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# Prosecutor's Authority in Investigating Corruption Crimes Law Number 1 of 2023 comes Into Force

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## Abstract

This study aims to examine and analyze the authority of the prosecutor's office in investigating corruption crimes after the enactment of the New Criminal Code which includes corruption crimes in the New Criminal Code. Although it has been affirmed that the prosecutor's office remains authorized to investigate criminal acts of corruption, the possibility of practical problems will still arise. The research method used is normative juridical with a statutory approach, concepts, and comparisons. The results of the discussion of this study provide solutions to the limitations of the authority to investigate corruption crimes based on the type according to location, perpetrators, loss values, and types of corruption crimes that occurred.

**Keywords:** Authority, Prosecutor, Investigation, Corruption

## 1. Introduction

The Criminal Code (KUHP) which has been in force since 1946 until now is a legacy of the Dutch colonial era, namely *Wetboek van Strafrecht vor Nederland Indie*. Because it is a colonial heritage since 1963 efforts have been made to reform the Criminal Code (Sri Endah Wahyuningsih, 2014). Until 2022, the composition of the drafting team has been formed and changed. In 2023 the New Criminal Code was ratified which was the result of a team consisting of the best criminal law experts in Indonesia with Law Number 1 of 2023 (Hans Tangkau, 2010). Even though it has been ratified and promulgated in the State Gazette, the Criminal Code will only apply for the next three years. Based on the Republic of Indonesia's Ministry of Law and Human Rights on the Final Criminal Code Bill for 2022 As a new Criminal Code, of course, this Criminal Code is different from the old Criminal Code. Apart from including some new crimes, and new principles, systematics also changed. The new Criminal Code only consists of two books, in contrast to the old Criminal Code which consists of three books. Several crimes that were not included in the Criminal Code are now included in the Criminal Code.

Specifically for corruption, several types of criminal acts of corruption that were previously regulated in the old Criminal Code were repealed and included in the Corruption Law, now they are again included in the New Criminal Code. In Law Number 1 of 2023 concerning the Criminal Code, the regulation of criminal acts of corruption is regulated in Articles 60, 3, 604, 605, and 606. If you look at the contents of the formulation of the articles of corruption in the New Criminal Code, there are similarities with the words of Articles 2, 3, and 5 of Law Number 31 of 1999 as amended by Law Number 20 of 2001.

The re-entry of several acts of corruption in the Criminal Code can have an impact on the law enforcement process, especially the investigative process. So far, corruption investigators have been the Corruption Eradication Commission, the Attorney General's Office, and the Police. Corruption investigations deviate from the Criminal Procedure Code system, which in principle assigns the police as an investigative agency, and places the prosecutor's office as a prosecution institution (Wirawan and Iswara, 2020).

The legal basis for the prosecutor's office in investigating acts of corruption is Law Number 16 of 2004 concerning the Prosecutor's Office which is regulated in Article 30 paragraph (1) letter d which states that one of the prosecutor's powers is to "investigate certain criminal acts based on the law". What is meant by certain crimes are corruption and gross human rights violations.

According to Abd Muthalib (2017) Long before the enactment of this Law, the legal basis used to investigate corruption was the transitional rule of Article 284 paragraph (1) of the Criminal Procedure Code which states that within two years after the law this is promulgated, all cases must apply the provisions of this law, with the temporary exception of special provisions for criminal procedures as stated in certain laws, until changes occur and/or are declared no longer valid.

At that time, the police were considered not fully capable of carrying out all investigative actions, especially on difficult matters such as corruption. On the other hand, the Criminal Procedure Code wants to position the function of the police as a "single" investigator. In the law of the KPK, KPK investigators come from the police institution. Another positive thing that the Criminal Procedure Code wants to uphold is horizontal supervision between the criminal justice sub-systems so that suspicion or self-action does not occur by one sub-system without being open to other sub-systems. That is what is called the principle of functional differentiation. In carrying out an investigation, the investigator is obliged to notify the public prosecutor about the commencement of the investigation. In carrying out searches and seizures, investigators must obtain permission from the head of the court.

With the authority of investigators to investigate acts of corruption and prosecutors also given the same authority, this creates various problems with the authority to investigate. This issue creates dynamics and debates that always occur. The result is that there is no limit to the authority to investigate criminal acts of corruption between the police and the prosecutor's office. Subsequent results can weaken law enforcement on corruption crimes where both institutions may blame each other, shake hands with each other or there is struggle for authority. If the case is handled by the police, it is estimated that it will be difficult for the public prosecutor to consider it complete. If this case is handled by the prosecutor, there is suspicion that there is no control from other justice sub-systems because the prosecutor acts as both an investigator and a prosecutor.

