

## CHAPTER TWO LITERATURE REVIEW

### A. The Concept of Corruption

Corruption is derived from Latin word "*corruptio*" or "*corruptus*" of the verb "*corrumpere*" which means rot, depravity, dishonesty, can be bribed, immoral and deviations from chastity. Those words in several languages of Europe such as England and France is known as "corruption" and in Dutch "*korruptie*" and subsequently in Indonesian as "*korupsi*". Black's Law Dictionary, defines corruption as:<sup>1</sup>

“An act done with an intent to give some advantage inconsistent with official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.”

According to M.Chalmer the definition of corruption is related to the problem of bribery that is related to manipulation in the economic field, and concerns the field of public interest.<sup>2</sup> According to Subekti, corruption is a self-enriching crime that directly harms state's finance and economy,<sup>3</sup> whereas Robert Klitgaard formulates corruption as an equation between discretion added with the existence of monopoly and lack of accountability.<sup>4</sup>

Globally there is no single definition that has become the only reference in the whole world about what is meant by corruption. Corruption is understood differently in various countries. The culture of each community

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<sup>1</sup> Black's Law Dictionary, <https://thelawdictionary.org/corruption/>, accessed on May 22<sup>nd</sup> 2019, at 10.00

<sup>2</sup> Jeremy Pope, 2008, *Strategi Memberantas Korupsi*, Transparency International, p.2.

<sup>3</sup>Subekti, 1977, *Kamus Hukum*, Pradnya Paramita, Jakarta, p. 73.

<sup>4</sup> Robert Klittgrard, 1998, "International Cooperation Against Corruption, Finance & Development", *International Monetary Fund Publications*, Vol. 35 No. 1, p.3-6.

can influence the definition of corruption. Even the United Nation Convention Against Corruption (UNCAC) which was agreed and became a reference by almost all countries in the world, does not specifically define what is meant by corruption, but only describes the forms of actions that can be subject to sanctions as a corruption act.

In the Indonesia Criminal Legal system, corruption is defined based on the form of criminal acts. These types of Corruption are defined through 13 detailed articles in Chapter 2 Article 2 to Article 16 of Law Number 31 of 1999 in Conjunction with the Law number 20 of 2001 on Corruption Eradication, namely:

1. State Finance Loss<sup>5</sup>
2. Bribery<sup>6</sup>
3. Gratification<sup>7</sup>
4. Embezzlement<sup>8</sup>
5. Extortion<sup>9</sup>
6. Cheat Action<sup>10</sup>
7. Conflict of Interest in Procurement.<sup>11</sup>

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<sup>5</sup> See at Article 2 and Article 3 of the Law Number 31 of 1999 *juncto* Law number 20 of 2001 on Corruption Eradication.

<sup>6</sup> See at Article 5 Point 1 and 2, Article 6 Point 1 and 2, Article 11, Article 12, Article 13, Article 15 of the Law Number 31 of 1999 *juncto* Law Number 20 of 2001 on Corruption Eradication.

<sup>7</sup> See Article 12B and 12C of the Law Number 31 of 1999 *juncto* Law Number 20 of 2001 on Corruption Eradication.

<sup>8</sup> See Article 8, 9 and 10 of the Law Number 31 of 1999 *juncto* Law Number 20 of 2001 on Corruption Eradication.

<sup>9</sup> See Article 12 of the Law Number 31 of 1999 *juncto* Law Number 20 of 2001 on Corruption Eradication.

<sup>10</sup> See Article 7 and 12 of the Law Number 31 of 1999 *juncto* Law Number 20 of 2001 on Corruption Eradication.

In addition, the Law Number 20 of 2001 on the amendment of Law Number 31 of 1999 on Corruption Eradication regulates other types of criminal acts related to the investigation of corruption, namely:

1. Obstruction of the process of examining corruption cases.
2. Banks that do not provide the offender's account.
3. Witnesses or Experts or person who holds secrets of the case that do not give information or give false information.
4. Witness who opens the identity of the reporter.

## **B. Corruption in Private Sector**

Corruption may occur in both public and private sector. The public sector is defined as the governmental bodies or state officials and its exercises of authority to provide and manage public goods and services.<sup>12</sup> On the other hand, the private sector is the part of a state's economic system that is run by personal sector (households), corporate sector (companies), and is not state controlled. Most private sectors are run by the intention of making profit.<sup>13</sup>

The harm of corruption to economic development and its efficiency, the social, political and ethical consequences, make private-to-public corruption has been widely studied. Private-to-private corruption on the contrary has

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<sup>11</sup> See Article 12 of the Law Number 31 of 1999 *juncto* Law Number 20 of 2001 on Corruption Eradication.

<sup>12</sup> World Bank, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/LACEXT/EXTLACREGTOPPU/BSECGOV/0,,contentMDK:20830474~pagePK:34004173~piPK:34003707~theSitePK:832592,00.html>, accessed on May 25<sup>th</sup> 2019, at 14.00.

<sup>13</sup> Black's Law Dictionary, <https://thelawdictionary.org/private-sector/>, accessed on May 25<sup>th</sup> 2019, at 14.30.

been relatively neglected and only recently has started to receive the attention. In the state where corruption is perceived to be a major issue, the very concept of corruption has been increasingly instrumentalized for political needs.<sup>14</sup>

The Law Number 31 of 1999 on Corruption Eradication make the ‘state financial loss’ as the main requirement of an illegal acts to be considered as corruption. Meanwhile, the Private-to-Private Corruption might not involve directly the state money.<sup>15</sup> Therefore, the implication is common mistakes of understanding on the regards of public and private sector corruption. By the requirement of ‘state financial loss’, the provisions in corruption act cannot be imposed on the private-to-private corruption. The law make the Public Sector must be involved in any case even though corruption may be conducted by whosoever (include natural person, *rechtsperson*, and state official’s). Therefore, it creates a gap on the private sector corruption eradication.

### C. Previous Studies

The studies of corruption in private sector have actually been examined by some authors. *The first*, entitled “Suap di Sektor Privat: Dapatkah Dijerat?” by Andreas Nathaniel Marbun. The focus of his study is only bribery. In his research, the legal instruments of bribery in the private-to-private sector are unclear. Based on the study, the author recommends the

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<sup>14</sup> Gjalte de Graaf, Pieter Wagenaar and Michel Hoenderboom, 2010, *Constructing Corruption, The Good Cause*, Verlag Barbara Budrich, Germany, p. 101.

<sup>15</sup> Komisi Pemberantasan Korupsi, 2016, *Dasar Hukum Tentang Korupsi Terkait Sektor Bisnis*, Direktorat Pendidikan dan Pelayanan Masyarakat KPK, Jakarta, p. 22.

needs to have clear and concrete law enforcement in order to punish bribery in the private-to-private sector and entering the provisions of the private-to-private bribery into the draft of Penal Code.

*The second*, this issue has been researched by Prianter Jaya Hairi, entitled “Urgensi Pengaturan Penanganan Tindak Pidana Korupsi di Sektor Swasta”. In his research, the mechanism of corruption eradication in private sector is only analysed by using the gap between United Nation Convention Against Corruption and regulation of corruption in Indonesia.

Based on the study above, it is interesting to discuss the urgency to eradicate the corruption in private sector but it may not be an improvement if the institution given the authority to eradicate the corruption is not well improved. It will be interesting if the research used comparative studies on the types of corruption and corruption eradication commission around the world. The comparison open the possibility to find the best solution to eradicate private sector corruption. So the aim of the research is to analyse the corruption in private sector eradication mechanism and shows the urgency of the authority of Corruption Eradication Commission in handling the private sector corruption.