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Deviation on Special Minimum Criminal Provision in the Verdict of Corruption Court

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ABSTRACT*: The imposition of criminal breaks of special minimum criminal provisions in law on corruption eradication is a form of legal finding in the field of special criminal law through the stages process include: ascertain phase, qualification phase, and constituirphase. The judge does not possess the uniformity of thought in hearing and deciding cases of corruption charged / prosecuted in utilizing the special minimum criminal provisions, therefore it is necessary to reformulateconcept regarding the limitation ofenforcement of the special minimum criminal provisionon law on corruption eradication.*
Keywords*: special minimum criminal provision, verdict, corruption court.*

I. INTRODUCTION

The demand for openness and transparency in the enforcement of power (state) in Indonesia must be correlated with the enforcement of clean and transparent power. The authorities required to put forward the mission of state administration that is clean and free from corruption, collusion and nepotism as main mission its governance. A high attention focuses from state officials or the agenda of prevention and eradication of corruption is marked with the publication of various legislations in the field of prevention and corruption eradication such as Law Number 31 Year 1999 on the Eradication of Corruption, Law Number 20 Year 2001 onAmendment to Law Number 31 Year 1999 on the Eradication of Corruption, Law Number 30 Year 2002 on Corruption Eradication Commission, and Law Number 46 Year 2009 on Corruption Court.

Therefore,as efforts on reduction and eradication of corruption Indonesian government has ratified the United Nations Convention Against Corruption (UNCAC) in 2003 under Law Number 7 Year 2006 on the Ratification of the United Nations Anti-Corruption on April 18, 2006. Then in May 2009 the government has submitted a LegalDraft (bill) on the Eradication of Criminal Acts of Corruption intended to revoke and replace the Law Number 31 Year 1999 *juncto*Law Number 20 Year 2001 on Eradication of Corruption even though the bill submitted to the House of Representative, yet there is no clarity to what extent upon its discussion until now. This matter is inseparable from the pulling of interests of groups with different vision and mission, that is one side contends that Law Number 31 Year 1999 is not contradictory to UNCAC hence it is unnecessary to be changed, but on the other side argues that the bill actually allows the gaps which are very profitable and lightening for corruption perpetrators such as criminal penalties regulated and formulated in the bill is much lighter than the penalty established by Law Number 31 Year 1999 *juncto* Law Number 20 Year 2001 and legal draft of Criminal Acts of Corruption which is suggested to eliminate additional penalty in the form of money replacement payment therefore it is considered unable to confer such deterrent effect to the perpetrators of corruption act and to cover the return of corrupted state property[1].

The ratification of the UNCAC Convention 2003 is a national commitment to improve Indonesia's national image in the international political arena. Judicially Indonesia has recognized several corruption acts mandated by UNCAC in 2003, however there is a discourse on the formulation of criminal acts of corruption in relation to the criminalization and harmonization of national legislation. The ratification of UNCAC is complementary to the previous regulation, ieLaw Number 31 Year 1999 on the Eradication of Corruption, Law Number 20 Year 2001 on Amendment to Law Number 31 Year 1999 on the Eradication of Corruption, and Law Number 30 Year 2002 on Corruption Eradication Commission.

Law Number 31 Year 1999 *juncto* Law Number 20 Year 2001 is one of many laws besidethe Criminal Code which in its formulation determines the existence of a special minimum penalty as well as regulating its sentencing guidance as in Article 12A which regulates:

(1) Provisions concerning imprisonment and fines as referred in Articles 5, 6, 7, 8, 9, 10, 11, and Article 12 shall not apply to criminal acts of corruption with value less than Rp. 5.000.000,- (five million rupiahs);
(2) For perpetrators of corruption whose value is less than Rp. 5.000.000,- (five million rupiah) as referred to in Paragraph (1) shall be imprisoned with a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 50.000.000,- (fifty million rupiah).

