

## THE SYSTEM OF RESPONSIBILITY AND PUNISHMENT FOR THE PROVINCE/CITY/REGENCY AND GOVERNOR/MAYOR/REGENT IN CORRUPTION CRIMINAL ACTION

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### ABSTRACT

*The subject of law in corruption criminal action is not only personal but also corporation. Corporation is not far from the system of criminal responsibility. This paper aims to find out the system of responsibility and punishment for the province/city/regency that made the decree and had inflicted the financial of country. The system of criminal responsibility for the corporation in several conducted rules consists of strict liability that burdened the criminal responsibility without see the fault and vicarious liability to others except the doer. Corporation, as the group of people or assets that organized well with law or not has responsibility and in corruption criminal action based on the chapter 20 Law Number 31 Year 1999 Juncto Law Number 20 Year 2001 on the Eradication of Corruption. This chapter is conducted by or represents the corporation. It has members to run the company can't be freed from the punishment although the prison punishment can't be done to the corporation. The system of responsibility of the governor/mayor/regent is related to the decree, in this case it is about the committee of means and infrastructure provision that has been conducted and inflicted the financial or economic of country. It can't be separated from the responsibility of the province/city/regent as the corporation, must get punishment based on the chapter 20 on the Eradication of Corruption with the personal responsibility of the governor/mayor/regent and the committee that had been appointed. The punishment for the governor/mayor/regent is the punishing from the corruption doer because he is as the leader chosen by the society.*

Key words: Responsibility, Corruption Criminal Action, Province/city/regent

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### Introduction

Corruption is not only detrimental to the financial state or the state's economy, but also a violation of the rights of the social and economic society broadly. Hence, corruption in the Law Number 31 Year 1999 (State Gazette of the Republic of Indonesia Year 1999 Number 140, Supplementary State Gazette of the Republic of Indonesia Number 3874) *Juncto* Law Number 20 Year 2001 (Supplementary State Gazette of the Republic of Indonesia Number 4150) on the Eradication of Corruption, hereinafter referred to as the Law on Corruption Eradication, is classified as an extraordinary crime.

According to the data of the Ministry of Home Affairs of Indonesia, there are 318 out of the 460 heads of districts or cities in Indonesia doing corruption. Meanwhile 16 out of the 33 governors in the entire province of Indonesia also perform that action.<sup>1</sup> The data is increasing every year since November 2004 the President of the Republic of Indonesia issued permits for the examination of several regional heads like governors, regents and mayors getting involved in corruption cases and its permit procedure is from the president, indeed.<sup>2</sup>

Governors are representatives of the central government in the provincial level. They are elected by people as regional heads who must ensure adherence to the vision and mission of the central government, especially public administration tasks such as stability and national integration, governance coordination and construction, and supervision of the implementation of the county/city governance. Nevertheless, in its tenure, they have been involved in corruption and abuse of power as the head of a local public agency which is in the province and so have mayors and regents.

Perpetrators of corruption is only limited to the individual. According to the Law on Corruption Eradication, it has set other legal subjects of corruption, including the corporation. The application of the criminal rule against corporate as corruptors has been included but the limitation of corporate liability and criminal provisions have not been clear enough in relation to the responsible subject if the imprisonment is imposed.

Based on the description above, the formulation of the problem which will be the focus of this paper is the accountability system and punishment for Province/City/District as the public agency and the Governor/Mayor/Regent as the perpetrators of corruption

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<sup>1</sup> m.republika.co.id/berita/nasional/hukum/14/03/14, "Waduh, 318 dari 460 Kepala Daerah di Indonesia Lakukan Korupsi," 14 March 2014, accessed on 10 May 2014.

<sup>2</sup> antikorupsi.org/en/docs, "Daftar Kepala Daerah Tersangka Korupsi, yang Telah Dapat Ijin Pemeriksaan," accessed on 10 May 2014.

that has inflicted state finances or economy. This research aims to examine and analyze the accountability system and punishment for Province/City/District as the public agency and the Governor / Mayor / Regent as the perpetrators of corruption that has inflicted state finances or economy.

