Ideal Setting of Investigation Authority in the Context of Eradicating Indonesian Corruption in the Perspective of Ius Constituendum

by Sukmareni Sukmareni

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SUKMARENI
Associate Professor in Law, Faculty of Law, Universitas Muhammadiyah Sumatera Barat, Padang, Indonesia
sukmarenirajab@yahoo.com

Ujuh JUHANA
Associate Professor in Law, Universitas Muhammadiyah Sukabumi, Jawa Barat, Indonesia
ujuhjuhana@gmail.com

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Abstract:

This study aims to analyze about (1) the regulation of the authority to investigation corruption in Indonesia (2) the ideal arrangement of investigative authority in the context of efforts to accelerate the eradication of criminal acts of corruption in the IUS constituendum perspective in Indonesia. This legal research is descriptive, uses a normative juridical approach, uses legal material relating to research problems as the main material, supported by interviews and data on the conduct of investigations by the three authorized institutions to help sharpen qualitative analysis of the implications of ideal arrangements regarding the authority of investigations against eradicating existing corruption. Based on the research it was found that (1) the investigation of corruption in Indonesia, gave authority to three institutions to carry out investigations, namely the Police, the Prosecutor's Office and the Corruption Eradication Commission (KPK), with unequal authority where the KPK's authority was wider than the authority The Police and the Attorney General's Office are seen in the authority of supervision, coordination, wiretapping, confiscation and others, and are administratively still individual. (2) The ideal setting of the authority of investigation in the context of efforts to accelerate the eradication of criminal acts of corruption in the perspective of IUS constituendum is still given to three institutions, namely the Police, Prosecutor's Office and the Corruption Eradication Commission, with strict regulations on authority and giving the same authority to all three institutions setting up coordination mechanisms in a better direction and integrated monitoring systems are not as fragmented as they are now.

Keywords: Investigation Authority; Ideal Setting; Eradication of Corruption.

JEL Classification: K3; K29; K40.

Introduction

Investigation of criminal acts of corruption, requires special provisions outside those that have been regulated in the general criminal procedure in force (Sidorenko et al, 2020). Due to the investigation of corruption that was previously carried out by the Police and the Attorney General's Office, it turned out that in its implementation it caused legal problems at the level of its implementation (Priyatno, 2018). The position of the Corruption Eradication Commission (KPK) as an alternative institution authorized to carry out investigations other than the Police and Prosecutors in eradicating corruption is expected to have high moral integrity capabilities; because the facts so far have indeed illustrated that the eradication of criminal acts of corruption committed by institutions that were previously felt by the wider community tended to be not maximum and seemed to be unable to optimize corruption. The existence of the Corruption Eradication Commission (KPK) is a manifestation of the legal response of the community that was legitimized by the State so that the KPK is able to portray it more representative in combating increasingly complex corruption, as an independent institution is expected to help accelerate eradication of corruption in Indonesia (Hatta, 2015).

Although both have the authority to conduct investigations into criminal acts of corruption, in reality the performance of the KPK appears to be more aggressive and promising in eradicating criminal acts of corruption compared to other investigators. This is because the KPK has the additional authority of being able to take over

corruption cases even though it is being handled by the Police or Prosecutor's Office (Article 8 paragraph (2) Law No. 30 of 2002), however, the takeover of corruption cases must be for the reasons stipulated in Article 9 Law Number 30 of 2002. The authority of such a large KPK (Article 6, Article 9 and Article 11 of the Corruption Eradication Commission Law, poses a risk to the existence of the KPK itself, this can be seen with the emergence of several parties in the Republic of Indonesia Parliament to weaken KPK duties and authorities by those who feel threatened by the KPK current performance.

The facts on the ground lately show the juridical implications that occur, namely the seizure of authority between the three institutions and institutions that are authorized to investigate corruption in some cases. As an example of a case of seizure of the authority to investigate suspects of criminal acts of corruption, the procurement of Driver's license simulators in the Police. The suspect of the case has been determined, although different versions, both by the National Police and the KPK. KPK Chairman Abraham Samad stated that the KPK had issued an Investigation Order including assigning suspects on July 27, 2012, while the National Police had just named the suspect on August 1, 2012. The Police through Sutarman said the new police would submit the case to the KPK if there was a court order.