Thus it is clear that in a criminal act of corruption, a special minimum penalty has been determined in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article, Article 11, but the provision of Article 12A which specifies a special minimum punishment in mentioned articles is unenforceable for a criminal act of corruption of less than Rp. 5.000.000,- (five million rupiahs) with the consequence that Judge may impose a 1 (one) day penalty following a minimum criminal provision inthe Criminal Code. In practice, during this time the author noticed that there is a tendency of Judge to impose criminal penalty in a decision which is more or at least equal to the minimum criminal provision specified in the articles of the criminal act of corruption. This tendency is a natural matter because it is undeniable that it is not without reason if the legislator formulates a special minimum penaltywith following reasons:

(1) The fact of disparity that is very striking for offences that are essentially similar in its quality;
(2) There is a desire to satisfy the demands of the public who want a minimum standard of objective for certain offenses that are highly reproached and harmful to society/state, as well as offenses that are qualified or aggravated by the consequences;
(3) There is a desire to further streamline the effect of general prevention on certain offenses, which are perceived as endangering and disturbing to the public.

The establishment and formulation of specific minimum criminal provisions for corruption as mentioned above is certainly acceptable, given the concerns of society against the current law enforcement of corruption. In the judge's verdict there should be a consideration that if the judgment is only concerned with the juridical aspect, the verdict becomes non-alive. If the verdict is only concerned with the sociological aspect, then the verdict is the means of coercion.If the verdict is only concerned with the philosophical aspect, then the decision becomes unrealistic.Although whatever the reason, it is forbiddenthat special minimum penalty precisely injures a sense of justice in relation to the conviction of a defendant convicted of a criminal act of corruption.

Among the practitioners themselves there are two (2) opinions, the first opinion states that if it is set special minimum criminal provisions in the legislation, then for the sake of legal certainty because a special minimum penalty should not be deviatedbecause this is a will of society. Meanwhile, second opinion states that even though it is set special minimum penalty, the judge can convict under or lower than the determined minimum penalty, given the sense of justice and along that the judge is not funnel of law.Both of these opinions are correct, but it is necessary to judges to have scrutiny at some mattersto draw conclusions in their mindset respectively within the framework of law enforcement interests that provide certainty and sense of justice and usefulness.

At the level of enforcement of the principles and purposes of sentencing are often found wherethe judges in imposing punishment on defendants in its judgment has been proven legally and convincingly guilty of corruption as well as articles in the indictment of Public Prosecutor, but the judge encountered contradiction between the options prioritize the principle of legal certainty to apply minimum criminal provision/specific minimum penalty in the Law on Eradication of Corruption with the principle of justice and usefulness.

Apparently there is a verdict which deviatedspecial minimum criminal provisions in the Law on Corruption Eradication by imposing verdict based on considerations of justice to the decision of sentencing under the threat of criminal provisions of the special minimum as the articles which the defendantis charged with, the problem is how the juridical legitimacy of sentencing decision that violate of specific minimum criminal provisions in the Law on Eradication of Corruption?Therefore, the discussion includes the judgment of judges in corruption court, punishment and legality principle of punishment, punishment in corruption, legal certainty and legalist justice in special minimum criminal provisions.

II. RESEARCH METHODS

This type of research is a normative legal research with a philosophical and conceptual approach equipped with research data in the form of primary and secondary legal materials. The data collected is systematically synchronized and studied based on legal theories and legal principles therefore the scientific truths are found to be the basis for answering the legal issue that is studied.

III. RESULTS AND DISCUSSION

1. Judgment of Judges in Corruption Court

Noting the court and the judgment of our courts will not be separated from*person* who fills the judicial organs that are establishing ideas and concept of the law that is still abstract. One of such *person* is none other than a judge who fills the building of abstract ideas and concept from the law.