## Research Design

### a. Corporate as Legal Subject of Corruption

Legal subject is a supporter of the rights and obligations. Article 59 of the Criminal Code only recognizes that the subject of a criminal act is a human and does not recognize a corporation as the subject of a criminal act because the responsible remains are the board of the corporation itself. The legal subject of corruption does not only involve *natuurlijke persoon*, but in the formulation of the articles of the Law on Corruption Eradication, it is decided that each person is the legal subject.

The phrase of each person within the formulation of the articles of the Law on Corruption Eradication refers also to the corporation both legal corporation and non-legal corporation. Limitation of definition of a corporation is closely related to problems in the field of civil law. For the definition of a corporation is a closely related terminology to the term of legal body (*rechtspersoon*), and the legal body itself is a terminology that is closely related to the field of civil law (Dwidja Priyatno 2004, 12).

According to Article 1653 of Civil code, legal body is divided into 3 kinds:

1. Legal body held by the Government / public authority, such as the Regional Level I , the Regional Level II/ Municipality and so on.
2. Legal body recognized by the Government / public authority, such as associations, churches and religious organizations, and so on.
3. Legal body set up for a purpose that is not contrary to law and morality, such as limited liability companies, insurance associations and so on.

Legal entities may also be divided into 2 types:

1. Public law agency, such as the Republic of Indonesia, the Regional Level I , the Regional Level II/ Municipality, state banks (such as Bank Indonesia);
2. Private law agency, such as limited liability companies, cooperatives, shipping, foundation.

Based on the formulation of Article 1 of the Law on Corruption Eradication determines that each person is an individual or including a corporation, while the corporation is the well-organized association and or properties which are either a legal entity or non-legal entity. This provision has incorporated corporation as a legal entity that can be sentenced to criminal.

The formulation of this article is the development of the corporation as a legal entity in the criminal law. It is not only corporate officials who are accountable but also those acting for and/or on behalf of the corporation or for the benefit of the corporation including the employees of the corporation. However, the form of criminal sanction imposed to the board as an individual and the corporation is different.

Corporate criminal liability in the Law on Corruption Eradication has developed corporate criminal law which is corporation regarded as a legal subject performing a criminal act and directly responsible to criminal as well as legal subjects in the form of human beings. Hence, if the corporation as the maker then it will be as well as responsible. So, not only corporate officials can be held accountable for criminal but the corporation itself can already be responsible for its actions.

Law on Corruption Eradication also confirms the corporation as a legal subject of corruption as referred to in Article 20 as follows:

- (1) In the case of corruption made by or on behalf of a corporation, the criminal charges and imposition are made to the corporation and or the board.
- (2) The criminal acts of corruption made by a corporation if the criminal act is done by people both based on working relationship or based on other relationships, acting in the corporate environment either individually or jointly .
- (3) In the case of criminal charges made against a corporation, then the corporation is represented by the board.
- (4) Board representing the corporation as referred to in paragraph (3) may be represented by another person.
- (5) The judge may order that the corporate board represent themselves before the court and may also order that the board is brought to trial.
- (6) In the event of criminal charges made against the corporation, the call for facing and submission of the summons are delivered to the board at the board residence or office.
- (7) Capital criminal which can be imposed against the corporation only a fine, the maximum criminal provision be plus 1/3 (one third).

### b. Corporate Crime

Corporate viewed from its legal form can be given a narrow meaning and a broad meaning. In a narrow meaning, namely as a legal body, a corporation is a legal figure that its existence and authority are able to perform legal acts recognized by civil law. In a broad meaning, corporation can be a legal body and a non-legal body, i.e. in criminal law (Sutan Remy Sjahdeini 2007, 43).

