***Lex Silencio Positivo* to Accelerate e-Government Implementation and to Reduce Corruption**

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**Abstract**

Corruption has been transformed into a difficult, systemic, and sophisticated from time to time. The law enforcement in corruption is not only dealing with the substance of the laws on anti-corruption but also with the system, especially how the development of the core of corruption is in a “grey area” between a criminal and administrative system of law. The decision of public officials both in the meaning of “*beleid*” and “discretion” can be contradictive under the regime of criminal law in the context of “excuses”. Regarding the issue of the tackling of corruption and the uses of high technology, the Indonesian Government has released a package of regulations that encourages the utilization of technology to implement good governance then accelerate the effort of corruption. The Indonesian Government emphasizes the acceleration of bureaucracy reform as well to build a strong and good government system that is clean and free of corruption in every field, such as permitting, procurement, etc. The Indonesian Law on Administration can be synchronized with other regulations to accelerate the implementation of e-government as well as an effort to reduce corruption. *Lex Silencio Positivo* through a fictitious acceptance has put a burden on the Government to give a decision based on the request of the applicant that needs the decision of the Government Agencies after a certain time limit. Consistently implementing *Lex Silencio Positivo* will accelerate the implementation of e-Government. When the Authority did not issue the decision or action, the applicant did not need to sue to court. In this matter, this process will limit the interaction between applicants and administrative authority that may cause corruption practice. This paper will discuss the effectivity of *Lex Silencio Positivo* as ordered in the law on the administration to reduce corruption.

Keywords: *Lex Silencio Positivo*; Practices of Corruption; e-Government; Good Governance

**Corruption and its Anatomy**

In the literature, corruption has a meaning as something bad, dishonest, immoral, etc. Corruption itself was not a new problem in all countries, including Indonesia. Corruption has been part of life and become a system, and adheres to the state governance itself. The word of corruption has been rooted in the Latin word “*corruptio*”, an English word “corruption”, or a Dutch word “*corruptie/korruptie*”. The definition of corruption is various, but it can be understood as below:

Dishonest or illegal behavior especially by powerful people (such as government officials or police officers; inducement to wrong by improper or unlawful means (such as bribery).[[1]](#footnote-2)

United Nations Convention Against Corruption (so-called UNCAC) does not explain the definition of corruption but more to the characteristics and nature of the crime itself. In the preamble of UNCAC, corruption can be understood by nature and characteristics below:

* Serious problems and threats to the stability and security of society
* Undermining institutions and values of democracy, ethical values, and justice
* Jeopardizing sustainable development and the rule of law
* Corruption is an organized crime and economic crime
* Corruption has threatened the political stability and sustainable development of States
* Corruption is a transnational phenomenon rather than a local matter and affects all societies and economies.

The explanation above gives a complex understanding that corruption is widespread, jeopardizing, complex, and threaten but it exists and merges into the state governance life of nations. Corruption in such a way has inflicted losses not only on the State but also on the social and economic rights of people violation. Thus it is categorized as a crime that shall be eradicated extraordinarily. (Inter alia Consideration point a of The Republic of Indonesia Law Number 31 of 1999 as amended by the Republic of Indonesia Law Number 20 of 2001 concerning the Law of Corruption (so-called as Indonesian Law of Corruption). Corruption has some features and typologies. The Indonesian Law of Corruption has defined corruption into 13 (thirteen) features of corruption, and further categorized into 7 (seven) forms, those are:

1. State financial loss, as mentioned in Article 2 and Article 3
2. Bribery, as mentioned in the Article 5 subparagraph (1) a; 5 subparagraph (1) b; Article 13; Article 5 subparagraph (2); Article 12 a; Article 12 b; Article 11; Article 6 subparagraph (1) a; Article 6 subparagraph (1) b; Article 6 subparagraph (2); Article 12 c; Article 12 d
3. Embezzlement in office as mentioned in Article 8; Article 9; Article 10 a; Article 10 b; and Article 10 c
4. Extortion as mentioned in Article 12 e to g
5. Fraudulence that is mentioned in Article 7 subparagraph (1) a – d; Article 7 subparagraph (2); Article12 h
6. Conflict of Interest in Procurement as mentioned in Article 12 i
7. Gratification/gratitudes as mentioned in Article 12 B in conjunction with Article 12 C.[[2]](#footnote-3)

