sup>

Deterrence is a future-oriented aim in that the intention behind it is to reduce crime. It could also be seen, therefore, to have a utilitarian rationale. As already mentioned, "utility" would be apparent if a punishment deterred an offender from reoffending or if it discouraged others from offending in the first place. This comment indicates that there are two basic ways in which deterrence can work: either at an individual or at a general level as it was stated by Cavadino and Dignan. Individual or specific deterrence involves the punishment showing the offender that her/his action was

<sup>18</sup> Ian Marsh, 2004, *Criminal Justice, An Introduction To Philosophies, Theories And Practice*, Routledge, New York, p. 9.

<sup>19</sup> Robert Cooter and Thomas Ulen, 1988, *Law And Economics*, Harper Collins Publishers, United States, p. 516.

<sup>20</sup> *Ibid.*, p. 535.

undesirable because it brought her/him more pain than pleasure; so the fear of punishment would prevent the individual from repeating the offence. General deterrence works by showing others who may consider a criminal act that they will suffer painful consequences if they commit the offence.<sup>21</sup>

Punishment involves using legal authority to do things which would otherwise be morally wrong – and with no guarantee that those things will achieve what they are intended to. The basic justifications we have considered here both contradict and overlap with one another. Retribution looks back and aims to punish in proportion to the offence committed, deterrence and rehabilitation look forward and aim to reduce future offending. And these different rationales can exist together within particular punishment – so that a prison sentence can be passed with the intention of being retributive, of deterring offenders and of offering rehabilitation.<sup>22</sup>

UNCAC also took the novel step of taking measures against corruption in the private sector. In Article 21, entitled 'Bribery in the Private Sector', only requires parties to consider criminalizing the intentional commission 'in the course of economic, financial or commercial activities', of 'the promise, offering or giving' and 'the solicitation or acceptance' of an undue advantage.<sup>23</sup> Realizing that the central issue in criminal law prevention and suppression of corruption is how to optimize the existing legal framework rather than substituting it with the new one.<sup>24</sup> This particular substance is not only the area of combating the corruption but the prevention way to upgrading the corporation.

Although in the old days, the legal obstacle to convicting corporations is due to criminal intent but apparently this criminal intention can be seen among the activities of board of directors, employee that represent the corporation. To reduce the criminal intention is not only by giving the highest criminal sanctions as a repressive way but the most important is how to create the good business ethics that could reduce the criminal intent.

### III. Building Business Principle and Integrity System Within The Corporation

As mentioned earlier that corporate criminal responsibility through imprisonment to corporate officers is not the only effective and efficient way to reducing corporate crime on corruption cases. Corporate criminal responsibility only become repressive way to combating problems on this Anti-Corruption regime. Corporate criminal responsibility even take a long winding road and high cost to do the necessary criminal law procedure. These costs should be borne by the government. Moreover stated that

<sup>21</sup> Ian Marsh, *Op.Cit.*, p. 8.

<sup>22</sup> *Ibid.*, p. 25.

<sup>23</sup> Neil Boister, 2012, *An Introduction To Transnational Criminal Law*, Oxford University Press, UK, p.96.

<sup>24</sup> NdivaKofele-Kale, *Op. Cit.*, p. 7.

criminal prosecution is typically reserved for the egregious violations in which laws are knowingly and intentionally broken. In these kinds of cases, the goals of enforcement are to achieve both special and general deterrence. Compliance is the main goal of civil and administrative enforcement under the assumption that highly punitive sanctions are unnecessary.<sup>25</sup>

Parallel with the corporate criminal responsibility as a repressive way, there is also a prevention way to avoiding the corporate crime on corruption cases by fostering business principle and integrity system to bolstering good business ethics and good corporate governance as it is also become the form of non-penal policy in Indonesia. Raising the bar for business principle and business ethics seems to be a new paradigm and milestone to avoiding any corruption acts or bribery act relating with corporation. Business ethics and good corporate governance seek to minimizing the risk of over-regulation and the costs from unintended consequences of corporate criminal responsibility.

