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AUTHORITY TO ISSUES AN ORDER TO TERMINATE INVESTIGATION (SP3) IN CORRUPTION CASES

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ABSTRACT

Corruption is an extraordinary crime because it is systemic, endemic, and has a very broad impact that not only harms state finances but also violates the social and economic rights of the wider community so that its action requires special efforts. Termination of investigation of corruption is carried out through the issuance of an Investigation Termination Order (SP3) by investigators (Police, Prosecutors, or the Corruption Eradication Commission). Based on legal validity if it meets the reasons for insufficient evidence: The investigator concludes that the existing evidence is insufficient to continue the case to the prosecution stage, the alleged incident does not fulfill the elements of a corruption crime, the case is stopped for reasons of the loss of the right to sue due to the suspect's death, expiration, or ne bis in idem (the same case has been decided by the court and has permanent legal force).

Keywords: *Authority, Termination of Investigation, Corruption Crimes.*

KEWENANGAN PENERBITAN SURAT PERINTAH PENGHENTIAN PENYIDIKAN (SP3) DALAM PERKARA TINDAK PIDANA KORUPSI

ABSTRAK

*Tindak pidana korupsi adalah tindak pidana yang bersifat luar biasa karena bersifat sistemik, endemik yang berdampak sangat luas yang tidak hanya merugikan keuangan Negara, tetapi juga melanggar hak sosial dan hak ekonomi masyarakat luas sehingga penindakannya perlu upaya khusus. Penghentian penyidikan tindak pidana korupsi dilakukan melalui penerbitan Surat Perintah Penghentian Penyidikan (SP3) oleh penyidik (Polisi, Kejaksaan, atau KPK). Berdasarkan sah secara hukum apabila memenuhi alas an tidak terdapat cukup bukti**:** Penyidik menyimpulkan bahwa bukti yang ada tidak cukup untuk melanjutkan perkara ke tahap penuntutan, peristiwa yang disangkakan ternyata tidak memenuhi unsur-unsur tindak pidana korupsi, perkara dihentikan karena alasan gugurnya hak menuntut akibat tersangka meninggal dunia, kedaluwarsa, atau* nebis in idem *(perkara yang sama telah diputus oleh pengadilan dan berkekuatan hukum tetap).*

Kata Kunci: *Kewenangan, Penghentian Penyidikan, Tindak Pidana Korupsi*

INTRODUCTION

Law enforcement is an effort that is deliberately carried out to realize the ideals of law in order to create justice and peace in the life of society, nation and state in accordance with the goals

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DOI: 10.47652/metadata.v8i2.1094

of Indonesian national development, namely to achieve a just and prosperous state of Indonesian society equally, both materially and spiritually, based on Pancasila and the 1945 Constitution. Indonesia as a state of law has guaranteed that all its citizens have equal status in law and government and are obliged to uphold the law and government without exception. The presence of law in society can be viewed from various perspectives. Legal professionals, such as judges, prosecutors, advocates, and jurists working in government, will view and interpret law as a legal structure. Law appears and is found in the form of legislation.

The Republic of Indonesia is a state based on the rule of law based on Pancasila and the 1945 Constitution, which upholds Human Rights (HAM) and guarantees all citizens' equal rights. Indonesia, as a state based on the rule of law that adheres to a national legal system, is expected to guarantee legal certainty for all its citizens, therefore it must conduct legal codification and unification. One of the results that has been achieved in improving and perfecting national law is by conducting a renewal of the codification and unification of criminal procedural law, namely by the formation of Law Number 8 of 1981 concerning the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code). Crime is an inherent problem in society. The characteristics of human beings as inhabitants of this society are always at odds with what society demands. This deviance is what society calls crime. The dilemma is that, on the one hand, crime is completely undesirable by society, yet it always exists and is committed by members of that society.

Essentially, crime is a behavior that develops parallel to or directly proportional to the development of society. The general characteristics of crime are that it causes harm, such as impacting the community as victims. Therefore, prevention and response efforts to address existing crimes are essential to prevent such intense and significant harm to society. Corruption can be described as a vicious cycle that permeates nearly the entire state system, including the economy, politics, and law enforcement. The more extensive the anti-corruption campaign, the more corruption cases involving officials, from regional officials to ministerial levels, increase.

