LEGIS INDEPENDENCE RATIO OF JUDICIAL POWER IN THE CRIME OF CORRUPTION IN COMPARATIVE INDONESIA WITH HONG KONG

Ahmad Fauzi[1], M. Noor Fajar[2], Deni Achmad[3]

Abstract

In a country the distribution of power based on trias politica will place state power in the executive, legislative and judicial branches. With regard to judicial power, the court institution in carrying out its functions is provided by the principle of independence of judicial power, this principle is the main principle for the court in protecting human rights, the rule of law and also justice. The principle of the independence of judicial power in its application, the judge in carrying out his duties must carry out the judicial function in accordance with the oath and the law without any interference from any party (directive). In the Indonesian legal system, judicial power is regulated in the provisions of Article 24 paragraph (2) of the 1945 Constitution which states that judicial power is exercised by a Supreme Court and judicial bodies under it within the general court environment, religious court environment, military court environment, administrative court environment. state and by a Constitutional Court. This research is a legal research with a legal comparison method between the Indonesian legal system and the Hong Kong legal system, where the analysis makes a country's national law more coherent when compared to other countries. The first result: the establishment of a corruption court in Indonesia is in line with the UNCAC convention and also the Declaration of Human Rights, in which the formation of a corruption court in Indonesia uses a court structure and ad hoc judges which have many weaknesses in the aspect of guaranteeing the independence of judicial power for ad hoc judges . Second: the formation of a corruption court in Hong Kong is guaranteed in the constitution with regard to institutions and institutions, the Hong Kong constitution stipulates a prohibition on the establishment of an ad hoc court, therefore the corruption court in Hong Kong is a permanent court structure and not ad hoc in nature. So that the guarantee of the independence of the judiciary against judges is more guaranteed.

Keywords*: Corruption, Courts, independence, Indonesia, Hong Kong.*

I. INTRODUCTION

Whereas tackling corruption crimes through a settlement mechanism with court institutions is a policy designed to tackle corruption crimes using court

[1], Lecturer of Faculty of Law, Universitas Sultan Ageng Tirtayasa, papawzi.abi@gmail.com
[2], Lecturer of Faculty of Law, Universitas Sultan Ageng Tirtayasa, fajar@unitirta.ac.id
[3] Lecturer of Faculty of Law, Universitas Lampung, deni.achmad.da@gmail.com

decisions. According to the World Bank, tackling corruption by establishing a corruption court is an effective and efficient means of tackling corruption crimes. Therefore the World Bank (World Bank) has recommended the establishment of corruption courts throughout the world, the establishment of corruption courts is intended to increase the success of a country in tackling corruption crimes in an efficient manner.[4]

In countries that have established corruption courts, it shows that there are effective policies in reducing corruption rates, such as in Uganda, Singapore, Hong Kong, and Chile, which have been able to reduce corruption rates.[5] The establishment of a corruption court as a body tasked with tackling corruption crimes in each country has a philosophy that its formation depends on the policies of each country, these policies can depend on a country's economic, social and political analysis. In terms of establishing a corruption court, there are several guidelines for corruption courts in each country, while these guidelines include:[6]

1) Independence and impartiality.
2) Accountability and integrity.
3) Financial and human reseorces.
4) Recruitment, appoitment and training of management and staf.

According to Buscaglia, the importance of anti-corruption court institutions is one of the effective aspects of reducing corruption rates as "applied judicial and municipal levels in many countries's with in significant results".[7] Tackling corruption by means of law enforcement must place the agency as the body or institution tasked with tackling this corruption, one of these institutions is to use the means of an anti-corruption court. Meanwhile, according to Robert Klitgard, countermeasures by means of anti-corruption court institutions enter the neo-economic frame, namely making anti-corruption court institutions as controllers or control of legal institutions to tackle corruption in a country.

In Indonesia, tackling corruption crimes by means of law enforcement through the courts is carried out by establishing a Corruption Crime Court through Law Number 46 of 2009 concerning Corruption Crime Courts. with the United Nations Convention Against Corruption in 2003 UNCAC which has been ratified by Indonesia, the establishment of a Corruption Court in line with the United Nations Convention Against Corruption in 2003 which has been ratified by Indonesia regulates comprehensively and firmly regarding the authority, judges and

[4] Klitgaard, Robert, Controling Corruption, University of California Press, Berkeley, California, 1998, Hlm 173.