In the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), judicial power is regulated in Article 24, Article 24A, 24B and 24C of Chapter IX on Judicial Power. The embodiment of this mandate is set forth in Law Number 48 Year 2009 as new Judicial Power replacing Law Number 4 Year 2004 on Judicial Power. The operation of the judicial authority shall be exercised by the Supreme Court of the Republic of

Indonesia. The power referred to is a rule that contains a right, namely the right to determine the law hence it can be interpreted as a rule that contains the meaning of permission or permissibility to act. Related to the authority of the judge is included in imposing a verdict.

Judgment of judges is a statement made by a judge as a state official authorized for it and pronounced before a hearing in order to end or settle a case between the parties to the dispute. In addition to the utterance of the judge, this should also be contained in the written form, which was then uttered by the judge in the trial which was regarded as the judge's verdict.

In judging the case against him, a judge is bound by generally accepted law principles; one of them is the prohibition against the *ultra petita* decision. *Ultra petita* in the formal law of the Indonesian Judiciary implies the imposition of a verdict on a case which is not prosecuted. This provision is stipulated in Article 178 paragraph (2) and (3) *Het HerzieneIndonesischReglement* (HIR) and Article 189 (2) and (3) RBg, whichprohibits a judge verdict beyond what was required. But in practice there are some judges who decide cases that are confronted with him in excess of what is demanded, therefore the pros and cons appear on the *ultra petit* judgment in the legal system based on law reviewed from the perspective of legal theory.

2. Punishment and Legality Principle of Punishment

In the general provisions of Chapter I Article 1 point 11 of the Criminal Procedure Code wthat what is inferred as by court judgment is a declaration of a judge spoken in an open court, which may be punishable or free or free from any lawsuit in respect of and in accordance with the manner laid down in this law.

That one of the purposes of sentencing against perpetrators of criminal acts is to prevent or hinder the perpetrators of these crimes as well as non-perpetrators who have the intention to commit crimes. According to Muladi, prevention of the perpetrator of this crime has a dual aspect that is individual and general. It is said that there is an individual or special precaution when a criminal can be prevented from committing a crime in the future and already believes that the crime will bring suffering to him in the future, therefore it is said or deemed to have the power to educate and repair. The second form of prevention is general prevention that means that the guilty verdictby a court is intended to prevent others from committing crimes[2].

According to A.Z. Abidin, that the criminal law of a society that reflects the values upon which altered to society basis, when those values change the criminal law also changes. Criminal law is appropriately referred to as one of the most faithful mirrors of given civilization, reflecting the fundamental value on which the latter rest[3].Along with the development of science of law, the criminal law was not spared from the influence of the development of other sciences. This is marked by the shifting of the view within the criminal law from the action-oriented to the perpetrator of the crime that is passed on to the view between the combined actors and deeds.

The lighter acts, the personal circumstances of the manufacturer or the circumstances at which the acts or actions take place may be inferred into consideration not to impose criminal sanction or to impose measures with respect to humanitarian justice aspect[4].L.H.C.Hulsman once pointed out that the sentencing system is the rule of law that deals with criminal sanctions and sentencing or the statutory rules relating to penal sanctions and punishment[5].In deciding a case, the judge is confronted with his conviction that the case is an act that needs to be punished severely or lightly, this is solely for the sake of humanitarian justice. Considerations of humanitarian justices mentioned above, as the basis for the judge in deciding a fair decision so as to provide legal certainty for the perpetrators of corruption.

In connection within a system, there has been integration of several sub-systems, as well as with the sentencing system there is integration of the material/substantive of criminal law system, the formal criminal law system and the enforcement of criminal law system. According to BardaNawawiAriefthe sentencing system is widely interpreted as a process of giving or imposition of criminal by the judge then it can be inferred that the sentencing system includes the notion of[6]:

- Overall system (rule of law) for sentencing.
- Overall system (rule of law) for granting/imposing and enforcement.
- Overall system (rule of law) for functionalization/operations/criminal concretization.
- Overall system (rule of law) how the criminal law is enforced or operated concretely therefore a person is subject to criminal sanctions.