Some terms related to the corporation often confuse the public largely to understand the various forms of corporate crime. The terms existing in the criminal law and the banking law have different meaning and purpose in creating the occurrence of a corporate crime. In this regard, Steven Box as cited by Arief Amrullah distinguished corporate crime as follows:

1. Crimes for corporations (corporate crimes): crimes committed by the corporation to achieve corporate objectives such as profitability for the purpose of the corporation, or in other words, corporate crime is committed clearly for the corporate and not against it.
2. Crimes against corporation (employee crime): crimes against the corporation, such as a corporate accountant stealing money. In this case the target of criminal is the corporation so that corporations are becoming victims.
3. Criminal corporations: corporations are used as a means to commit a crime (Arief Amrullah 2006, 41-42).

According to Sutherland, as quoted by Setiyono, depicting white collar crime as "... any person of higher status who commits socioeconomic of legal violation in the course of his or her occupation" (Setiyono 2005, 30,36). The term use of white collar crime is for crimes committed by people who have high social position and honor in his occupation, especially to designate crimes committed by employers and executive officials who harm the public interest.

Sutherland, as quoted by Arief Amrullah, discussed about white - collar criminality and produced five propositions as follows:

1. White - collar crime is a real crime and a violation of criminal law;
2. White - collar crime is different with the crime committed by lower-class groups;
3. Criminological theories which states that the crimes are related to poverty, mental illness and the social condition of the slum is no longer appropriate;
4. Required a theory of criminal behavior that would explain white - collar crime and crimes committed by the lower classes;
5. A hypothesis against this view in accordance with the theory of differential association and social disorganization.

### c. Corporate Criminal Liability Theory

In the beginning there is a difference in the civil law regarding a legal entity which can commit an unlawful act (*onrechtmatig handelen*), through *doelmatigheid* and *billijkheid* as the main base, then the science of civil law accepts that a legal entity shall be deemed guilty of committing an unlawful act, especially in the economic traffic. Legal entities cannot escape from the mistakes made by the board. Intent (*dolus*) or negligence (*culpa*) of the board shall be considered as intentional and negligence of its own legal entity (Mardjono Reksodipoetro 2014, 11).

Accountability of the criminal law is based on the principle of not convicted if there is no error (*geen straf zonder Schuld*). That one cannot be accounted for (punished) if the person does not commit a criminal act. However, despite committing a criminal, it is not always that person who can be convicted.

According to the teachings of accountability identification, the company can carry out a number of offences directly through the people who are very closely associated with the company and are seen as the company itself. In such circumstances, they are not as a substitute and therefore company liability is not included as personal accountability (Barda Nawawi Arief 2002, 154).

Doctrine of accountability identification is related to the element of *mens rea* that must exist and be fulfilled for those who are acting for and/or on behalf of the corporation/legal entity or for the purpose of the corporation/legal entity in order to impose the accountability to the corporation/legal entity. *Mens rea* or fault is the condition at which the criminal actor is able to be reproached because in terms of people actually s/he can do the other thing if he does not want to perform these actions (Roeslan Saleh 1983, 74).

Errors are the condition at which the criminal actors are able to be reproached because in terms of people actually s/he can do another if he does not want to perform these actions. According to Chairul Huda, this definition is composed by three main components, namely: 'reproach', 'in terms of the people' and 'can do another'. 'Reproached' is merely as a result of a mistake, if it is merely understood as 'be punished'. 'Reproached' also means 'accountable'. On the legal subject of human, the relationship between the act and its actor is focused more on the relationship between the inner state of the actor and the crime. So, 'in terms of people', the actor 'can be reproached' for having committed a crime. 'Can do another' means there is always a possibility for the actor to avoid the occurrence of crime. The absence of the possibility to do other thing for the actor, besides committing a crime, causes him/her to be released from state of guilt (Chairul Huda 2006, 74-76).

Liability identification refers to directing mind as someone who is responsible for creating and implementing corporate policies, in this case the head of the corporation/legal entity as one of the organs in the company. It does not include a person who only implements corporate/legal entity policies created by directing mind. So, the only official who is directing mind of the corporation/legal entity that is aware of corruption that has been done, which can be held responsible for an act of corruption.