With the inclusion of several acts of corruption in the New Criminal Code, a new problem arises where the legal basis for the prosecutor as an investigator is for certain crimes or special crimes. Theoretically, what is meant by special crimes are crimes regulated outside the Criminal Code. With the inclusion of certain acts of corruption in the New Criminal Code, corruption is no longer a specific crime but has become a general crime as well. If following the construction of certain criminal investigations as a crime that can be investigated by the prosecutor's office, it can mean that after the enactment of the New Criminal Code, the prosecutor's office no longer has the authority to investigate acts of corruption.

Several other studies have related issues such as research by Gratia Debora Mumu (2016) with the title "Authorities of Prosecutors as Investigators of Corruption Crimes" explaining the prosecutor's office as one of the institutions that are given authority as an investigator apart from its main task is to carry out prosecutions or

public prosecutions. The authority granted by law to prosecutors is to conduct investigations into specific criminal acts, one of which is corruption. The prosecutor's authority as an investigator is similar to the legal rules governing these provisions, among others, in Article 284 (2) of the Criminal Procedure Code, Article 30 (d) of Law no. 16 of 2004, Article 17 of Government Regulation Number 27 of 1983, Article 8 paragraph (2), (3), (4), and Article 9 letter f of Law no. 30 of 2002 concerning the Corruption Eradication Commission, as well as in Law no. 20 of 2001 concerning the Eradication of Corruption Crimes. And in carrying out this authority there are obstacles and obstacles in the process of investigating corruption so there is overlapping authority between related institutions. Furthermore, there is research entitled "Policy Directions for Eradicating Corruption Crimes in Indonesia: Studies after Amendments to the Corruption Eradication Commission Law" written by Edita Elda (2019) explaining that eradication of criminal acts of corruption is still the main agenda in law enforcement in Indonesia. The birth of Corruption Eradication Commission (KPK) is the spearhead of eradicating corruption in Indonesia, through the mandate of Law Number 30 of 2002. The KPK is given more authority compared to other law enforcement agencies, namely the police and prosecutors in handling corruption cases. After more or less 17 years of existence, changes to the KPK law by the DPR have recently received considerable attention in the community. There were pro and contra groups for the revision of the KPK law which was passed on September 17, 2019. On the other hand, the aspirations of the people were divided into two, namely the pros and cons of the revision of the KPK law. Opinions state that this law change will strengthen the KPK or even weaken the KPK's performance in eradicating corruption. Not a few people also pushed for the President to issue a Perppu. If this law has been recorded in the state gazette and additional state sheets, some parties who disagree with the point of changing the articles in the law can apply for a judicial review as a legal step protected by the constitution.

## **2. Research Method**

By using normative juridical research methods, namely research that uses an approach using secondary data, efforts are made to find ideal concepts in the investigation of corruption by the prosecutor's office about the authority of the police as the sole investigator according to the Criminal Procedure Code after the entry into force of the New Criminal Code. To complete the secondary data, the authors also conducted interviews with several respondents, namely criminal law experts who focused on studying corruption.

## **3. Results and Discussion**

The legal basis for the police to investigate acts of corruption is based on Article 14 paragraph (1) letter g of the Police Law, namely that the police are tasked with investigating and investigating all criminal acts by the criminal procedure law and other laws and regulations. In this case, authority is interpreted as including criminal acts of corruption. Meanwhile, the prosecutor's authority as an investigator also refers to the transitional provisions of law number 8 of 1981. The essence of the temper in the Criminal Procedure Code is the Permanent Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Law Number 16 of 2004, Government Regulation Number 27 of 1983, Presidential Regulation of the Republic of Indonesia Number 38 of 2010 and PERJA Number PER. 009/A/JA/2011, PERJA Number PERJA-039/A/JA/2010, Decision of the Constitutional Court Number 16/P/UUD-X/2012.

With the various provisions mentioned above, it can be identified that there are problems with authority in investigating corruption. Referring to the KUHAP system, investigations are carried out based on Articles 106 to 136 of the Criminal Procedure Code by investigators according to Article 1 points 1 to 5, namely the police and prosecution of criminal acts carried out according to Articles 137 to 144 of the Criminal Procedure Code by the public prosecutor (Article 1 points 6 and 7 of the Criminal Procedure Code). ), namely the Prosecutor (Suhari Lasmadi, 2010).

