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Why Does Indonesia Need a Clarity Concept of Legal Liability of Government Officials in Corruption Eradication Efforts?

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Abstract: The effort to eradicate corruption in Indonesia faces several conditions such as high rate of corruption, problems in different views of law related to criminal corruption in government officials in applying their office authority, especially on court decisions. These issues raise the question of how the concept of legal responsibility of government officials in Indonesia in carrying out its duties, functions and authority of their position. This research aims to find the answer by conducting legal research with conceptual approach, statute approach and case approach. The research found out that various concepts of legal responsibility are used in the handling of corruption crime in Indonesia related to the implementation of position authority from government officials and it makes the ambiguity of the interpretation of the elements of corruption offense and inconsistency in the application of law. Indonesia's criminal corruption law should have its own concept of responsibility in the effort to eradicate corruption, especially in the case of corruption whose legal subjects are government officials.

Key words: Eradication of corruption, legal liability, government officials, responsibility, implementation, corruption

INTRODUCTION

Corruption is not a new problem in the social life of a country. Corruptive behavior is as old as human civilization though in its different forms and dimensions from time to time. Corrupt behavior is universal because the corruption can occur in various social environments. Jyoti Khanna and Michael Johnston say that "corruption is often likened to a dread disease, bringing about calamity and collapse if not checked" (Wijayanto, 2006). The world has begun to view corruption as an important issue in the past two decades and initiatives have been taken to fight it (Olufayo, 2006; Ogunleye *et al*., 2006; Nawawi, 2003; Anonymous, 2001; Ahmertora *et al*., 2016; Smirnora *et al*., 2016). The view that perceives corruption drives economic growth to be left behind and corruption is placed as a multidimensional (political, economic, social and cultural) problem) (Wijayanto, 2006), even many studies concluded that corruption destroys the nation's own life and the existence of the country. Therefore, it is natural that government officials (formerly, prior to the enactment of the Government Administration Law used the term state apparatus or state administration) became the main focus in efforts to eradicate corruption and the legal liability was asked. This problem is increasingly important in countries that embrace the concept of welfare state where government officials have a big role in realizing the welfare of society.

As in other countries, efforts to eradicate corruption among government officials have been done in long time in Indonesia but there is no significant progress. Based on the Corruption Perception Index (CPI) 2016 reported by Transparency International, Indonesia ranks 90th with a score of 3.7 points out of 176 countries and Indonesia is slow to eradicate corruption. The slowness was apparent when compared to CPI of Indonesia reported in 2004 with a score of 2.2 and rose only a few points over a 13 years span in 2016. Similarly, corruption cases handled by the Corruption Eradication Commission (KPK) Indonesia are still high. For example, there were 140 cases at the investigation stage conducted by KPK and 77 cases at the stage of prosecution in 2016. The cases handled by the KPK are still dominant among government officials including DPR and DPRD members, Heads of Institutions/Ministries, Ambassadors, Commissioner, Governor, Mayor/Regent and Deputy, Echelon I, II and III, Judge (Anonymous, 2016a, b). Corruption cases

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delegated by the KPK to the Court have not fully responded to public complaints to KPK indicating corruption in 2016 were about 3,868 complaints. These number of cases will rise be much greater if they compare with the corruption cases handled by the Attorney General of Indonesia which government officials are dominant to be the subject of the perpetrators.

The high numbers of corruption in Indonesia also indicate a problem in the effort to eradicate corruption. In this context, it is not identical with the low CPI score of Indonesia because the parameters are different. Corruption handled by the KPK and the Indonesian Attorney General is a perspective of law enforcement or in the context of the judiciary. It can't be denied that the problem of corruption in Indonesia makes a variety of pessimists, both in Indonesia and in various parts of the world. Some even come to the view that no single theory can guarantee in taking the corrupt behavior to the point of zero but can be led to an optimized level (Wijayanto, 2007). Whatever, the circumstances there is no reason to stop trying to eradicate corruption and find the root of the problem. From various issues, the handling of corruption in Indonesia is still facing differences of views among jurists and law enforcers that are visible from the judge's verdict.