According to Sutan Remy Syahdeini, that formally juridical, directing mind of the corporation can be seen from the corporate statutes, decrees of the board containing the appointment of officials or the managers to fill certain positions, and granting authority to carry out the task and obligations associated with the position. Directing mind of the corporation are personnel who have a position as a determinant of corporate policy or have legitimate authority to perform or not perform acts that bind the corporation without the approval of his superiors.

Directing the mind as someone who is responsible for creating and implementing corporate policy/legal entity may not have the presence of a justification or an excuse to release him from liability for the act of corruption so that its criminal liability can be charged to the corporation or to the directing mind itself. This is in accordance with the legal entity doctrine recognizing that the

corporation can only do or not do an act by humans, not by itself. Only when the real perpetrators can be criminally accountable, then the relevant criminal liability can also be charged to the corporation.

According to Barda Nawawi Arief, vicarious liability can be defined as the legal liability of a person for acts committed by any other person. Briefly it is defined as substitute liability. Substitute liability is the imposition of liability to others for the actions committed by a person so that the charged person is considered to have committed the acts (criminal offense). In this case the imposition of substitute liability deviates from the requirement of *mens rea* on a person in order to make him responsible for the actions that have been performed. This substitute liability is contrary to the concept of liability identification which requires the existence of *mens rea* on the perpetrators of corruption to be charged for its actions to corporate.

Vicarious liability occurs over acts committed by a subordinate in this case can be done by officials or employees or workers of a corporation/legal entity in which the superiors as the employers bear the liability for acts committed by subordinates. In this case act committed by officials or employees or workers is a must in order for duty of officials or employee or workers in accordance with the statute, authority, and policies granted by an employer to his subordinates. Thus an employer does not have to bear criminal liability for acts committed by officials or employees or workers if the act is done outside or unrelated with the statute, authority, and policies of the employer to his subordinates. The corporation as an employer must take responsibility for the acts committed by officials or employees even though the corporation does not commit the act by himself.

#### d. Punishment For Corporations

The description of the perpetrator is still often associated with physical actions performed by the actor (*fysieke dader*). Socio-economic environment of the actor does not always need to act the criminal physically. The act may be carried out by employees. Because the acts of the corporation is always manifested through human actions, then the transfer of the liability itself becomes acts of the corporation, it could be done if such actions are carried out in the traffic of social life as acts of the corporation.

According to Mardjono Reksodiputro as quoted by Hamzah Hatrik, that in criminal law the existence of a legal entity or business entity that bears the term "corporation" is accepted and recognized as a legal subject that can perform a criminal offense and can also be accounted for. In the development of criminal law in Indonesia, there are three systems of corporate liability as the subject of crime, namely:

1. Corporation board as the perpetrator, then the responsible one is the board;
2. Corporation as the perpetrator, then the responsible one is the board;
3. Corporation as the perpetrator and the responsible one (Hamzah Hatrik 1996, 30).

Sutan Remy Sjahdeini has other viewpoint that there are four possible systems to the imposition of corporate criminal liability, namely:

1. Corporation managers as a criminal, and therefore they should bear the criminal liability;
2. Corporation as a criminal, but the board should bear criminal liability;
3. Corporation as a criminal and the corporation itself must bear criminal liability;
4. Managers and corporations both as perpetrators, and both also should bear criminal liability.

As a corporation, based on Article 20 Paragraph (1) and (2) of the Law on Corruption Eradication that,

1. In the case of corruption made by or on behalf of a corporation, the charge and imposition of criminal may be made to the corporation and or managers;
2. Criminal acts of corruption committed by a corporation if the criminal act is done by people both based on working relationship or based on other relationships, acting in the corporate environment either individually or jointly.

Based on the grammatical interpretation of Article 20 Paragraph (1) of the Law on Corruption Eradication there are three (3) form a system of corporate criminal liability, namely:

1. Corporation as the criminal perpetrators and should be held accountable;
2. Corporation as the criminal perpetrators but the managers who should be held accountable;
3. Corporation as the criminal perpetrators but the corporation and managers should be responsible.