Regulations take turns, always the latter fixes the first, but corruption in all its forms is felt to be still raging and still rampant. The instruments of legal substance played by the criminal justice system cannot touch all perpetrators of corruption in Indonesia. If after all there are or many perpetrators who have been sentenced to criminality, it is a small portrait of the real phenomenon (Hamzah, 1991). Various efforts to renew legal products in the context of overcoming or eradicating corruption have not yet shown maximum results. As far as can be observed, the practice of corruption has been so destructive in Indonesia. So severe is the form of abuse of authority that it is even considered a common practice. Seeing this condition, it is not surprising that in the last three years the research of the Political Economic Risk Consultant (PERC) has always put Indonesia as the champion of corruption in Asia. Similar predictions also come from Transparency International, which always puts Indonesia as one of the most corrupt countries in the world (Suprayitno and Pradiptyo, 2018). The things above cause the writer wants to do research on the ideal arrangement for investigating corruption in the future.

1. Method

This research is legal research as a process to find legal rules, legal principles and legal doctrine in order to answer the legal issues at hand (Marzuki, 2005). This research is descriptive, using a normative legal research approach (normative juridical). It is a legal research library that focuses on secondary data. Especially intended to do (a) Inventory of regulations related to the investigation of corruption as formal criminal law provisions and law enforcement (Approach to the Act), (b) Synchronization of various regulations related both vertically and horizontally regarding the investigation of corruption. Using legal material as the main study material, which here consists of: (a) Primary legal material, (b) Secondary legal material, and (c) Tertiary legal material Collection of legal materials, carried out by library research in the form of document studies. taken from documents or library materials or literature. The required data is written and obtained by another person or an institution (Adi, 2004). Legal material obtained is processed by reducing the data, identifying the legal material units obtained, then coding by giving certain code by making the data source easy to find when needed. Processing of legal materials is done deductively, which is to draw conclusions from problems that are abstract (general) to concrete problems (specifically) (Soemitro, 1988). Teleological interpretation is carried out on legal material, namely to seek the purpose or intent of a statutory regulation giving the authority to investigate each institution, namely the Police Investigator, Prosecutor's Investigator and KPK Investigator, in an effort to accelerate the eradication of corruption in Indonesia. Whereas to analyze the relationship between the results of the interpretation of legal materials, the authors obtained a qualitative analysis.

2. Results and Discussions

2.1 Regulation of The Authority To Investigate Corruption Crimes In Indonesia

The legal substance of investigating corruption is found in the provisions of Article 26 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, stating that “Investigations, prosecutions, and hearings in court cases involving corruption applicable criminal procedure, unless otherwise stipulated in this law”. If grammatical interpretation is made of the sound of Article 26 above, then the word “based on the applicable criminal procedure” means referring to Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), as the only legal provision event that applies in Indonesia. Thus, the investigation into corruption is carried out by

investigators Article 106 to 136 of the Criminal Procedure Code, which according to Articles 1 to 5 of the Criminal Procedure Code investigations are the authority of the police.

The follow-up of the investigation arrangements that have been regulated in the Criminal Procedure Code and the Police Law, as described in Chapter II, are further regulated in Presidential Regulation No. 52 of 2010. Whereas the legal substance in the field of technical and management investigations is currently regulated in the Chief of Police Regulation Number 14 of 2012 concerning Management of Criminal Investigation, which replaced the Chief of Police Regulation Number 12 of 2009 concerning Supervision and Control of Criminal Handling in the Police. In this regulation, it is regulated in addition to an explanation of the meaning of the investigation, also regulates the definition of investigation, regulation, then technical investigation, management of investigations, case files and supervision of investigations. It is thus clear that, at the time of the entry into force of the Criminal Procedure Code, the task of investigation is fully handed over to investigators as stipulated in Article 6 of the Criminal Procedure Code, the prosecutor's office is no longer authorized to investigate general criminal cases. However, there are provisions in Article 284 paragraph (2) of the Criminal Procedure Code Jo Article 17 of Government Regulation number 27 of 1983, which gives an opportunity to the Prosecutor to still have the authority to investigate certain criminal acts (special criminal acts).

