The Implementation of Inclusion in Corruption Case Handling

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ABSTRACT

The formulation of problem in the implementation of inclusion in handling corruption case has reflected the legal objectives which are legal certainty, justice, and expediency, and inconsistency in implementing the inclusion in handling corruption case, the purpose of the research is To find out and analyze the application of inclusion in handling corruption case has reflected the legal purposes which are legal certainty, justice and expediency and To find out and analyze the inconsistency in applying of inclusion in handling of corruption case, using empirical research method which resulted that there is indication that the implementation of inclusion is not yet implemented which causing inconsistency of law enforcement officer, i.e., Police, Attorney in applying the article of inclusion in handling of case corruption and inconsistency in the application of inclusion in corruption cases causes the occurrence of discrimination in the process of law enforcement, so that does not reflect the legal purpose of legal certainty. It is recommended that to create legal objectives, law enforcement officers must be consistent in applying the articles of inclusion in the handling of corruption cases and to achieve legal certainty should investigators, and prosecutors apply the juridical participation in corruption cases.

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A. Introduction

Corruption in Indonesia has become more severe and acute as cancer that spreads to the cells of public organs, like state institutions such as legislative, executive, and judiciary to State-Owned Enterprises (BUMN). There are so many illustrations of corrupt practices exposed to the surface, whether they are corruption in small quantities or extraordinary amounts. The criminal acts of corruption are generally committed without violence but are followed by cheating, misdirection, concealment, manipulation, misconduct, and harm to the state’s losses\(^1\) and are committed by some people such as colleagues, party counterparts, superiors and subordinates even involving family members and is developing every year. In Indonesia, corruption has touched almost all levels of society, not only in relation to the State Organizer, the power, and the (executive) policy but also to the private sector,\(^2\) legislative and judicial sides such as the number of clerks and judges who are arrested for accepting bribes, strived for prevention and eradication in accordance with legislation.

Legislation related to the eradication of corruption does not make the corruptors to be afraid to commit a criminal act of corruption, but the most important is how the implementation/operationalization of all these regulations in tackling corruption in Indonesia. As stated by Muladi that criminal law enforcement is not completed only in the regulation, but also must be applied and implemented in the community.\(^3\) Law No. 31 on 1999 as already amended by Law No. 20 on 2001 of the Eradication of Corruption, it is known that there are special things in law that are different from the Criminal Code, for example: criminal attempt, and assistance and criminal conspiracy to commit a criminal offense, shall be subjected the same as a criminal offender, and regarding to corporate as subjects of criminal law, in which the corporation may commit a criminal offense and be accountable, to become a special criminal act and to alter the Criminal Code.

The perpetrators of inclusion in corruption are: Every person who conducts an attempt, assistance or a malicious conspiracy to commit a criminal act of corruption shall be subject to the same criminal sanction as intended in Article 2, Article 3, Article 5 through Article 14 and Article 15 of Law No.31 on 1999 as amended by Law No. 20 on 2001 on the Eradication of Corruption. The provision of inclusion by Adami Chazawi

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\(^1\) Aruan Sakidjo and Bambang Poernomo, *Hukum Pidana Dasar Aturan umum Hukum Pidana Kodifikasi*, Jakarta: Ghalia Indonesia, (1990), p. 149

\(^2\) Edi Yunara, *Korupsi dan Pertanggungjawaban Pidana Korporasi Berikut Studi Kasus*, Bandung: Citra Aditya Bakti, (2005), p. 175

\(^3\) Muladi, *Kapita Selekta Sistem Peradilan Pidana*, Semarang: Badan Penerbit UNDIP, (1995), p. 13.
that the forms of inclusion are contained and explained in Articles 55 and 56 of the Criminal Code (KUHP), concerning classes called mededaders (called participants, or makers), and Article 56 of the KUHP concerning medeplichtige (maker’s assistance). In practice, the issue of inclusion is still poorly understood by law practitioners. It can be seen from the results of the investigation, indictment of prosecutors and judgments that are not by the principles of criminal law. Sometimes, the punishment given to perpetrators of crimes committed by more than one person for example inclusion in corruption is still not by applicable criminal law.

One example of the case is the Court Ruling (Putusan Pengadilan) of Palu District Court Number: 29/Pid.Sus-TKP/2016/PN. Pal, this is a case of corruption involving 4 (four) persons and 1 (one) victim, of which 3 (three) persons are mere as witnesses. So justice for all turns to justice not for all. The law in our country seems to show no reflection of equality before the law is evenly distributed to all levels of society such as the application of inclusion cases.

B. Research Methods
The type of research used is normative juridical using three approaches, namely the law approach, case approach, and conceptual approach, and analyzed juridically with deductive patterns based on relevant theories to legal issues to be solved and deductively deduced conclusions.

