

# Analysis of the Implementation Regulations for Police Actions as Law Enforcement of Corruption Cases Constitutional Court

<sup>1</sup>Rian Sacipto, <sup>2</sup>Teguh Prasetyo, <sup>3</sup>Anis Mashdurohatun, <sup>4</sup>Ciptono

**Abstract--***Realizing an Indonesian law state, by upholding justice without differentiating power and authority to realize the legal ideals, is a mandate from the opening of the 1945 Constitution of the Indonesian state. Regulations stating police actions against Constitutional Court judges who commit unusual acts are deemed to be an obstacle to the existence of the rules established by the state constitution so that there are weaknesses that affect the police action rules against Constitutional Court Judges that damage their passion for the problems of corruption that have occurred in Indonesia. The writing of this scientific study aims to uncover and analyze and expect changes in the rules of police action against judges of the Constitutional Court who commit acts of corruption based on justice values to be able to implement appropriate law enforcement without distinguishing the authority and power possessed by state administrators so that there are no obstacles in the process of law enforcement. Several theories are used in the analysis of the framework and methods of thinking of scientific studies by including justice theory, rule of law theory and approach methods that are sourced from primary and secondary data obtained through interviews and conducting literature studies, so as to produce studies that can be analyzed by concluding that it is necessary the change to article 6 Paragraph (2) of Law Number 24 Year 2003 regarding the Constitutional Court explaining the relevant authority in the regulation of the police to act against the constitutional judges who are proven guilty or acts that violate the law without the permission of the President or the Attorney General so that the purpose of the law can be done without distinguishing the authority possessed by each law enforcement agency so that it runs well without any obstacles or complicated processes.*

**Key words--***Law Enforcement, Corruption, Police Action, Justice, Constitutional Justice*

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## I. INTRODUCTION

Indonesia, which is based on law and upholds the highest sovereignty of the people, is governed by the Constitution of 1945 (Sacipto R: **2019**), [1]. Indonesian rule of law is a form of affirmation, based on an official perspective which presupposes the law must play a decisive or central role in the life of society, nation and state in Indonesia (Moh Mahfud MD: **2009**), [2]. The need for a strategy in law enforcement to eradicate corruption must be based on comprehensive optimization for the realization of the rule of law aspired by the nation's founders as follows:

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<sup>1</sup> Universitas Ngudi Waluyo Semarang, Indonesia. Email: rian.sacipto@gmail.com

<sup>2</sup> DKPP Republik Indonesia.

<sup>3</sup> PDIH UNISSULA Semarang, Indonesia.

<sup>4</sup> Akademi Kepolisian Semarang, Indonesia. Email: ciptono.1961@gmail.com