Aside from the categorization mentioned above, there is another category called as other types of crime related to corruption. It comprises of:

1. Obstruction of the process of corruption examination / Obstruction of justice as mentioned in Article 21
2. Does not provide information or provide false information as mentioned in Article 22 in conjunction with Article 28
3. The Bank that did not provide the suspect's account information as mentioned in Article 22 in conjunction with Article 29
4. Witnesses or experts who do not provide information or provide false information as mentioned in Article 22 in conjunction with Article 35
5. The person who is holding the secret of offices that does not provide information or provide false information as mentioned in Article 22 in conjunction with Article 36
6. The witness who disclosed the reporter's identity as mentioned in Article 24 in conjunction with Article 31.[[3]](#footnote-4)

According to the categorization given by the Indonesian Commission of Corruption Eradication above, it is well understood that Indonesia recognizes various forms and types of corruption in its law. Article 2 and Article 3 of the Indonesian Law on Corruption that is categorized corruption as state financial loss has become the major understanding of Corruption in Indonesia. The elements of the crime can be shown in the explanation below:

Table 1: Elements of Corruption Crime in Indonesia

|  |  |
| --- | --- |
| **Article 2** | **Article 3** |
| * Anyone
 | * Anyone
 |
| * Unlawfully
 | * Intentionally
 |
| * Enriching himself or other persons or corporation
 | * Enriching himself or other persons or corporations
 |
| * May caused state financial or the state economic loss
 | * Abusing the authority, the facilities, or other means at their disposal due to rank or positions
 |
|  | * May caused the state financial or the state economic loss
 |

To notice the elements of corruption in Indonesia, the characteristic of Indonesian corruption is more strengthened to the state financial loss or the state economic loss as the major characteristic. The delineation of Article 2 and Article 3 above shows the different characteristics of a person who conducts corruption. Article 3 is notably to the person who has authority or facilities or other means in their position and intentionally enriching himself or other persons or corporations by conduct abusing in his positions and it may cause the state financial or the state economic loss. In comparison, Article 11 and Article 12 B of the Indonesian Law of Corruption explain:

Table 2: The Comparison to the forms of Bribery

|  |  |
| --- | --- |
| Article 11 | Article 12 B and 12 C |
| * A civil servant or State apparatus
 | * A civil servant or State apparatus
 |
| * Receives payment or a promise
 | * Received gratification that considered as bribery
 |
| * Know or reasonably suspected
 | * Related to his position
 |
| * To have been given because of the power or authority related to his/her position or prize or promise which according to the contributor still has
 | * It is against his obligation or tasks
* It is not reported to the Indonesian Commission of Corruption Eradication in 30 days
 |

The subject of law as defined in those articles is a civil servant or state apparatus. Notably, it is directed to the specific subject of the law of corruption. In the practice, the major corruption that happened in Indonesia is the existence of ‘facilitation payments’ or ‘cigarette money’ that normally cause any decision will be weighted based on money and not by the needed.[[4]](#footnote-5) This condition has brought the habitual for people to give some money to get easier rather than follow the rule and find difficulties.

Corruption has been developed into a crime that difficult to prove. It thrives in line with the hegemony of politics, social, and law’s power and authority. Corruption as a part of authority needs the reparation of the system itself. Further, Indriyanto Seno Adji has strengthened that the structural crime has put corruption as a part of organized crime. The structural crime is including a good system, organization, and structure.[[5]](#footnote-6) In the context of the system, it needs a systemic approach for countermeasures of corruption.