C. Discussion
Various eradication efforts have been carried out, but not able to combat corruption crimes, even increasing both from the quantity and regarding the quality of the perpetrators. Criminal provisions in the legislation since the enactment of laws regulates the criminal act of corruption has undergone a good change from regarding criminal offenses or legal subjects as well as from a form of criminal sanctions. The function of sanctions in criminal law, is not merely to scare or threaten the violators, but more than that, the existence of such sanctions should also be able to educate and improve the perpetrator.

An effort has been made to reduce the number of criminal acts of corruption by making legislation that has specificity or there are special things in the law that are different from the Criminal Code, for example, criminal attempt, assistance and conspiracy to perform criminal act, similar criminal sentencing as criminal offender, and corporate as subjects of

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4 Adami Chazawi, *Percobaan Dan Penyertaan*. Jakarta: Raja Grafindo Persada, (2011), pp. 80-82.
5 M. Sholehuddin, *Sistem Sanksi dalam Hukum Pidana, Ide Dasar Double Track System dan Implementasinya*. Jakarta: Raja Grafindo Persada, (2007), p. 162
criminal law, in which the corporation may commit a criminal offense and be accountable. Generally, a crime is formulated for a sole proprietor, only some of which are designed to involve many people. To extend the reach of the law's definition of a single offender criminal act, a provision for "inclusion" (deelneming) is made. The restrictive making theory, the absolute provision of inclusion, so, to make others other than the perpetrator (pleger) of a crime, is also deemed to be prohibited.

In inclusion, there are 2 (two) doctrines, which are subjective and objective. According to the subjective doctrine which emphasizes on the inner attitude of the maker, it gives a measure that the person involved in a crime committed by more than one person (inclusion) is if he wishes, has a purpose and interest for the realization of a crime. The one who has the greatest interest in the crime is the one who has to bear the greater criminal responsibility. On the contrary, according to objective doctrine, which emphasizes on what form of deeds and the extent to which the role and the contribution and positive influence of the form of the action against the incidence of the intended crime, which determines how much responsibility is burdened against the occurrence of a criminal offense.

The existence of criminal acts of corruption and doctrine of inclusion in corruption crime gave birth to a criminal responsibility to the person who ordered to do, participate in doing, advocacy and assistance (medeplichtige). The argument that corruption can occur because it involves various parties to facilitate the corruption, the actors have different roles but have the same goal of corruption. According to Muladi that: "The criminal act of corruption has a very difficult quality of proof because it is usually done by professionals who have a minimal education that is acceptable for the possibility of such crimes. Also, the integrity, capability, and activities of the perpetrator, are generally very vulnerable to the environment of corruption. In the sense that the perpetrator indeed understands the working environment and the format to avoid the occurrence of tracking of corruption crimes."

In reviewing the doctrine of criminal involvement in the KUHP and Article 15 of Law No. 31 on 1999 as amended by Law No. 20 on 2001 of the Eradication of Corruption in the effort to eradicate corruption should elaborate as deeply as possible about the doctrine of inclusion in which in Article 55 and 56 of the KUHP is determined that all are perpetrators. Article 56 of the KUHP is a perpetrator who carries out coordination before and/or when a criminal act occurs or is referred to as the auxiliary maker (medeplichtige), whereas in the of Article 15 of Law No. 31 on 1999 as amended by Law No. 20 on 2001 of the Eradication of Criminal Acts of

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6 Adam Chazawi, Op.Cit., p. 73.
7 Ibid.
8 Muladi, Kapita Selekta Hukum Pidana, Semarang: UNDIP, (2004), p. 80.
Corruption, the scope is broader than that, to the actors who provide opportunities, preparations or actions to prevent the disclosure of criminal acts of corruption in a unity of thought the act of corruption in corruption.

In practice and court ruling which already bind legally, the person assisting the perpetrator of a criminal act of corruption shall be subject to the same criminal penalty imposed on the perpetrator of corruption. This provision also applies to any person outside the territory of Indonesia assisting the perpetrators of corruption. Criminal threats to persons who participate in corrupt acts, referring to the general provisions of criminal law regulated in the KUHP. Under Article 55 Paragraph (1) of the KUHP, persons participating in a criminal act shall be punished as criminals. Thus, under Article 55 Paragraph (1) of the KUHP, the person who participates in the criminal act of corruption is also convicted with the same criminal penalty as the perpetrator of corruption.

For example, a partner of Ministry of Youth and Sports proved to conduct bribery, a partner of Ministry of Youth and Sports was convicted in the case of construction an athlete's house in Palembang with a charge based on the provisions of Act No. 31 of 1999 as amended by Act No.20 of 2001 on the Eradication of Corruption, also based on Article 55 paragraph (1) of the Criminal Code. Another example can be seen in Supreme Court Verdict. 2389K/Pid.Sus/2011 dated February 22, 2012, which convicted the defendant guilty of taking part in corruption together. Also, in the Court Ruling Of District Court of Palu Number: 15/Pid.Sus/2012/PN.PL, the Court of Corruption of Palu stated that the defendant Sitti Salma Sennang was proven legally and convincingly guilty of committing a criminal act of corruption jointly as stipulated in Article 3 jo Article 18 paragraph (1) letter b Act No. 31 of 1999 as amended by Law No. 20 on 2001 of the Eradication of Corruption in juncto Article 55 paragraph (1) to the Criminal Code. Thus, people who participate in corruption and those who assist in corruption are both threatened with the same criminal punishment as those who commit the corruption.