To understand the provision of Article 20 verse (2) of Corruption Eradication Law is not included in the explanation so it must be given legal interpretation of the verse. Corruption that based on the working relationship or other relation of the doers with the corporation/legal body is one of liability imposition to corporation/legal body for the action committed by the offenders. Based on the employment relationship or other relationship that happened is must be in accordance with the intent and purpose and the content of corporate budget it self. This relationship is intended as a basis and guide for the doer in his activity done inside or outside the corporation/legal body.

Those who act upon the employment relationship can be defined as those who have a working relationship with the board or as an employee of corporation. In this case, it is under the corporation budget, letter of agreement as an employee or working appointment in a corporation. Meanwhile, those who act based on another relationship can in the form of employment relationship or with the corporation. Those people will represent the corporation to do legal action for or on corporation or the importance of corporation that gives benefit for the corporation.

The actions done by the offenders for or on the corporation or its importance, either under the employment relationship or other relationship, inside the corporation domain in order to be charged for corporation must be in form of *intra vires* not *ultra vires*.

The actions of ultra vires are not based on the purpose of corporation but as personal responsibility of the offender and can be responsible to the corporation.

Corruption action is considered done by corporation/legal body if it happened in corporation domain both individually and jointly. From the explanation of Article 20 verse (2) of Corruption Eradication Law there are three imposition system of liability offender to the corporation as legal subject as follow:

- a. Corporation as the offender of corruption then the corporation and the official should bear the criminal liability
- b. Corporation as the offender of corruption then the corporation itself should bear the criminal liability
- c. Corporation as the offender of corruption then but the official should bear the criminal liability.

### Finding and Discussion

The element of authority abuse in corruption action is *species offense* of element that against the law as *genus offense* will always be associated with the position of public official. Offence of authority abuse in corruption has been regulated in Article 3 of Corruption Eradication Law as follow: *any person with the purpose of enriching himself or another person or a corporation, abusing authority, opportunity, means at its disposal, because of the position or situation that could harm the economy of state or country, with life imprisonment or 1 year imprisonment and a maximum of 20 years or a fine of 50 million and a maximum of 1 billion.*

The formulation of Article 3 of Corruption Eradication Law does not have element of unlawful but there is element of authority abuse. Inherent authority abuse and against the law does not mean as unlawful proved *mutatis*. In contrast, if the element of authority abuse has proven, the element that against the law is not necessary needed because it has proven automatically. In terms of element of authority abuse is not proven then the element is not necessarily against the law not proven.

Based on the decree of the Supreme Court of Indonesia No. 934/Pid/1999, 28<sup>th</sup> of August 2000, states that the element of authority abuse, opportunity abuse, and means abuse in Article 3 of Corruption Eradication Law is independent element or an alternative. The authority abuse in Article 3 is addressed to the subject/*offence* doer such as official or civil servant. The authority in a position or situation of the corruption crime doer is a set of power or right that related to the position or situation of the doer to take an action that needed in order to help his/her duty or job can be done properly.

Based on the decree of the Supreme Court Republic Indonesia No. 572K/Pid/2003, it must be distinguished and separated between the position liability and personal responsibility. Referred to the Supreme Court, position liability is responsibility that given to the functionary that abuse the opportunity in his or her position for corruption. The opportunity means the possibility used by the corruption doer in which written in the stipulations about the work system related to the position or situation occupied by the corruption doer. This opportunity is taken as the effect of emptiness or weakness of stipulation of the work system or deliberateness to interpret the stipulation inappropriately. The means is the requirement, way and media. Related to the provision in article 3 of Corruption Eradication Law, means is the way of work or method that correlated with the position or situation of the corruption doer. The word position is used to the official as the corruption doer that occupied a position both in structural and functional.