The different views of the law have been happening for a long time and cannot be separated from the understanding of what is called corruption. In various literatures, it is found that some definitions of what is called or classified as corruption, some of them are: According to Black's Law Dictionary compiled by Henry Campbell Black, gives a definition of corruption as "An act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an affiliate or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or another person, contrary to duty and the rights of others"; The International Transparency Institution proposes the definition of corruption as "corruption involves the behavior on the part of official in the public sector whether politicians or civil servants in which they improperly and unlawfully enrich themselves or those close to them by the public power entrusted them".

An act is seen as a corrupt behavior is determined by not only the value system adopted by a nation but also by motive. Cultural values are viewed as ordinary behavior can be viewed as a corrupt behavior from a political and economic view. An act based on law is a corrupt act but it not a corrupt act based on the point of view of cultural, economic or political. An act based on one area of law is a corrupt act but it is not a corrupt act for another field of law. Different detentions create legal uncertainty and on the other hand as the weakness of law in efforts to eradicate corruption in Indonesia.

Research objectives: Different views in understanding the deliberate corruption are more sharply when the concept of corruption offenses in Indonesia are expanded, both subject and legal object. The important question of the problem is what is the concept of legal responsibility of government officials in Indonesia when faced with allegations of corruption

MATERIALS AND METHODS

This research was a legal research. Legal research is a research applied specifically to the science of law. Cohen (1985) says that legal research is the process of finding the law that governs activities in human society. Cohen states "It involves locating both the rules which are enforced by the states and commentaries which explain or analyze the rule". In legal research, there are several approaches being used, namely statute approach, conceptual approach, analytical approach, comparative approach, historical approach, philosophical approach and case approach (Cohen, 1985). Based on these approaches this study used a conceptual approach, a statute approach and a case approach. Concerning the concept of legal liability of government officials which became the focus of this study was answered through a conceptual approach which was carried out integrally with the statute approach. The conceptual approach was used to explore the existence and function of state administrative law in the welfare state law, the position of state administrative law in the field of law. This conceptual approach was made to discover and distinguish the character of state administrative law and the character of criminal law, especially the criminal law of corruption in relation to the legal liability of government officials in the context of corruption eradication. Research at this level was legal dogmatic research and legal theory.

Several approaches and a combination of approaches to the problems studied aimed to obtain the results of analysis on the layers of the science of legal philosophy in order to find the principles derived from the contradictions between the rules of state administrative law and criminal law (criminal corruption). A rule of law based on the notion of material effectiveness is substantially feasible and therefore has a legal liability nature. If it happens, it will be a philosophical issue because it touches the legal basis (Bruggink, 1999).

RESULTS

The results of legal research are described as follows.

Theory of Legal Liability: If the law governs human acts then the law is only meaningful to those who can take action whether as offense or as a sanction, doing something or not doing something. But the ability to act is not directly equal to the ability to do offense because in modern law it requires a certain mental state. By law, the ability to act primarily is the ability to engage in legal relationships as well as the ability to influence judicial procedures through demands or appeals. According to Kelsen (2010) when a norm qualifies a particular individual act as a legal condition or legal consequence, it means only this individual can and may be capable of performing or not conducting a legal action. Only he is competent. If only a competent and competent individual does or does not act. An act of doing something or not doing something is a legal condition or legal consequence according to a particular norm (Asshiddiqie, 2006).

Although, only a capable and competent person who can perform or not to practice law but in modern law there is also a provision that not all humans can be punished. Whether or not a person being punished is determined whether they can handle the offense. In this case, the offense is understood as a condition in which sanctions are granted based on existing legal norms. That is, a person can be punished or held accountable for the law determined by their competence and capability for an action. A concept related to a legal obligation is the concept of legal liability. A person is said to be legally responsible for a particular act is that he or she may be subject to a witness in the case of opposite acts. Normally, in the case of a sanction imposed on a delinquent it is because of his own actions that make him or her responsible. In this case, the subject of responsibility and subject of legal obligation are the same. According to traditional theory, there are two kinds of differentiated responsibilities: accountability based on fault and absolute responsibility (Asshiddiqie, 2006).