Problems that arise in the practice of handling corruption cases, there are allegations of criminal acts committed by some actors, but lack of witnesses or lack of evidence, so that the most aware of the events are the perpetrators of corruption itself. In this case, it is necessary to use splitsising method so that there is evidence of the Witness's Statement and has the evidentiary power as specified in Article 185 paragraph (2) of the Code of Criminal Procedure, so that one actor can be a witness against another actor, for example, Court Ruling Number: 15/Pid. Sus/2012/PN.PL, Corruption Court of Palu, but in almost the same case the Court Ruling of Palu District
Court No.29/Pid.Sus-TKP/2016/PN.Pal, it’s a case of corruption which involving 4 (four) persons and only 1 (one) who convicted which are a contractor, the other 3 (three) people were only as the witness. Based on the results of the inquiries and investigation, examination of witnesses and evidence in the court can be seen that the corruption case occurred because of the help of some parties and the abuse of authority of the parties who do not perform its function so that the state loses. Thus the different rulings do not reflect the legal objectives of legal certainty, justice, and expediency. Resulting in the issue of a judicial mafia, justice can be purchased, the reaction of a sense of community due to unprofessional legal institutions and the lack of equality before the law in handling cases of corruption.

Supposedly with the Court Ruling of Palu District Court Number:29/Pid.Sus-TKP/2016/PN.Pal, which is a case involving corruption, related parties are investigated and brought to court, as is the case of Decision Number: 15/Pid.Sus/2012/PN.PL, Corruption Court of Palu and Supreme Court Verdict. 2389K/Pid.Sus/2011 dated February 22, 2012, which convicted the defendant guilty of taking part in corruption together, by splitting of the case file.

With Court Ruling of Palu District Court case Number: 29/Pid.Sus-TKP/2016/PN.Pal, it’s a case of corruption in the name of defendant Freddy Akuba and the examination of witnesses in court, it can be seen that the criminal act of corruption is done together so it must be accounted jointly also by some parties namely the Committing Officer/Drs. Suardi, Apt. M.Si, Technical Assistant/Secretary of Provisional Hand Over/Anaddarah Shofiah, ST, Supervisory Consultant/Fadhli, ST, Budget User/Dr. Abdul Rahman. DM., Mars, and Chairman of the Committee of Provisional Hand Over/Burhanuddin. So the case is the same as the Court Ruling Number: 15/Pid.Sus/2012/PN.PL, Corruption Court of Palu involving several parties who are subject to the criminal sanction of corruption in accordance with Article 3 jo Article 18 paragraph (1) letter b Act No. 31 of 1999 as amended by Act No.20 of 2001 on the Eradication of Corruption Jo Article 55 paragraph (1) to the Criminal Code.

In practice not always splitsing method can be used, for example, case of the criminal act of inclusion in the case of corruption Criminal Case Number: 29/Pid.Sus-TKP/2016/PN.Pal involving many parties. But until now, the only defendant and become a convicted Freddy Akuba and 3 (three) others only to be a witness. In the verdict it has violated the principle of equality before the law because only Freddy Akuba submitted to the Corruption Court of Palu, because based on the evidence of corruption in the witness examination at the hearing, it is known that the act of Freddy Akuba, was done together with others, i.e. 3 (three) persons. Based on several cases so far, in general, the criminal act of corruption is done jointly or there is
participation in facilitating corruption such as Contractor, Officer, Budget holder, supervisor, if it runs according to its job desk, it is difficult to get corruption.

In connection with the above matters, in the hearing of proceedings in the Criminal case Number: 29/Pid.Sus-TKP/2016/PN.Pal involving many parties, should be applied Article 55 and 56 of the Criminal Code which means that there are two or more people who committed a crime or in words, there are two or more people take part to actualize a crime. Schematically to request criminal responsibility to the offender or criminal is divided into 2 (two) namely:
1. Full responsibility
2. Partial responsibility.

In criminal law, in particular, corruption means, the problem of criminal liability begins with the doctrine of criminal acts and the Doctrine of Criminal Instruction because the scope of criminal liability relates to the question of the concept of action. Thus, the fundamental issues and spectrum of criminal corruption accountability are closely related to issues ranging from criminal acts and the inclusion of criminal acts.

Under the provisions of Article 142 of the Code of Criminal Procedure, it shall authorize the Prosecutor to undertake "splitting case files" from one case file to several case files. That is, the authority to conduct splitting is in the hands of the Prosecutor. But in Palu District Court Number: 29/Pid.Sus-TKP/2016/PN. Pal, this is a case of corruption incidents, the investigator does not make the parties a suspect is only a witness from the defendant Freddy Akuba, although the judge has ordered an investigation to several witnesses.