The development of criminal law and state administrative law has entered the grey area with all its technical difficulties of the criminal sanction process. It is remains causing debate among criminal law experts. In this regard, Indriyanto Seno Adji explains how the decisions of state officials (both in the context of discretion or *beleid* became a reason to reject or justify punishment in the context of criminal law.[[6]](#footnote-7) The principle of *materiele wederrechtelijkheid* is sometimes has been shifted into any unlawful that against the laws, not only criminal law but also administrative law and civil law. Indriyanto Seno Adji then strengthened the point below:

Dalam kerangka Hukum Administrasi Negara, parameter yang membatasi gerak bebas kewenangan Aparatur Negata *(“discretionary power”)* adalah *detournement de povouir* (penyelahgunaan wewenang) dan *abuse de droit* (sewenang-wenang), sedangkan dalam area Hukum Pidana-pun memiliki pula kriteria yang membatasi gerak bebas kewenangan Aparatur Negara berupa unsur *“wederrechtelijkheid”* dan “menyalahgunakan wewenang”. Permasalahannya adalah manakala Aparatur Negara melakukan perbuatan yang dianggap menyalahgunakan kewenangan dan melawan hukum, artinya mana yang akan dijadikan ujian bagi penyimpangan Aparatur Negara ini, Hukum Administrasi Negara ataukah Hukum Pidana, khususnya dalam perkara-perkara tindak pidana korupsi.[[7]](#footnote-8)

(Translation: In the framework of Administrative Law, the parameters that limit the free movement of the authority of the State Apparatus *("discretionary power")* are *detournement de povouir* (abuse of authority) and *abuse de droit* (arbitrary), while in the area of ​​Criminal Law it also has criteria that limiting the free movement of the authority of the State Apparatus in the form of elements of *"wederrechtelijkheid"* and "abuse of authority". The problem is when the State Apparatus commits an act which is considered to be abusing their authority and against the law, which means which will be used as a test for this State Apparatus' irregularities, Administrative Law, or Criminal Law, especially in cases of criminal acts of corruption).

In short, the way to differentiate when is the criminal law and the administrative law shall be implemented in the corruption cases is how to study the elements of the crime itself. Criminal law must seek the material truth of the corruption elements of a crime. Based on the explanation above, it is important to weighting the parameter that appears in the fault of the state apparatus whether it is related to *detournement de povouir* and/or *abuse of droit*, or *wederrechtelijkheid* and/or *detournement de povouir*.

In regards to the corruption that caused state financial loss (vide Article 2 and 3 of the Indonesian law of Corruption), Indonesia regulates other laws. Those laws are the Republic of Indonesia Number 17 of 2003 concerning State Finance (so-called as Law of State Finance), Republic of Indonesia Law Number 1 of 2004 concerning State Treasury (so-called as Law of State Treasury), Law Number 15 of 2004 concerning State Financial Management and Accountability Audit (so-called as Law of State Financial Management and Accountability Audit), and Law Number 15 of 2006 concerning Audit Board of the Republic of Indonesia (so-called as Law of State Audit Board.

The Indonesian Law on State Treasury explained that the state government administration needs to be managed in a state financial management system to realize the goal to determine the rights and obligations of the state (inter alia Consideration number (a) of the law).[[8]](#footnote-9) Further, Article 1 number 22 of Law on State Treasury defines State/Regional Loss. The article defines that State/Regional Loss is an apparent and definite loss of money, securities, and goods, of which amount is caused by unlawful actions, either intentionally or negligently.[[9]](#footnote-10) Further Article 59 – 67 of The Indonesian laws of state treasury has set mechanism called Settlement of State/Regional Losses through a. Administrative measurement (vide Article 59); b. Compensation imposing (vide Article 62); c. Criminal investigation will be followed once there are criminal elements that are found in the examination of state or regional losses. Some arguments are arising concerning the terms and elements of state loss and state financial loss in the literature and criminal investigation. Hernold Ferry Makawimbang explains that the essence of both terms is different. It will be impacted by the scope of the law that regulates it.[[10]](#footnote-11) The scope of the law that regulates the terminology of state loss as mentioned in the Indonesian Law of State Treasury is administrative law.[[11]](#footnote-12) Further, State loss is irrelevant or disconnect with the criminal act of corruption that enriching himself or benefiting himself or other people or corporation, and abuse of authority, opportunity, or facilities given to him related to his position. State loss can be happened due to Force Majeure (natural disaster, fire, or economy crisis).[[12]](#footnote-13) In its perspective, it need to be understood that state financial loss is quite different with state loss based on several laws explained above. Anyhow, it needs to be understood that the approach to corruption is so complicated since it will impact to the State. It is important to treat the problem of corruption with more carefully.