Guidance of sentencing is more a directive direction for judges to impose and apply penalty or constitute judicial/judicial guidelines for judges[7]. Thus the guidance of sentencing is the basic provision that supplies direction, which determines in the criminal imposition, this is a clue to the judges in applying and imposing the penalty.Because these guidelines are basic guidelines then this guidance is part of the legislative policy. This legislative policy formulates guidelines and sentencing in order to achieve a greater goal by means of law that is social welfare. The law is a system which aims (Anthony Allot, mentioned it as the term "Purposive System")[8]. The formulation of penalty and sentencing rules in the law is only a means to achieve the objectives and therefore it is necessary to be formulated the purpose and guidance of punishment[9].

The principle of legality was first formulated by Paul Johan Anslemvon Feuerbach (1775-1833) in which according to BambangPoernomo's view, as quoted by Eddy O.S. Hiariej, contains a very profound meaning. In Latin the legality principle stipulates*: nullapoena sine lege* (no crime without law); *nullapoena sine crimine* (no penalty without criminal act);*nullumcrimen sine poenalegali* (no criminal act without criminal by law)[10]. These three phrases then developed by Feuerbach into adagium*Nullumdelictum, nullapoena sine praevialegipoenali*[11].

The meaning of the legality principle in Indonesia can be found in Article 1 paragraph (1) of the Criminal Code is literally translated into Indonesian with: "*Tidakadadelik, tiadaadapidanatanpaketentuanpidana yang mendahuluinya*". Often the Latin term is also used: "*Nullumcrimen sine legestricta*", which can be interpreted as: "No offense without strict provisions"[12].

R. Soesilo argues that the legality principle contained in Article 1 paragraph (1) of the Indonesian Criminal Code contains an understanding that a criminal event will not exist, if the criminal provisions in the law does not exist first[13]. Noting this provision in punishing people, judges are bound by law hence to guarantee the right of personal freedom of person[14].

According to RoeslanSaleh's view, the principle of legality is the principal foundation of a criminal act, because without the provision of a criminal law in advance of what is forbidden (and what is ordered to do) there would be unknown identification of criminal act[15].

The principle of legality affirms that to impose a penalty or sanction on a person, it is required that his actions or events to be realized must first be prohibited or ordered by written criminal laws and against him a criminal or sanction rule has been established. In other words, there must be a criminal law rule (*strafrechtsnorm*) and criminal rules (*strafnorm*) ahead of the action/event[16].

In conclusion, it can be inferred that a judge can not punish a perpetrator for the crime he has committed, if the acts of the perpetrator and the criminal sanction that is threatened against the perpetrator actions have not been regulated in law.

3. Punishment in Corruption

In the context of law enforcement on corruption eradication (TPK) requires a common perception and also necessity for sentencing standards. The necessityof perception intended especially in terms of prevention efforts and eradication of the criminal act in general and corruption in particular. Law Number 31 Year 1999 on the Eradication of Corruption *juncto* Law Number 20 Year 2001 on Amendment to Law Number 31 Year 1999 on the Eradication of Corruption, hereinafter referred to as UUPTPK has regulated various special provisions such as criminal sanction and criminal procedure provisions.

Sanctions (penalty/punishment) that are different from the previous law, in the process of applying the law is expected to have a positive effect to prevent and combat corruption. Criminal sanctions have an important role in creating compliance. Tirtaatmadjaja (1955) states that in order to create society members to obey the law there is a necessity for legal sanction. These legal sanctions, according to Charles (1984), are intended to be obeyed by members of the society. This sanction is then maintained by the government to alter the society members to obey as required by the rules[17].

Criminal provisions in the legislation since the enactment of UUPTPK have undergone changes in either perpetrator of criminal act (subject of law) or the form of criminal sanction.UUPTK is expected to meet and anticipate the development of the legal needs of the society in order to prevent and combat corruption more effectively. Thus the law enforcers, especially the judges have steady self confidencein imposing criminal sanctions on the perpetrators of corruption.