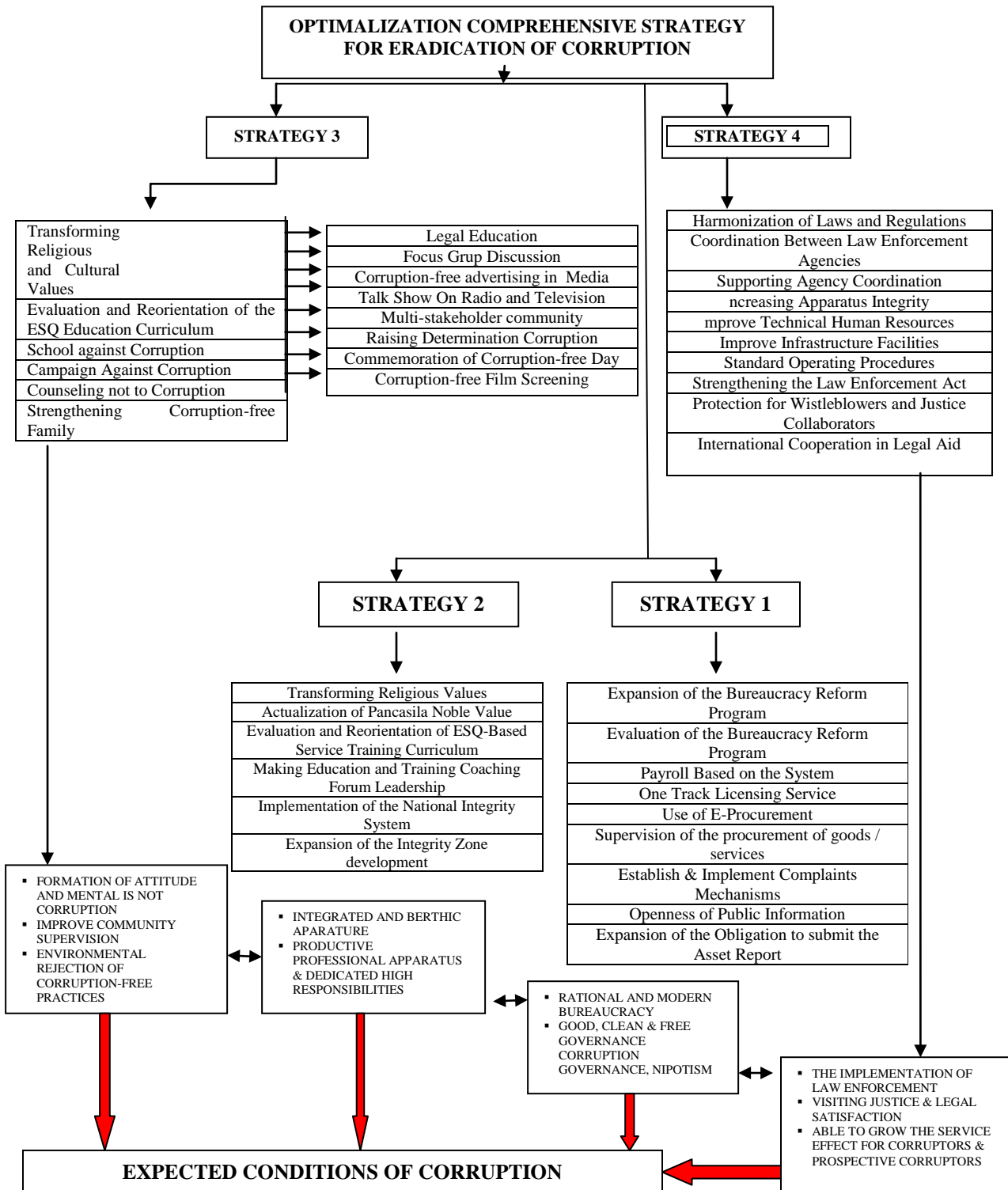


Figure:1 Concept. 1

Law which is a symbol of justice has been a serious subject since the beginning of Greek philosophy. Justice talks have a wide range, ranging from the ethical, philosophical, legal, to social justice. Since Indonesia's independence in 1945 the Indonesian state has adopted a written legal system which means that all applicable legal regulations are written in written form so that all members of the community can more easily know and understand them (Anis Masdurohatusun; **2012**), [3]. Many people think that acting fairly and unfairly depends on the strength they have, to be fair is quite easy, but of course this does not happen in human life. However, the truth is that the righteous is the true God. Thus, the law does not discriminate (distinguish) between officials or citizens. Such features according to (Dicey A.V: **2009**), [4] are called equality before the law. Equality before the law is a constitutional basis which must not be violated, but in its development shows that the above constitutional basis is not implemented as it should.

The position of the 1945 Constitution as the highest legal basis in the state of law in Indonesia has been stated expressly in TAP MPRS number III / MPRS / 1966. The basic statement is also contained in article 3 paragraph (1) of Law Number 10 of 2004 concerning the Formation of Legislation, which reads "The 1945 Constitution of the Republic of Indonesia is the basic law in statutory regulations". The consequence of the position of the 1945 Constitution as the basic law which is the highest law, causes that laws and regulations are not allowed to conflict with the basic law, because the constitutional system contains the meaning of testing existing norms. When conflicts arise between constitutional rules and lower legislation, then state officials must be bound to respect the constitutional rules and rule out lower legislation.

