Reconstruction Legal Policies And Institution Of Strengthening
Prevention Of Corruption In Indonesia
(The comparative study of selected anti-corruption institutions)

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Abstract

This study was conducted to examine the history and background of the establishment of the Commission of Indonesia and then compare with a few selected countries, as a comparison. The results of such studies can be done as an attempt to find a model or institutional patterns that suit the needs of the institutional strengthening of the policy/ institutional corruption in the regulation Indonesia and regulatory changes in the future. From these studies it has been found several institutional models to eradicate corruption, there are four models; (1) The Universal Model, (2) the Investigative Model, (3) the Parliamentary model and (4) the Multi-Agency Model. Then the method of analysis used is descriptive analytic supported secondary data, to be able to identify the characteristics of anti-corruption policy in accordance with institutional needs in Indonesia. Then, with some models known institutional, institutional reconstruction effort to eradicate corruption in Indonesia, which has the independence, authority and field tasks that are relevant to the needs of Indonesia. Including with regard to the approach or way of preventive, repressive, or curative, either simultaneously or differentiated. From the results of the research will be identified to formulate relevant to the needs of Indonesia with regard to the form of institutional, duty and authority, human resource management professionals and the forms of support from the community. This study is expected to contribute to the efforts to strengthen the Commission in the future, both in setting and management.

A. Introduction

Corruption as an extraordinary crime has been widely agreed upon by some countries. This is because in general, corruption is done systematically, has an intellectual actor, involving stakeholders in a region, including involving law enforcement officers, and having a “destructive” impact on a wide spectrum.

Countries capable of emerging from the slumps due to corruption generally start from the commitment of the people and leaders who are then downgraded in various policies, both in the form of legislation and in the formation of special institutions to eradicate corruption. At first the establishment of this institution is more because the existing law enforcement agencies are no longer able to carry out its function in combating corruption.

The existence of an independent institution which has full authority in combating corruption crimes is empirically proven to help liberate a country from corrupt predicates and corrupt behavior of its apparatus. It should be noted that the establishment of this special institution is not all successful. Further analysis is needed to find out what factors influence the success of corruption eradication institutions in a country.

In connection with that, the other side that needs to be observed is that as reported by Indonesian Corruption Watch (ICW), it has been found 15 (fifteen) indictments of the Corruption Eradication Commission
(KPK) weakening efforts within 10 years since the establishment of KPK in 2003, UU no. 30 of 2002 on the Corruption Eradication Commission.

As it is known that a series of drama cases KPK-Polri peseruan then called the case Cicak Crocodile Volume I and Volume II, Criminalization case KPK commissioner due to examine cases of corruption, and Material Testing Act of the Corruption Eradication Commission are the real forms of weakening the performance of the Commission and intervene the authority making the work of KPK hampered in combating corruption. While on the other hand, political support from the government is unclear, when such efforts occur. This phenomenon is continuing to dissolve, and this omission is politically disadvantageous.

As a relatively new corruption eradication agency, KPK needs to get as much input and support as possible by studying trips from similar institutions of "KPK" abroad to be considered in determining the future policy or legal direction of the KPK.

Studying the performance of similar institutions "KPK" in LN becomes important because; As an accountable institution, the KPK needs to periodically measure the performance achieved by comparing the performance of similar institutions of the KPK in other countries. In addition, the KPK also needs to know "lesson learned" from the corruption eradication process in other countries, and then selectively apply it in Indonesia.

Therefore, it is necessary to examine the concept of political politics, the approach used and the implementation strategy in developing and improving the role of the KPK through the improvement of the Corruption Eradication Commission Law and other related Anti-corruption Law.

B. Problems

1. How is the legal position of anti-corruption agencies in selected countries, in relation to their structure and authority in combating corruption; how does the authority of anti-corruption institutions handle corruption issues related to the national criminal law relationship with the legal politics of corruption eradication, whether as a strategic form which has consistency and mutually supportive relationship?