The idea is based on how big correspondence of failure of business ethics could be the prominent factor of corporate crime. Whilst doing business activities in corporations, the main purpose is to achieve the maximum profit with minimum efforts. Corporation mostly do whatever it takes to achieve its purpose. Even by breaking the rules, doing bribery activities to smooth the business activities, doing financial fraud, tax evasion and any other illegal activities. These conditions can even worst when the corporations don't provide themselves with business principle and business ethics. Government, consumer, competitor, employees could become a risk. Failure of business principle and business ethics certainly could cause business crime. Michael Clarke explained business crime, however, in the sense in which it is used here, covers a much wider range of misconduct, which may be non the less damaging and otherwise undesirable from resulting from duress, incompetence, negligence, lack of training, lack of clarity in the rules, opportunism, technical infraction, or sheer muddle-headedness, rather than calculated deceit motivated by greed.<sup>26</sup> Furthermore, business crime can create corruption acts. Corruption, as a business option, from a criminal entrepreneur's perspective, is primarily useful as a market control mechanism, in that, corruption strategies, like bribes and/or kick-backs to police, politicians, government officials, 'honey-traps', and blackmail, assist criminal entrepreneurs to facilitate their business opportunities as well as increase their market share.<sup>27</sup>

Fostering the business principle and business ethics in corporation will bring tremendous positive impact and increasing the good behavior of corporation itself. Therefore corporation shall realized the importance role

<sup>25</sup> Michael L. Benson and Sally S. Simpson, *Op. Cit.*, p. 150.

<sup>26</sup> Michael Clarke, 1990, *Business Crime, Its Nature and Control*, St. Martin's Press, New York, p.16-17.

<sup>27</sup> Geoff Dean et.al., 2010, *Organized Crime, Policing Illegal Business Entrepreneurialism*, Oxford University Press, New York, p. 76.

of corporation to the economic concern of the nation. Considering how great is the power of corporation, as stated by Donald Nordberg, "Many large corporations, the ones we sometimes call multinational enterprises or "transnational" companies, have more income and produce more wealth than many countries. Their employees may well be citizens of a country – or of more than one – but their expatriate managers may have a greater sense of allegiance to the corporation than to any single nation-state. Their actions – if nothing else through threatening to move their legal seat from one political jurisdiction to another – can propt governments to change policy. A few have conspired to overthrow governments, so great is the potential of their power."<sup>28</sup>

Having said that corruption as one of the most serious distortions of the competitive well functioning of modern regulated market, which typically creates and crystallizes asymmetric business environments.<sup>29</sup>Therefore integrity system within good corporate governance should be implemented in every corporate legal activity. International Finance Corporation as quoted by Donald Nordberg mentioned that "Good corporate governance will not just keep your companies out of trouble. Well-governed companies often draw huge investment premiums, get access to cheaper debt, and outperform their peers."<sup>30</sup> Having said this, the corporation who can build their integrity system will get benefits in their business activities.

Dealing with corruption cases such as bribery by corporations do not absolutely eliminated by criminal sanction. The OECD Recommendations on Bribery in International Business which recommend effective measures against bribery including criminalization also acknowledge non-criminal sanctions such as monetary sanction.<sup>31</sup>

The UN Global Compact pronouns ten universal principles into business philosophy and everyday operation. One of the principle is businesses should work against corruption in all its forms, including extortion and bribery. The World Bank and other global organizations have recently paid considerable attention to combating corruption and bribery.<sup>32</sup>All of the preventive ways to combating corporate crimes in corruption cases are implementing the preventive anti – corruption policies and practices under UNCAC which was already ratified by Indonesian Law Number 7 Year 2006 particularly upon Article 5 which highlighted several important principles such as principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.<sup>33</sup>Therefore the importance

<sup>28</sup> Donald Nordberg, 2010, *Corporate Governance, Principles and Issues*, SAGE Publications, London, p. 5.

<sup>29</sup> Marco Arnone and Leonardo S. Borlini, 2014, *Corruption – Economic Analysis and International Law*, Edward Elgar, Cheltenham UK, p. 19.

<sup>30</sup> Donald Nordberg, *Op.Cit.*, p. 110.

<sup>31</sup> Neil Boister, *Op. Cit.*, p. 93.

<sup>32</sup> Nick Kochan and Robin Goodyear, 2011, *Corruption - The New Corporate Challenge*, Palgrave Macmillan, Hampshire UK, p. 10-11

<sup>33</sup> Article 5 *United Nations Convention Against Corruption(UNCAC)2003*

functions of business principle and business ethics in corporations as standards and procedures designed to safe guard the integrity of corporations.