In 2014, Indonesia enacted the Republic of Indonesia Number 30 of 2014 concerning Government Administration (so-called Law of Administration). The general principles of good governance and the provisions of laws and regulations are needed to be preferred to improve the quality of government administration, government agencies, and/or officials in exercising authority (vide point a) and inter alia with point c, to realize good governance, it needs the legal basis to underlie decisions and/or actions of government officials to meet the legal needs of the community in government administration (vide point c).[[13]](#footnote-14) This aspect will be discussed in the subchapter below.

From the explanation above, corruption is difficult to be solved, and understanding only from one perspective, but the important elements of crime could not be ignored.

**Good Government Implementation**

In the context of legal development, it needs to highlight that there is a significant and fundamental evaluation of the implementation of the legal development theory in Indonesia. It needs re-orientation of national legal development. One of the points in the re-orientation of national legal development is as what the explanation below:

Masalah penataan kelembagaan aparatur hukum yang masih mengedepankan egoisme sektoral, miskomunikasi dan miskoordinasi antar lembaga penegak hukum. Semua itu disebabkan miskinnya pemahaman aparatur hukum mengenai prinsip *“Good Governance”*, *“due process of law”*, “praduga tak bersalah”, *“transparency”*, *“accountability”* dan *“the right to counsel”*.[[14]](#footnote-15)

(Translation: Problems with the institutional arrangement of the legal apparatus that still prioritizes by sector egoism, missed-communication, and missed-coordination between law enforcement agencies. All of this is caused by the law apparatus's poor understanding of the principles of "Good Governance", "due process of law", "presumption of innocence", "transparency', 'accountability' and" the right to counsel").

The Government of Indonesia is continually improving and conducting reformation in the good governance aspects, one of them is through the principle of "zero tolerance to corruption".[[15]](#footnote-16) Thus, the Good Governance is important to be implemented by the State Apparatus to reduce and eliminate corruption and the practices of corruption in Indonesia.

The general principles of Good Governance hereinafter referred to as AUPB, are principles used as a reference for the use of Authority for Government Officials in issuing Decisions and/or Actions in government administration. (vide Article 1 number 17).[[16]](#footnote-17) This AUPB has become important to guarantee the implementation of the duties of the Government. Philipus M. Hadjon, a quote from G.H. Addink, mentions that:

1. To guarantee the security of all persons and society itself;
2. To manage an effective framework for the public sector, the private sector, and civil society;
3. To promote economic, social and other aims in accordance with the wishes of the population.[[17]](#footnote-18)

The principle of Good Governance anyhow is had the same meaning as the principle of good administration. A good government must be reflecting good administration and its functions well. Thus, Article 2 of the Indonesian Law of Administration regulates the purpose of the Law, that is:

The Law on Government Administration is intended as one of the legal bases for Government agencies and/or officials, citizens of the community, and other parties related to Government Administration to improve the quality of government administration.

In this context, the administration law follows the principle of administrative law itself. There is three (3) main approaches in administrative law, as follow:

1. Pendekatan terhadap kekuasaan pemerintah.
2. Pendekatan hak asasi (rights based approach)
3. Pendekatan fungsionaris[[18]](#footnote-19)

(Translation:

1. Government authority approach
2. Right based approach
3. Functionary approach)

The functionary approach starts from the starting point that it is the officials (or the man) who exercise government power. Therefore administrative law must concern with the behavior of officials. Administrative law itself does not include the government norms only but also the behavior norms of the officials. Behavioral norms are measured by the conception of maladministration. The implementation of government administration is based on 3 (three) principles, namely:

1. The principle of legality;
2. The principle of Human rights protection; and
3. AUPB (The General principles of Good Governance).[[19]](#footnote-20)

Regarding the AUPB, Article 10 has regulated that the AUPB consists of some principles, as follow: [[20]](#footnote-21)

1. Legal certainty;
2. Utility;
3. Impartiality;
4. Accuracy;
5. Not conducting abuse of authority;
6. Openness;
7. Public interest; and
8. Good services

And there in the subparagraph (2), the law mentions that there is remain general principles beyond AUPB as mentioned above that can be implemented as long as it is used as the basis for the judge's judgment as stated in the permanent legal force’s court decision.