On legal liability there is a terminological difference between legal obligations and legal liability required when sanctions are not or not only imposed on delinquent but also against the individual that are legally associated with it. The relationship is determined by the rule of law. Corporate liability for a delinquent by his or her organ can be an example (Asshiddiqie, 2006). According to Hans Kelsen, the concept of legal liability is basically related but not identical to the concept of legal obligations. It is also asserted that the difference between legal obligations and legal liability can be known from the linguistic side (Kelsen, 2010). Theoretically, the legal liability of each field of law has its own characteristics, traits and characteristics. Observing the views of Apeldoorn (2000) then in principle the concept of liability will refer to the legal responsibility in the realm of public law and in the realm of private law. Since, the focus of this study is a study on corruption among government officials, particularly in relation to unlawful acts and abuse of authority, the legal liability theory proposed is from the side of criminal law and state administrative law that are both common as public law. Although, both of them are public law but the matter of legal responsibility between these two areas of law is not the same nature and characteristics.

The existence of government officials and corruption: In the introduction, it has been mentioned that the perpetrators of corruption in Indonesia are dominant from government officials. Domination is not just data but more than that. The position of government officials, especially for countries that declared themselves welfare state as well as with Indonesia became the foundation in realizing the welfare of society and on the other hand had a potential to corrupt.

Formally juridical, government officials are a new term introduced by Act No. 30 of 2014 on Government Administration in Indonesia. The term government official introduced by this act is not the same purpose and substance with the state administrative officials or with state officials and public officials. According to Law Number 30 Year 2014, the meaning of government officials is the element that performs the functions of government, both within the government and other state institutions (Law No. 30 of 2014). The introduction of the term of Government Officials, the term other officials related to the implementation of government functions is within the scope of government officials. Just benchmarking, the state administration officer is an official who carries out government affairs based on applicable laws and regulations while government officials are the elements that perform the functions of government. Although, "state administrators" and "government officials" are both executive but what is done is what sets them apart.

The function of governance in Indonesia as a country that embraces the concept of the welfare state certainly cannot be separated from the functions of governance that is now developing and not limited to discourse. This is marked by the juridical formulation (law) in the Government Administration Law in Indonesia which is meant by the function of government is a function in carrying out government administration which includes

the functions of regulation, service, development, empowerment and protection (Law Number 30 of 2014). On behalf of the function of the government can be understood the importance of the existence of government officials. A government can realize the objectives of the state by not be separated from the extent to which government officials carry out the functions of government that existed. The good of a government is determined by the behavior and actions of government officials in carrying out the functions of government. The existence of government officials as the implementing element of government functions in different countries of the world is theoretically the same. If there is a difference in practice it is more due to the differences in government systems, political systems adopted. The existence of government officials is directly proportional to the existence of government but there is always the possibility of different governmental goals with the aim of government officials in the sense of as human officials. In Indonesia, the existence of government officials is first reflected in the constitution (the 1945 Constitution) which one of them is to promote the general welfare (Preamble to the fourth line of 1945 Constitution).

What the purpose of the state is also as the task of government to make it happen through government officials. This is the most essential of the existence of government officials and not only as supporters of rights and duties. The existence of government officials should not be reduced as a mere human official. From this point of view, it is clear that the existence of government officials is intricately in position. Official is the representative of the position and hence acts in accordance with the inherent authority of the office. Government officials with authority have the power to take decisions and actions in the administration of government and followed by liability. From the approach to the existence of government officials it is natural that in various countries of the world including Indonesia, government officials become the main focus in efforts to eradicate corruption. In this context, that is the reason why a clarity concept of legal liability is needed for government officials in performing their duties, functions and authority in the effort to eradicate corruption.