In Indonesia, the theory of justice is developed (Teguh Prasetyo: **2017**), [5] that justice, expediency and certainty in Radbruch are singular or imperative. All three are balanced and therefore in reality they can be distinguished and studied as antinomies of legal ideals, but in the end they should not be understood as having separate meanings. The existence of a justice certainly does not differentiate everything or preferably has a power. Justice comes from the word "fair", which when viewed from the origin of the word is an absorption word from Arabic, namely al-adl, which means "middle" or "middle", or something good, an impartial attitude, safeguarding rights someone and the right way to make the right decision / attitude (R. Lily, B Arief: **1994**), [6] Whereas the root word 'adl in various forms of conjugation may lose its direct connection with the justice side accordingly (A. Wahid : **2018**), [7] (for example, "ta'dilu" in the sense of union with God and "in the sense of redemption)."

Dignified justice theory is a theory known in the literature in English with the concept of legal theory, jurisprudence or philosophy of law and knowledge about the substantive law of a legal system. The scope of the theory of justice with dignity does not only reveal abstract dimensions of the legal rules and principles that apply, furthermore. Dignified Justice Theory reveals all legal principles and principles that apply in the legal system, in this case the positive legal system in Indonesia, or the legal system based on Pancasila (Teguh Prasetyo: **2017**), [8].

Regulations of police action against judges of the Constitutional Court in the State of Indonesian Law who are suspected of committing criminal acts of corruption, law enforcement officers namely the police in exercising their authority require prior permission from the President, as Article 6 Paragraph (2) of Law Number 24 Year 2003

of the Constitutional Court Republic Indonesia, is stated "Constitutional Justices can only be subject to police action by order of the Attorney General after obtaining written approval from the President", except in cases of :

- a. Caught in the act of committing a crime; or
- b. Based on preliminary evidence that is reasonably suspected of having committed a criminal offense threatened with capital punishment or a criminal offense against state security.

Constitutional Justices can only be subject to police action on the orders of the Attorney General is an improper act because the position of the National Police Chief and Attorney General is balanced under the President. The Attorney General is the leader and highest responsibility of the prosecutor's office who leads, controls the implementation of the duties and authority of the prosecutor's office, as regulated Article 16 Paragraph (1) of Law Republic Indonesia Number 16 Year 2004.

The existence of a rule related to statements that weaken the police's actions against constitutional judges who commit violations or criminal acts must be caused by the appointment process in sealing up more soft people to fill the position of judges of the Constitutional Court (Tom Ginsburg: 2003), [9]. This clearly indicates that the integrity and morality of state officials for the constitution is not very good, including other organizers in matters of law enforcement that are so complex.

The Indonesian state that upholds the law as a form of implementing democracy and the welfare of the people who have guards or guards of State rules and policies, namely the Constitutional Justice is an honor that should be guarded and not injured because of corruption which is a despicable act and tarnishes a constitutional dignity that ultimately have a negative impact on the State. Justice that needs to be upheld for law enforcement by an institution that is the police that is given authority if the constitutional judge tarnishes dignity by committing acts of corruption must be prioritized without differentiating an authority from other institutions and the police does not need to ask permission of the President and the Attorney General in carrying out police actions by constitutional judges who commit corruption. The background of this problem will be used as material for scientific analysis by using methods that are supported and scientifically presented for the advancement and welfare of the nation so that of course a justice can be carried out without any differences or procedures that are not appropriate and too complicated. The existence of a scientific study needs to be done as a positive response and an amendment to the regulations that are not appropriate to the actions of the Police that are considered inadequate to law enforcement officials to deal with the problem of corruption in Indonesia which is a disease in realizing the implementation of the rule of law.

## II. METHOD

The method in a scientific study can be interpreted as a process of principles and procedures for solving problems encountered in conducting research (Soerjono Soekanto: 2008), [10]. The use of this work method uses the constructive paradigm that is the methodology of transactional / subjectivity, findings which are the result of creation juxtaposed with descriptive qualitative approaches and research methods for real problems that occur in people's lives (Suparman: 2018), [11].