[5] Ruzindana, Augustine, The Importance of Leadership in Fighting Corruption in Uganda," in Corruption in the Global Economy, ed. by Kimberly Ann Elliott, Institute for International Economics, Washington, 1997, Hlm 133

[6] https://www.unodc.org/documents/corruption/Toolkit_ed2.pdf, diunduh tanggal 3 Maret 2021.

[7] *Ibid.*

composition of the panel of judges , a special procedural law used in examinations at trial at the corruption court. Providing guarantees to the public so that the administration of trials of corruption cases can run in a fair, transparent, objective and accountable manner so that efforts to eradicate corruption become more effective, certain and provide a sense of justice.

The establishment of a corruption criminal court must also follow the principles of universal justice, viz:[8]

1) Independent and Impartial

   The principle of independence and impartiality is the main principle that has been determined in the constitution and various provisions of international law. The principle of independence requires that the judiciary be free and independent from interference (intervention), pressure and coercion, either directly or indirectly from other parties outside the court so that in deciding a case it is only done for the sake of justice based on law and judge's belief. The principle of independence relates to independence personally (judges) or institutionally. This is inseparable from the arrangements relating to the appointment and dismissal of judges, court financial budgets, and others. While the principle of impartiality basically means that a judge in adjudicating must not discriminate and respect in a fair and balanced manner the rights of the parties to a case, so that a judge must be free and avoid conflicts of interest.

2) Simple and Fast

   It is a right demanded by the public when entering the judicial process is to obtain easy access supported by the system. A convoluted process may lead to injustice, for this reason, easy, simple, fast, and thorough procedural actions in decision making must guarantee the creation of justice. Therefore, court proceedings must be simplified in such a way, both in terms of cost, location and procedures so that they do not impede a person's right to obtain justice (access to justice). It is hoped that the process in court that must be taken by justice seekers does not require a long time. In other words, court proceedings must be swift, clear and timely. The process, which is long and has no clear time limit, not only creates pessimism for justice seekers, but also invites suspicions or negative allegations.

3) Transparency

   Transparency here is not unlimited openness, but intends to provide an opportunity for the public to exercise control and correction according to the level of examination and need, for example, decisions

[8] Naskah akademik Rancangan Undang-undang No. 46 tahun 2009 tentang Pengadilan Tindak Pidana Korupsi Hlm 22

are pronounced in open court hearings and openness of court decisions that are accessible to the public to be able to find out the basis for which they were taken. a decision.

4) Accountable

The granting of power has consequences for accountability and within the framework of implementing accountability there are several things that must be considered, namely:

a) Obedience to the law.
b) Clear procedures.
c) Fair and decent.
d) Effective control mechanism.

All of these principles serve as a measure of the extent to which the justice system has been implemented properly. In relation to oversight of the implementation of the judicial process, especially oversight within the framework of the oversight mechanism between sub-systems, it is necessary to have a more participatory mechanism arrangement. All of the above general principles are inseparable from the independence of the judiciary which coincides with accountability in which there is political accountability, decision accountability, and behavioral accountability including the administration of the Corruption Crime Court itself.

The research method used in this research is to use the comparative law method, the comparative law method is used as a tool to improve domestic law and local legal doctrine, as a way to improve national law whose doctrine and its application still dominate in a legal system. In its development comparative law is a necessary instrument for a harmonization of law.[9] According to Patrick Glenn, comparative law aims to do:[10]

1) Comparison of law as an instrument of learning and science.
2) Comparison of law as an instrument of evolution and taxonomy of science.
3) Contribute to the national legal system.
4) Formation of harmonization of national law with the laws of other countries.

In comparative law, the goal to be achieved is to make a country's national law more coherent by comparison with other countries, so that national law can harmonize with internationally applicable law. Therefore, in comparative law, the

[9] comparative law mainly as an instrument for improving domestic law and legal doctrine, as a way to renovating the fossilized approach of the still dominating Exegetic School to the Civil Code and its interpretation. Dalam E. Reid, The Law of Trusts in Russia', *Review of Central and East European Law,* University of Edinburgh, 1998, Hlm 154

[10] H. Patrick Glenn, 'The Aims of Comparative Law', dalam J.M. Smits (ed.), Elgar Encyclopedia of Comparative Law, Edward Elgar, Cheltenham, 2006, Hllm 257.

focus of study can be related to the existence of legal similarities and can also be related to differences in the laws of one country to another.[11]

II. DISCUSSION

The Legislative Ratio of Corruption Crime Courts and the Guarantee of Independence of Judicial Powers