In order to avoid corruption, companies can take internal steps to prevent it. They need a zero-tolerance policy towards bribery and corruption. And it must be enforced through specific anti-corruption measures. There is Business Principles for Countering Bribery. But companies also need an honest operating environment.<sup>34</sup> Corruption in the private sector takes many forms. It distorts markets and has a negative impact on society. It was needed to build and work with coalitions of governments, public institutions and civil society to advocate for a stronger anti-corruption environment in the private sector.<sup>35</sup>Therefore, Transparency International encourages Business Principles such as :

- a. The enterprise shall prohibit bribery in any form whether direct or indirect.
- b. The enterprise shall commit to implementing a Programme to counter bribery. The Programme shall represent the enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance.

These Business Principles are based on a Board commitment to fundamental values of integrity, transparency and accountability. Enterprises should aim to create and maintain a trust-based and inclusive internal culture of individual accountability in which bribery is not tolerated.<sup>36</sup> Corporation should build and implement anti-corruption strategy not only to reducing the risk but also to strengthening reputation, builds the respect of employees, raises credibility with key stakeholders and supports a corporate commitment to honest and responsible behavior. The government also take part to build Indonesia best practices for corporation to avoid corruption activities.

In line with the aforementioned idea, there is Presidential Regulation Number 55 Year 2012 concerning on National Strategy of Corruption Prevention and Eradication both Long Term Year 2012-2025 and Medium Term Year 2012-2014. The vision for the long term (2012-2025) is: "to create an anti-corruption nation that is supported by a system of cultural values with integrity". Whereas for the medium term (2012-2014) the vision is "to create a government that is free from corruption, and having the capacity to prevent and take action against corruption and a system of integrity as a cultural values". The long-term vision and medium-term vision shall both be realized in all the domains, that is, within the government in a broad sense,

<sup>34</sup> [http://www.transparency.org/topic/detail/private\\_sector](http://www.transparency.org/topic/detail/private_sector), downloaded 10 December 2015

<sup>35</sup> *Ibid.*

<sup>36</sup> Transparency International, 2013, *Business Principles For Countering Bribery, A Multi-Stakeholder Initiative Led By Transparency International*, Third Edition, p. 5.

the civil society, as well as the business world.<sup>37</sup> Through this Presidential Regulation, it was clearly stated that corporation, as part of the business world, hand-in-hand with the government has a medium term vision to build a system of integrity as a cultural values.

The Presidential Regulation Number 55 Year 2012 outlines six strategies used by the Indonesian government to realize the vision: prevention, law enforcement, the harmonization of rules and regulations, international cooperation, the recovery of assets acquired through corruption and the promotion of anti-corruption education and culture and reporting mechanisms. As it was mentioned earlier, the first strategy in this regulation is prevention way to eradicating corruption. In order to deal with the corruption acts that still massively and systematically conducted in Indonesia, prevention way has to take part to eliminate it.

Concerning that corruption activities can occur everywhere, within the government agencies, private agencies, and even in day-to-day life. In view of such conditions, it is only fitting that the prevention of corruption be given the position of priority as the first strategy. Through a prevention strategy, it is hoped that other steps will come forth as contribution for improvements in the future. This strategy is the answer to an approach which is more focused on repressive action. The paradigm for development of a repressive approach is that it provides a punitive effect on the perpetrator of the crime of corruption. Unfortunately, however, the repressive approach has apparently not yet been able to reduce corruptive behavior and practice systematically and on a massive scale. The success of the prevention strategy is measured by the increasing corruption perception index value and Ease of Doing Business (EoDB) value in Indonesia.

Following the issuance of the regulation, President of The Republic of Indonesia issued Presidential Instruction Number 1 of 2013 on Actions to Prevent and Eradicate Corruption, which contains the details action plans that state institutions, ministries and regional governments must carry out. These action plans include the provision of regular updates through an evaluation and monitoring system managed by the Presidential Working Unit for Development Supervision and Control. The whole of an enterprise's anti-bribery efforts including values, code of conduct, detailed policies and procedures, risk management, internal and external communication, training and guidance, internal controls, oversight, monitoring and assurance. The importance role of corporations within the economic of nation particularly in Asian countries also described by OECD Report that one key facet of this structural change was corporate governance reform. Indeed, the years since

<sup>37</sup> A. Suhartati Lukito, 2015, *Fostering and Enhancing The Role of Private Sector – A Prevention Way Towards Corruption Eradication in Indonesia*, Journal of Financial Crime, Vol. 22 No. 4, p. 482.

the Asian financial crisis of 1997 have seen many countries in Asia enhance and transform corporate governance systems.<sup>38</sup>

Corporations must promote integrity to avoid any corruption activities. A particularly pertinent principle in the Asian context is the recommendation in OECD that the corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets. Within this context, a critical element of the policy making landscape is to promote the benefits of good corporate governance at both the firm and economy level. To this end, effective and continuous consultation with the public is an essential element that is widely regarded as good practice.