In UUPTPK sanction arrangements is progressing very dynamic if compared to criminal sanctions provisions contained in the Criminal Code. Criminal sanction in the Criminal Code is only known by the single or main criminal sanctions and criminal sanctions alternative to main sentencing. It is marked with the word "or", for example sentenced by imprisonment orfine ...; and a minimum rate of imprisonment in the Criminal Code sanctions in general is one (1) day and maximum for lifetime. Legal Sanction of UUPTPK has three forms namely alternative criminal sanctions (*or*), cumulative sanctions (*and*) or a combination of both marked with *(and / or*), minimal sanctions have specific characteristics that are different with sanctions in the Criminal Code, for example, in Article 2 UUPTPK minimum sanction is 4 (four) years and the maximum sanction is 20 years imprisonment *and fine* ... (cumulative sanction). Such sanctioning arrangements are binding for judges based on principles of legality.

4. Legal Certainty and Legalist Justice in Special Minimum Criminal Provisions.

According to solving legal problems in practice in the District Court and High Court (*JudexFactie*) which prosecutes criminal cases specifically including the Corruption Court, the judge pegged as *rigid* with minimal criminal threat (justice legalists) the imposition of the verdict, basically the judge cannot impose a verdictwhich deviates from the minimal criminal provisions by merely prioritize the sense of justice, but in

cases where the exceptional nature of such deviation can be applied. The judge does not just convict under the special minimum penalty as determined by law, because sentencing below the special minimum penalty shall be really casuistry and exceptional. The phrase "exceptional" certainly rises difficult and subjective nature, therefore it is proper that the Supreme Court of the Republic of Indonesialater found sentencing below special minimal criminal penalty should be conductedunder strict conditions and the determination of exceptional grounds remanded in judicial practice[18].

Like a double-edged sword, one side of law is a means of control to prevent arbitrary action or for legal certainty. In this context that judges should be (mandatory) to convict according to the law that is the law that existed before the case (*principle of crimendelictum*). On the other hand the existing law can be handcuffed, that is if the law is arbitrary. Judges who should properly and fairlydecide become false and unjust because they are forced to decide according to a law that is substantially arbitrary or unjust.Judge in deciding more dominantly influenced by anxiety and fear to accept the consequences of his decision, which concerns the decision will be examined, worries and fears will be encountering investigation by the internal institute controls of the Supreme Court and the Judicial Commission of the Republic of Indonesia, which may lead to the imposition of sanctions in his career (demotion, non active in his position or "non-hammer" until termination/dismissal) because the reports from the public or Non-Governmental Organization (NGO) which assesses the decision to be considered asdeviation and distortion and it is inferred not execute commands of law. This matter is most likely to happen if the legislator deliberately makes arbitrary laws, including laws that exclude or diminish the independence of judicial power or the freedom of judges.

Judges decide solely according to the law, the verdict of judges should be based *presedent*, not on the basis of public opinion polls. Judges are not only obliged to protect the public interest (majority) but also must protect individual and minority. Opinion should not be at all-time expense of individual rights and/or minority. In certain circumstances, a majority vote is not synonymous with truth and sense of justice.A vote of one person or oppressed minorities who are deprived or seized of their rights arbitrarily is also the voice of God (always demanded truth and justice). The general opinion is engineered or deliberately created, not always referred as a truth and justice, but the manipulation of the will of the class interests in particular. The possibility of denial or suppression of individual rights or minorities incorrectly and unjust can only be protected, and the abuse of the majority can only be prevented, if there is independence of judicial power.

Efforts to prevent arbitrary laws or laws that deliberately reduce the independence of judicial power and/or judge's freedom are at least two instruments that can be utilized[19]:

(1) The doctrine of the judge is not the mouth (funnel) of the law (*bouche de la loi, spreekbius van de wet*, the mouth of the law). The judge has the right to refuse to apply or deviated arbitrary or unfair laws, or at least undertakes legal finding (interpretation, construction, etc.) to find proper and fair decisions.
(2) Regulation of judicial review
Judicial review allows courts or judges to escape from the shackles of laws, by reason of statute contrary to UUD NRI 1945, the judge may deviated, declare invalid or invalidate the law.