The writing method used is normative juridical using secondary data literature in the form of legal documents, previous studies and other relevant references (Nenivesna: **2018**), [12] and analysis of this legal study is based on an empirical juridical approach which is an empirical study of research to find theories about legal process of work in the community. Data processing is taken from Primary Data sources of data or facts obtained directly through research in the field including information from respondents related to the object of research, namely: Corruption Eradication Commission, the Constitutional Court, Police, Attorney's Office and Academics. The data used are secondary data, obtained by literature research which is then systematically compiled and analyzed qualitatively (Hastuti: **2019**), [13] so that narrative processing is obtained from library materials, the data are usually arranged in the form of documents.

### **III. RESULTS AND DISCUSSION**

#### **Law Enforcement**

Consistent and integrated law enforcement will also bring benefits to the community, namely the emergence of a deterrent effect, so that it can prevent someone who wants to commit corruption. Another benefit is the growth of public trust in law enforcement efforts and law enforcement officials, so that public support for law enforcement agencies will strengthen. Conversely, if inconsistencies occur in law enforcement, the community will judge that the process of law enforcement in conflict of interest, so that public confidence in law enforcement will weaken. The proverb says that the law fell sharply and bluntly upward, with the implication that this will weaken the legal culture and obedience to law by the people so that it is very contradictory and certainly cannot manifest personality in accordance with the values of Pancasila which is the hope of the founder of the state to get the results of mutual agreement and serve as a code of shared nationality or civic nationalism (EY Lestari: **2017**), [14].

Recognizing the complexity of the problem of corruption in the midst of a multidimensional crisis and the real threat, namely the impact of this crime. As an extra ordinary crime, the eradication of corruption requires the seriousness of the government. In eradicating corruption, the seriousness of the Indonesian government can be seen from the issuance of policies that are directly related to tackling corruption. Moreover, corruption in various sectors and also executive, legislative and judicial powers and even the private sector (B. Waluyo: **2016**), [15].

The government, especially law enforcement apparatuses, must carry out the law enforcement process in a strict, consistent and integrated manner so as to be able to produce fair law enforcement, fostering such legal certainty, which is expected to leave public trust, cause a deterrent effect, prevent prospective corruptors, optimize state money returns / the people and other positive impacts. As for Agencies or Indonesian state institutions which have the authority to handle criminal acts of corruption as follows:

#### **Corruption Eradication Commission (KPK Indonesian)**

Based on Article 6 letter c of Law Number 30 Year 2002 Concerning the Corruption Eradication Commission, states that the KPK is tasked with conducting investigations, investigations and prosecution of corruption.

Procedure for handling corruption is based on Law No. 30 of 2002 concerning the Corruption Eradication Commission. In this law, the procedure adopted by anyone who commits a criminal act of corruption is with the criteria of harming the country's finances or economy at least Rp. 1,000,000,000,000 (one billion rupiah).

### **Prosecutor's**

Based on the provisions in Article 30 paragraph (1) letter d of Law No. 16 of 2004 concerning the Prosecutor's Office, it was stated that the duties and authority of the prosecutor's office in the criminal field were "to conduct investigations into certain criminal acts based on the law". Furthermore, in an explanation it is generally stated that what is meant by "certain crimes" includes corruption. This was also confirmed by the Constitutional Court Decision No.28 / PUU-V / 2007 dated March 27, 2008

### **Police By:**

- a) Article 14 paragraph (1) letter g of Law No. 2 of 2002 concerning the Indonesian National Police, states that the Indonesian National Police is tasked with conducting an investigation and investigation of all criminal acts.
- b) Article 4 (investigator), and Article 6 (investigator) of the Shrimp Book of the Criminal Procedure Code (KUHAP), is every official of the Republic of Indonesia state police For the Police in handling corruption acts committed by the Chair / Judge of the Constitutional Court on the orders of the Attorney General after obtaining a written approval from the President based on Law Number 24 Year 2003 Article 6 Paragraph (2) Regarding the Constitutional Court, the procedural law used is the Law Number 8 of 1981 concerning criminal procedure. Procedures that must be taken when the legal subject is a Constitutional Court (Judicative) judge, the police's action by the Attorney General's order after obtaining a written approval from the President, is an obstacle in accelerating the law enforcement process.