Looking at the reality of the corrupt practices that are occurring in Indonesia today, it can be said that they are inversely proportional to the ideals of reform that were trumpeted around 20 years ago by the Indonesian people together with a number of activists, some of whom can now be said to be enjoying the sweet fruits of reform, because these activists have gained power and positions. It's important to remember that, at the time of the fall of the New Order regime, a

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DOI: 10.47652/metadata.v8i2.1094

number of reformist figures now in power argued that corruption in Indonesia was a product or legacy of the previous administration, which had caused a crisis for the Indonesian nation. However, the current situation actually shows that post-reform regimes have reproduced this negative legacy. Corruption is an inseparable part of human history and is one of the oldest forms of crime, as well as a social ill. Corruption increases with progress, prosperity, and technological advancement, as well as lifestyles and needs, which are suspected of causing and encouraging individuals to engage in corruption.

The crime of corruption is an extraordinary crime because it is systemic, endemic, and has a very broad impact, not only harming state finances but also violating the social and economic rights of the wider community, so that its enforcement requires special efforts. The power and position held by an individual can be a primary factor in committing a crime by exploiting their authority. These crimes are committed for various reasons, such as personal or group interests. Corruption is difficult to uncover because perpetrators use sophisticated equipment in line with advances in technology and information, and are usually carried out by more than one person in a covert and organized manner.

The issue of corruption in Indonesia (collusion and nepotism are a subset of corruption) is a very complex one. Nearly every aspect of life has been affected by corruption. The active involvement of law enforcement is insufficient to stem its spread. Corruption has become a culture, and public doubts about the government's commitment to eradicating corruption add to the challenges facing law enforcement. Initially, the presence of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, which was later amended (revised) with the issuance of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as the PTPK Law), was considered capable of eradicating or at least reducing the number of corruption in Indonesia. However, in reality, corruption crimes have actually continued to increase, both in terms of quality and quantity. Corruption eradication should begin with law enforcement itself. As the saying goes: "as long as the dirty broom is not cleaned, all talk about the law is empty." When law enforcement sets a good example, public trust will increase, thereby enhancing the authority of the law and law enforcement within the community.

RESEARCH METHODS

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Edition May 2026, Published: 04-05-2026, Page 417-429
DOI: 10.47652/metadata.v8i2.1094

This research is a normative legal research. Normative legal research is research conducted by examining library materials (secondary data) or library legal research. Judging from its objectives, this research is included in the type of normative legal research. Normative research includes research on legal principles, legal systematics, positive legal inventories, philosophical basis (dogma or doctrine) of positive law. In this study, the focus of the research study is the regulation of corruption crimes related to the act of promising to stop an investigation by a police investigator in handling a case by asking for a sum of money from the suspect.

The research approach used in this study is tailored to the research problem and discussion. In accordance with the research problem and objectives, several approaches were used, including the statute approach, the case approach, and the conceptual approach.

RESEARCH RESULTS AND DISCUSSION

Taking into account the formulation of Article 2 to Article 17 and Article 21 to Article 24 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the perpetrator of criminal acts of corruption is every person, meaning an individual or corporation. The provisions contained in Law Number 31 of 1999 and Law Number 20 of 2001, Criminal Acts of Corruption can be divided into two aspects, namely active and passive. Based on the above description, it is clear that from a legal perspective, the definition of corruption has been clearly explained in 13 articles in Law No. 31 of 1999, which was amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. Based on these articles, corruption is formulated into 30 forms/types of criminal acts of corruption. These articles explain in detail the acts that can be subject to criminal sanctions for corruption. These 30 forms/types of criminal acts of corruption can basically be grouped as follows:

1) State financial losses.
2) Bribery.
3) Embezzlement in office.
4) Extortion.
5) Fraudulent acts.
6) Conflict of interest in procurement.
7) Gratification.