Regarding the concern of the behavior of the state apparatus and officials against corruption, it can be related to the discussion here on the AUPB principles points c, e, f, and h. The elucidation of Article 10 subparagraph 1 point c concerning Impartiality, the Indonesian Law of Administration explains that:

The principle of impartiality is the principle that obliges Government agencies and/or officials to determine and/or make decisions and/or actions by considering the interest of the parties as a whole and is not discriminatory.

The principle of impartiality is important in implementing good governance and stopping the behavior of corrupt that may appear as a bad habit of the state apparatus due to the authority given them by the law. The principle of openness (vide Article 10 subparagraph (1) point f) has defined as:

The principle of openness is the principle that serves the public to gain access and obtain information that is correct, honest, and non-discriminatory in the administration of government while still paying attention to the protection of personal, class, and state secret human rights.

This principle of openness is related to the behavior of the servants to fulfill the needed of the public of right, honest, and non-discriminatory information. This principle then will be needed to improve more to serve the electronic government (so-called e-government) that has been required to be implemented in the era of high technology. Further, this will discuss in another subchapter in this paper.

Another principle as AUPB Principles that can be related to the discussion of anti-corruption is the principle of good service as stated in Article 10 subparagraph (1) point h, as in its elucidation, explains that:

The principle of good service is the principle that provides services that are on time, clear procedures, and costs, following services standards, and the provisions of laws and regulations.

This principle is strengthening in the model of standards of services and provisions of laws and regulations on provide services. This principle will be related further in the context of *Lex Silencio Positivo*. The other important principles to stop or reduce the behavior of anti-corruption are the Principle of not conducting abuse of authority (vide Article 10 subparagraph (1) point e and its elucidation as follow:

The principle of not conducting abuse of authority is the principle that obliges every agency and/or Government Officials not to use their authority for personal interest or other interests and is not in accordance to grant such authority, does not exceeds, not abuse, and/or confound the authority.

Referred to Indriyanto Seno Adji’s opinion in the previous above, the corruption issues nowadays appears because of the authority of the Government Officials and/or State Apparatus, and it is in dilemmatic approached whether the authority is in the criminal law scope or just in the administrative law scope. Further, the Indonesian Law of Administration stated that the sources of authority are Attribution, Delegation, and/or Mandate (vide Article 11). This authority itself has its limitation (inter alia Article 15), as follows:

* The period or grace period of the authority;
* Area of where the Authority is applied; and
* The scope of the field or material authority.[[21]](#footnote-22)

Thus after the period of authority is ended, the State officials and/or state apparatus are not allowed to make any decisions.

Another authority given by the law to the state officials according to the law of administration is called Discretion. In Article 1 number 9, Discretion is defined as:

Discretion is a decision and/or action determined and/or taken by government officials to solve concrete problems faced in the administration of a government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and/or there is stagnation of government.

Discretion has been very crucial in its correlation with Article 2 and 3 of the Indonesian Law of Corruption. These articles are sometimes confused with the discretion conducted by the State officials and/or State apparatus. Discretion can be used as a reason to avoid and/or justification to action, but remain in debate. Article 22 of the Indonesian Law of Administration, in general, regulate discretion as follow:

(1). Discretion can only be exercised by authorized government officials.

(2) Every use of a Government Official's Discretion is:

a. To aimed to carry out government administration;

b. Filling in the legal void;

c. Provide legal certainty; and

d. Overcoming government stagnation in certain circumstances for the benefit and public interest.

From the article above, discretion is needed in the terms of 4 (four) conditions mentioned and can be only exercised by authorized governments. So the limitation in using discretion is authorized government officials inter alia with Article 24 of Indonesian Law of Administration, those are:

Government Officials who use discretion must meet the following requirements:

a. Per the objectives of Discretion as referred to in Article 22 paragraph (2);

b. Not contradicting the provisions of laws and regulations;

c. According to AUPB;

d. Based on objective reasons;

e. Does not cause a Conflict of Interest, and

f. Done in good faith.