Corruption Eradication Law does not specifically regulate the inclusion form. In accordance with the provisions of Article 103 of the Criminal Code, Article 20, Verse (2) the Law on Corruption Eradication force participation form set out in Article 55 of the Criminal Code. One form is the inclusion of Article 55 of the Criminal Code are those who participate in a crime or *medeplegen*, where participants together as one entity perform an action such that the action or actions of each are separated only cause a portion of the execution criminal offense, while the acts or acts jointly or actions shall be implemented such offenses to be perfect (in this case corruption occurs). For each *medeplegen* participant threatened the same punishment although some participants did not meet the elements of any offense alleged, because every participant is considered as a criminal maker, then all participants were threatened with the same punishment.

Assistance form of corruption are also included in the Corruption Eradication Law referred to the Article 15, which states that everyone attempted, assisted, or conspiracy to engage in corrupt activities, is liable to the same penalties as referred in Article 2, Article 3, Article 5 through Article 14. Affirmation of the corporation as a legal subject of corruption contained in Article 20 of the Corruption Eradication Law is fundamental law of corporation that can be responsible and punished if there was any corruption, in terms the corruption done by the person that acting for and/or on behalf of the corporation or for the benefit of the corporation, either under labor relations or other relations in a corporate environment done individually or jointly.

The provision of Article 20 verse (2) of the Corruption Eradication Law in burdened criminal liability to corporation that follows the doctrine of identification and the doctrine of aggregation. Doctrine of identification indicated from the formulation *if the offense is committed by good people based on working relationship or based on other relationship*, because this doctrine teaches that in order to impose criminal liability for a corporation, who is committing a crime should be able to be identified by the public prosecutor. If the offense was committed by those who are "*directing mind*" of the corporation then the criminal liability can be charged to the corporation.

As the head of the Region Level I, Region Level II/Municipality which is the "*directing mind*" of a public entity, in this case the Province/Municipality/District, the corruption done by the official can be burdened to the Province/Municipality/District. The action of the Governor/Mayor/Regent was considered as the behavior and attitude of the Province/Municipality/District. It imposes liability not only to the Governor/Mayor/Regent but also charged to the Province/Municipality/District in accordance

with the grammatical interpretation of Article 20 verse (1) Corruption Eradication Law in the third form, corporation as the doer but corporation and the officials must be responsible.

The writer believes that the imposition of criminal liability on the Province/Municipality/District as corporation/legal body for their action acts committed Governor/Mayor/Regent during working relationship based or based on other relationships is one of efforts as a deterrent to eradicate the culture of corruption in the government. Province/Municipality/District is charged with the administration of the criminal liability of principal and additional criminal punishment in accordance with the stipulation of Corruption Eradication Law.

Article 20 verse (2) of the Corruption Eradication Law also embrace the doctrine of aggregation, indicated from the formulation *when the criminal act was committed ... within the corporate environment either individually or jointly*. Applying aggregation doctrine there must be coherence of the elements in the various aggregates of people as a whole would mean the fulfillment of a crime and accountability. The combination of the elements are interrelated and can be combined into a whole that all these elements meet the pattern of actions described in the formulation of the relevant offense. All the elements, both concerning the behavior and faults, must be complete fulfilled as required in *offence* formulation and all these elements should be linked, not stand alone separately.

This aggregation doctrine complete the identification doctrine that Governor/Mayor/Regent action in corruption must satisfy the elements referred to in the formulation of corruption and there is an element of inter-related errors so that accountability can also be charged to the Provincial/Municipal/District as corporation/legal body.

Punishment for corporation who engage in corruption activities contained in Article 17, Article 18, and Article 20 of the Corruption Eradication Law. Penalty provision for corporation/legal body consists of the main criminal and additional criminal penalties beside the imprisonment for Governor/Mayor/Regent as the doer of corruption. The provision of punishment for the corporation/legal body, in this case the Provincial/Municipal/District, in the form of a fine as stipulated in Article 20, verse 7 of the Corruption Eradication Law which states that main criminal can be imposed to the corporation with a fine, the maximum punishment is added 1/3 (one third).