Problematic concept of liability: Based on corruption cases in Indonesia handled by the Corruption Eradication Commission (Komisi Pemberantasan Korupsi/KPK) and the Indonesian Attorney General, the perpetrators of corruption are generally government officials. Table 1 shows the condition of corruption cases at the investigation stage conducted by the attorney and followed by the prosecution from 2011-2015. The number

Table 1: Handling of criminal cases of corruption by the public prosecutor of the Republic of Indonesia year 2011-2015

Years	Investigation (cases)	Prosecution (cases)
2011	1.515	1.217
2012	1.401	1.511
2013	1.430	1.430
2014	1.380	1.380
2015	1.785	1.622

Annual Report of the General Attorney of Indonesia in 2014-2015

of corruption cases is increasing when combined with corruption cases handled by KPK Indonesia and the most important of the number of corruption cases in this study is the subject of the perpetrators. Both based on cases of corruption handled by the Attorney and KPK, the subject of corruption in Indonesia is dominant from among government officials in carrying out their duties and authorities. Therefore, the important question is: what is the form of liability faced by the government officials in their office? This question may not be rational for some people but it becomes rational when we explored what goes on in the judicial process against government officials, why?

Based on a research conducted by Siswahyudi in law enforcement efforts in Indonesia, he concluded; first, it is found that the ambiguity of interpretation and the application of Article 2 and 3 of the Law on Corruption Eradication (UU PTKK) by law enforcers, namely prosecutors, lawyers and judges; second, the ambiguity of the interpretation occurs in almost all elements of Article 2 and 3 of the PTPK Law primarily the interpretation of the 'unlawful' element and the element of 'misuse of authority' in Article 3 of the Anti-Corruption Eradication Act. These ambiguities are caused by: lack of clarity formulation and explanation of PTPK Law. The existence of duplication of criminal rules between the PTPK Law and other laws that can be qualified as a criminal act of corruption. The existence of other rules that give the discretion of authority (freies ermessen) for public officials to be able to make policies outside the rules applicable. The existence of different missions and interests between prosecutors, advocates/defendants of defendants and judges so as to make a difference in the method of interpretation of each. Sometimes different interpretations in the application of the PTPK Law can also be caused by non-juridical interests outside the context of the judiciary (bribery motives, political motives or other interests). The consequences of ambiguity in the interpretation of Article 2 Paragraph (1) and Article 3 of the PTPK Law have led to controversial judicial decisions and injure the public sense of justice. The method of interpretation used by the prosecutor is a method of grammatical, normative juridical interpretation. Advocates tend to use an analogical, extensive interpretation in the

interests of the accused. Judges often use an altered interpretation method (inconsistent). Based on research, the handling of corruption among government officials has not been free from the normative problem and still faced with the different concept of legal liability. This fact is particularly important in assessing whether corruption among government officials actually occurs or occurs because of dualism or the ambiguity of the interpretation of the corruption offense. There is a battle of the concept of legal liability to assess whether an act of government official is a criminal act of corruption or not.

As it is known that, the so-called concept is in fact a determinant of a theoretical building as it is said in the English literature, 'concepts is the building blocks of theorie's it must be concluded here that "the absence of similarity of concepts will have consequences on the absences of theory of what the law calls" (Wignjosoebroto, 2010). The essence of that thought can be confirmed by the question of liability demanded to government officials in the context of corruption. The diversity of liability concepts attached to government officials will have consequences for the uncertainty of liability that government officials must bear. Furthermore, similar conditions are also reported by Lawrence (2011) that Institutional corruption is the consequence of an influence within an economy of influence that is illegitimately weakens the effectiveness of an institution especially by weakening the public trust of the institution.