To better ensure legal certainty, avoid the diversity of legal interpretation and provide protection to social and economic rights of society widely, and fair treatment in combating corruption, it is necessary to amend Law Number 31 Year 1999 *juncto* Law Number 20 Year 2001 on the Eradication of Corruption, but not a change that is degrading the rules that have been properly existed, but should be better in accordance with the basic ideals of the establishment of the Law Eradication of Corruption that is to save the economy and state finances.

In the case of any act of the defendant in contravention of a prohibited legislation, and in such circumstances if a judge of the Corruption Court examining and adjudicating his case has contended that there are no matters which may remove the nature of criminal liability against the indictment and convicted of a criminal act of corruption, the defendant shall be subject to a penalty based on the principles and objectives of the sentencing, namely to attain of legal certainty, justice and benefit for the defendant, for the society and for the enforcement of the law itself.

Indonesian law order is laying down the legal principle in Article 1 paragraph (1) of the Criminal Code in which this principle requires the binding of Judge to a law which affirms that criminal court proceedings or criminal proceedings process are carried out according to the event, process or procedure which has been regulated by law that is in Article 3 of Law Number 8 Year 1981 on Criminal Code Procedure (KUHAP).

Article 1 Paragraph (3) of the UUD NRI 1945 of the amendment states that Indonesia is a "State of Law" which accepts the principle of legal certainty as well as accepting the principle of sense of justice that emphasizes "the rule of law" as contained in Article 28H of the UUD NRI 1945 which emphasizes the importance of usefulness and justice, while Article 28D of the UUD NRI 1945 emphasizes the importance of

fair law certainty, then the principle of legal certainty, justice and usefulness must be treated in an integrative way instead of an alternative.

5. Inconsistency of the Supreme Court of the Republic of Indonesia in the Enforcement of Special Minimum Criminal Provisions on the Verdict of the Corruption Court.

In this paper the author would like to illustrate that there is the fact that there are two Supreme Court of the Republic of IndonesiaVerdicts that judge differently in the case of dropping specific minimum criminal provisions. *Firstly*, in the case of corruption was decided by the Pontianak High Court in the case of procurement of goods and services in the form of procurement of civil Clothing and Singkawang Regional of People Legislative Assembly Service at the end of 2007. Total budget ceiling for the procurement wasRp. 65.000.000,- (sixty five million rupiah). In the implementation of the activities of the Chairman of the Committee for Execution of Activities/PPK (the defendant in a separate file) had planned to appoint a tailor to carry out the activities, but the problem of the tailor was not qualified as the provider of goods/services as stipulated by Presidential Decree No. 80 Year 2003. PPK then contacted the defendant to lend his company that was engaged in sewing therefore the conditions of formal appointment of executor of activities are fulfilled. PPK promised rewards asRp. 2.900.000, - (two million nine hundred thousand rupiah). Upon the offer, the Defendant agreed.

After the defendant's company won the tender, the money was then disbursed to the account of the defendant of Rp. 58.000.000, - (fifty eight million rupiah). The money was then transferred to PPK by minus Rp. 2.900.000,- (two million nine hundred thousand rupiah) according to the previous agreement. But apparently the money that KKP received was never handed over to the real Executor therefore the consequences of the work was failed and no one piece of clothing was successfully created.