In case of corruption Court Ruling Number: 15/Pid.Sus/2012/PN.PL, the Corruption Court convicted by Sitti Salma Sennang is proven legally and convincingly guilty of committing a criminal act of corruption jointly as stipulated in Article 3 jo Article 18 paragraph (1) letter b Law No. 31 on 1999 as amended by Law No. 20 on 2001 of the Eradication of Corruption Jo Article 55 Paragraph (1) of the Criminal Code namely Sitti Salma Sennang as a contractor/private party, project leader, authorization of budget holder. While in the case of Palu District Court Number: 29/Pid.Sus-TKP/2016/PN.Pal, this is a case involving corruption but the other party is not prosecuted, only the Freddy Akuba.

The Court Ruling of Palu District Court Number: 29/Pid.Sus-TKP/2016/PN should be based on the provisions of Article 142 of the Code of Criminal Procedure (KUHAP) carried out an investigation of the parties by making case files in which case a new examination is required both to the defendant and witness. In this connection, the investigator based on the evidence available in the examination of the witness and based on the Palu
District Court decision No.29/Pid.Sus-TKP/2016/PN may carry out splitting, on the guidance of the public prosecutor against the parties, namely the Committing Officer/Drs. Suardi, Apt. M.Si, Technical Assistant/Secretary of Provisional Hand Over/Anaddarah Shofiah, ST, Supervisory Consultant/Fadhli, ST, Budget User/Dr. Abdul Rahman. DM., Mars and Chairman of the Committee of Provisional Hand Over/Burhanuddin.

Palu District Court Number: 29/Pid.Sus-TKP/2016/PN should include Article 55 of the Criminal Code as same as the case of Decision Number: 15/Pid. Sus/2012/PN.PL, Corruption Court of Palu. Incorporating elements of Article 55 paragraph 1 to-1 of the Criminal Code should be explained the role of each of these crimes. Article 55 of the Criminal Code explained the crime of each of the perpetrator; it will be able to see the role and level of crime committed by each of the perpetrators of criminal acts. Without deciphering their respective roles as meant would result in indictments and claims being blurred and unclear. About the cases mentioned above, the existence of inclusion in corruption, based on the provisions of Article 142 of the Code of Criminal Procedure, the splitting of the case must consist of several different offenses but done by several people at the same time. So according to the author of the cases above should not use the method of splitting (splitting) because from the cases above there is only one same case.

Another problem is that in the case of a criminal act of corruption there is usually a new defendant in the same case brought to court after a court ruling with another defendant or there has been a court ruling against another offender, based on the result of the examination, the inclusion case under Article 55 of the Criminal Code the new defendant was punished. For in the verdict, the first defendant has been declared to have committed a crime together or there is a consignment with the newly charged defendant in the hearing. On the one hand splitting the case is indeed justified by law. But on the other hand, the splitting is often problematic. Inclusion in corruption crime, basically to fulfill the element in Article 55 paragraph (1) point 1 of Criminal Code must be proven there is a series of activities or deeds done jointly with other people in performing such acts. In the absence of a joint proof that the perpetrators have done so that the criminal act occurs, this makes the element of Article 55 Paragraph (1) of the Criminal Code also cannot be proven.

Furthermore, according to Rudy Satrio, asserted that splitting could complicate prosecutors in proving one offender relationship with other actors. The reason, in the criminal acts committed by some people automatically, required proof between the perpetrators. If the case is splitted, it’s difficult to find out the relationship between the perpetrators. The unclear elements of deelneming or inclusion, so it is difficult to determine
the role and the classification of each of its involvement in corruption. This is in contrast to the purpose of inclusion, as has been described in the form of participation involving several people. It is therefore appropriate that such persons be accounted for either jointly or by themselves by the degree of classification of their respective involvement in the crimes they have perpetrated.10

This dependence on the principal actor is also the basis for the distinction of the form of inclusion (deelneming), which according to Simons, there are two forms of inclusion, namely Zelfstandigedeelneming and Onzelfstandigedeelneming. 11 In the first form of inclusion, the accountability of several persons involved in the crime is judged individually. Although there may be a connection between the actions of other participants, the actions of each participant are judged individually according to their legal nature, and each has its qualifications.12 Wherein in the second form, the criminalization of persons implicated in criminal offenses is based on the contribution it has given to the perpetrators' actions, and the law also evaluates their actions from the act of the perpetrator. So everything depends on the main perpetrators. Thus, the accountability of an onzelfstandige deelnemer cannot exceed the accountability of the perpetrator.13