### **Police Actions**

The Indonesian Criminal Procedure Code (KUHAP) lists the powers of investigation, arrest, detention, confiscation and so on. In a formal rule of law the police action must be justified literally or explicitly by a rule of law. In material law will result in the development of a country to create a welfare state (welfare state), and the law is written with limited words and can not take action from all norms that occur in society so that material law arises in view of the objectives of the law itself. Authority has a scope known as dimensions or dimensions (S. Sunarso: **2015**), [16]. scilicet :

1. Territorial dimension, i.e. not only one or two spaces, for example regional units, territorial insight, territorial territories and so on,
2. Measured from objects, which are human beings that can be acted upon by the police, so-called personal dimensions or human dimensions,
3. Measured from a problem that is called a problem dimension or matter, what is the authority of the police that can be handled,
4. Measured from the problem of time, namely when the police act, when the situation in the community must be monitored continuously.

Police action is a coercive attempt and / or other action taken in accordance with applicable law to prevent, obstruct, or otherwise stop a criminal act that threatens the safety or endangerment of the body, property or dignity of the law, in order to establish order and law enforcement and the building of a peaceful society. This act is an embodiment of police authority and responsibility. In a country of law the authority is given by law in the form of laws and / or regulations (Ciptono: **2017**), [17].

Article 16 Paragraph (1) of Law Number 2 of 2002 explains that in the context of carrying out tasks in the field of criminal proceedings, the Indonesian National Police has the authority to: 1) arrest, detention, search and seizure, 2) prohibit anyone from leaving or entering the scene of the case for the purposes of investigation, 3) bringing and confronting the investigator in the course of the investigation, 4) ordering the person to be stopped and questioning and checking personal identification, 5) conduct examination and confiscation of letters, 6) call people to be heard and examined as suspects or witnesses, 7) bring in experts needed in connection with the examination of cases, 8) conduct an investigation stop, 9) submit case files to public prosecutor, 10) submit a request directly to the authorized immigration official at the immigration checkpoint in an urgent or sudden situation to prevent or deter a person suspected of committing a crime, 11) provide instructions and assistance in the investigation of civil service investigators and receive the results of the investigation employee investigator n civil horror to be handed over to the public prosecutor. and 12) take other actions according to the law responsible for Java.

The other actions in Article 16 Paragraph (2) of Act No. 2 of 2002 are the investigative and investigative actions taken if they meet the following requirements: 1) does not conflict with a rule of law, 2) is in line with the legal obligations that require the action to be carried out, 3) must be reasonable, reasonable, and included in the environment of his position, 4) reasonable consideration based on compelling circumstances. and 5) respect for human rights.

Regarding all authority which includes the principles of using force in police actions is also regulated in Article 3 of the regulation of the head of the Indonesian police No. 1 of 2009 which includes:

1. Legality, which means that all police actions must be in accordance with applicable law.
2. Nesesiatas, which means that the use of force can be done if necessary and cannot be avoided based on the situation at hand.
3. Proportionality, which means that the use of force must be carried out in a balanced manner between the threats faced and the level of strength or response of members of the National Police, so that they do not cause excessive loss / casualties / suffering.
4. General obligations, which means that members of the National Police are given the authority to act on their own judgment, to maintain, maintain order and guarantee public safety.
5. Preventive, which means that the actions of the police prioritize prevention.
6. Reasonable (reasonable), which means that police actions are taken logically by considering the situation and condition of the threat or resistance of the perpetrators to the officers or the danger to the community.

### **Constitutional Justice Corruption Case**

Since the last 10 years the corruption case which tarnished and violated the constitution of the Republic of Indonesia carried out by constitutional judge Akil Mochtar, was the country's first highest official, as well as the highest law enforcement institution in Indonesia caught by the Corruption Eradication Commission (KPK) on October 3, 2013, for corruption in the Election of Regional Heads of Gunung Mas Regency, Central Kalimantan Province and Lebak Regency, Banten Province handled by the Constitutional Court.