2. What is the basic concept of legal politics that can provide institutional strengthening, relating to the structure and legal substance that can build a more effective and functional criminal law in the eradication of corruption?
Descriptions of Selected Anti-Corruption Institutions

1. The Australian Anti-Corruption Agency (ICAC)

The Anti-Corruption Eradication Agency in Australia called Independent Commission Against Corruption (ICAC) was established by State Government I (NSW) in 1989. The establishment of the ICAC NSW was a response to public concerns about the integrity of public administration in NSW.

The Independent Commission Against Corruption Act has been amended four times. In 1990, the scope and methods of the ICAC investigation were made clear. In 1994, the definition of corruption was extended to include members of Parliament and inserting a code of conduct for members of Parliament. In 1996, there was a change in the regulation of witness protection.

The structure of the hierarchy of the ICAC organization comprises the Commissioner as the chairman, the Assistant Commissioner as the vice chairman, and the four Executive Directors in charge of the operational unit. The four units are:

a. Investigation Unit whose job is investigation, intelligence and analysis, assessment, investigation assistance and technical services.
   b. Solicitor (lawyer) whose duty is in the field of law, the secretariat of the committee of the review of operations and liaison with the joint committee of parliament.
   c. Prevention and Education Corruption whose job it is to prevent corruption, education and media.
   d. Commission Services whose tasks are information technology, information services, recording and property, human resources, finance, office services, and security. ICAC has the function of investigation, prevention and education.

2. Singapore

Eradication of corruption in Singapore itself has a long history. The eradication of corruption in Singapore stems from the failure of the Singapore Police Corruption Section.

CPIB was founded in 1952 as an organization separate from the police, tasked with investigating all corruption cases as an independent institution. The institute consists of civil investigators and senior police personnel. CPIB moves under the Prevention of Corruption Act (PCA). This law gives the CPIB the power to investigate and arrest the
corruptors. This institution is responsible for eradicating corruption in Singapore.

CPIB’s internal organization consists of directors, deputy directors, and assistant directors, who oversee five parts, namely.

a. the operations section;

b. operational support;

c. administration (administration);

d. staff officers;

e. prevention.

Under Subsection 3 of POCA, the president appoints an official to become director of CPIB. The President may refuse on the basis of his discretion to accept or dismiss the director if it is deemed unlike the advice or recommendation of the cabinet or a minister acting as the cabinet's general powers. The President may also appoint CPIB's deputy director, and a number of assistant directors, and CPIB special investigators if deemed appropriate. Any authority of the director under the law may be exercised by the deputy director, assistant director of the CPIB with the direction of the director.

CPIB can not sanction directly to the suspect, the CPIB must submit evidence to the prosecutor who will follow up the case and will be tried or not. In the case of an investigation of high-ranking officials, such as ministers, the CPIB must obtain the approval of the prime minister or president.

The success factors of corruption eradication are due to good structural factors and are also supported by the following factors:

a. There is high political will from the Singapore government to combat corruption.

b. The strength of the law is mainly anti-corruption regulations.

c. A severe punishment for corruptors.

d. The existence of anti-corruption education.

e. An analysis of working methods.

f. The existence of asset and investment declarations

g. Prohibition of receiving gifts.

3. China (Tiongkok)

In China there are two important institutions that play a role in eradicating corruption in China, namely in the party and in government. The Central Commission for Discipline Inspection (CCDI) is the disciplinary body of the Chinese Communist Party while the government
of the PRC established the National Bureau for Corruption Prevention (NBCP) in September 2007.

CCDI is the disciplinary body of the Chinese Communist Party. CCDI is the highest institution in the internal control system in the Chinese Communist Party. The CCDI is in charge of maintaining party discipline, punishing cadres for wrongs committed and maintaining democratic centralism and the leadership of the central committee.

While NBCP is tasked to monitor the path of suspicious assets and suspected activities are the result of corruption. NBCP staff will collect and analyze information from a number of sectors including from banking, land use, medicine and telecommunications so as to monitor the financial flow in and out of officials and detect the behavior of suspected parties. NBCP is under a state council responsible for preventing corruption in the PRC. This Bureau is now under the Ministry of Supervision. In this bureau are two deputy directors, one as Vice Minister of Supervision and another Vice Minister Level Oversees who do routine work in bureaus tasked with monitoring the path of suspicious assets and suspected activities are the result of corruption.