The above is reinforced by the enactment of Law Number 16 of 2004 concerning the Prosecutor's Office as stipulated in Article 30 paragraph (1) letter d which states: the duty and authority of the Prosecutor are: "Investigating certain crimes based on the Law". In its explanation it is stated that what is meant by certain criminal acts based on the Law is as stipulated in Law Number 26 of 2000 concerning the court of Human Rights and Law Number 31 of 1999 concerning the Corruption of Law No. 20 of 2001. With the above provisions, giving the task and authority to the Prosecutor in addition to prosecuting it as the main task, also having the authority to carry out investigations into certain crimes based on the Law. Certain crimes according to the article explanation are those stipulated in Law Number 26 of 2000 concerning Human Rights courts and Law Number 31 of 1999 concerning Jo Corruption of Law Number 20 of 2001. Thus the Prosecutor's Office is an institution authorized to handle criminal acts corruption can act as a public prosecutor who gets the results of an investigation from the Police regarding corruption and can also act as a direct investigator.

The authority of the Prosecutor in conducting this investigation also shows the affirmation in Article 17 of Government Regulation Number 27 of 1983 concerning KUHAP Implementing Regulations, stating that: "Investigations according to special provisions of criminal proceedings as referred to in certain Laws as referred to in Article 284 paragraph (2) the Criminal Procedure Code carried out by investigators, prosecutors, and other authorized investigating officials based on legislation".

However, the authority of the prosecutor in investigating corruption is still questioned, this can be seen from the existence of the Prosecutor's Office as an investigator in cases of corruption that cannot be fully understood in one opinion. There are still differences in interpretations among law enforcement officials, in the implementation there are still judges who in their decisions have not recognized prosecutors as investigators of corruption. The Supreme Court has given an answer to this issue by issuing an opinion/fatwa Number KMA/102/III/2005 dated March 9, 2005, essentially explaining that the Prosecutor has the authority to investigate cases of corruption after the enactment of Law Number 31 of 1999 Jo. Law Number 20 of 2001 on the basis of Article 26 and Article 27, Article 284 paragraph (2) of the Criminal Procedure Code and its explanation. Article 17 Government Regulation No. 27 of 1983 Article 30 paragraph (1) letter d of Law Number 16 of 2004 violates the 1945 Constitution. The reason is that the constitution does not prohibit the dual function carried out by the Prosecutor, as the president has the function as the government authority and legislator (Lasmadi, 2017).

Then regarding the authority of the Corruption Eradication Commission to conduct investigations can be seen in Article 6 of the KPK Law itself, which states that: The Corruption Eradication Commission has the task: (1) coordination with agencies that have the authority to eradicate corruption, (2) supervision of enang eradicates corruption, (3) conducts investigations and prosecutions of criminal acts of corruption, (4) conducts acts of prevention of criminal acts of corruption; and (5) monitor the implementation of state governance.

To carry out the coordination task as referred to in article 6 letter a above according to Article 10 of the KPK Law, the KPK is authorized: a) Coordinate investigations and prosecutions of Corruption Crimes; b) Stablish a reporting system in the activities to eradicate Corruption Crime; c) Requesting information about the eradication of Corruption Crime activities with the relevant agencies; d) Holding hearings or meetings with agencies authorized to eradicate Corruption Crime; e) Request reports from relevant agencies regarding the prevention of Corruption Crime

Whereas to carry out the supervision task as referred to in article 6 letter, in Article 8 of the KPK Law, the KPK is authorized: a) Conduct supervision, research or review of agencies that carry out their duties and authorities

relating to the eradication of Corruption Crimes and agencies that carry out public services; b) In connection with the authority in paragraph (1), the KPK has the authority to take over the investigation and prosecution of the perpetrators of Corruption Crimes being carried out by the Police and the Prosecutor's Office; c) In the event that the Corruption Eradication Commission takes over the investigation or prosecution, the Police and the Prosecutor's Office must submit the suspect and all case files along with the evidence and other documents required within a maximum period of 14 (fourteen days), from the date the KPK requests are received; d) Submission as referred to is carried out by signing the minutes of submission, so that all the duties and authorities of the Police and the Attorney General at the time of the handover are transferred to the KPK.