In practice, corruption cases still have neglected matters, because in the consideration of the

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DOI: 10.47652/metadata.v8i2.1094

Judge's decision, which does not clearly and firmly distinguish the nominal value of state losses lost due to the actions of the convict, in the sense that the Judge has not differentiated the understanding/definition of the element of enriching and/or benefiting oneself or another person or a corporation, in each corruption case that he decides, resulting in the sentencing being disproportionate. In addition, the Judge in his decision also does not consider the existence of corruption crimes that have harmed state finances or the state economy, with corruption crimes that will harm state finances or the state economy. Such differences should be stated by the Judge in his decision, so that it is clear the classification between a corruption crime that has harmed state finances or the state economy (state losses have actually occurred or state finances have decreased), with corruption crimes that will harm the State (state losses have not occurred or state finances remain as before, not decreased).

The issue of sentencing is not only important for judges and the judicial process. Sentencing patterns are crucial to the legal process as a whole, particularly in law enforcement. One of the elements that must be upheld for a smooth law enforcement process is a high level of trust and respect for the law. This is likely to be unattainable if sentencing varies too widely. This also concerns the issue of fairness (comparability), which is typically expected from the court as an institution or the judiciary as a process.

As long as these institutions ignore the consequences and the imposition of penalties, it will be difficult to institutionalize public trust in the courts. Citizens want the penalties imposed to truly bring about significant change in addressing the corruption cases that have devastated the very foundations of society and the state.

In principle, there are 2 (two) important formulations in understanding the problem of criminal acts of corruption, including:

1) Going against the law to enrich oneself, or another person or corporation and causing harm to state finances is corruption.
2) Abusing authority to benefit oneself or others or corporations and can harm state finances is corruption.

Based on the above, an act can be said to be corruption if it fulfills all of the following elements:

1) The act of enriching and/or benefiting oneself, another person or a corporation which is carried out unlawfully.

JURNAL ILMIAH METADATA, ISSN :2723 -7737, Vol. 8 No. 2
Edition May 2026, Published: 04-05-2026, Page 417-429
DOI: 10.47652/metadata.v8i2.1094

2) This act causes losses to state finances or the state economy.

Based on the formulation above, the understanding of the limits of unlawfulness in the crime of corruption must be interpreted as encompassing reprehensible acts that, according to the sense of justice of society, must be prosecuted and punished. Meanwhile, what is meant by detrimental is the same as causing a loss or a reduction, so that what is meant by the element of detrimental to state finances is the same as causing a loss to state finances or a reduction in state finances.

The imposition of sanctions is a form of accountability imposed on a person who has been proven to have committed a criminal act, and the person has fulfilled 3 (three) important elements so that a person can be held accountable. Where the imposition of sanctions on a person who has committed a criminal act is intended so that the person can immediately realize and repent of the mistakes they have made and not repeat their mistakes again, in addition to that, the imposition of these sanctions is also intended to provide a lesson to the community so that they do not commit the same actions as the perpetrator of the crime.

Based on Law Number 31 of 1999 concerning Criminal Acts of Corruption in conjunction with Law Number 20 of 2001, the criminal sanctions that can be given to perpetrators of criminal acts of corruption are as follows:

1. Against people who commit criminal acts of corruption:
   a. Death penalty

   The death penalty can be given to anyone who unlawfully commits an act of enriching themselves or another person or a corporation which can harm state finances or the state economy as stipulated in Article 2 paragraph 1 of Law Number 31 of 1999 concerning Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999, which is carried out in certain circumstances such as during natural disasters, wars, riots, and so on.

b. Prison sentence
   1) Life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) for any person who unlawfully commits an act of enriching himself or another person or corporation that can harm state finances or the state economy. (Article 2)

JURNAL ILMIAH METADATA, ISSN :2723 -7737, Vol. 8 No. 2
Edition May 2026, Published: 04-05-2026, Page 417-429
DOI: 10.47652/metadata.v8i2.1094