NBCP has the following tasks:

a) Monitoring the path of suspicious assets and suspected activities is the result of corruption.

b) Provide direction for anti-corruption work for companies, non-governmental organizations, assist trade associations to create their own disciplinary systems and mechanisms, prevent commercial bribery, and expand corruption prevention for rural organizations such as urban communities.

c) Responsible for harmonization, planning, policy formulation and testing and supervision of anti-corruption in China.

d) Coordination and direction for the prevention of corruption in the private sector, the public sector, social groups, and other social organizations.

e) Responsible for international cooperation in the prevention of corruption. In order to improve NBCP’s capacity, international cooperation and international agency assistance in preventing corruption is undertaken.

f) Evaluating a number of loopholes in the new policy issued by the government that there may still be ways to corrupt.

g) Conduct checks and prevention of corruption at all levels.

h) Conduct pilot projects and prepare a standard establishment to establish whether a department or a clean official.
Hongkong Corruption Eradication Commission

The Hong Kong Corruption Eradication Commission is called ICAC (Independent Commission Against Corruption). Formed on February 15, 1974 after the law was passed on Hong Kong Independent Commission Agreement Corruption (Chapter 204)\(^\text{188}\). Hong Kong established Independent Commission Against Corruption in the circumstances that judges are still very clean from corruption, and corruption is only rampant among the police, while in other countries forms an anti-corruption commission because corruption is already widespread in the country.

There are three powers given to the ICAC: investigating the existence of suspected corruption (Investigations), preventing corruption by improving systems and procedures in the public sector (preventions), and educating the public about corruption and mobilizing public support in the effort to prevent corruption (public educations)\(^\text{189}\). In addition to the public sector, the ICAC is also authorized to investigate alleged corruption in the private sector. However, the ICAC cannot provide legal sanctions to the suspect, as this becomes the authority of the judiciary. The ICAC’s duty is to provide sufficient evidence that corruption has occurred so that the suspect can be tried.

In implementing the ICAC ordinance, the ICAC’s authority did not apply retroactively, the ICAC was unable to investigate cases that existed before 17 October 1974. However, there were exceptions, i.e. cases of corruption that occurred before 1974 could also be investigated if there was an approval from the governor or present SAR Executive.

The ICAC structure consists of the Commissioner as chairman; Operations Prevention Department is a division that has the main authority of education; The Corruption Prevention Department has the authority to examine the performance and procedures of government departments and public bodies, identify any weaknesses of the system that enable corruption and provide recommendations for improved work methods to reduce the potential for corruption; and Community Relations, this department has a responsibility to public education about the dangers of corruption.

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Combating Corruption in Indonesia

Corruption Eradication Agency in Indonesia named Corruption Eradication Commission (KPK). Formed in December 2003 based on Law No.30 of 2002 on Corruption Eradication Commission. The law stipulates that the KPK was established because the government agency handling corruption cases has not functioned effectively and efficiently in combating corruption.

The KPK’s duties are detailed in Article 6 no. 30/2002, namely:
1) Coordination with the authorities authorized to eradicate corruption.
2) Supervision of institutions authorized to eradicate corruption.
3) Investigate, investigate, and prosecute corruption.
4) Conduct actions to prevent corruption; and
5) Monitoring of state administration.

While the authority granted to KPK is:
1) Coordinate investigation, investigation, and prosecution of corruption;
2) Establish reporting system in eradication activities of corruption;
3) Request information on corruption eradication activities to the relevant agencies;
4) Conducting hearings or meetings with agencies authorized to eradicate corrupt acts; and
5) Requesting the relevant agency’s report on the prevention of criminal acts of corruption

The KPK’s organizational structure is as follows190.

a. Leaders consisting of a chairman concurrently member, and four vice-chairman concurrently members
b. Counselors consist of four people.
c. Deputy for Prevention.
d. Deputy for Action.
e. Deputy of Information and Data Division.
f. Deputy for Internal Control and Public Complaints.
g. Secretariat General.