Then in the takeover of investigations and prosecutions that have been carried out by police investigators and prosecutors investigators as referred to above, menurt Article 9 of the Corruption Eradication Commission Law is carried out by the Corruption Eradication Commission on the following grounds: (2) prolonged or delayed process of handling Corruption Crimes without justifiable reasons; (3) the handling of Corruption Crime is intended to protect the actual Corruption Crime Actor; (4) the handling of Corruption Crimes contains elements of corruption; (5) barriers to handling Corruption Crime due to interference from the executive, judiciary, or legislature; or (6) other conditions which, according to the Police or Attorney's office, are difficult to handle Corruption Crime in a good and accountable manner. If there is one of the 6 reasons set out in Article 9 above, the KPK informs the investigator or public prosecutor to take over the Corruption Crime that is being handled (Article 10 of the KPK Law).

Then in carrying out the task of investigation, investigation and prosecution as referred to in Article 6 letter c, the KPK is limited by Article 11 only to Corruption Crimes which: 1) Involving law enforcement officials, state administrators, and other people related to Corruption Crimes committed by law enforcement officials or state administrators; 2) Get attention that is troubling the community; and or; 3) Involving state losses of at least Rp. 1,000,000,000.00 (one billion rupiah).

All authorities relating to the investigation, investigation and prosecution stipulated in Law Number 8 of 1981 concerning Criminal Procedure Law also apply to investigators, investigators, and public prosecutors in the KPK, except the provisions of Article 7 paragraph (2) of the Criminal Procedure Code that do not apply to KPK investigators (Article 38 of the KPK Law). Furthermore, in Article 39 of the Corruption Eradication Commission Law it is emphasized that: 1) Investigation, investigation and prosecution of Corruption Crimes shall be carried out based on the Criminal Procedure Code and based on the Corruption Crime Act itself; 2) Investigation, investigation and prosecution as referred to in paragraph (1) shall be carried out based on orders and acting for and on behalf of the KPK; 3) Investigators, investigators, and public prosecutors who are employees of the KPK, are temporarily dismissed from the Police and Prosecutor's Office while serving as employees of the KPK.

In the above provisions it is clearly stated that the implementation of the investigation by the KPK still refers to the Criminal Procedure Code unless otherwise stipulated in the Corruption Crime Act itself. but it has acted for and on behalf of the KPK, as well as investigators, and its investigators from the Police must be temporarily dismissed from their original institutions and become KPK employees. Furthermore, in carrying out the tasks of investigation, investigation and prosecution as referred to in Article 6 letter c above, the KPK is authorized by article 12 of the KPK Law, namely (1) conducting tapping and recording conversations; (2) ordering the relevant agencies to prohibit someone from traveling abroad; (3) requesting information from banks or other financial institutions about the financial condition of the suspects or defendants being examined; (4) ordering banks or other financial institutions to block accounts suspected of being the result of corruption belonging to a suspect, defendant or other related party; (5) instructing the leadership or superiors to suspend the suspect from his position; (6) request data on the wealth and tax data of the suspect or defendant to the relevant agencies; (7) temporarily stopping a financial transaction, trade transaction, and other agreement or revocation of licenses, licenses and licenses carried out or owned by a suspect or defendant allegedly based on preliminary evidence that is sufficiently related to the Corruption Crime being examined; (8) request assistance from Interpol Indonesia or other State law enforcement agencies to carry out searches, arrests, and confiscation of evidence from abroad; (9) request assistance from the Police or other relevant agencies to carry out arrests, detention, searches and seizures in the Corruption Case being handled.

Renewal of criminal law in overcoming corruption must be carried out comprehensively, which includes legal substance, legal structure and legal culture as the main elements of the legal system (Kumarbekkyzy, Alibekova and Filipets, 2017). Although the law is an important aspect that will determine the operation of the criminal justice system, the existence of the law alone will not be “sufficient condition” even if it is a necessary condition. The consistency of the application of law, and legal culture are determining factors (Akhmetov, Zhamuldinov and Komarov, 2018).

Reconstruction of the bureaucracy of the prosecutor's office in investigations, prosecution of criminal acts of corruption with a progressive legal approach, must be carried out in three components at once namely institutional, cultural and legal substance. Institutional reconstruction is carried out by freeing the prosecutor's bureaucracy from its bureaucratic, centralized character, hierarchical accountability and command system (Reznik et al, 2017). Cultural reconstruction is carried out by delegating the authority of policy making in all stages of case handling, namely with independence (Kassenova, 2020). Reconstruction of legal substance by perfecting Law No. 16 of the Attorney General's Office and other internal regulations.