In history, the definition of ad hoc judges and ad hoc courts appeared for the first time when the British, French and Russian governments issued a Joint Declaration relating to the massacre of the Armenian people by the Turkish government, they called it a crime against civilization and humanity. For this crime the Turkish government was deemed responsible for the crime against humanity against the Armenian people, and the British, French and Russian governments demanded the formation of an ad hoc body to investigate the crime against humanity committed by Turkey against the Armenian people.[12]

The formation of ad hoc courts and judges also emerged after the second world war where the president of the United States Franklin D. Roosevelt gave affirmation to the Nazi leader, Adolf Hitler with regard to the killings committed by Nazi Germany against the Jewish nation. For the crimes committed by the Nazis, the allied countries carried out and signed the London Agreement which became the basis for trials of war crimes committed by the Nazis in the Ad Hoc Nuremberg trials.[13]

After the Nuremberg Ad Hoc court was formed, the era of the International Military Tribunal for the Fast East began, where the United States wanted to try Japan at the International Court of Justice for war crimes. The International Military Tribunal for the Fast East uses the Nuremberg ad hoc trial model as its judicial model where categories are formed into three (3) crime models namely:[14]

1) Model A (crime against peace).
2) Class B (convention war crime).
3) Class C (crime against humanity).

In the end, the Tokyo ad hoc court was created in 1946 which tried Japan for individual criminal responsibility in war crimes committed under international law, regardless of the existence of national law which could try a head of state (president).[15]

In 1993 and 1994 the UN Security Council established ad hoc courts whose respective statuses were to try Crime Against Humanity crimes, the first ad hoc court was the international criminal tribunal for the former Yugoslavia (ICTY) which

---

[11] W. Twining, Globalisation and Comparative Law, Dalam E. Örücü & D. Nelken (eds.), *Comparative Law. A Handbook*, Hart Publishing, Oxford, 2007, Hlm 69.

[12] Andrzey Bryl, Crime Againts Humanity In Pursuit of an International Convention, dalam www.bibliotekacyfrowa/content/54577/04- Andrzey-Bry, diunduh 17 November 2021

[13] M. Cherif Bassiouni, Crime Againts Humanity : History Evolution and Contemporary Application, Cambridge University Press, 2011, Hlm 95.

[14] Alton Hosch, More About the IMFTE, dalam www.libguides.law.uga.edu/cphp?g=17716&p=1164581, diunduh 16 Oktober 2021.

[15] *ibid*

was formed in May 1993 which handled crimes wars and other crimes that occurred in Yugoslavia.[16] Furthermore, in November 1994 the UN then formed the international tribunal for Rwanda (ICTR) which established this ad hoc court to try violations of international humanitarian law crimes that occurred in the country of Rwanda.[17]

Based on the experience of forming the Yugoslav and Rwandan ad hoc courts, in 1998 the Rome statute of international criminal court was established as a legal means by establishing the International Criminal Court which would form an ad hoc court within the international court in international crime cases regulated in rome statutes.[18] The agreement that forms the basis for the establishment of an international court is known as the ICC Statute, in the ICC Statute it is regulated that crimes that can be brought to the international court are:[19]

…….Any of the following acts when commited as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack:

1) *Murder.*
2) *Extermination.*
3) *Enslavement.*
4) *Deportation or forcible transfer population.*
5) *Imprisonment or other severe devrivation of physical liberty in violation of fundamental rules of international law.*
6) *Torture.*
7) *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.*
8) *Persecution against any indentifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paraghraph 3, or others grounds that are universally recognized as impermissible under international las, in connection with any act reffered to in this paragraph or any crime within the jurisdiction of the court.*
9) *Enforced disappearance of person.*
10) *The crime of apartheid.*
11) *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

The emergence of the development of international crimes that can be handled by courts and ad hoc judges at the International Court of Justice shows that there is a philosophy that underlies the formation of ad hoc courts and judges, this is due to

[16] United Nation International Residual Mechanism for Criminal Tribunal : About The ICTY dalam www.icty.org/en/about. Di unduh 12 September 2021.

[17] United Nation International Residual Mechanism for Criminal Tribunal : About The ICTr, dalam www.unictr.irmct.org/en/tribunal, diunduh 3 November 2021.

[18] Ida Lim, Rome Statute : Whats is it? Will Agong's Immunity Be At Risk, dalam www.malaymail.co,/news/malaysia/2019/03/25, diunduh 26 Desember 2021.