 The scope of Discretion is regulated in Article 23 of the Indonesian Law of Administration as follow:

Discretion Government officials include:

a. decisions making and/or actions based on the provisions of laws and regulations that provide a choice of decisions and/or actions;

b. decisions making and/or actions because statutory regulations do not regulate;

c. decision making and/or actions due to incomplete or unclear statutory regulations; and d. Decisions and/or Actions due to the stagnation of government for broader interests

Further, Discretion used by State Officials and potentially change budget allocations, Article 25 subparagraph (1) regulates that the state officials must seek approval from the Supervisory officers. Then Article 25 subparagraph (2), (3), (4), and (5) regulates that:

* The approval as referred to in paragraph (1) shall be carried out if the use of Discretion is based on the provisions of Article 23 letter a, letter b, and letter c and creates legal consequences that have the potential to burden state finances.
* If the use of Discretion causes public restlessness, emergency, urgent, and/or natural disasters occur, Government Officials are obliged to notify the Supervisors of Officials before the use of Discretion and report to the Officials Supervisor after the use of Discretion.
* Notification before the use of Discretion as referred to in paragraph (3) shall be made if the use of Discretion is based on the provisions in Article 23 letter d which has the potential to cause restlessness in public.
* Reporting after the use of Discretion as referred to in paragraph (3) shall be conducted if the use of Discretion is based on the provisions in Article 23 letter d which occurs in an emergency, urgent, and/or natural disaster.

Thus, discretion in its nature is needed to be controlled by the law and regulations and must consider its potentiality in use it.

Article 30 – 32 of the Indonesian Law of Administration must be noticed. There are 3 kinds of Discretion and its legal consequences, as:

* Exceeds the limit of authority will bring a legal consequence that the decision and the legal consequences are considered non-existence or Invalid
* Mix up the authority will bring a legal consequence that the decision and the legal consequence must be exercised by the Supervisor or Court. In other words, the decision can be canceled.
* Arbitrary actions bring a legal consequence that the decisions are invalid.

From the previous chapter in this paper, there are several differentials between administrative aspects and criminal aspects. Criminal law will be based on the existence of criminal activity with Mens rea – or fault while the administrative aspect will be based on the existence of acts against the law as maladministration. The state loss or economic loss of the state is not being the main element in mal-administrations while in the criminal aspect, the state loss or state economic loss is being the main element of corruption. In Criminal law, there are criminal elements found, while in the administrative aspect, there are no criminal elements found.

***Lex Silencio Positivo* in e-Government and Anti-Corruption Practices Prevention**

In the era of the uses of Information Technology, the Government of Indonesia has to implement e-government. The legal base of the implementation of e-Government in Indonesia is the Presidential Instruction Number 3 of 2003 concerning National policy and strategy of e-government development. The background of this regulation was based on the condition whereas Indonesia faces a fundamental change in the life of the nation and state towards a governance system that is democratic and transparent and places the rule of law. This condition has been happened in all the countries in the world as well. The changes that are being experienced provide opportunities for the arrangement of various aspects of the life of the nation and state, where the interests of the people can be put back in a central position. However, every change in the life of the nation and state is always accompanied by various forms of uncertainty. Thus, the government must strive for smooth communication with high-level state institutions and regional governments and encourage wider community participation, so that the uncertainty does not lead to widespread disputes and tensions, and has the potential to create new problems. The government must also be more open to the swift flow of expressions of the people's aspirations and be able to respond quickly and effectively.

The changes that are being undertaken are occurring at a time when the world is transforming an era of an information society. The fact that rapid advancement of information technology and the potential for its widespread use are opens up opportunities for accessing, managing and utilizing large volumes of information quickly and accurately. The condition has shown that the use of electronic media is a very important factor in various international transactions, especially in trade transactions. The inability to adapt to this global trend will lead the Indonesian nation to a digital divide, and will be isolated from global developments because it is unable to utilize information. Therefore, the arrangement must also be directed by Government to encourage Indonesia towards an information society.

Thus, the very rapid information and communication technology and all its potentials must be widely utilized, so that it can be accessed, managed, and utilized quickly and accurately. Apart from that, its use must also address the use of information technology in government processes (e-government) for the sake of increasing efficiency, effectiveness, transparency, and accountability in government administration.[[22]](#footnote-23) In this regard, the development of e-government must be purposed to improve the quality of public services to become more effective and efficient. This e-government must implement good e-governance fundamental principles as mentioned in the previous subchapter above. Then it can be said from the perspective of bureaucratic reform, the existence of the Indonesian Law of Administration is important. It becomes an instrument to realize the principles of good governance in the legal norms that bind bureaucrats and the public.