Tracing law enforcement efforts against corruption in Indonesia shows that the diversity of liability concepts used is in line with the changes and extensions of the concept of corruption as set in to in the corruption law. Initially, it is only in the sense of committing a crime and/or violation with the intention of enriching oneself or another person resulting in state losses but now includes unlawful acts and abuse of authority due to the position or position of a government official in carrying out his duties and functions. In fact, it has recently developed a new dimension of corruption offense, namely abduction of power which is often also called institutional corruption. This statement is in line with the case cited by Arief, "In the United Nations (UN) VII Congress which was about the Prevention of Crime and the Treatment of Offenders in Milan in 1985 discussed the dimensions of crime related to the development of a country. The issue of congressional highlighting is the increasing abuse of power by widespread public officials, known as systemic corruption. It is because this systemic corruption involves a number of state institutions which is also referred to as institutional corruption".

The expansion of the concept of corruption offenses in Indonesia, both the subject and the object is not accompanied by the reinforcement of the concept of liability. In this context, decisions and actions taken by government officials in carrying out their duties and powers are confronted with some forms of liability that work simultaneously. As a consequence of the absence of a typical concept of legal responsibility for criminal corruption, the theoretical debate over court decisions on a number of corruption cases occurs.

There were many cases as the examples of corruption cases that have fixed legal power that can show how the form of legal uncertainty in handling corruption cases in Indonesia. In this study, there are three case examples to show the diversity of the concept of legal liability that gave rise to normative issues in handling corruption cases in Indonesia including the question of ambiguity of the interpretation of the corruption offense in the Corruption Act in Indonesia.

First case: corruption case with decision taken by Indonesian supreme court No. 32 PK/Pid/2001: In the case of corruption which has a permanent legal force based on Supreme Court Decision No. 32 PK/Pid/2001, Drs. Zuiyen Rais, MS was charged with violating several provisions in Law No. 3 of 1971. In the first court hearing (the Padang District Court) the defendant was acquitted of all charges of the Public Prosecutor and then the Public Prosecutor made a cassation appeal. On the appeal made by the Public Prosecutor in the case, the Supreme Court of Indonesia in its decision on September 25th, 2000 No. 366 K/Pid/2000 annulled the Padang District Court decision and declared the defendant as being guilty of committing a criminal act of corruption together and continuing in the form of deed misusing authority due to his position and occupation as set out in Article 1 Paragraph (1) sub b of Law Number 3 Year 1971 but it was not proven to be unlawful.

On the verdict of the Supreme Court, the defendant proposed a review effort. On the Judicial Review Judgment v. 32 PK/Pid/2001, the Supreme Court overturned the decision of the cassation court. In this context, the legal considerations of the Judicial Review Panel freed the defendant by introducing the provision of Article 50 of the Indonesian Criminal Code which determines "Anyone committing acts to enforce the provisions of the Law shall not be subject to punishment" (Supreme Court Decision No. 32 PK/Pid/2001, 54). The Panel of Judges of Judicial Review in its legal consideration states that the possibility of any defects or errors in the process of formulating the Padang City Regulation No. 2 of 1998, cannot be personally accountable to the defendant because based on Article 38 of Law No, 5 of 1974, the regulation are and can be written by the Head of Region and the People's Legislative

Assembly (Supreme Court Decision No. 32, PK/Pid/2001). The Court of Judgment stated that the act of indictment to the convicted person is proven but the act is not a crime (Supreme Court Decision No. 32, PK/Pid/2001).

Based on the case above, it can be seen how there is a struggle of the concept of legal liability in handling cases of corruption in Indonesia this problem is rarely taken into account in assessing the extent of the problem of corruption in Indonesia. That is, the quantity of corruption cases in Indonesia does not necessarily describe the existence of corruption in quality.

The second case; Corruption case with Indonesian Supreme Court Decision No. 1900 K/Pid/2002: The Supreme Court of Indonesia in its decision No. 1900 K/Pid/2002 defendant is not proven guilty of corruption crime either for corruption offense whose element is doing illegal act or corruption offense whose element misuse the authority, considering that the defendant act as Governor of Bank Indonesia is in the framework of performing the duties as the state cashier or the cashier of the government or as the administrators of State accounts who are obliged to pay in cash IBRA (BPPN) money in the framework of the government guarantee program and the payment is made on the order of BPPN; in other words, in the case of payment of a government guarantee program by Bank Indonesia to IBRA, the Governor of Bank Indonesia has no authority and only as the state cashier or the government cashier.