[19] Pasal 7 ayat (1) Statuta Roma

aspects of violations of humanity that occurred in these crimes. Crime against humanity is an identity inherent in humans which is a normative reason for taking certain actions or not taking certain actions, therefore humanitarian norms are valid legal norms, not just as moral norms which are not only limited to moral condemnation. However, legal prosecutions can be carried out by establishing courts and ad hoc judges.[20]

This is based on the conditions after the second world war which gave rise to atrocities over the second world war, these atrocities arose because of crimes that were very detrimental not only to victims of war crimes but also to victims, but also to society and humanity regardless of region. war conflict. Both of these atrocities occurred as a violation of humanity that belongs to and is inherent in humans as living beings, meaning that crimes that can be prosecuted in ad hoc courts and ad hoc judges are crimes that result in cruelty to humanity and human nature.[21]

Whereas then the idea of forming ad hoc courts and judges in Indonesia is very different from the idea of forming ad hoc courts and judges in the concept of international law, the idea of forming ad hoc courts and ad hoc judges is based on the elucidation of Article 27 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states that special courts are: "what is meant by "special courts" in this provision, among others, are juvenile courts, commercial courts, human rights courts, corruption courts, industrial relations courts and fisheries courts is within the general court environment and the tax court which is within the state administrative court environment.

The interpretation of this article does not further explain what is meant by this special court, it only gives an example of what the special court looks like. The courts formed based on these special rules include:

1) Juvenile courts formed through Law no. 3 of 1997 concerning juvenile justice.
2) The Commercial Court which was made based on Perpu No. 1 year 1998.
3) The Human Rights Court which was made based on rules through Law no. 26 of 2000 concerning the Human Rights Court.
4) The Industrial Relations Court which was formed based on Law no. 2 of 2004 concerning Settlement of Industrial Relations.
5) The tax court which was made based on Law no. 14 of 2002 concerning the Tax Court.

[20] Xunwu Chen, The Concept of Crime against humanity and the Spirits of Our Time, Journal of East-West Thought, Vol 2, years 2013, Hlm 26 https://scholarworks.calstate.edu/downloads/bc386m211?locale=es

[21] Christopher Macleod, Toward a Philosophical Accaount of Crime Againts Humanity, the European of International Journal, Vol 1, 2010, Hlm 283. https://academic.oup.com/ejil/article/21/2/281/374214

In connection with the existence of this special court, according to Bagir Manan, it indicates the existence of a form of judicial power in a country. Does the country distinguish the concept of general court (the ordinary court) or use the concept of special court (the special court) which is based on:[22]

1) The composition of judicial power in countries that are included in the common law state legal system, this country applies a judicial system based on the rule of law. In countries that use this system there will be no difference between the judiciary for state administration officials, everyone involved in court will be seen as an ordinary person or state administration officials will be examined, tried and decided by the same judicial body, namely the general judiciary (the ordinary court).
2) While the composition of judicial power in a country that adheres to the prerogative state legal system, the concept of state administration officials in carrying out their administrative functions must comply with the applicable state administrative law, if the state administration official makes a mistake or mistake in carrying out the state administration, a separate judicial forum will be chosen, namely special court body.

The idea of establishing a corruption court in Indonesia is closer to the second option, where the idea of establishing a corruption court is a mandate from article 53 of Law No. 30 of 202 concerning Corruption Crimes and Constitutional Court Ruling No. 012-016-019/PUU-IV/2006 which in principle states that corruption cases cannot be tried in two different courts, namely the Corruption Court in Jakarta and the general court, therefore a law must be enacted as legal basis in establishing a court that has competence and jurisdiction in deciding corruption cases.

This is driven by the increasing number of corruption cases in Indonesia, as well as the spirit of renewal in tackling corruption crimes. Because of that, Law No. 46 of 2009 concerning Corruption Courts is expected to be able to become a legal basis related to the separation of court institutions that specifically handle corruption cases in Indonesia. Philosophically, corruption courts are formed based on their specificities. This means that special courts handling corruption cases whose formation is based on special laws are also regulated in Law no. 46 of 2009 concerning the Corruption Court, the corruption court is a special court that is in the general court area and the only court that has the authority to try corruption cases whose prosecution is carried out by the public prosecutor.