Based on the above description, the following comparison of the Anti-Corruption Agency can be seen in the table bellower;

Table 1 : Comparison of Corruption Eradication Agencies in Five Countries

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<table>
<thead>
<tr>
<th>Country</th>
<th>State/Since</th>
<th>Institution</th>
<th>Model</th>
<th>Official Member</th>
<th>Organizational/structure</th>
<th>Prosecution</th>
<th>Responsible to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia / 1989</td>
<td></td>
<td>Independent Commission Against Corruption (ICAC) New South Wales</td>
<td>The Parliamentary Model</td>
<td>10 (2011)</td>
<td>Commissioner, Deputy Commissioner, Executive Director, Investigations, Executive Director, Corruption Prevention, Education and Research, Executive Director, Corporate Services</td>
<td></td>
<td>Parliament New South Wales to ICAC New South Wales Parliamentary Joint Committee or PJC.</td>
</tr>
<tr>
<td>Singapore / 1952</td>
<td></td>
<td>Corruption Practices Investigation Bureau (CPIB)</td>
<td>Universal Model</td>
<td>38 (2011)</td>
<td>Director, deputy director, and assistant director operations; operation support; administration; staff officers; Prevention.</td>
<td></td>
<td>Prime Minister</td>
</tr>
<tr>
<td>China / 2007</td>
<td></td>
<td>National Bureau for</td>
<td>Multi-</td>
<td>Not</td>
<td>NBC is housed in the</td>
<td></td>
<td>State council</td>
</tr>
<tr>
<td>Country</td>
<td>Agency Model</td>
<td>Ministry of Supervision</td>
<td>Number of Deputies</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>-----------</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hongkong / 1974</td>
<td>Independent Commissions Against Corruption (ICAC) Hongkong</td>
<td>$\text{Universal Model}$</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indonesia /2002</td>
<td>Komisi Pemberantasan Korupsi (KPK)</td>
<td>$\text{Universal Model}$</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Corruption Prevention (NBCP), dan Central Commission for Disciplines Inspection (CCDI)*

<table>
<thead>
<tr>
<th>Ministry of Supervision</th>
<th>Number of Deputies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vice Minister Supervision</td>
<td>Vice Minister level oversees</td>
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<td></td>
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</table>

**Notes:**

Chairmen Executives Hong Kong (SAR)

Chair of the President

Chairman concurrently member, and four vice-chairman concurrently members.

The advisory consists of four people.

Deputy for Prevention

Deputy for Operations
From the above comparison it (table 1) can be concluded that for countries with a good corruption index such as Hong Kong and Singapore, it has a Corruption Eradication Agency with special characteristics, including; (i) It has long been established; (ii) Proportion of employees for the largest investigative department compared to other departments (iii) Have sufficient funding sources (iv) Average number of incoming reports relatively more (v) Have greater authority (Can do own prosecution). So some things that must be considered in the Corruption Eradication Agency as follows:

**Human Resources**

To create an ideal anti-corruption agency, an ideal and qualified resource is needed in every field. From table comparisons of countries with good corruption indexes such as Hong Kong and Singapore, the number of employees for the largest investigative department compared to other departments.

In addition, the figure of commission leader or institute commissioner must have credibility and integrity, as well as professional, so that it can carry out a great task and can meet the expectations of all Indonesian people in eradicating corruption. To produce such a leader, the most important factor is the selection process and its blessing.

In some other countries, the election of the leadership of corruption eradication agencies is done very selectively, in order to create credible, integrity and professional leaders. The election is almost the same, depending on country conditions.

**Independence**

The essence of independence for the Corruption Eradication Agency is the ability of the Corruption Eradication Agency to behave objectively in formulating its own policy without being influenced by "outside" interests. Independence is needed so that the anti-corruption body can run effectively.
Independence can not always be achieved by relying only on the legal framework establishing that the Corruption Eradication Institute is established by a special law that provides "facilities" of independence well. There are many cases in some countries where corruption eradication agencies remain successful and independent despite being held accountable to the president or head of government. For example, Singapore, CPIB is under the control of the prime minister and his leadership is accountable to the prime minister. Hongkong, ICAC is responsible to the chief executive.