The weaknesses of normative provisions in the reasoning effort of the prosecutor's role are the problem of investigation, control mechanisms, special provisions of the Corruption Crime Act and criminal law related to corruption and the Prosecutor's Law (Mussayeva and Bozhkarauly, 2019). Whereas the weaknesses in the non-reasoning business are the duties and functions of the Prosecutor's Office as state attorneys (JPN) which are facultative (Burmistrov et al, 2019). Investigation is not yet integral wherein (a) In the corruption investigation system in Indonesia, the existing corruption investigating institutions, namely police investigators, Prosecutors' investigators and KPK investigators have their own systems which are regulated in separate laws, (b) Boxed corruption investigation agencies creating agency centric or fragmentation tendencies. So as to influence the course of the case handling process from the results of investigations conducted by police investigators to the Public Prosecutor, juridical constraints that cause the integration of corruption investigations are (a) the multiplication of Corruption Crime investigation institutions which causes the emergence of sectoral egoism tendencies in the process submission of cases from investigators to the Public Prosecutor, (b) the absence of formulation of integral legislation in corruption investigations that could eliminate the emergence of sectoral egoism.

Based on the description, it can be seen clearly that the authority of the Corruption Crime investigation since the enactment of the 1999 KPK Law was in three institutions, namely the Police investigator, KPK investigator and KPK investigator himself. that among the three institutions that carry out investigations into criminal acts of corruption, KPK has wider authority, which authority is not owned by other investigating agencies, such as wiretapping, confiscation, coordination, supervision and others.

2.2 Ideal Arrangements For The Authority To Investigate Corruption In Indonesia

According to Januarsyah et al (2020), criminal law is viewed from the aspect of criminal law policy, the aim of criminal law is not only to regulate the actions of citizens in general, but also to regulate acts of law (in the sense of authority or law enforcement). The task of criminal law is not just to regulate society but to govern the rulers. To avoid problems in the application of investigations carried out by three investigating institutions, due to the lack of clarity in the regulation of authority given by the law, reformation of criminal law policy formulation is needed (Kravtsova, Sinkevych and Kudriavtseva, 2020), by revising the provisions governing the granting of the authority of the investigation itself, among others by set about:

1) Giving the same authority to the three institutions in carrying out investigative duties, must be followed by the desire to make improvements in the affirmation of the authority of each institution without distinguishing authority in the field of eavesdropping, cessation of investigations as currently only given to KPK, while investigators the police and prosecutors do not have that authority. Where coordination authority remains with the KPK. This assertion is needed to eliminate the institution's egocentricism, there is no reason for the different interpretations among the three institutions, so that the implementation of the investigation as a system unity is achieved, and raises hopes for the community to feel that law enforcement is running well, as a formulation of criminal law must be done in the future, a policy of legal formulation is needed, which is able to position the granting of investigative authority to the three institutions as part of the investigation system. It is expected that the legislature will involve the existing legal experts, in a neutral and objective manner, by excluding all party and other interests in producing legal products in the form of synchronous and harmonious legislation as expected, in the form of legislation that no longer regulates the authority of the investigation overlapping and unclear as now, about the process of investigating the Corruption Crime among these three institutions. Which is the authority of the Police investigator, Prosecutor's investigator and KPK investigator. This is if it is associated with a component of an authority, then there is a component of the Law configuration, which includes the standard of authority itself, must be clearly and clearly regulated in order to provide legal certainty for those who have the authority themselves in the implementation;
2) The system and coordination mechanism among the three investigators must be clarified by creating a data collection system for the implementation of integrated Corruption Criminal Investigation based on information technology as a database for Corruption Crime investigation in SPPI. In the future, it is

necessary to formulate a regulation on how the form of coordination among the three institutions is carried out in carrying out investigations on corruption, by referring to the requirements and existing legal principles. We hope that in the future there will be no more mistakes and weaknesses in legislative policy making. If this coordination arrangement is given explicitly and in detail in the Law as its legal basis, of course the binding power will be more compared in the form of the Collective Agreement of the Three Institutions that exist today. To fulfill the demands of the law they carry out a collective agreement or agreement, but whether it is implemented or not is not a major concern, because the binding power is not as strong as the Law. The KPK has difficulties if it wants to carry out an investigation conducted by the Police. Based on data on the KPK performance report, until 2017, the KPK has conducted an examination of 7 prosecutors and 2 police officers, which of all cases is not an easy task to be carried out by the KPK;