In addition to the specialties mentioned above, other forms of specialization are related to the composition of judges in examining and deciding cases of corruption, the composition of the panel of judges at the Corruption Court consisting of career judges and ad hoc judges whose selection and appointment requirements

[22] Bagir Manan, Kekuasaan Kehakiman Republik Indonesia, LPPM Unisba, Bandung, 1995, Hlm 17

are different from those of judges in generally. The presence of ad hoc judges is necessary because their expertise is in line with the complexity of corruption cases, both in terms of the modus operandi, evidence, and the wide scope of corruption, among others, in the fields of finance and banking, taxation, capital markets, procurement of government goods and services.

With the presence of ad hoc judges in corruption courts, it is hoped that they will be able to revive public trust in overcoming corruption crimes, this is because in the past the court institution no longer had the trust of the public so that with the presence of ad hoc judges, the court could be trusted again by the seeking community. justice . In connection with the difference in arrangement between ad hoc judges and career judges in corruption courts where there should not be a difference in the structure and position of the judges, the difference in legal position between ad hoc judges and career judges in corruption courts should have been eliminated. Because empirically and judicial practice shows the reality that there is no difference in meaning between ad hoc judges and career judges in the composition of the panel of judges in corruption courts.

The definition of ad hoc for ad hoc judges at the corruption court which is defined as a judge on temporary duty or a judge who is not permanent is an interpretation that is contrary to the Judicial Powers Act as the umbrella law for administering justice in Indonesia. Because in the judicial power law does not provide an interpretation of ad hoc courts, but only gives a special meaning of justice. In article 1 point 8 in conjunction with Article 27 of Law No. 48 of 2009 concerning Judicial Powers, it does not provide an interpretation or definition for ad hoc or temporary or non-permanent trials, but only provides an interpretation of the meaning of special courts.

The difference in arrangement between ad hoc judges and career judges at the corruption courts indicates a conflict with the principle of independence of judicial power, especially for ad hoc judges. countries (such as the UK, Canada, the Netherlands) the term of office for judges is during good behavior (as long as they behave well) and are placed in a permanent court institution, not in an ad hoc court institution which is temporary and not permanent.[23]

The Legislative Ratio of the Hong Kong Corruption Court and the Guarantee of Independence of Judicial Power

The legal system in Hong Kong is different from other countries, the legal system in force in Hong Kong is a legacy law from the constitution of the Republic of China, where previously Hong Kong was the territory of the Republic of China which did not yet have its own law. Uniquely, law in Hong Kong enforces two legal rules, namely law originating from the law of the Republic of China and local law from

[23] Opcit dalam Y. Sibarani, Budaya Hukum Progresif Hakim Ad Hoc Dalam Penegakan Hukum Tindak Pidana Korupsi, Hlm 404

Hong Kong. . While with regard to basic rights and legal obligations to use local law that originates from the law of the native people of Hong Kong.[24]

Law originating from China is law originating from and made by Chinese state law experts with input from Hong Kong government officials, while Hong Kong local law is law originating from the Declaration listed in the agreement where by Britain transfers sovereignty over Hong Kong to China in 1984. This agreement provides full rights for Hong Kong independence as an independent country separate from China, unfortunately the application of the legal system inherited from the Chinese state actually applies legal aspects that are socialist in Hong Kong.[25]

In relation to tackling corruption, Hong Kong is a country with high effectiveness in suppressing corruption and has a low corruption index, in 2000 Hong Kong was listed as the 11th country with a low corruption index among 180 countries with a score of 77/100 and is considered a country that effective in combating corruption.[26] Before 1970 Hong Kong was a country with a high corruption index, the most common corruption was bribery to police officers in cases of narcotics smuggling, gambling, prostitution and cases of traffic violations as the main crimes handled by the police in Hong Kong.[27]

Until then in 1970 the people of Hong Kong pressed the government to carry out legal reforms related to dealing with corruption in Hong Kong, the people demanded the existence of a serious institution to deal with corruption crimes in Hong Kong. So as a form of legal reform, the Hong Kong government formed an institution called the Institution of Independent Commission Against Corruption (ICAC), an institution tasked with dealing with corruption crimes in Hong Kong.[28]

In its development, the Institution of Independent Commission Against Corruption (ICAC) has shown success in reducing corruption crimes in Hong Kong, even the Institution of Independent Commission Against Corruption (ICAC) has become a reference for many countries in the world in dealing with corruption crimes because they are considered very effective in tackling corruption. in Hong Kong. Whereas in the past Hong Kong had a high corruption rate, later the institutions of the Independent Commission Against Corruption (ICAC) were able to tackle corruption crimes in Hong Kong, as well as resolve many corruption cases in

[24] Bagir manan, Prasyarat Kemerdekaan Kekuasaan Kehakiman, Varia Peradilan Majalah Hukum Tahun XXX No. 348 November 2014. Hlm 6.