In the Code of Criminal Procedure, splitsing or splitting of corruption cases is possible and becomes part of the authority of the Public Prosecutor. According to the authors, this authority should be conducted selectively, because if it is not careful it will violate several provisions of the Code of Criminal Procedure, such as Article 142 in connection with Article 141 of the Code of Criminal Procedure, it is clearly not justified in splitsing a criminal case perpetrated by several suspects, with the principle of "simple, quick and low cost" In this connection, it is the investigator who implements the splitsing of the public prosecutor's indictment. The reason for this splitting is still in preparation for the prosecution and has not yet reached the stage of court proceedings. Therefore, in the case of the prosecutor receives the investigation result from the investigator, as well as researching and studying whether the case is necessary or not in "splits" and if he believes that the case is necessary for splitsing, so within seven days shall notify the investigator to complete and refined by providing necessary instructions and investigators within fourteen days from the date of receipt of the file, the

10 Ibid.
11 D. Simons, Sebagai Pelaku dan Keturutsertaan (Daderschap en deelneming) " dalam Kitab Pelajaran Hukum Pidana (Leerboek van Het Nederlandse Strafrecht) translated by P.A.F. Lamintang, Bandung: Pionir Jaya, (1992), pp. 315-316.
12 Ibid.
13 Ibid.
investigator must have re-submitted the dossier that has been duly filed in accordance with the guidance of the public prosecutor (related to the meaning of the provisions 138 paragraph (1) and (2). So it is the investigators who have the authority to do splitting, whereas the Code of Criminal Procedure determines that the prosecutor is authorized to do so. Based on the above matters, the problem of the implementation of the law on the criminal act of inclusion in the case of corruption, the authors can conclude from various cases above and the opinion of the criminal law expert that the method of splitting the case or splitting must be applied to cases that should be applied. As with the splitting of the case, it must consist of several different offenses, but done by several people at the same time. So some shortcomings/problems that is the difference of law implementation, violation of non-self-incrimination principle, a presumption of innocence and the unclear of deelneming element can be avoided. So that fair trial and certainty of law (fair and legal certainty) and equality before the law can be achieved.

In addition, the inclusion related to the shift of individual accountability in Article 18 of Act No. 31 Year 1999 as has been amended by Act No.20 Year 2001 about Eradication of Corruption, Edi Yunara accounted for criminal corruption, especially the issue of payment of replacement money and or return of assets that are often included in the judge's decision on the convict other than imprisonment and fine, by the heirs of the convicted person. If the convicted passed away gives birth to a different perspective on the other dimensions of criminal involvement (inclusion).\textsuperscript{14} Whereas while the heirs did not commit the criminal act of the participation or the formula of participation is by the provisions of Article 55 of the Criminal Code and Law No. 31 of 1999 as amended by Law No.20 of 2001 on the Eradication of Corruption.

The provision of money replacement, in contrast to the general rule in the Criminal Code which abort the criminal responsibility of the convicted persons who died and withdraw the heirs in the dimension of inclusion as intended by the assistance in the concealment of corruption which is understood as accessories after the fact not regulated in the Criminal Code but regulated in criminal act of Corruption Act and the formulation of the assistance of corruption inclusion after the completion of the criminal act includes deelneming, while Article 56 of the Criminal Code does not regulate it, then Article 18 of Law No. 31 on 1999 as already amended by Law No. 20 on 2001 of the Eradication of Corruption is the only civility.

\textsuperscript{14} \textit{Ibid.}
while its act does not regulate corruption as predicate crime in the dimension of money laundering.\textsuperscript{15}

In addition to the problem of inclusion of corruption above, in its development, it experienced a shift in the determination of errors (\textit{schuld}) perpetrators, for the actions of subordinates in a government agency or corporation that harm the state finances. Which stated that the inclusion doctrine as an extension of the definition of a crime, causing the participant in crime participation, should also be covered by mistakes, according to the principle of "\textit{geen straf zonder schuld.}" Thus, it is not the fault of the head of an agency or corporation if there are subordinates who commit a criminal act of corruption in which the superior is also required to be responsible. But the fault of the subordinates, as long as there is no order to commit a criminal act of corruption so that the superior is not burdened with criminal liability or inclusion in corruption or by the authority of the delegation.

Accountability of superior of his subordinates who commit a corruption crime without cooperation and orders of superiors should not be sought for criminal liability as a participant. The problem should be placed on the action concerned, and not his position as a leader or superiors. His position as a leader or superiors is not a crime according to positive law, so it is not at all deserved to be condemned therefore there is no mistake as a condition of his criminal punishment. If the perpetrator of corruption is only subordinate, then the responsibility of the leader, in this case, is not based on the error (liability without fault). So that the liability without fault responsibility occurs a shift "Doctrine of Inclusion" in various cases of corruption that ensnare the superior of his subordinates, because inclusion is constructed in the form of liability.

The problem is why the shift of "doctrine of inclusion" in some cases of corruption related to inclusion, cannot be answered normatively juridically. It may be seen from the politics of government law that is changing in this case. The shift is quite difficult for academics to develop explanations- theoretical explanation of it, to justify it. In the Criminal Code as a general rule, several forms of participation are included and explained in Articles 55 and 56 of the Criminal Code, concerning classes called \textit{mededaders} (called participants, or makers), and Article 56 of the Criminal Code concerning \textit{medeplichtige}.\textsuperscript{16}

The existence of acts participating in corruption can be seen in the Corruption Court Ruling on Palu District Court Number: 29/Pid.Sus-TKP/2016/PN.Pal as follows: In the fiscal year 2014, based on Document of Implementation of Amendment of Local Government Work Unit Budget

\textsuperscript{15}Ibid.