The decision of the Supreme Court of Indonesia in the case of No. 1900 K/Pid/2002 applies what Bothlingk says which cited by Ridwan, both representatives and representatives are perpetrators but it does not mean that both of them have responsibility (Ridwan, 2006). It also mentioned that with regard to deeds, the answer is clear. The act of law is a statement of will and responsibility specifically addressed to the party whose will is declared, i.e., the party represented. Later on in the judicial review with the verdict 07 PK/PID.SUS/2009, the Supreme Court of Indonesia gave a different decision from the decision of the cassation court in which the defendant was found guilty.

DISCUSSION

Based on the results there are several cases discussed as follows.

The third case; Corruption cases with the decision taken by the Supreme Court of Indonesia No. 572 K/Pid/2003: The case of the third example is a case of corruption that has a permanent legal force based on the decision of the Supreme Court of Indonesia no. 572 K/Pid/2003. The case was related to the use of Bulog (Agency for Logistics Affairs) funds. The defendant in this case was then Minister of State Secretary of Indonesia. Supreme Court in Decision No. 572 K/PID/2003: "It was stated that Ir. Akbar Tanjung as defendant was not legally and convincingly proven guilty of committing a crime as charged to him in the primary and subside indictment".

From the decision taken by the Supreme Court R.I, it was known that the basis of consideration of the Supreme Court to the conclusion, that Ir. Akbar Tanjung was not proven to commit a criminal act of corruption. Without prejudice to the legal considerations of the Supreme Court over the elements of its corruption offense there is a dissenting opinion between the Panel of Judges of Cassation in the decision making in this case. Dissenting opinion was from Justice Abdul Rahman where Abdul Rahman Saleh in his dissenting opinion stated; "Furthermore, also opinion of Dr. Andi Hamzah, SH, "Regarding the matter against the law, the author agrees with the Supreme Court that to "violate the law in the offense of corruption apply the teachings "against the law in civil cases (onrechtmatig) in accordance with article 1365 BW. Thus prevailing against a wide range of laws, such as the famous arrest Cohen-Lindenbaun 1919".

From several matters related to unlawful matters in the consideration of corruption crime case No. 572 K/PID/2003, following matters were found. There is a dualism of legal considerations regarding the element of unlawfulness in the offense of corruption which is against the law using the principles of administrative law from the side of administrative law and on the other side of the element against the law considered the teachings against the civil law. Although, both are based off against material law but there is no common view because it departs from two different legal regimes. The legal approach to breaking the law in cases of corruption does not have its own criterion as a benchmark but tend to use doctrine against the law of other legal fields.

The difference of opinion between the Supreme Court Justices who examined and tried the corruption crime case No. 572 K/PID/2003 shows that in handling corruption cases in Indonesia, the Corruption Act does not have the concept of its own liability. In fact there were two concepts of liability in the Corruption Pit of Ir. Akbar Tanjung, namely the concept of liability in the perspective of criminal law and in the perspective of civil law. What happens in court decisions in the criminal act of corruption as presented, correlates with issues in understanding the elements of corruption offense in the corruption law in Indonesia. The research conducted by Silalahi summarizes the abusive interpretation of the elements of Article 2 and 3 of Law Number 31 of 1999.

Similarly, result is also showed by the research conducted by Judicial Sector Support Program (JSSP). Although, the research conducted by JSSP focuses on the matter of "against the law", the conclusions of the study are not directly indicative of the diversity of the concept of legal liability in corruption enforcement in Indonesia.