[25] Han Zhu, Beijing's Rule Of Law Strategy For Governing Hong Kong Legislation Without Demonstration, Open Edition Journal, No 1/2019, 20 Maret 2019, Hlm 25. https://journals.openedition.org/chinaperspectives/8686

[26] Jordan, Ann D, Lost in the Translation: Two Legal Cultures, the Common Law Judiciary and the Basic Law of the Hong Kong Special Administrative Region, Cornell International Law Journal: Vol. 30: Issue. 2, Article 3, 2007, Hlm 336. https://scholarship.law.cornell.edu/cilj/vol30/iss2/3/

[27] https://www.transparency.org/en/countries/hong-kong, diunduh 3 Februari 2021.

[28] Roderic Broadhurst and Lee King Wa, The Transformation of Triad 'Dark Societies' in Hong Kong: The Impact of Law Enforcement, Socio-Economic and Political Change, Security Challenges Journal, Vol. 5, No. 4, Summer 2009, Hlm 4 https://www.jstor.org/stable/26460067

a short time and change the behavior of Hong Kong people to reject corrupt behavior.[29]

The Institution of Independent Commission Against Corruption (ICAC) took action and prevention against corruptors, and then this step was considered an effective step in tackling corruption crimes in Hong Kong. This step was taken because taking action and preventing corruptors was considered to be more effective in tackling corruption that used the work pattern of corrupt actors in Hong Kong, where the work pattern of corruption in Hong Kong used political power and position and power in government.[30]

In carrying out its duties to eradicate corruption, the main focus of the Institution of Independent Commission Against Corruption (ICAC) is to focus on 3 (three) main steps, namely prevention, anti-corruption education and law enforcement. In carrying out its functions and duties, the Institution of Independent Commission Against Corruption (ICAC) has a structure:[31]

1) Operation Department.
2) Corruption Prevention Department.
3) Community Relations Department.

And assisted by the Administration Branch, which is in charge of serving the three departments above, and carrying out the strategies of each of these departments.

In carrying out its duties, the Institution of Independent Commission Against Corruption (ICAC) consistently implements its strategy in eradicating corruption in Hong Kong through, firstly, by building public trust by establishing anti-corruption laws. The second way is to provide information services for reporting corruption cases from the public, and the third way is to build partnerships with other institutions in preventing and overcoming corruption. This strategy has been carried out since 1974 and has succeeded in tackling major cases of corruption in Hong Kong, so that for this performance the Institution of Independent Commission Against Corruption (ICAC) has received high trust from the public.[32]

Every year the Institution of Independent Commission Against Corruption (ICAC) publishes an annual report which contains the policies implemented in tackling corruption crimes in Hong Kong, as well as how many corruption cases have been uncovered. The contents of the Institution of Independent Commission Against Corruption (ICAC) annual report consist of:[33]

---

[29] *Ibid.*

[30] Ian Scott, Different Paths to Curbing Corruption: Lessons from Denmark, Finland, Hong Kong, New Zealand and Singapore, Research in Public Policy Analysis and Management Journal, Volume 23-791, 2018, Hlm 81-82. https://onlinelibrary.wiley.com/doi/abs/10.1111/gove.12492

[31] *Ibid.*

[32] Independent Commission Against Corruption (Hong Kong Special Administrative Region). 2007 -2011 Annual Report. Hong Kong: Independent Commission Against Corruption. 2007-2011

[33] *ibid*

1) The results of corruption cases that have been uncovered and enforced.
2) An explanation of how cases are handled and an explanation of the steps and progress in dealing with corruption cases.
3) Indicators related to the steps that have been achieved.
4) Initiation is related to what targets will be achieved in the future.

The annual report is a form of transparency from the Institution of Independent Commission Against Corruption (ICAC) in conducting investigations into the public and providing access to the public to find out the performance of the Institution of Independent Commission Against Corruption (ICAC), with this annual report the public will provide an assessment on the performance of the Institution of Independent Commission Against Corruption (ICAC) and also find out what corruption cases have been uncovered. In this report, an investigative process was carried out by the Institution of Independent Commission Against Corruption (ICAC), namely Steps:[34]

1) Reporting cases of corruption that occurred.
2) Preliminary investigation.
3) Investigation.
4) Prosecution.