On the issue the Defendant was required to participate in the criminal act of corruption charged with a single indictment of Article 2 paragraph (1) of Law Number 31 Year 1999 together with PPK but in a separate file. At the first level the Defendant was found guilty of committing a crime charged and sentenced to 4 years imprisonment and a fine of Rp.200.000.000,- (two hundred million)subsidiary 1 (one) month in jail and a substitute Rp. 2.900.000,- (two million nine hundred thousand rupiah). At the Appeal ruling, the sentence is reduced to 1 (one) year imprisonment and a fine of Rp. 200.000.000,- (two hundred million rupiah) subsidiary 1 month of confinement. On behalf of the verdict of appeal ruling the Public Prosecutor was submitted appeal to the High Court Verdict upon the reasons that the decision violated the minimum sanction as stipulated in Article 2 paragraph (1) of Law Number 31 Year 1999.

In the decision of appeal to Supreme Courtof the Republic of Indonesiacassation was essentially in harmony with the appellate decision but with its own consideration. The Supreme Court of the Republic of Indonesia in its Decision No. 2399K/Pidsus/2010 stipulated that "although the choice of form indictment was authorized by Public Prosecutor, but the charges against *a quo* case led to the judges that are in a dilemma, because there is no option to apply the appropriate legal and fair for the Defendant and for the enforcement of the law itself". Therefore, the Supreme Court of the Republic of Indonesiain the *a quo* case overrode the minimum criminal threat as stipulated in Article 2 paragraph (1) of Law Number 31 Year 1999 on the Eradication of Corruption. Due to the application of special minimum criminal provisions in the case may injure the sense of justice because it is not balanced with the actions of the defendant and what is received, obtained, and enjoyed by the defendant which is only Rp. 2.900.000,- (two million nine hundred thousand rupiah).

Secondly, in 2006 the Central Market of HamadiJayapura City was burned and rebuilt by Jayapura City Government as many as 375 units of shops and kiosks in August 2010. The marketwould be functioned and reorganized. Defendant I was the Head of Regional Technical Management Unit (UPTD) Market and Defendant II was Head of Cooperatives at the Department of Trade Industry and Cooperation at the Department of Trade Industry and Cooperation (Disperindagkop) Jayapura City. In order to divide the place of store/shop/kiosk for every trader of fire victim, it had been determined the obligation of merchant to pay administration fee equal to Rp. 10.000.000,- (ten million rupiah) for shop and Rp. 6.000.000,- (six million) for the kiosk that was paid in installments and startedwhen the distributionofshop/kiosk's key. At the key distribution on 20th August 2010 which took place at the Disperindagkop Service Office inJayapura City, the administration funds collected by the Office of the JayapuraCitywas Rp.212.000.000,- (two hundred and twelve million rupiah) and the funds were partly used for expenses (operational) during the execution of the distribution of kiosk/shop keys of Rp. 77.400.000,- (seventy seven million four hundred thousand rupiah) and the remaining Rp. 134.600.000,- (one hundred thirty four million six hundred thousand rupiah) is submitted to the Head of Disperindagkop(Defendant in a separate file).

In late August 2010, the Chairman of Market Traders Association (HIMPAS) intended to meet the Head of DisperindagkopJayapura City to request the addition of key store/kiosk for 15 (fifteen) traders whom wanted to have more than one store/kiosk, Defendant I and Defendant II ushered Chairman of HIMPAS to meet with the Head of the PeringdakopJayapura City. After a few days later the Chairman of HIMPAS met Defendant

II and submitted checks worth Rp. 87.500.000,- (eighty-seven million five hundred thousand rupiah) and said that the Head ofDisperindagkopJayapura City had approved the request for additionalkey and check for the Head of Disperindagkop, about four days later Chairman of HIMPAS came back to Defendant II and handed over a check worth Rp. 20.000.000,- (twenty million) and said the money was a form of his gratitude for Defendant I and Defendant II, then the check was liquefied by the Defendant II in the Bank and the money was then divided in two for Defendant I and Defendant II with Rp. 10.000.000,- (ten million rupiah) respectively.

To these problems Defendant I and Defendant II who received prosecuted was involved in the corruption case charged with a single Article 12 letter b of Law Number 20 Year 2001 Amendment to Law Number 31 Year 1999 along with the Head of Disperindagkop and Chairman of HIMPAS but in a separate file.