\textsuperscript{16}Adami Chazawi, \textit{Op.Cit.}, pp. 80-82.
(DPPA SKPD) DPP Number SKPD: 1.02.01.0125.07.5.2 on Health Service Organization Unit, the Year 2014 has been held the auction of goods and services by direct selection method with post qualification for Construction of Front and Side Unit of Wakai General Hospital Sector worth Rp 412,531,000, - (Four Hundred Twelve Million Five Hundred and Thirty-One Thousand Rupiah). That Freddy Akuba as Director of CV. Prism in the execution of the contract of the work of Construction of Front and Side Unit of Wakai General Hospital as the winner of the auction in accordance with the agreement to execute Construction Work Package of Construction of Front and Side Unit of Wakai General Hospital Number 108.A/KONT-PPA/APBD/VI/DINKES/RS.WKI-01/2014 dated 16th June 2014 signed by Freddy Akuba as Director.

Whereas in the work of Construction of Front and Side Unit of Wakai General Hospital in 2014, there is work that is not by the contract executed by Freddy Akuba, thus causing the front and side channel of Wakai General Hospital cannot survive and cannot be functioned as planned. Freddy Akuba has received 100% payment while there are still many shortcomings that must be met, due to the acts of Freddy Akuba the state loss Rp.283,241,874.18 (Two Hundred Eighty Three Million Two Hundred Forty-One Thousand Eight Hundred Seventy Four Cent Rupiah).

Based on the results of the examination of the witnesses, it was revealed that Freddy Akuba obtained the ease and assistance of several parties such as Committed Officer, Technical Assistant, Consultant Planner, Supervisory Consultant and Budget User Authority responsible as Corresponding in the corruption case of Construction of Front and Side Unit of Wakai General Hospital. The existence of inclusion in the case can be found based on the result of examination of witnesses in the Corruption Court Ruling of Palu District Court Number: 29/Pid.Sus-TKP/2016/PN. Pal, who the author resumed as follows: 17 Whereas based on the examination of witnesses and the examination of Expert witnesses in the trial, it is known that those responsible for the work are several parties, namely:

1. Committing Officer/ Drs. Suardi, Apt. M.Si,
2. Technical Assistant/Secretary of Provisional Hand Over/Anaddarah Shofiah, ST;
3. Supervisory Consultant/Fadhli, ST;
4. Authorized Budget User/Dr. Abdul Rahman. DM., Mars
5. Chairman of the Committee Provisional Hand Over/Burhanuddin

For Service Provider and Supervisory Consultant, The Service Provider is responsible for the construction work not in accordance with the contract or Back Up data, then for the Supervisory Consultant responsible for

17 Putusan Pengadilan of Palu District Court Number : 29/Pid.Sus-TKP/2016/PN. Pal, p. 17
approving the work done by Service Provider without conducting supervision or inspection referring to the contract and Back Up data and approves the progress report of the work done by the Service Provider even if it turns out the work is not in accordance with the contract or Back Up data.\textsuperscript{18}

Based on expert witnesses, Abdul Rahman, ST, is one of the audit team for the calculation of state losses on suspicion of deviation of Construction of Front and Side Unit of Wakai General Hospital in providing expert statements limited to state losses, can only explain that basically all parties are responsible, i.e. Providers, Supervisory Consultants, Provisional Hand Over Committees, and Committing Officer and to determine who is most responsible so that the deviation of such development is the authority of the investigator.\textsuperscript{19}

In the consideration of the Panel of Judges that, the Committing Officer (Drs Suardi, Apt M.Si); Technical Assistant / Secretary of Provisional Hand Over (Anaddarah Shofiah, ST); Consultant Supervisor (Fadhli, ST); The Budget User Authority (Dr. Abdul Rahman, DM., Mars) and the Chairman of the Provisional Hand Over Committee (Burhanuddin) are jointly responsible for the accused as well as the facts and confessions at the hearing, as has been considered in the element of crime which has been proven to be rejected, because of who will be indicted, prosecuted or brought before the court is the authority of the Public Prosecutor to determine if that cannot be intervened by other parties, except in the name of justice and the supremacy of the Law, but against the plea of justice (\textit{ex aequo et bono}) for the defendant, The Panel of Judges will consider it.

Inclusion and assistance in the criminal act of corruption is regulated in Article 15 of Act No. 31 of 1999 as amended by Act No.20 of 2001 on the Eradication of Corruption: Everyone who conducted the trial (Article 53 paragraph 1 of the Criminal Code), assistance (Article 56 KUHP) or malicious conspiracy (Article 88 of the Criminal Code) criminal corruption, shall be subject to the same criminal sanction as referred to in Article 2, Article 3, Article 5 through Article 14. The case of Corruption Assistance can be seen in the Palu District Court case number 29 / Pid.Sus-TKP / 2016 / PN and Court Ruling Nomor: 15 / Pid. Sus / 2012 / PN.PL, the Palu Corruption Court which begins the implementation of development that is not by the budget involving several parties that harm the state losses.

