

## CHAPTER ONE INTRODUCTION

### A. Background

The Investigation Team of Tempo Magazine revealed the news that there was a collusion between pharmaceutical companies and doctors when prescribing certain medicines to patients. Based on data held by Tempo, it stated that there are at least 2,125 doctors and 151 hospitals spread across five provinces in Indonesia, namely Jakarta, Banten, West Java, East Java, and South Sulawesi.<sup>1</sup> Each doctor receives an average of IDR 5.000.000 up to IDR 2.500.000.000 which is not always in the form of money, but also a car,<sup>2</sup> Umrah accommodation,<sup>3</sup> and also a form of sexual gratification.<sup>4</sup> It was also mentioned in the Tempo magazine investigation report that 40% of the price of medicine was used as the source to bribe doctors.<sup>5</sup> The result of bribery by pharmaceutical companies to doctors is the loss of society as medical consumers. This is because the public as consumers must bear the cost of purchasing more expensive medicine.

---

<sup>1</sup> Tempo, “Eksklusif: Suap Obat, Dokter Terima Mobil Yaris hingga Camry”, <https://nasional.tempo.co/read/news/2015/11/03/173715547/eksklusif-suap-obat-dokter-terima-mobil-yaris-hingga-camry>, accessed on May 17<sup>th</sup> 2019, at 13.00

<sup>2</sup> *Ibid.*

<sup>3</sup> Tempo, “Eksklusif: Suap Obat, Dokter Naik Haji pun Dibayari”, <https://nasional.tempo.co/read/news/2015/11/02/173715198/eksklusif-suap-obat-dokter-naik-haji-pun-dibayari>, accessed on May 17<sup>th</sup> 2019, at 13.10

<sup>4</sup> Tempo, “Eksklusif, Suap Obat: Dirut RSCM Pernah Ditawari PSK”, <http://nasional.tempo.co/read/news/2015/11/02/173715076/eksklusif-suap-obat-dirut-rscm-pernah-ditawari-psk>, accessed on on May 17<sup>th</sup> 2019, at 13.30

<sup>5</sup> Tempo, “Eksklusif: Terkuak, 40 Persen dari Harga Obat buat Menyuap Dokter”, <https://nasional.tempo.co/read/news/2015/11/02/078714995/eksklusif-terkuak-40-persen-dari-harga-obat-buat-menyuap-dokter/2>, accessed on May 17<sup>th</sup> 2019, at 14.00.

Indeed, if it refers to the provisions of the Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Amendment to the Law number 31 of 1999 on Eradication of Corruption, actions or practices conducted by pharmaceutical companies to doctors cannot be categorized as corruption. This is because Article 2 to Article 24 do not mention bribery and gratification between the private sector and other private sector as a subject of corruption.

Corruption in the private sector is increasingly widespread. However, many consider corruptions in the public sector are more important than corruption in the private sector.<sup>6</sup> This assumption has resulted in many countries making corruption in the public sector a serious crime and ignoring the private sector.<sup>7</sup> Corruption in the private sector has a negative impact<sup>8</sup> and also infected all aspects of people's lives in the pharmaceutical, health, banking, finance, agricultural, fishery.<sup>9</sup> Based on the data of Corruption Eradication Commission, corruption by profession/position from 2004 to September 2019, there are 287 from the private sector.

---

<sup>6</sup> W. Paati Ofosu-Amaah, et al, 1999, *Combating Corruption: A Comparative Review of Selected legal Aspects of State Practice and Major International Initiatives*, World Bank, Washington D.C., p. 66.

<sup>7</sup> *Ibid.*

<sup>8</sup> Nika A. Antonikova, 2015, "Private Sector Corruption in International Trade: The Need For Heightened Reporting and A Private Right of Action in The Foreign Corrupt Practices Act", *Brigham Young University International Law & Management Review*, Vol. 11 No. 1, p. 93.

<sup>9</sup> Deborah Hardoon dan Finn Heinrich, 2011, *Bribe Payers Index 2011*, Berlin, Transparency International, p. 19.

PROFESSION	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	TOTAL
DPR and DPRD	10	103	20	23	19	9	8	16	5	27	8	7	2	0	0	0	257
The Head of Institution / Ministry	2	1	0	2	3	9	4	1	0	2	1	1	0	1	1	0	28
The Ambassador	0	0	0	0	0	0	0	0	0	1	0	1	2	0	0	0	4
Commissioner	0	0	0	0	0	0	0	0	0	0	0	1	1	2	3	0	7
The Governor	1	2	1	1	3	3	2	0	0	1	2	1	1	2	0	1	21
Mayor/Regent	14	30	13	9	4	12	3	3	3	4	5	6	6	3	0	0	115
Echelon I / II / III	14	24	43	10	7	2	7	8	15	12	14	22	10	15	9	2	213
The Judge	0	5	3	1	3	2	3	2	2	1	0	0	0	0	0	0	22
The prosecutor	3	0	1	3	0	0	0	0	2	0	0	1	0	0	0	0	10
The Police	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	2
The Advocate	1	4	0	1	2	0	0	0	0	1	0	0	0	0	2	0	12
The Private Sector	49	56	28	28	18	16	24	16	10	8	11	12	3	5	4	1	287
The Others	32	31	13	21	3	8	8	2	1	8	4	3	2	1	4	0	141
Corporation	1	4	1	0	0	0	0	0	0	0	0	0	0	0	0	0	6
<b>TOTAL NUMBER</b>	<b>127</b>	<b>260</b>	<b>123</b>	<b>99</b>	<b>62</b>	<b>61</b>	<b>60</b>	<b>49</b>	<b>38</b>	<b>65</b>	<b>45</b>	<b>55</b>	<b>27</b>	<b>29</b>	<b>23</b>	<b>4</b>	<b>1125</b>