The strong commitment from corporation to build business ethics and integrity is a milestone to achieve the first strategy in National Strategy of Corruption Prevention and Eradication as the main target of the strategy is to reduce corruption and to build a prosperous Indonesian society free from corruptive acts. The success indicators used here are: (1) raising the Corruption Perception Index; (2) increased compliance between the anticorruption regulations in Indonesia and the clauses in UNCAC; (3) raising the Annual National Integrity Index, which is a system being developed in an effort eradicate corruption in Indonesia in a holistic manner by elaborating on all pillars (legislative, executive, judiciary, political parties, oversight bodies, media, civil society and the private sector). Due to that, the success indicators of each strategy are: (1) raising the Corruption Prevention Index, in which the number is obtained from the sub-indicator of the *Control of Corruption Index* and the rating of *Ease of Doing Business*; (2) raising the Anticorruption Law Enforcement Index, in which the number is obtained from accounting the percentage of settlement of each stage of the law enforcement process of a corruption case, starting from the settlement of corruption complaints up to the settlement of execution of anticorruption court verdicts; (3) percentage of settlement of the recommendations from the UNCAC review results; (4) percentage of assets of corruption recovered and success rate of international cooperation, which is viewed from the percentage of success in the implementation of Mutual Legal Assistance (MLA) in criminal matters and Extradition in relation to corruption, both requested to or received from other countries; (5) raising the Anticorruption Behavior Index; and (6) Satisfaction index of Stakeholders towards Corruption Prevention and Eradication Reports.

Realizing the importance role of the corporations to run the business activities with integrity and business ethics, to build a business ethics in Indonesia is not only deals with the business society itself. The government

<sup>38</sup> OECD, 2011, *Reform Priorities in Asia : Taking Corporate Governance To A Higher Level*, p. 9.

as well as public official and state apparatus have the obligation to raising the bar for corporate excellence by providing a good regulation and supervision on business activities.

Whilst during their legal activities, corporation needs a robust corporate governance standard for them to be recognized as a professional company adhering to high international standards. To improve corporate governance, corporation has begun to develop a strategy to prevent corruption and to improve their quality of its public service. As Gary Slapper and Steve Tombs said the goal of a 'compliance strategy', on the other hand, is to 'prevent a harm rather than punish an evil', aiming thus for 'social repair and maintenance' at minimum cost.<sup>39</sup> Corporations should take noted on fostering business ethics within their activities due to ethics is a discipline that deals with what is good or bad, right or wrong, and the principles of what constitutes a moral duty or and obligation. Ethics in business stress the importance of truth and justice in all spheres of business activity.<sup>40</sup>

In order to prevent the corruption activities that could possibly done through transnational corporation or multinational corporation, The OECD provides guidelines for Multinational Corporations to ensure that the activities of corporations are in line with the governmental policies of their country and of countries in which they have operations, so as to strengthening the foundations for mutual trust between corporations and the communities in which they operate, contributing to improve the climate for foreign investments, among other benefits. In relation to the category on corruption, the OECD recommends that enterprises should not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.

Recognizing the increasing importance of corporate governance, government and business associations in many countries have started to develop or improve national systems of corporate governance. In Asian countries, the development of corporate governance is an important part of the economic reforms that are essential in overcoming the economic crisis. Particularly in Indonesia, realizing that corruption is growing up because of supply and demand, the Indonesian government said that the corporation had responsibility of developing the Good Corporate Governance and the corporation's responsibility in the prevention of corruption. It was including three crucial matters, that is how the superior's responsibility of not telling the subordinate to carry out the corruption action. Secondly, the superior's responsible of not allowing the subordinate to carry out corruption. Thirdly, how did the company develop the prevention system of corruption by applying the internal control program, made the rule and

<sup>39</sup> Gary Slapper and Steve Tombs, *Op. Cit.*, p.166.