In the first court of Corruption Court, Defendant I and Defendant II was proven to have committed the accused and sentenced to imprisonment for 1 (one) year and 2 (two) months of imprisonment and fine of Rp. 50.000.000,-subsidiary 1 (one) month of confinement (through the minimum provisions of article 12 a) with legal consideration to adopt the Supreme Court of the Republic of Indonesia Legal consideration No. 2399K/Pidsus/2010 in the first case above as a guide.

At the appeal and cassation level of the High Court of Jayapura and the Supreme Court of the Republic of Indonesia revoked the First Level Verdict and adjudicated independently by imposing penalties for 4 (four) years and a fine of Rp. 200.000,- (two hundred million rupiah) subsidiary 1 month of confinement with *judexfactie* legal consideration did not follow the special minimum provisions of article 12 letter b UUPTPK by imposing the decision lower than the minimum threat of article that wascharged by the Supreme Court of the Republic of Indonesiaas a mistake in the application of the law as Referred to Article 253 paragraph (1) letter a of KUHAP.

Based on 2 (two) verdicts of corruption cases above, it is inferred that the Supreme Court of the Republic of Indonesiais inconsistent with its opinion regarding the implementation of special minimum criminal provisions in the law of eradiation of corruption. The legal considerations of the Supreme Court of the Republic of Indonesia in applying a specific minimum criminal provision in the first case which is deemed to injure a sense of justice because it is imbalanced with the actions of the defendant and what is accepted contrary to the legal reasoning in the second case that adjudicated*JudexFactie* the first level of overrode of the special minimum criminal provisions was a mistake in implementation of law.

RoeslanSalehnoted that judgment is a humanitarian struggle for the realization of the law, thereby prosecuting without a fellow human relationship between the judge and the defendant is often perceived as treating an injustice, therefore ideally "if the judge handles and decides cases in the face of a conflict between justice and legal certainty, then he should give priority to justice"[20].In line with the above, the term used in the UUD NRI 1945 is an emphasis on just legal certainty, so that cases that are decided by the court in addition to providing legal certainty, can also be felt fairly.

Based on the considerations that relate the actions of defendants that have been proven and fulfill all elements in the articles charged in UUTPK there are judges' verdict which in the judgment of judges who assessed the application of special minimum criminal provisions in the indictment has proven that it can injure a sense of justice, because there is an imbalance between the acts committed by the defendant and the consequences arising from the defendant's actions and also related to the amount of value earned and enjoyed by the defendant from his actions. In this fact the judge has breached, abandoned, and committed irregularities to the minimum penalty/special criminal provisions contained in articles that are explicitly, limitatively and imperatively contained in the Law of Eradication of Corruption.

IV. CONCLUSION

Observing at the existing phenomenon as mentioned above, the author can conclude that at the *JudexJuris* level the Supreme Court of the Republic of Indonesia is inconsistent in the implementation of special minimum criminal provisions on the verdict of corruption cases, on the one hand assessing the imposition of sentencing to the diversion of specific minimum criminal provisions is justified because the special minimum penalty threat in UUPTPK can injure a sense of justice if it is imbalanced with the quality of the defendant's actions and what the defendant receives or obtains in his actions. On the other hand, the Supreme Court of the Republic of Indonesia adjudicated the decision, whichdeviate's the special minimum criminal provisions in UUPTPK is a mistake in the implementation of law and it is not justified.

In the spirit of eradicating corruption criminal action, it should not be addressed in a permissive manner regardless of the value of state losses or whatever the perpetrators of corruption are inflicted because of his actions, but on the other hand with the conscience of the judge should also be important that imposing penalty that injure the sense of justice must also be avoided, therefore the law should make space for the Judge of Corruption Court in its function to prosecute can carry out the enforcement of law that its actualization is not fully in line with the spirit and will of the legislator, but can deviated the special minimum criminal provisions in legislation with the aim of providing a sense of justice that is harmonized with conviction and legal certainty.

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