2) Life imprisonment or imprisonment for a minimum of 1 (one) year and/or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah) for any person who, with the aim of benefiting himself or another person or corporation, abuses the authority, opportunity, or means available to him due to his position and position which can harm the state finances or the state economy. (Article 3)
3) A minimum prison sentence of 3 (three) years and a maximum of 12 (twelve) years and/or a minimum fine of Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah) for any person who intentionally prevents, obstructs or thwarts directly or indirectly the investigation, prosecution and examination in court of suspects or defendants or witnesses in corruption cases. (Article 21)
4) A minimum prison sentence of 3 (three) years or a maximum of 12 (twelve) years and/or a fine of at least Rp. 150,000,000.00 (one hundred and fifty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah) for each person as referred to in Article 28, Article 29, Article 35, and Article 36.

c. Additional penalties:
1) Confiscation of tangible or intangible movable property or immovable property used for or obtained from criminal acts of corruption, including companies owned by convicts where criminal acts of corruption were committed, as well as goods replacing such goods.
2) Payment of compensation in an amount equal to the assets obtained from the criminal act of corruption.
3) Closure of all or part of the company for a maximum period of 1 (one) year.
4) Revocation of all or part of certain rights or the elimination of all or part of certain benefits that have been or may be given by the government to the convict.
5) If the convict does not pay the replacement money within 1 (one) month after the court decision has permanent legal force, then his/her property can be confiscated by the prosecutor and auctioned to cover the replacement money.
6) In the event that the convict does not have sufficient assets to pay the replacement

JURNAL ILMIAH METADATA, ISSN :2723 -7737, Vol. 8 No. 2
Edition May 2026, Published: 04-05-2026, Page 417-429
DOI: 10.47652/metadata.v8i2.1094

money, the convict will be sentenced to a prison sentence that does not meet the maximum threat of the principal sentence according to the provisions of Law Number 31 of 1999 concerning Criminal Acts of Corruption in conjunction with Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Criminal Acts of Corruption and the length of the sentence has been decided in court.

2. Against criminal acts of corruption committed by or on behalf of a corporation.

Corporations that commit acts of corruption, that the relevant principal punishment for corporations is a fine, as regulated in Article 20 paragraph (7) of the Corruption Crime Law which expressly states that the principal punishment that can be imposed on corporations is only a fine, with the provision that the maximum penalty is increased by 1/3 (one third). In addition to being subject to the principal penalty, corporations can also be subject to additional penalties as regulated in Article 18 paragraph 1 of the Corruption Crime Law.

Sanctions related to the act of promising to stop the investigation of a case by a Polri officer in decision No. 01 / Pid. Sus / PN. Mdn carried out by the defendant Longser Sihombing as a Civil Servant at the Republic of Indonesia National Police carrying out duties as the Chief of Police Sector (Kapolsek) Sukaramai Polres Pakpak Bharat based on the Decree of the Chief of Police of North Sumatra Region Number: KEP / 486 / VI / 2016 dated June 10, 2016, on Saturday, September 3, 2016 or at least at another time in 2016, located at Doorsmer Global located on Jalan Kapten Sumarsono Helvetia Medan, Helvetia District, Medan City at approximately 16.00 WIB, or at least at a place based on Article 5 of Law Number 46 of 2009 concerning the Corruption Crime Court Jo. Article 3 number 1 of the Decree of the Chief Justice of the Republic of Indonesia Number 022/KMA/SK/II/2011 dated February 7, 2011, still included in the Jurisdiction of the Corruption Crimes Court at the Medan District Court, received a gift or promise in the form of cash amounting to Rp. 200,000,000,- (two hundred million rupiah) from witness Triono Herlambang as Site Manager of PT. Karya Sakti Sejahtera (KSS). HThe gift or promise is given because of the power or authority related to his position, or which in the opinion of the person giving the gift or promise is related to his positionnamely given because of the authority and position of the defendant as the Head of the Sukaramai Sector Police of the Pakpak Bharat Police as an investigator who is handling a case of alleged criminal misuse of transportation and storage of diesel fuel.