<sup>40</sup> Marshall B. Clinard and Peter C Yeager, *Op. Cit.*, p. 213

the code of conducts. These three matters are important to create the clean business environment, transparent accountable. Due to corruption pushed the practice of the unjust competition and had an impact on the aspect of the economy of a nation, that is why the Integrity is the key factornecessarily significant to prevent the business crime which covers a much wider range of misconduct, which may be non the less damaging and otherwise undesirable from resulting from duress, incompetence, negligence, lack of training, lack of clarity in the rules, opportunism, technical infraction, or sheer muddle-headedness, rather than calculated deceit motivated by greed.<sup>41</sup>

Realizing that the prime purpose of corporations has been to make profits, and perhaps for this reason corporations have not carefully examined their values.<sup>42</sup> This purpose must be eliminated through Business Ethics and Good Corporate Governance to achieve corporations integrity and strong-commitment for the best economic interest of the nation.<sup>43</sup> Specifically to the financial institutions relating with any other financial crime such as money laundering, building compliance and integrity system within the corporation is played an important part in their business activities.<sup>44</sup>

#### IV. Conclusion

Corruption is not only governmental problem but an entire nation problem. The whole society has to continuously taking part on Anti-Corruption Regime. In particular, corporation as part of the private sector also play an important role on it due to the greater negative impact of corruption cases relating with corporation behavior such as bribery cases and corruption through procurement of goods and/or services.

As corporation are facing challenges and competition in global market, it is inevitable as a first priority for Indonesia private sector to creating integrity and compliance. Both business principle and integrity system significantly supporting Anti-Corruption Regime as well as reducing corporate crimes relating with corruption cases. Corporation should implement anti-corruption strategy not only to reducing the risk but also to strengthening reputation, builds the respect of employees, raises credibility with key stakeholders and supports an corporate commitment to honest and responsible behavior.

Hence, the integrityplay a crucial part and has been known as the key factor to strengthening the corporation. Indeed, the integrity will be formed as a foundation to promoting compliance in it. Therefore, it is urged to

<sup>41</sup> Michael Clarke, Op. Cit., p.16-17.

<sup>42</sup> Marshall B. Clinard and Peter C. Yeager, Op. Cit., p.215.

<sup>43</sup> A. SuhartatiLukito, 2015, "Good Corporate Governance and Corporate Social Responsibility in Indonesian Banking Institutions; A Pathway to Preventing Financial Crime", *Research Handbook on International Financial Crime*, Barry Rider (Ed.), Edward Elgar Publishing, Cheltenham UK, p. 174.

<sup>44</sup> A. SuhartatiLukito, 2016, "Financial Intelligent Investigations in Combating Money Laundering Crime: an Indonesian Legal Perspective", *Journal of Money Laundering Control*, Vol. 19 No. 1, p. 100.

enhancing integrity in the corporation as a prevention way to reducing and preventing any corrupt practices.

Criminal sanctions as a repressive way in the law enforcement era is a manifest of the second strategy in National Strategy on Corruption Prevention and Eradication regulated under Presidential Regulation Number 55 Year 2012 and Supreme Court Regulation Number 13 Year 2016. Through the regulation, it was clearly stated that corporation, as part of the business world, hand-in-hand with the government has a medium term vision to build a system of integrity as a cultural values.

In line with implementing corporate criminal responsibility, integrity and compliance will become important to raising the bar for corporate excellence in Indonesia. Monitoring and evaluating from government institutions and authority needs to be maximized. New paradigm of compliance behavior and integrity system should be encouraged within corporate activities due to the development of corporate governance is an important part of the economic reforms that are essential in combating corruption. Indeed, it will be a milestone in Indonesian National Strategy on Prevention and Eradication Corruption.

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# TACKLING FINANCIAL CRIMES

## VARIOUS INTERNATIONAL PERSPECTIVES

The development of crime, in this particular-financial crime, has massively increased. Its manifestation has become major problems in all countries. The variety of financial crime manifestation can be understood such as fraud, corruption, money laundering, financing of terrorism and proliferation, cyber laundering, etc. These kinds of financial crime have attracted all the nations concern to build a good regime of the prevention and eradication against these crimes. The instrument of law such as criminal law and international law plays an important role in eradication while it is easily to mention that those variety of crimes has its characteristic as transnational crime and should be categorized as extraordinary crime.

Criminal law in its function to be a law which can maintain peace living between offender-victim and society of states shall be reconstructed to achieve its goals. Criminal law is not only about punishment. The problem of financial crime will need refunctioning of criminal law in all areas, national and international.

Emphasizing on the current condition, in global context economic growth is significant. In particular, Asia-Pacific is the fastest growing economic region and the largest continental economy by gross domestic product (GDP) purchasing power parity in the world. Therefore, it is important for all countries to keep the integrity of the economies from subversive wrongful actions.

This book is suitable for law students, legal practitioner, and people who interested in area of building a good regime in financial crime prevention and eradication.

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