3) Establish an independent institution to supervise the performance of investigations into corruption. Supervision of the implementation of the duties and authorities of each Corruption Criminal Investigator, both supervision of the duties of police investigators, Prosecutors' Investigators and KPK Investigators. At present the supervisory arrangements for the performance of investigations conducted by the Police, Attorney and KPK are different. The police are currently carrying out their duties monitored by the Police Commission, while the Attorney General's Office by the Prosecutor's Commission, while the KPK, currently the KPK Investigators' mechanism for conducting investigations is very abstract, because they are directly responsible to the community. The KPK can appoint Advisory Teams from various fields of expertise whose duty is to provide advice or consideration to the Corruption Eradication Commission. According to the author, it is necessary to establish a kind of external supervisory body on the implementation of the investigative duties carried out by the KPK. because KPK's vast authority compared to other law enforcers in investigating and prosecuting also needs to be monitored, without undermining the meaning and intending to weaken the KPK as an independent institution in accelerating the eradication of Corruption Crime (Sukmareni, 2018). In connection with this oversight it is necessary to think together about the supervision of the implementation of KPK duties and authorities, because as an independent institution it must be clarified and confirmed the mechanism and system of monitoring the KPK performance as it is, because in the KPK Law itself there is no further explanation;

4) The position of the KPK is lower than other institutions mandated by the constitution. The KPK has a temporary task, that is, until the state of extraordinary corruption does not exist anymore, or before the police and the prosecutor's office can carry out their duties and authority in eradicating TPK properly. So if problems arise with certain parties, it could be weakened by the revision of the law and other ways, such as those carried out by the House of Representatives some time later who want to revise the KPK Law, which was reported by some people to do weakening against the KPK. It is different from the Police and the Attorney General's Office which has a clear position in the constitution, so that it has a permanent and strong existence and is not easy to be weakened by certain parties;

The independence of KPK investigators also needs to be considered, so far the KPK investigators still depend on their original institutions, so the confirmation of the independence of the KPK requires the need for the KPK to have its own investigators, no longer borrowing from other institutions. This is very important to avoid the possibility of withdrawal by the institution of origin of the investigator, which has great potential to disrupt institutional independence and independence of the functions of the KPK, which can guarantee institutional work to achieve the ideal goals expected from its formation (Asshidiqie, 2008). Unlike the Police and Attorney General's Office, which in their duties besides as law enforcers, they have links with existing government and state administrators, making it difficult for them to be able to be independent in carrying out their duties and authorities without intervention from various parties (Klyukovskaya, 2017).

Conclusions

The current regulation of the authority of the Corruption Criminal Investigation gives investigative authority to three institutions, namely the Police, Attorney General's Office and the Corruption Eradication Commission, in attribution by existing legislation, namely the Criminal Procedure Code, Police Law, Prosecutorial Law, Corruption Law and KPK Law. However, the KPK is given more authority than police investigators and prosecutor investigators, namely the authority to conduct wiretapping, confiscation and supervision that gives the KPK the authority to take over investigations of Corruption Crimes being carried out by Police investigators and Prosecutors investigators for certain reasons (Article 9 of the KPK Law), and coordination authority (Article 50 of the KPK Law). This situation has caused the KPK to be referred to as a super body institution and has various implications in the implementation

of Corruption Crime Investigations, thus preventing the acceleration of the eradication of Corruption Crimes. Administratively it is still separately separated, but functionally these three institutions are expected to work together to accelerate the eradication of criminal acts of corruption on Indonesian soil.

The ideal arrangement of the authority of the Corruption Crime investigation in the IUS constituendum perspective, it is better that the authority of the Corruption Crime investigation be carried out on three institutions, namely the Police, Prosecutors and Corruption Eradication Commission, with a number of future changes, especially in (1) giving the same authority to the three , because the criminal act that was examined by Corruption Crime requires information, data and analysis that is difficult in its verification, (2) it is necessary to increase the integrated coordination mechanism among the three investigators by setting standards of authority explicitly and in the form of coordination by utilizing information technology, (3) it is necessary to affirm the integrated supervision system to the performance of investigators, especially KPK investigators who do not yet have an independent supervisory body, such as the KPK..

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