In connection with the regulation of corruption offenses in the Hong Kong Law, it is regulated in Article 9 of the Prevention of Bribery Ordinance (POBO), which states:[35]

Section 9 (1)

"of the Prevention of Bribery Ordinance (POBO) states that it is an offence for an agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for doing or forbearing to do any act in relation to the agent's principal's affairs or business"

Section 9 (2)

"of the Prevention of Bribery Ordinance (POBO) provides that it is an offence for any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement or a reward for the agent doing or forbearing to do any act in relation to the agent's principal's affairs or business".

In enforcing corruption cases in Hong Kong, the criminal court has the right to examine and decide cases, both district courts, appeal courts and courts at the Hong Kong Supreme Court,[36] meaning that in deciding a case of corruption in Hong Kong using a permanent and permanent court mechanism without using an ad hoc court.

[34] http://www.icac.org.hk/en/about_icac/le.index.html, diunduh 3 Januri 2021

[35] *Ibid.*

[36] https://www.irglobal.com/article/corruption-in-hong-kong-lessons-from-a-recent-case-first-published-in-the-june-2017-edition-of-the-grc-professional-magazine-bfb6/, diunduh tanggal 4 Maret 2021

So that in Hong Kong there is no known ad hoc judge in deciding corruption cases, and there is no known distinction in position between ad hoc judges and career judges at the corruption court in Hong Kong.

Judges in Hong Kong courts are given the principle of absolute independence of judicial power. This principle is given to judges both at public courts and at the Hong Kong Supreme Court, the principle of independence of judicial power is given to judges in the form of independent autonomy to judges in deciding cases. The principle of independence of judicial power for judges in Hong Kong is regulated in Article 88 of the Hong Kong Constitution, this article has been in effect since 1997 which provides guarantees for the implementation of the principle of independent judicial power for judges. In courts in Hong Kong judges are appointed by the Prime Minister on the recommendation of an independent commission, while the heads of courts of first instance and high courts are determined based on applicable regulations. Those involved as judges at courts of first instance, appeals and the Supreme Court act independently and are free from interference from outsiders who are not involved in cases decided by judges.[37]

The principle of independence of judicial power in Hong Kong is something that is absolute for judges, and applies as the basic law for judges. Although this principle provides a critical note for judges who can use their power excessively, the principle of independence of judicial power is a guarantee for judges in upholding justice. Then the principle of independence of judicial power is interpreted as a doctrine to protect judges from interference in carrying out their judicial functions in examining and deciding cases.

The guarantee of the independence of the judicial power is a guarantee as a form of freedom, the judiciary has both positive and negative aspects. If this condition occurs, then in this case it allows the judge to avoid different sources of coercion from outside parties and outside powers, while the principle of independence of the judiciary in Hong Kong is regulated in several aspects, namely:[38]

1) Tenure security, tenure guarantees are given so that judges are safe and calm in carrying out their judicial functions.
2) Financial security, in the form of guaranteed income rights (salary) and also retirement in accordance with applicable legal provisions.
3) Institutional independence, independence in carrying out judicial administrative functions in deciding cases.

The independence of the judicial power is an ideal value for judges, therefore this concept must be guaranteed in the constitution. Because if it is not guaranteed in the constitution, it will provide a legal basis for judges in providing justice and

[37] *Ibid.*

[38] Teve Tsang (ed), Judicial Independence and the Rule of Law in Hong Kong, Palgrave, New York, 2001, Hlm 5

legal certainty in every decision they make. If it is not guaranteed in the constitution, it will have a negative effect in the form of personal ambition and political control which can influence the judge's decision. The concept of the independence of the judiciary is an idealistic concept, the independence of the judicial powers will depend heavily on the personal judges, not on the legal rules governing the independence of the judicial powers. Independence for judges in deciding cases is possible if judges are already independent in their hearts and minds, therefore setting the basic value of independence of judicial power in the constitution is able to maintain the principle of independence for judges in deciding cases.[39]

III. CONCLUSION

The guarantee of the independence of the judiciary for corruption courts in Indonesia is still experiencing obstacles due to the structure of Law No. 46 of 2009 concerning the Corruption Crime Court still distinguishes between career judges and ad hoc judges, with this difference, the guarantee of independence of judicial power to ad hoc judges will be disrupted in terms of welfare guarantees, career guarantees and retirement guarantees. In Hong Kong the guarantee of the independence of the judiciary is given based on constitutional guarantees which prohibit the formation of ad hoc courts, so that the guarantee of the independence of the judiciary in Hong Kong is guaranteed in terms of career, welfare and retirement.