The case mentioned has been juncto-ed Article 55 of the Criminal Code, the case of Decision Number: 15 / Pid. Sus / 2012 / PN.PL, Palu Corruption Court and Palu District Court No. 29 / Pid.Sus-TKP / 2016 / PN

\textsuperscript{18} Moh. Ikram A. Towada, ST, Expert Witnesses in Case Number : 29/Pid.Sus-TKP/2016/PN. Pal

\textsuperscript{19} Abdul Rahman, ST, Expert Witnesses in case Number : 29/Pid.Sus-TKP/2016/PN. Pal
is not in juncto-ed Article 55 of the Criminal Code. However, in the case of a mistake in the prosecution of the perpetrator who is allegedly committing a criminal act of assistance related to the corruption offense which in the indictment the perpetrator is not charged with Article 55 of the Criminal Code so that there is no evidence of assistance, it should be based on inquiries and investigation (BAP) the beginning of the investigation of the parties in the case in juncto-ed Article 55 of the Criminal Code.

This inclusion is precisely made to punish those who do not conduct the act (not the makers). This participatory lesson is not made to punish those whose actions contain all the elements of the criminal incidents in question. These are precisely made to demand their accountability which enables the maker to commit a criminal event, even if their own act does not contain all elements of the criminal event. Even though they are not the makers that their actions do not contain all the elements of criminal incidents, still they (also) responsible or accountable for the criminal act, because without their participation, of course the criminal event never happened.

Based on the above, in practice, the application of criminal law, the issue of inclusion is still poorly understood by law practitioners. It can be seen from the results of the investigation, the prosecutor's indictment which is not by the principles of criminal law relating to the existence of inclusion. Supposedly since the inquiries and investigation should have set some parties who became suspects. Because of the criminal acts of corruption committed by Freddy Akuba get the ease and assistance of several parties such as Committing Officer, Technical Assistant, Consultant Planner, Supervisory Consultant and the Budget User Authority responsible as a comrade in the corruption case of Construction of Front and Side Unit of Wakai General Hospital. With no other suspects being suspended so that there is no guarantee of legal certainty, equality before the law, justice, and legal certainty must also be obtained by suspects, defendants and convicted justice process in the criminal case. So that the law enforcement process given to perpetrators of criminal acts committed by more than one person for example the inclusion in corruption crime is still not in accordance with applicable criminal law regulations. Should be the pre-party who assist or do jointly in the case of Palu District Court Number: 29 / Pid.Sus-TKP / 2016 / PN. Pal is also filed as a suspect. Palu District Court Decision Number: 29 / Pid.Sus-TKP / 2016 / PN. Pal, this is a case of corruption involvement of perpetrators consisting of 4 (four) persons and the suspects, defendants and convicted 1 (one) person namely contractor, of which 3 (three) persons are only as witnesses, resulting in disparity in enforcement law, resulting in inconsistencies in the application of inclusion in the handling of corruption cases.
Legal problems in Indonesia can be caused by several things such as the judicial system, the legal instruments, and the inconsistency of law enforcement, the intervention of power, as well as the legal protection that does not reflect the legal objectives of legal certainty, justice, and expediency. The disparity of criminal law enforcement in Indonesia cannot be abolished. All that can be done is efforts to minimize the criminal disability that occurs in a society that violates the principles and legal objectives of legal certainty, justice, and expediency. With the various views of scholars connected with the philosophy of punishment and the purpose of the law itself then the solution we can use is the opinion of Muladi stating that.\textsuperscript{20}

The most important effort that must be taken in facing the problem of criminal disparity is the need to appreciate the judge against the principle of proportionality between the interests of society, the interests of the State, the interests of the perpetrators of crime and the interests of victims of criminal acts. In connection with the opinion of Edward M. Kennedy above, it can be seen that the consequences of the disparity of criminal law enforcement are not by the purpose of the criminal law that is the certainty of law, justice, and expediency. The occurrence violation of legal objectives of legal certainty, justice, and expediency in corruption case cause chaos in society, not only hurts the sense of community justice but also encourages people to commit criminal acts.