Table. 1.1

Source: Komisi Pemberantasan Korupsi<sup>10</sup>

From the data above, corruption of the private sector is the highest of others. It indicates that the private sector has corrupt behavior and tends to corrupt. In addition, the report of Transparency International on the Corruption Perception Index in 2018, Indonesia ranked 89<sup>th</sup> from 180 countries with a score of 38 (0 very corrupt and 100 very clean).<sup>11</sup> The Political and Economic Risk Consultancy (PERC)'s 2018 Report on Corruption in Asia, Indonesia is in 14<sup>th</sup> position out of 16 countries with 7.57 points.<sup>12</sup> This position makes Indonesia one of the most corrupt countries in the world.

<sup>10</sup> Komisi Pemberantasan Korupsi, "Statistik", <https://www.kpk.go.id/id/publikasi/penanganan-perkara>, accessed on October 1<sup>st</sup> 2019, at 08.00.

<sup>11</sup> Transparency International, <https://www.transparency.org/country/IDN>, accessed on May 20<sup>th</sup> 2019, at 09.00.

<sup>12</sup> Asian Intelligence, 2018, *An Independent Fortnightly Report on Asian Business and Politics*, Hong Kong, Political and Economic Risk Consultancy Ltd., p. 1.

Supreme Court Regulation number 13 of 2016 on Procedures for Handling Criminal Acts by Corporations has been used as a guideline for law enforcement in handling criminal cases on corporation and/ or corporate administrators. However, the regulation is less able to reach the perpetrators of corruption in the private sector because until now one of the elements of corruption in the Law Number 31 of 1999 on Corruption Eradication is still limited to the element of “the loss of state finances”. In addition, the Constitutional Court Decision Number 25 / PUU-XIV / 2016 which related to Articles 2 and 3 of the Law number 31 of 1999 on Corruption Eradication, reinforced further about the absolute existence of the element in an act of corruption. The absolute element of corruption stated in both law above is the need for concrete state losses. Meanwhile, forms of corruption in the private sector might not involve the state financial loss.

Corruption in the private sector is handled internally by companies with sanctions such as refunds or dismissals. The company does not bring the case to the legal domain because of consideration to protect the name of the company.<sup>13</sup> Globally, the issue of corruption in the private sector has been very common and has long been a concern, especially in developed countries. Corruption cases that involve large companies have shown that corruption in the private sector is common, widespread and even seems to be a part of company strategy because well-designed from the process of budget planning. Therefore, Anti-Corruption Agency (ACA) in various countries

---

<sup>13</sup> Nasional Kompas, “Korupsi Sektor Swasta Lebih Gila”, <https://nasional.kompas.com/read/2018/02/01/07304001/korupsi-di-sektor-swasta-lebihgila>, accessed May 20<sup>th</sup> 2019, at 10.00.

have the authority to investigate and prosecute corruption both public and private sectors, such as Corrupt Practices Investigation Bureau (CPIB) Singapore,<sup>14</sup> Independent Commission Against Corruption (ICAC) Hong Kong,<sup>15</sup> and so on.

The impact of private sector corruption on the company is the raising of additional costs for bribery or for building a corrupt network, paying bribes for other competitors for the opportunity to get a contract. These costs are consequently transmitted to consumers through higher prices or lower quality products and services. At the country level, corruption impedes investment, erodes competition, negatively affects the quality of public services, undermines citizen trust in state institutions, exacerbates inequality, and ultimately jeopardizes political stability.<sup>16</sup>

The urgency of regulating the eradication of corruption in the private sector has emerged since 2006 when Indonesia enacted Law Number 7 of 2006 concerning the Ratification of United Nation Convention Against Corruption (UNCAC). Some articles in UNCAC recommend state parties to take steps to deal with corruption in the private sector. However, until now, recommendations from UNCAC have not been realized as a product of legislation. Based on above problems, it is interesting to conduct a research

---

<sup>14</sup> Corrupt Practices Investigation Bureau, [www.cpi.gov.sg](http://www.cpi.gov.sg), accessed on May 21<sup>st</sup> 2019, at 13.00.

<sup>15</sup> Independent Corruption Against Corruption, [www.icac.org.hk](http://www.icac.org.hk), accessed on May 21<sup>st</sup> 2019, at 13.30.

<sup>16</sup> Deutsche Gesellschaft Fur Internationale Zusammenarbeit, "The Private Sector Corruption", <https://www.giz.de/fachexpertise/downloads/gtz2008-en-privatesector.pdf>, accessed on May 21<sup>st</sup> 2019, at 07.00.

on the Urgency of Corruption Eradication Commission in Handling the Corruption in Private Sectors.

## **B. Statement of Problem**

Based on the background above, the problem statements of this research is what is the urgency of Corruption Eradication Commission in developing its authority to handle corruption cases in private sector?

## **C. Objectives of Research**

1. To know and understand the Corruption Eradication Commission in developing its authority to handle corruption case in private sector.
2. To analyze the Corruption Eradication Commission in developing its authority to handle corruption case in private sector.
3. To Propose some suggestion on corruption eradication method in private sector.

## **D. Benefits of Research**

### **1. Theoretically**

The research grants a better and deeper understanding of knowledge on how Corruption Eradication Commission in handling corruption and the research will reveal the urgency of corruption eradication in private sectors.

### **2. Practically**

The research may give suggestion for a better policy to policy maker on how to settle problem of corruption in private sector.