The manifestation of the diversity of the concept of legal liability is reflected in the absence of a single interpretation of the unlawful elements of the corruption offense and in other studies calling it the ambiguity of the interpretation of the corruption offense. And, one thing relevant to what has been the focus of this research is the JSSP recommendation to end the dualism of the application of Article 2 Paragraph (1) of the PTPK Law, the Supreme Court of Indonesia should be consistent with the application of Supreme Court Decision Number 103 K /Pid/2007 on the 28th of February, 2007 as jurisprudence in criminal law enforcement corruption. The judge's consideration of applying the element of lawlessness in the broad sense of the ruling is not only in accordance with the development of doctrine against the law but also embodies the will of the Judicial Sector Support Program (JSSP).

Indications of the JSSP recommendation are reinforcement to ensure the existence of normative problems in corruption law in Indonesia and the concept of liability that must be solved in order to realize a law-abiding law of corruption. Furthermore, from the case of the sample presented and the JSSP research which found inconsistency in the application of legal norms in the criminal law enforcement of corruption in Indonesia as well as asserted that the criminal law of corruption in Indonesia does not have the concept of its own legal responsibility. In addition, there is also dualism, ambiguity and inconsistency in interpreting the elements of corruption offense which is certainly difficult to avoid.

Dualism legal responsibility of government officials: Learning from the development of corruption crime handlers in Indonesia as has been pointed out in the previous discussion; government officials in Indonesia face a dilemmatic situation. On the one hand, they have to carry out the duties, functions and position authority with legal responsibility under the provisions of administrative law but on the other hand in carrying out the duties, functions and authority of the office of government officials also burdened personal liability under the criminal law of corruption. Three cases presented above are some examples of cases relevant to the question of the dualism of liability of government officials in Indonesia in exercising the position authority. Tracing corruption criminal law in Indonesia, no explanation is found why government officials are saddled with personal liability in exercising their right to use the position authority. Normatively, Indonesian corruption law does not place "officer" or "position" as its legal subject but a person (naturlijkee person) associated with the position. But not so with corporations that are also placed as subjects of corruption.

Even in the practice of justice, the placement of government officials as the subject of corruption criminal law is sought by the truth by promoting the principle of the legal subject in the sense of supporting the rights and obligations. This pattern is actually the same as the placement of corporations as the subject of corruption. When referred to the encyclopedia of administration, liability is the necessity of a person to properly perform what has been obliged to him (will be different meaning when understood from the right side). It is also mentioned that accountability contains meaning, even if a person has the freedom to carry out a task assigned to him but he cannot free himself of the result or consequence of his freedom of action and he can be prosecuted to properly perform what is prescribed to him (Arifin, 1986) although, the others consider the need to be separated between rights and obligations.

Indeed, the law was created to regulate the association of life in order that each of the legal subjects carried out their obligations properly and acquired their rights fairly. The law also functions as a protection instrument (bescherming) for legal subjects. Ridwan (2006) said the law was created for justice implemented in the association of law. When, there is a legal subject that neglects a legal obligation that should be exercised or violates the rights of another legal subject to those who neglect the obligation and violate the right is burdened with responsibility and required to restore or restore the rights that have been violated. Even, the responsibility for compensation or rights is directed against any legal subject that violates the law, regardless of whether the legal subject is a person, legal entity or government (Ridwan, 2006). Can this be applied to corruption which is the legal subject of a government official in exercising his/her position of authority?

From a general perspective of law, it is understood that any legal subject that violates the law should be subject to legal liability and its application is not so difficult on a particular legal action in the field of law. However, the implementation of legal liability related to unlawful acts, even more on the abuse of authority is not easy for the government officials. Hopefully, it is in the sense, will the government official in exercising his or her right to exercise the position authority be subject to personal legal liability for his actions or decisions? A

government official is a representative of a position. According to Ridwan HR who cites the opinion of Bothlingk, officials acting in accordance with the authority attached to the office are officials representing the office while officials acting inappropriately with that authority cannot be called officials representing the position. This view is certainly not about the authority itself but about the behavior of government officials who act outside the authority or act beyond the authority or any form of abuse of authority. To determine whether government officials have acted as described by Bothlingk, the measure is the authority that exists in the office itself. it is natural for a government official to be liable to a legal liability.