One of the cases that resulted in violations of the legal objectives of legal certainty, justice and expediency in the law enforcement of corruption cases is in the case of Freddy Akuba get the ease and assistance of some parties such as Committing Officer, Technical Assistant, Consultant Planner, Supervisory Consultant and Budget User Authorization is responsible as a participant in the corruption crime case of the Construction of Front and Side Unit of Wakai General Hospital and involving many parties. However, until now, the only convicted person is Freddy Akuba, (service provider). The involvement of others in the case is very clear based on the consideration of the Panel of Judges of the Palu District Court No. 29 / Pid.Sus-TKP / 2016 / PN, that in the examination of witnesses and expert information revealed in the hearing the criminal act of corruption is carried out jointly with other people. The investigator and the public prosecutor should also include the involvement of the other person in the case file. So it can be known the culprit, medeplegen, doenpleger, uitlokker. So that criminal law enforcement related to corruption can guarantee legal certainty (rule of law)

\textsuperscript{20} Muladi, Dampak Disparitas Pidana dan Usaha mengatasinya, Bandung: Alumni, (1985), pp. 8-9
and give a sense of justice for victim and social justice community so that law enforcement can improve as *restitutio in integrum*.

The consequences of other party are not being filed as suspects other than Freddy Akuba such as Committing Officer, Technical Assistant, Consultant Planner, Supervisory Consultant and Budget User Authority; this will potentially hamper the disclosure of key actors and other actors with various roles in place resulting in legal uncertainty, justice, and expediency. With the conviction of Freddy Akuba who in the indictment and prosecution of the Public Prosecutor did not include Article 55 of the Criminal Code to the defendant Freddy Akuba due to this the other party will not be filed as a suspect, the defendant let alone the convicted person, so the case will be responsible only for Freddy Akuba, resulting in discrimination in law enforcement and the absence of equality in law so that there is no guarantee of legal certainty in court process of corruption case.

As a result of discrimination in law enforcement is a violation of the due process of law or equitable legal process\(^2\)\(^1\), an understanding of fair and equitable legal process also contains an attitude of inner respect for the rights of citizens even though he became a criminal, but his position as human allows him to obtain his rights without discrimination in impartiality. To realize that matter the parties involved in the inclusion in the Case Number: 29 / Pid.Sus-TKP / 2016 / PN. Pal should be held criminally liable because criminal liability relates to issues of justice and equality before the law.

In the Case Number: 29 / Pid.Sus-TKP / 2016 / PN. Pal, the parties as the companion must be accounted for criminally because it meets the principle of legality and a mistake in the supervision of the Construction of Front and Side Unit of Wakai General Hospital. The existence of inclusion in a case can be found based on the results of the examination of witnesses in the court other than the Service Provider as well as the Technical Assistant, Consultant Planner, Supervisory Consultant and the Budget User Authority shall be responsible for any errors. In criminal liability, there are perspectives such as a monistic view and a dualistic view. A monistic view is, among others, suggested by Simons that “*strafbaar feit* as an act which is punishable by law, contrary to law, is committed by a guilty person and the person is held responsible for his deeds”. According to the flow of monism, the elements of *strafbaar feit* include both the elements of action, commonly called the objective element, as well as the elements of the maker, commonly called subjective elements. Because it is mixed between the elements of the act and the maker, it can be concluded that *strafbaar feit* is the same as the conditions of criminal imposition, so it seems as if it is

\(^{21}\) Muladi, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, Semarang: Badan Penerbit Universitas Diponegoro, (2002), p. 62.
assumed that if there is strict feasibility, then the perpetrator must be convicted. Adherents of a monistic view of the *strictab feit* or criminal act argue that the elements of criminal liability concerning the makers of the offense include: firstly responsible ability; both errors in the broadest sense, i.e., deliberate and/or omission; and thirdly there is no excuse for forgiving.

Doctrinally criminal liability in the teaching of criminal inclusion in the Case Number: 29 / Pid.Sus-TKP / 2016 / PN. Pal, as an independent form of participation, is called *zelfstandige vormen van deelneming*, where criminal liability lies with each participant being individually respected. Since the parties are Service Providers as well as Technical Assistants, Consultant Planners, Supervisory Consultants and Authorized Budget Authorities, those who participate in criminal acts with doctrinal requirements that the participant must be physical and the presence of awareness in accompanying criminal acts and between them must also be a relationship cause. The criminal responsibility must be linear and follow all doctrine about the scope of participation of criminal act as the purpose of holding the provision of inclusion to expand the criminalization of a person who is not fully or not at all direct conduct.

D. Conclusions

1. Conclusion
Based on the results and discussion, it can be concluded as follows:

a) There has been no application of inclusion in the handling of corruption cases causing inconsistency among law enforcement officers such as Police, Attorney General Office in applying article of inclusion in handling corruption cases.

b) The inconsistency in the application of inclusion in corruption cases, the occurrence of discrimination in the process of law enforcement of corruption so as not to reflect the legal objectives of legal certainty, customs, and legal expediency.

2. Recommendation

a) To create legal objectives, law enforcement officers must be consistent in applying the articles of inclusion in the handling of corruption cases.

b) To achieve legal certainty, investigators and prosecutors should apply the juridical participation in corruption cases.

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22 Muladi dan Dwidja Priyatno *Pertanggungjawaban Pidana Korporasi*, Jakarta: Kencana, (2010), p.50.

23 A.Z Abidin, *Bunga Rampai Hukum Pidana*, Jakarta: Pradnya Paramita, (1983), p. 44.
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