The Government of Indonesia has transformed its government system into maximizes the encouragement of Information Technology uses in every field, and it must be directed to be implemented to prevent corruption and its behavior. In the end, e-government must be set to realize the national goal of Indonesia as mentioned in the Preamble of 1945 Constitutional of the Republic of Indonesia. E-Government must be directed to support the realization of business activity and its environment become accelerates. Presidential Regulation Number 91 of 2017 concerning Acceleration of Business Implementation was issued to support the implementation of business and its acceleration. The policy aims to increase service standard business permits to become more efficient, easy, and integrated without neglecting good governance principles. As it is understood well, in arrange permits for business, there is a possibility to practice corruption. E-Government with good governance must guarantee openness, not conducting authority abuse and fairness. To connected e-government – good governance – and *Lex Silencio Positivo*, it can be said that the adoption of positive fictitious decisions will bring positive results in the policy of ease of doing business, especially in the permit process. The positive fictitious decision provides legal certainty and provides legal protection for the applicant especially for a permit regarding whether or not an application they submitted was accepted.

Enrico Simanjuntak explains that *Lex Silentio/silencio positivo* is expected to be able to solve various complaints regarding permit procedures.[[23]](#footnote-24) The Indonesian Law of Administration has adopted the concept of *Lex Silencio Positivo*, as a legal mechanism that required administrative authority to respond or issuing decisions or actions within a certain limit of time. If the requirement did not fulfill, the administration authority assumed to have granted the request of the issuance of the decision or action. This *Lex Silencio Positivo* as mentioned in Article 53 of the Indonesian Law of Administration has been known also as a positive fictitious approval. Article 53 subparagraph (1) set an obligation for administration authority to establish and/or make a decision and/or actions following the provisions of the legislation. In the subparagraph (2) it mentioned that if the provisions do not mention a specific time limit, the Government officials shall prescribe and/or make a decision and/or action within 10 (ten) working days after applications are fully accepted by the Government offices. Inter alia to subparagraph (3), if within the time limit as referred, the Government officials do not issued and/or make decisions and/or actions, the application is deemed to be granted legally. After that, the applicant must apply to the Court to obtain a decision to accept the application. In less than 21 (twenty-one) working day, Court shall decide, and the Government Officials shall establish a decision to implement the Court decision no later than 5 (five) working days since the Court is established.[[24]](#footnote-25).For this point, Bambang Heriyanto mentions that Article 53 has the spirit to improve the public service quality as a part of bureaucratic reformation for Government officials to implement their duty and function.[[25]](#footnote-26)

*Lex silencio positivo* will help to achieve good e-government implementation. Through e-government, the applicant will not be in direct communication with the Government Officers, thus it will reduce and/or avoid practices of corruption, such as bribery and/or gratification. *Lex Silencio Positivo* leads an understanding of anti-corruption, because if Government Officials must guarantee that the applicant will get the response of their application, within a certain time limit. Applicants did not need to sue to the court and the State does not need to bear the cost of holding Court as it happened according to the previous perspective. It can save state finance. The consistency of implementing e-government with good governance principles and respect *lex silencio* *positivo* will bring consequences of corruption and its practices become less and/or stop.

**Conclusion**

Corruption and its practices must be prevented and eradicated in many ways and from many perspectives. The boundaries between criminal law and administrative law in viewing corruption must be strengthened. To know the boundaries between illegal acts from criminal law and administrative law must be clearly and properly applied. The terms of discretion must be implemented according to the law and directed to the goal or purpose as mentioned in the law. The law on administration has regulated on how government (and e-government) should implement good governance principles, especially the principles of openness, good services, not conducting abuse of authority from Government to the public could well guarantee. One another new aspect that arranges in the Law of Administration is concerning *Lex Silencio Positivo*. The consistent implementation *Lex Silencio Positivo* will bring impact to the consistency in e-government to prevent the practices of corruption itself.

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