Kranenburg and Vegting (1901) state that there are two forms of official accountability. First, fautes personalles, a theory which states that the loss to a third party is imposed on an official because of his actions is causing harm. Secondly, fautes de services, the theory which states that the loss to the third party is charged to the agency of the official concerned. The theory of accountability of the officials put forward by Kranenburg is not entirely relevant to the legal accountability of government officials in criminal corruption in which losses arising from the actions of government officials against the state itself (position/title). Moreover, if government officials as the subject of criminal corruption in the context of abuse of authority, it will be not limited to the subjective mistakes of officials in carrying the position authority but sometimes it become the error of authority itself as in the case of example Ir. Akbar Tanjung or the case of Zuiyen Rais. On the contrary, there is no authority at all like the case of Syahril Sabirin.

It is in line with Bothlingk, he argues that both representatives and representatives are perpetrators but that does not mean that both of them have responsibility. With regard to deeds, the answer is clear. The act of law is a statement of will and responsibility specifically addressed to the party whose will is declared, i.e., the party represented. The representative does not declare his own will because it lays the responsibility to him out of place. The pattern of legal liability based on representative theory introduced by Bothlingk has been accepted and applied in legal accountability of government officials in acts in the field of administrative law and civil law. But, this is not the same in the criminal law of corruption in Indonesia where the legal actions of government officials in office, the accountability is placed on government officials even though government officials remain as deputy of office.

Based on the representative theory approach, it can be concluded that placing government officials as legal subjects who bear the legal responsibility for office deeds is inappropriate and should be abandoned in the effort to eradicate corruption in Indonesia. In addition to contradicting representative theory, taking legal liability to government officials in the exercise of office powers is the inconsistency of applying the legal principles of government officials as representative of office subject to the principles and principles of administrative law. The ability to burden government officials with personal legal liability for his actions in exercising the position authority certainly is not based on the official factor who is a human who is not spared from errors and shortcomings but based on the existence of officials who are representative of the position. The concept of this legal liability is not seen in the criminal law of corruption in Indonesia. In contrast to a number of cases of corruption in Indonesia and three cases among the, presented in this study shows the concept of various legal liabilities for corruption cases that are legal subjects of government officials.

In this regard, it is true what Ridwan (2006) argues, that in determining whether a government official will be subject to legal liability personally requires classification, especially to determine when the responsibility should be borne personally and when it is charged to the office or institution. This conditions is now seemingly grappling in the process of corruption law enforcement in Indonesia, especially in cases of corruption the government officials in exercising the authority of his position are the subject to the perpetrators. The facts of normative problems in corruption criminal law enforcement in Indonesia at the same time become the basis of answers to the question why it is necessary to clarify the concept of legal liability of government officials in criminal law enforcement in Indonesia. On the other hand, the number of government officials in Indonesia stumbling cases of corruption may not yet describe the actual situation. If the criminal law enforcement of corruption is still faced with the normative problem, then the criminal act of corruption charged to government officials in running the position authority will have a relative nature.

CONCLUSION

Based on the discussion, there are several conclusions that can be drawn: the effort to eradicate corruption in Indonesia among government officials is the focus of law enforcement but there is a normative problem to be solved behind the efforts to eradicate corruption. The enforcement of corruption criminal law in Indonesia has not been accompanied by one concept of legal liability alone and the various concepts of legal liabilities used have spawned legal uncertainty for government officials charged with committing corruption in the

exercise of office powers. On the other hand, inconsistency and ambiguity in applying the elements of corruption offense due to the actions of government officials in carrying out the position is the impact of the unclear concept of legal liability that being used. Behind the high rate of corruption cases in Indonesia, it lies the importance of criminal law of corruption in Indonesia must have its own legal liability concept to realize court decisions that satisfy the sense of justice and legal certainty of justice seekers (government officials).

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