Furthermore, referring to the provisions of Article 26 of Law no. 31 of 1999 to Article 27 of Law no. 31 of 1999, it is stated that for crimes that are difficult to prove, a joint team will be formed under the coordination of the Attorney General. With the formation of the KPK, the coordination function in Article 27 in eradicating corruption was taken over by the Corruption Eradication Commission (KPK) by Article 6 of Law Number 30 of 2002 concerning the Corruption Eradication Commission.

Article 17 of Government Regulation (PP) of the Republic of Indonesia Number 27 of 1983 concerning the Implementation of the Criminal Procedure Code, also formulates the matter: "Investigations according to the special provisions of the criminal procedure book as referred to in certain laws as referred to in Article 284 Paragraph (2) ) The Criminal Procedure Code is carried out by investigators, prosecutors, and other authorized investigators based on statutory regulations. where Article 26 also contains provisions: "Investigations, prosecutions, and examinations in trials of criminal acts of corruption, are carried out based on the applicable criminal procedural law unless otherwise specified in this Law" (Kurnia, Lasmadi, Siregar, 2021).

With the confusion in the regulation of criminal acts of corruption based on these various laws, an illustration can be obtained that there are normative juridical problems in the process of investigating criminal acts of corruption.

Based on interviews with Indonesian criminal law experts, different views were obtained regarding the prosecutor's authority to conduct investigations as illustrated in the following table.

Table 1: Opinion of criminal law experts regarding the investigative authority of the Attorney General's Office

No.	Expert	University	Opinion
1.	Mahrus Ali	UI	This problem has been resolved with the New Criminal Code. The New Criminal Code does not revoke procedural law provisions in sectoral laws, but if you want to be consistent with the principle of functional differentiation, an investigation must be given to a special institution. It is necessary to review the trial minutes of the Prosecutor's Office which authorizes the public prosecutor to become an investigator of certain criminal cases. If the prosecutor is also an investigator, the system gets mixed up. By granting investigative authority, the prosecutor's burden becomes heavy. If the prosecutor becomes both an investigator and a public prosecutor, then where is the control? It is inappropriate for one person to carry two different things out of control
2.	Marcus Priyo Gunarto	UGM	Can read in the explanation, that the enforcement of the special offense law remains by the applicable law. The specific offense is just the core of urine and is a linking article, so it's clear
3.	Romli Atmasasmita	Unpad	In the Criminal Procedure Code, the prosecutor, but in the Criminal Procedure Code, is also an investigator
4.	Topo Santoso	UI	In my opinion, the prosecutor's office still has the authority to investigate the typical. Juridically, it is still regulated in the Criminal Procedure Code, the Prosecutor's Law, and the National Criminal Code and emphasizes that the institution authorized to commit specific crimes in the Criminal Code still has the authority to conduct investigations. In terms of the criminal justice system, crime is a difficult crime to investigate, and historically, and in its background capacity, the prosecutor's office has been able to exercise investigative powers on fraud. In addition, not all criminal acts must be investigated only by the police, because there are also other institutions such as the prosecutor's office, KPK, PPNS, and the Indonesian Navy for cases at sea. This has been going on all along. The investigative duties of the police are very

			numerous because they investigate almost all criminal acts.
5.	Chairul Huda	UMJ	In my opinion, criminal acts (criminal acts of corruption) for which the authority to investigate is given to several institutions (KPK, the Attorney General's Office, and the National Police) are a notary system. This situation can cause a conflict of authority to be investigated, for example, in Lizard vs Crocodile volumes I and II. Given that the prime sector for eradicating corruption lies with the KPK, I agree more if the authority to investigate corruption by the Attorney or Police only concerns certain sectors. Therefore, even if it is still deemed necessary for the Attorney General's Office to be given authority to investigate corruption crimes, it must be determined in a limited way regarding what corruption crimes are. Not as it is now, or likely to remain so, after the enactment of the national Criminal Code, The Attorney General's Office is given the authority to investigate corruption crimes without clear criteria. This can lead to the criminalization of various acts that are said to be against the law but are not acts of corruption. For example, the Jiwasraya case or the use of forest areas for plantations by the Palma group, the cooking oil case is not a criminal act of corruption. However, the prosecutor criminalized it as a criminal act of corruption. With the prosecutor's limited authority in investigating corruption, the exercise of this authority will be carried out in a more accountable manner The cooking oil case is not a criminal act of corruption. However, the prosecutor criminalized it as a criminal act of corruption. With the prosecutor's limited authority in investigating corruption, the exercise of this authority will be carried out in a more accountable manner The cooking oil case is not a criminal act of corruption. However, the prosecutor criminalized it as a criminal act of corruption. With the prosecutor's limited authority in investigating corruption, the exercise of this authority will be carried out in a more accountable manner

*Source: Interview, 25 March 2023*

Based on the results of the research above, it is illustrated that although the New Criminal Code has stipulated that the prosecutor's office is still authorized to investigate acts of corruption, the actual problem has not been resolved. How technical is the investigation of corruption crimes, it must be determined how to regulate the investigation problems in the upcoming KUHAP. It is still unclear how the KUHAP will maintain the current KUHAP system which places the police as the central investigator (Giulio Calcara, others, 2015).