Based on the UNDP study, the independence of the Corruption Eradication Agency is mostly assessed by (i) The availability of a transparent mechanism to assess the performance of the Corruption Eradication Agency concerned, so as to maintain its functioning unbiased. (ii) The election of the Corruption Eradication Commission heads using democratic, transparent and objective (iii) The elected head of the Corruption Eradication Institute is known as a person of good integrity and has been tested.

c. Authority

Basically the authority of the Corruption Eradication Agency includes a combination of the functions of Investigation, Prosecution, Public Education, Prevention and Coordination. But through Prevention, Investigation and Community Education (Hong Kong, New most Corruption Eradication Agencies do a strategy of combating corruption of South Wales, Thailand and Indonesia).

The function of investigation is the main function of the anticorruption institution, this function is always used as a benchmark for the success of anti-corruption institutions. Community education function is a better long-term function. While the prevention function commonly performed by the Corruption Eradication Agency is to examine the systems and procedures of government and public institutions so as to detect loopholes that lead to the possibility of corruption. The results of the study can be used as a tool to urge the leaders of relevant institutions to immediately fix the system, as well as facilitate the investigation function of the Corruption Eradication Agency itself. The solid coordination between prevention and operation function in ICAC Hongkong is one of the key points of success of the Corruption Eradication Agency.

As for the prosecution function, not all anticorruption agencies have such a function, only Thailand, Ecuador, and Botswana. Prosecution in some countries is more the authority of the prosecutor than the anticorruption body. As for the reason of giving the prosecution authority
to the anti-corruption body, because within the prosecutor's own body as a prosecution institution there is corruption, so, the choice of granting prosecution authority to the anti-corruption body becomes an important thing.

Accountability

The Corruption Eradication Commission as a state institution conducting corruption eradication means that the commission should give account for what has been done.

In addition (Tabel 3, here are some advantages and weaknesses of the Anti-Corruption Institution in a country:

<table>
<thead>
<tr>
<th>No.</th>
<th>superiority</th>
<th>weakness</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Can continue to increase / pressure government to seriously, conduct efforts to eradicate of corruption</td>
<td>Additional cost for the country</td>
</tr>
<tr>
<td>2</td>
<td>Produce institutions with a special level of expertise</td>
<td>There will be competition between law enforcement agencies that already exist, so it will complicate the inside to coordinate</td>
</tr>
<tr>
<td>3</td>
<td>As a new institution can build a new system that is free from the influence of corruption</td>
<td>May result in restructuring of other existing embarks</td>
</tr>
<tr>
<td>4</td>
<td>Can be an example for other institutions, especially law enforcement agencies, so that it becomes a &quot;trigger mechanism&quot; for existing law enforcement</td>
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</tr>
<tr>
<td>5</td>
<td>Has greater credibility</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Can be equipped with a better security protection system in carrying out its function</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>CAC can recruitment objectively to obtain human resources with better quality and integrity</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Can design your own educational and training content that matches the dynamic environment</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>More clearly in assessing its development, its failure rate and its success</td>
<td></td>
</tr>
</tbody>
</table>

The factors supporting the success and failure of anti-corruption agencies can be seen in the following table 4:
<table>
<thead>
<tr>
<th>Factors that drive success</th>
<th>Factors that drive failure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political support</td>
<td>Absence of political commitment</td>
</tr>
<tr>
<td>The anti-corruption agencies are in a comprehensive anti-corruption strategy and have effective and complementary support</td>
<td>Contra productive to economic growth</td>
</tr>
<tr>
<td>A stable economy and development programs always focus on reducing opportunities for corruption. For example: Manage</td>
<td>In general, the government failed to build institutions in the country</td>
</tr>
<tr>
<td>Supported by good financial resources and trained staff</td>
<td>Law enforcement against corrupt actors is less encouraging, ineffective and ambiguous</td>
</tr>
<tr>
<td>Vision and mission is also supported by business planning, priority and no adequate budget management and organizational structure</td>
<td>No focus, lots of pressure, no priority and no adequate budget management and organizational structure</td>
</tr>
<tr>
<td>Have a strong legal framework including the &quot;rule of law&quot; and are equipped with a strong legal forces that can support the activities of the agencies</td>
<td>Corruption eradication is seen as inefficient and expensive</td>
</tr>
<tr>
<td>Work independently and freely from any influence interests</td>
<td>Low public trust</td>
</tr>
<tr>
<td>All staff and leaders have high integrity standards</td>
<td></td>
</tr>
</tbody>
</table>
D. Reconstructions Legal Polices and Conclusion