REFERENCES

Alton Hosch, More About the IMFTE, dalam www.libguides.law.uga.edu/cphp?g=17716&p=1164581, diunduh 16 Oktober 2021.

Andrzey Bryl, Crime Againts Humanity In Pursuit of an International Convention, dalam www.bibliotekacyfrowa/content/54577/04- Andrzey-Bry

Bagir Manan, Kekuasaan Kehakiman Republik Indonesia, LPPM Unisba, Bandung, 1995

Christopher Macleod, Toward a Philosophical Accaount of Crime Againts Humanity, the European of International Journal, Vol 1, 2010, Hlm 283. https://academic.oup.com/ejil/article/21/2/281/374214

E.Reid, The Law of Trusts in Russia', *Review of Central and East European Law*, University of Edinburgh, 1998

[39] K. Malleson, The New Judiciary, Ashgate Publishing Company, London: 1999, hlm 8

H. Patrick Glenn, 'The Aims of Comparative Law', dalam J.M. Smits (ed.), Elgar Encyclopedia of Comparative Law, Edward Elgar, Cheltenham, 2006

Han Zhu, Beijing's Rule Of Law Strategy For Governing Hong Kong Legislation Without Demonstration, Open Edition Journal, No 1/2019, 20 Maret 2019,

Ian Scott, Different Paths to Curbing Corruption: Lessons from Denmark, Finland, Hong Kong, New Zealand and Singapore, Research in Public Policy Analysis and Management Journal, Volume 23-791, 2018, Hlm 81-82. https://onlinelibrary.wiley.com/doi/abs/10.1111/gove.12492

Ida Lim, Rome Statute : Whats is it? Will Agong's Immunity Be At Risk, dalam www.malaymail.co,/news/malaysia/2019/03/25, diunduh 26 Desember 2021.

Independent Commission Against Corruption (Hong Kong Special Administrative Region). 2007 -2011 Annual Report. Hong Kong: Independent Commission Against Corruption. 2007-2011.

Jordan, Ann D, Lost in the Translation: Two Legal Cultures, the Common Law Judiciary and the Basic Law of the Hong Kong Special Administrative Region, Cornell International Law Journal: Vol. 30: Issue. 2, Article 3, 2007, Hlm 336. https://scholarship.law.cornell.edu/cilj/vol30/iss2/3/

K. Malleson, The New Judiciary, Ashgate Publishing Company, London: 1999,

Klitgaard, Robert, Controling Corruption, University of California Press, Berkeley, California, 1998

Komisi Hukum Nasional, Laporan Penelitian Tentang Pembentukan Pengadilan Tindak Pidana Korupsi", 2002

M. Cherif Bassiouni, Crime Againts Humanity : History Evolution and Contemporary Application, Cambridge University Press, 2011

Naskah akademik Rancangan Undang-undang No. 46 tahun 2009 tentang Pengadilan Tindak Pidana Korupsi Hlm,

Roderic Broadhurst and Lee King Wa, The Transformation of Triad 'Dark Societies' in Hong Kong: The Impact of Law Enforcement, Socio-Economic and Political Change, Security Challenges Journal, Vol. 5, No. 4, Summer 2009, Hlm 4 https://www.jstor.org/stable/26460067

Ruzindana, Augustine, The Importance of Leadership in Fighting Corruption in Uganda," in Corruption in the Global Economy, ed. by Kimberly Ann Elliott, Institute for International Economics, Washington, 1997

Syarifudin, dkk (penyusun), "Benang Kusut Peradilan Korupsi Perbankan", KRHN, Jakarta, 2006, KRHN

Teve Tsang (ed), Judicial Independence and the Rule of Law in Hong Kong, Palgrave, New York, 2001

United Nation International Residual Mechanism for Criminal Tribunal : About The ICTY dalam www.icty.org/en/about. Di unduh 12 September 2021.

United Nation International Residual Mechanism for Criminal Tribunal : About The ICTr, dalam www.unictr.irmct.org/en/tribunal, diunduh 3 November 2021

W. Twining, Globalisation and Comparative Law, Dalam E. Örücü & D. Nelken (eds.), *Comparative Law. A Handbook*, Hart Publishing, Oxford, 2007

Xunwu Chen, The Concept of Crime against humanity and the Spirits of Our Time, Journal of East-West Thought, Vol 2, years 2013, Hlm 26
https://scholarworks.calstate.edu/downloads/bc386m211?locale=es