Under current conditions, the problems most prone to occur in the investigation process are inter-agency conflicts and leadership interventions. Investigative institutions are also inseparable from the possibility of interference by political forces. Law enforcement cannot be completely free from political technology (Orlovskiy, Shapoval, Demenko, 2018).

According to Gerhard Anders, Fidelis, and Brigitte Seim (2020), the Attorney General's Office as an institution that is a prosecution institution according to the Criminal Procedure Code, in the HIR or before the Criminal Procedure Code era was also an investigative institution. Looking back, namely the HIR era, it is not an

exaggeration if the prosecutor's office still wants to maintain its investigative and prosecution authority. This also happens overseas where the prosecutor's office, apart from being a public prosecutor, is also an investigator.

In addition to this historical basis, there is a desire for the prosecutor's office to continue investigating corruption crimes based on the fact that the police's ability to investigate corruption crimes is weak compared to the capabilities of the state prosecutor's office. According to the author's observations, this low capacity is caused by the too-broad authority of police investigators who have to handle various criminal cases.

According to ICW, the handling of corruption cases by the Attorney General tended to increase from 2010 to 2015. The trend of handling corruption cases by the Police tended to increase from 2010 to 2015. The trend of handling corruption cases by the KPK tended to be stagnant from 2010 to 2015 (Anticorruption, 2015).

Based on ICW data, there is an increasing trend in the handling of criminal acts of corruption by the prosecutor's office and the police. This shows that there is a tendency between the police and the prosecutor's office to deal with corruption together.

Based on the data above, it can be emphasized that the prosecutor's office still needs to investigate corruption regardless of whether corruption is a general crime or a specific crime. In addition, even if there is a change in corruption from specific crimes to general crimes, not all types of corruption crimes will turn into general crimes. Of the 30 types of corruption, only 2 types of corruption are included in the New Criminal Code, namely corruption that causes state losses and bribery.

Faisal Laode Syarif (2019) explains that the inclusion of 2 types of corruption in the New Criminal Code is questionable because of the 30 types of corruption, 2 types of corruption include corruption which is difficult to prove. Because it is difficult to prove, it should be more appropriate if it is not included as a crime that is part of the Criminal Code, so that there is no debate about the prosecutor's authority to investigate corruption for both types of violations.

Based on these facts, what needs to be done in this case with the enactment of the New Criminal Code, according to the author, is not to abolish one another's authority to investigate acts of corruption by the three institutions between the police, the prosecutor's office and the KPK. What needs to be done are restrictions. If there is already a boundary between the KPK and the police and prosecutors, in the future it will be necessary to limit the police and prosecutors (Ceshel, Hinna, Homberg, 2022).

Seeing the condition of the prosecutor's organization and the police, ideally, there is a division of authority based on four things (Melo and Renno, 2016), namely:

1. The author proposes that for this type of corruption that causes state losses with a value of more than 100 million, it should still be the authority of the prosecutor's office, while 100 million and below should become the authority of the police. For this type of corruption, extortion at the office, corruption in contracts, destruction of goods, and embezzlement of goods, is the authority of the police, while the corruption of bribery, gratuities, and state losses of more than 100 million remains the prosecutor's authority.
2. The location of corruption crimes, judging from their location, corruption that occurs in district/city capitals, sub-districts, and villages falls under the authority of the police, while those that occur in district capitals and provincial capitals fall under the authority of the prosecutor's office.
3. Value of state losses. From the value of state losses, there should be a division that corruption which causes state losses of more than 100 million is the authority of the prosecutor's office, while state losses of under 100 million are the authority of the police.

Perpetrators of corruption. From the point of view of perpetrators of corruption, ideally, the prosecutor's office handles corruption crimes committed by district, city, and provincial level officials, while the police handle district/city level officials.

#### 4. Conclusion

Based on the discussion above, it can be concluded that changes or the enactment of the New Criminal Code do not affect the prosecutor's authority to investigate corruption crimes normatively. However, theoretically, there is still debate. The author's proposal as an illustration of renewal is about the limits and division of authority to investigate corruption by the location, the perpetrator, the value of the loss, and the type of corruption that occurred.

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