The defendant based on the Investigation Order of the Sukaramai Sector Police Chief

JURNAL ILMIAH METADATA, ISSN :2723 -7737, Vol. 8 No. 2
Edition May 2026, Published: 04-05-2026, Page 417-429
DOI: 10.47652/metadata.v8i2.1094

No. Pol.: SPRIN-LIDIK/27/VIII/2016/Reskrim dated August 3, 2016 acted as an Investigator carrying out the task of investigating the alleged criminal act of misuse of transportation and storage of diesel fuel and or participating in/ordering to do and or assisting in doing as referred to in Article 55 and or 53 letters b and c, Article 23 paragraph (2) letters b and c of Law Number 22 of 2001 concerning Oil and Natural Gas Jo. Article 55 of the Criminal Code Jo. Article 56 of the Criminal Code, where the defendant together with members of the Sukarami Police on August 3, 2016 located in the Kombih 3 PLTM construction project area in Kuta Nangka Hamlet, Mahala Village, Pakpak Bharat Regency secured 1 (one) unit of dump truck transporting diesel fuel belonging to PT. Karya Sakti Sejahtera (KSS) which is not equipped with a Transportation Business License and a Trading Business License and the Sukaramai Police made a Police Line in the project area, then the defendant on August 4, 2016 issued a Confiscation Order Number: SPSITA / 05 / VIII / 2016 / RESKRIM regarding the case, even though the case is still in the investigation stage which should not be able to carry out confiscation actions, but on August 5, 2016 the installed Police Line was damaged and was suspected of being carried out by PT. KSS, so the defendant made a police report against members of PT. KSS with allegations of alleged criminal acts of destruction.

The defendant asked for Rp. 300,000,000 (three hundred million rupiah) from witness Triono Herlambang so that the case would not be continued or the investigation would be stopped, but the witness only had Rp. 200,000,000 (two hundred million rupiah) and the defendant asked the victim to make monthly deposits of Rp. 25,000,000 (twenty million rupiah) to Rp. 30,000,000 (thirty million rupiah). The defendant's actions are as regulated and subject to criminal penalties in Article 11 of Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, so that the panel of judges msentenced the defendant Longser Sihombing to 1 (one) year in prison and a fine of Rp. 50,000,000 (fifty million rupiah) with the provision that if the fine is not paid it will be replaced with 1 (one) month in prison.

CONCLUSION

The provisions governing the crime of Corruption in Indonesia are regulated in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in conjunction with Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption. Examples of

JURNAL ILMIAH METADATA, ISSN :2723 -7737, Vol. 8 No. 2
Edition May 2026, Published: 04-05-2026, Page 417-429
DOI: 10.47652/metadata.v8i2.1094

cases of Corruption such as in the case of case N0.01 / Pid.Sus.TPK / 2017PN.Mdn. There are several forms of Corruption, namely: can harm state finances, bribery, embezzlement in office, extortion, fraudulent acts, gratuities. Seeing current developments in Indonesia, the crime of corruption is no longer unfamiliar to be called extraordinary crime. The qualification of offense and sanctions related to the act of promising to stop the investigation of the case by a Polri officer in the decision Number 01/Pid. Sus/2017/PN. Mdn is that the defendant has been legally and convincingly proven to have committed a criminal act of corruption, the defendant is capable of being responsible and his actions are unlawful and there is no excuse that can eliminate the error or justification that can eliminate the unlawful nature of the act, then by considering the provisions in Article 11 of the Republic of Indonesia Law Number 20 of 2001 concerning Amendments to the Republic of Indonesia Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the defendant must be sentenced to imprisonment.

The judge's basis for deciding the defendant in Decision Number 01/Pid. Sus/PN. Mdn is based on legal considerations, the element of receiving gifts or promises has been proven and fulfilled convincingly guilty of committing a criminal act of corruption. Where it is clear that the defendant did receive gifts or promises in order to do something or not do something related to the position he held so that the defendant Longser Sihombing was sentenced to 1 (one) year in prison and a fine of Rp. 50,000,000,- (Fifty million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 1 (one) month.

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