Under the provision of Article 17 of Corruption Eradication Law, defendant will not only get punishment referred to Article 2, Article 3, Article 5 to Article 14, but also can get an additional as referred to in Article 18. Defendant here is a corporation/legal body, in this case the Provincial/Municipal/District. Additional penal provision contained in Article 18 of the on Corruption Eradication Law, that:

- (1) In addition to the additional punishment as referred to in the Book of the Criminal Law, some additional punishments are:
  - a. deprivation of tangible chattels or intangible or immovable property used for or derived from acts of corruption, including company-owned convict where corruption is done , so is the price of goods that replace these items;
  - b. replacement payment amount equal to as much as property derived from criminal acts of corruption;
  - c. closure of all or part of the company for a period of 1 (one) year;
  - d. repeal all or part of certain rights or removal of all or part of certain advantages, which have been or may be provided by the Government to the convict .
- (2) If the convicted person does not pay the compensation referred to in verse ( 1 ) letter b, maximum in 1 (one) month after the court decision got settled power, then his property may be seized by prosecutor and auctioned to cover the replacement money.
- (3) If the convicted person does not have enough wealth to pay the compensation as referred to in verse ( 1 ) letter b, then it shall be imprisoned for the duration does not exceed the maximum threat of criminal substantially in accordance with the provision of this law and the period has been determined in a court decision .

Additional criminal stipulation in the Corruption Eradication Law completes the criminal additional referred to the Article 10 of the Penal Code. Additional criminal punishment to the corporation under the Article 17 of Corruption Eradication Law is optional, it may be imposed or not by a judge following the main criminal like criminal penalty. The optional provision reflected the presence of the word "may" in the article to suggest that additional punishment is imposed to the corporation. Thus meaning of imperative as the command to impose additional criminal punishment under the main criminal to the corporation does not implied.

Imprisonment and criminal fines given to an individual who is the subject of law , in this case the governor/mayor/regent, is a different criminal system that is an alternative to the Criminal Code . Criminal system in Act Eradication is cumulative with the conjunctive " and " in describing the types of sanctions. Governor / mayor / regent found guilty of corruption and meet the elements contained in this Act in addition sentenced to prison also sentenced to a fine.

Sentencing the Governor/mayor/regent can not provide sufficient assurance that the corporation/institution will not keep doing corruptible criminal. Giving the main criminal fines for corporations with additional criminal/legal entity, in this case the Provincial/Municipal/District, as the prevention of corruption will realize the goal of punishment is deterrence (generally and specifically), and the protection for public financial loss and State's economy.

## Conclusions and Suggestions

Based on the discussion above may results the conclusions as follows:

- a. Systems of criminal accountability for the Province/City/Regency as a public legal entity in the formulation of the Law

Corruption Eradication embrace accountability identification teachings (doctrine of identification) and aggregation teachings (doctrine of aggregation). Directing mens rea element of mind, in this case the governor/mayor/regent, should be proven to have committed an act against the law according to the criminal acts of corruption formulations Law Corruption Eradication. Governor/mayor/regent as head of the district will be charged as criminal accountability of departmental responsibility (liability department).

- b. The Province/City/Regency that has been sentenced as a public legal entity is a criminal offense with the maximum criminal fine plus 1/3 (one third) and accompanied by additional criminal. This is different to punished Governor/mayor/regent in the form of imprisonment and criminal fines, but also charged the return loss of financial or national economy.

Suggestions that given to the the problems and conclusion above are:

- a. Sentenced Province/City/Regency should be included in the indictment by the General Attorney together with the criminal charges for governor/mayor/regent. The claims are unseparable and together with an indictment in accordance with the acts against the law which fulfill the formulations of Law Corruption and Eradication.
- b. Sentencing Governor/mayor/regent by The Law of Eradication of Corruption should be a weighting the perpetrators which different from individual corruption acts, so that the changes of formulation in weight imprisonment and criminal fines in the Laws of Eradication of Corruption should be needed.

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