The case is pure crime, the offense is formal offense. In handling this case, in order to maintain the spirit of the Constitutional Court on November 1, 2013 the Honorary Council of the Constitutional Court ruled that former MK Chief Akil Mochtar was proven to have violated the code of ethics and dismissed Akil Mochtar with disrespect. This is in accordance with Article 4 of the Constitutional Court Board of Commissioners Regulation Number 1 of 2014 letter a point 6 scilicet; Violating the prohibition as a Judge to:

- a) To hold office as another state official, political party member, businessman, advocate or state official;
- b) Accept any offer or promise from the parties, either directly or indirectly.

So that the next process of police action does not need the permission of the President, because the former constitutional judge has been dismissed with no respect. In the Constitutional Court Honorary Session, chaired by Harjono, with other members of the assembly Bagir Manan, Abbas Said, Mahfud M.D. and Hikmahanto Juwana.

In the code of conduct session held by the honorary council Harjono and Abbas Said, Akil Mochtar was proven to have committed a disgraceful act, violated the oath of office, and violated the code of ethics of a constitutional judge. While the Honorary Assembly member, Abbas said that Akil Moch. proven to violate the code of ethics because it decides a case with a bias to one party. In addition, Akil Moch. violated the code of ethics by ordering secretary name Yuanna Sicilian and driver Daryono to transfer an improper amount of funds. Akil Mochtar not only allows but also conducts financial transactions in an unnatural amount. Still according to Abbas, Akil Mochtar was also proven to have received funds from legal counsel and litigants. Under the code of ethics, constitutional judges and families are prohibited from requesting gifts or loans from litigants. In addition, Akil Mochtar was proven to have a number of narcotics in his office in the form of three cannabis-rolled and two extraction pills in accordance with DNA tests conducted by the National Narcotics Agency (BNN Indonesian Organisation).

Furthermore, cases that still occur that tickle the dignity of the Indonesian republic's constitution also occur related to the Case experienced by Patrialis Akbar, which is almost the same as the case or Akil Mochtar's case, namely corruption. The Indonesian Constitutional Court honorary panel considered that non-active constitutional judge Patrialis Akbar was proven to have committed two gross violations so that he had to be dishonorably discharged. Ethical violations committed by violating the constitutional spirit of corruption by utilizing his position as a high-ranking state official who committed ethical violations by Patrialis Akbar are:

1. Violations of the principle of impartiality regulated in Article 2 Paragraph (2) of the Code of Ethics and Guidelines for the Conduct of Constitutional Justices. This violation was committed by the Partialist Akbar by



expressing his personal opinion which tended to side with one of the parties who litigated in the Criminal Material Test session;

2. Violations of the minimum standards of competence in mastering science that are set out in Article 2 Paragraph (3) of the Code of Ethics and Code of Conduct for Constitutional Justices;
3. Violation of the principle of accountability set forth in Article 2 Paragraph (2) of the Code of Ethics and the Code of Conduct of Constitutional Justices Article 3 Paragraph (1) letter (e) of the Code of Ethics and Code of Conduct of Constitutional Judges require each judge not to accept bribes from parties litigation party.

### **The rules of police action against Constitutional Court judges who commit criminal acts of corruption currently do not provide a sense of justice**

Justice is one of the objectives of the law besides legal certainty, legal usefulness. The nature of law rests on the idea of justice and moral strength. The idea of justice is never separated from its relation to the law, because talking about the law, clearly or vaguely is always a talk about justice too. The concept of fairness can be traced from its original understanding in language, because the substance of justice really starts from its understanding in language. Of course, enforcement of justice is done without any discrimination or discrimination in law enforcement efforts. It can be seen after reviewing and the problems that occur as in Article 6 Paragraph (2) of Law Number 24 of 2003, that: "Constitutional Justices can only be subject to police action by order of the Attorney General after obtaining written approval from the President, except in the case of: a) . caught in the act of committing a crime; or b) based on preliminary evidence which is reasonably suspected of having committed a criminal offense threatened with capital punishment or a criminal offense against state security. That the statement in the article is not appropriate, because:

1. Contrary to the *principle of independent of judiciary*, Article 1 Paragraph (3) of the 1945 Constitution states: "the state of Indonesia is a state of law" (amendment III, 9 November 2001), in a democratic rule of law, executive power represented by the Government, the President , agencies and other state officials require respect and enforcement of the principle of independent of judiciary (the judiciary must not be reduced in the slightest nature of its independence; that in writing Article 24 Paragraph (1) of the 1945 Constitution designates judicial authority, but this matter can be interpreted broadly to include matters relating to law enforcement and justice;
2. Contradicting the *principle of equality before the law*, where the 1945 Constitution has adopted the principles of equality before the law or equality before the law, as regulated in Article 27 Paragraph (1) and Article 28D Paragraph (1) of the 1945 Constitution. Whereas Article 27 Paragraph (1) of the 1945 Constitution reads, "All Citizens are at the same position in law and government and are obliged to uphold the law and government without exception"; Article 28D paragraph (1) of the 1945 Constitution reads, "Everyone has the right to recognition, guarantees, protection and certainty of law that is fair and equal treatment before the law";
3. Contrary to the *principle of non-discrimination*, Article 28I paragraph (2): "Everyone has the right to be free from discriminatory treatment on any basis and has the right to get protection against such discriminatory treatment". Every person has the right to equality in law which means that the law must not discriminate and law enforcement officials must not act discriminatively in law enforcement.

The existence of this scientific study of the problems outlined in the above writing, it is hoped that for a law enforcement in accordance with the principles of justice without any discrimination of authority in law enforcement especially the problem of corruption carried out by high state officials namely constitutional justices, the need for a change and the renewal of rules in a law that must be done immediately as a form of upholding justice in law enforcement related to corruption. The author updates the article which is deemed not fulfilling the element of justice in law enforcement against the authority of the police, as follows:

**Table 2** Analysts Study Changes In Police Action Rules That Reflect Fair Law Enforcement

| Clause  | Before Analysis   | Susceptibility  | Analysis Results  |
|---|---|---|---|
| 6 Paragraph (2) of Law Number 24/2003 of the Law of the Constitution of the Republic of Indonesia | Constitutional judges can only be subject to police action by order of the Attorney General after obtaining written approval from the President except in the case of: a). Caught in a criminal act or b). Based on sufficient preliminary evidence, they have committed a criminal offense threatened with capital punishment or a criminal offense against state security | Do not have a sense of justice, in law enforcement Discrimination of authority and complicated processes in law enforcement | Constitutional judges may be subject to police action in accordance with their authority in terms of: caught in the act of committing a crime, in the case of the investigation and investigation of the Indonesian National Police, it is sufficient to notify the chairman of the Constitutional Court and in the case that the National Police detains a Judge from the Constitutional Court who commits a crime, is obliged to seek the President's permission. |

#### IV. CONCLUSION

Law enforcement for the problem of corruption in Indonesia to high state officials must be carried out without discrimination in the procedure or execution process. The main causes of corruption by constitutional judges are the moral factors of individuals in bureaucratic organizational groups and the strong influence of the organizational, structural and systematic environment. The implementation of police actions against judges of the Constitutional Court who commit criminal acts of corruption based on positive law currently covers the main duties, functions and roles of the police and the authority to investigate criminal acts of corruption, so that the mechanisms and procedures for investigating corruption problems committed by constitutional judges must be carried out in accordance with the Police with the value of justice because there is no separation of the authority of the investigation for the problem of corruption. The existence of the attorney general's permission and approval from the President in the process of arrest by constitutional judges was deemed inappropriate.

So that the police action against judges of the Constitutional Court who commit acts of corruption based on the value of justice is to make changes to the legislation that are considered not appropriate and do not yet reflect fair law enforcement so as to weaken the exploitation actions that will be carried out by law enforcement to high state officials interpreted with discrimination in law enforcement treatment.

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