1. Based on preliminary findings indicating that each selected country has the same will to make corruption a crime or a punishable offense;

2. From comparison to the experience of some countries, it can be argued that the need menadasar of institutional strengthening of corruption eradication in Indonesia needs to be done, by changing the law to provide opportunities to the KPK to be stronger, namely: (a) granting full authority to the KPK to specifically deal with cases of corruption. (b) establishing KPK representatives or branches in all provinces, even where necessary at the district or city level; (c) removing or removing the investigation authority of corruption cases owned by the police and the prosecutor’s office only becomes the authority of the KPK and (d) makes corruption an extraordinary crime.

3. Whereas the existence of corruption eradication institutions gives a picture that corruption is a serious concern that needs to be taken seriously. Nevertheless each institution has different positions and authorities. Thus it can be argued that there is a political equality of law in common that corruption is seen as a serious crime, and needs a serious legal basis as well.

4. When viewed from the position and authority of mass anti-corruption institutions in the selected country, each of them has authority in the field of investigation, investigation and prosecution, but there is a direct nature provided by law or custom.

5. Whereas for the effectiveness of the work of corruption eradication agencies, it is necessary to adjust to the capability, capability of resources owned by the relevant state. That corruption eradication policy will succeed if it is supported by political will and political will seriously establishes corruption as a false crime.

6. There are three patterns of relationship between corruption eradication agency and government (1) Universal Model, (2) Parenting model, and (3) Investigative model.
BIBLIOGRAPHY


Amrullah, M. Arif. 2007. Politik Hukum Pidana ; kajian perlindungan korban kejahatan ekonomi di bidang perbankan. Malang : Bayu Media


--------, 2006, Bunga Rampai Kebijakan Hukum Pidana, Bandung : Citra Aditya Bakti


--------, 2000. Perbandingan Hukum Pidana, Cetakan ke-2, Mandar Maju : Bandung


Bintan R. Saragih, 2006, Politik Hukum, Bandung : Utomo


Daniel S. Lev. 1990. Hukum dan Politik di Indonesia, Jakarta : LP3ES


Hendra Nurtjahyo, 2004. Politik Hukum Tata Negara Indonesia, Jakarta : Pusat Studi HTN FHUI


Jan Remmelink, 2003. Hukum Pidana, Jakarta : Gramedia


Satjipto Rahardjo, 2005. Ilmu Hukum, Bandung : Citra Aditya Bakti
----------, 2006. Membalas Hukum Progresif, Jakarta : Kompas Sarasih, Bintan R.

Foundation dan PSHK (Pusat Studi Hukum dan Kebijakan Indonesia).

Implikasinya dalam Perspektif Hukum dan Masyarakat*. Bandung:PT. Refika
Aditama.

System dan Implementasinya. PT.Raja Grafindo Persada : Jakarta

: Gaitbersburg-New York

Smith & Hogan (Penerjemah: Jamilah A Rauf dan raja Honana Raja Mamat). 1996 :
Undang-Undang Jenayah : Prinsip Umum (bahagian I). Dewan Bahasa dan Pustaka
: Kuala Lumpur.


Sudigno Mertokusumo, 2005. Menegnal Hukum, Yogjakarta: Liberty

Masalahnya.
Elsam dan Huma : Jakarta.

Wisnubroto, Al. 1999. Kebijakan Hukum Pidana dalam Penanggulangan