SUMMARY

From the explanation of research application at article 2 paragraph 1 Law Number 31 Year 1999 Jo. Law Number 20 Year 2001 after the decree of Court of Constitution Number: 003/PUU-IV/2006 about the changing meaning of against the law at article 2 paragraph 1, it can be concluded that law about corruption criminal act in Indonesia which ever and valid until today, that is Law Number 24 Prp 1960, Law Number 3 Year 1971, Law Number 312 Year 1999 Jo Law Number 20 Year 2001, do not decrease the number of corruption criminal action, moreover, according to Corruption Index Perception, Indonesia is in the position number 5 (five) as the most corrupt country from 146 countries after previously there are many experts in the country estimate that corruption in Indonesia caused monetary leakage in the country around 30%-50%. The fact further becomes the one of considerations about Law Number 20 Year 2001 which categorizes corruption criminal action as a crime in which its combat must be done in a whole.

Law Number 31 Year 1999, which is then replaced and completed with Law Number 20 Year 2001 regulate the matter of corruption criminal action as it mentioned in the article 2 paragraph (1). In the Law explanation, this article stated that corruption criminal action includes any action against the law, formally or materially. It is mean that criminal action refers to any action that is not arranged

in the law regulations but is considered defected because it is not suitable with justice sense or social live norms in the society. Such acts which against the law is called as an act which against material law in the positive function, as it is mentioned in the general explanation of Law Number 3 Year 1971 about the Fight of Corruption Criminal Action. The background of against the law formulation, as it is stated in the general explanation of Law Number 3 Year 1971 and Law Number 31 Year 1999, intent to get easier criminal act evidence to be punished and to reach every modus operandi of country monetary deviation or country economy which is more complicated.

In the doctrine/knowledge, there are two characteristics which are said to be against the law, that are:

1. Characteristics against the law in the formal meaning.
2. Characteristics against the law in the material meaning.

One act is considered against formal law when such action able to fulfill all element which mentioned in the formula. Meanwhile, one act against material law if the act fulfills the elements mentioned in the formula and against the social norms, which the act should not and must not performed.

From two kinds of meaning against the law that already mentioned above, each has followers which will maintain their opinions. Simon, for example, as the followers of formal principles stated that in order to punish such act, it must be suited with the formula in the law. Therefore, opinion concerning with characteristics against material law cannot be accepted because such opinion put the will of the law former in the positive law under the faith of personal

judgement. Norms, based on the unwritten rules has a subjective attribute and will concuss the positive law. Meanwhile Vost, the follower of material principal has been formulizing act against the law as an action that is considered forbidden by the society. This form is influenced by HR. Nederland at 1919 which is famous with the name of Lindenbaum Cohen Arres (in the civil law) and arres HR at 1933 which is famous internal he name Veearts Arrest (in the criminal law). The material principle is based on the opinion that law certainty that will be assured by legality principles is shown no justice. With such material conviction, there is a loose for the judge to give justice to a person which is not perform any criminal action by stated that the lost of characteristics against formal law is based on unwritten reasons of law.

Based on the characteristic instruction against material law, there is a friction of legality meaning. Legality base stated "Nullum delictum nulla poena sine praevia" which mean there is no game, there is no act with no rules, and it means not only as "nullum delictum sine lege" but also "nullum delictum sine ius" which mean not only seen as formal legality base but also material legality, that is admitting custom criminal act, living law, or unwritten law. The other meanings of characteristics against the law besides those meanings are:

1. No right or self authorization
2. Against the other person's right
3. Against the objective right

But, among the above meaning, some writers follow opinion that characteristics against the law refer to action that is contradicts the law. According to Longemeyer, it includes written and unwritten law.

In the criminal law literature, there are 2 (two) functions of against the law characteristic theory, that is:

a. A teaching about characteristics against law material in its negative function. It is means that is an act in which although according to the law is an act against the law, but if the act is not contradict to the society norm, so the intended act does not characterize law contradiction.

b. A teaching about material law in its in its positive function. It is means that is an act in which although according to the law it is not determined as against the law, but if it is against the society norm, then the intended act characterizes law contradiction.

Supreme Court in its several decree has determines two characteristics function defining the term against material law. In the verdict dated 8 January 1966 Number: 42/K/Kr/1965 with defendant Machroes Efendi, the verdict dated 23 July 1973 Number: 43 K/Kr/1973 with defendant Drs. I Gede Sudana, and the verdict dated 16 December 1976 Number: 81 K/Kr/1973 with defendant Ir. Mochamad Otjo Danaatmadja, Supreme Court has define act which is against the material law in its negative function. Meanwhile, in the verdict dated 29 December 1983 Number: 275 K/Pid/1983 with defendant R. Sonson Natalegawa and verdict dated 12 February 2004 Number 572 K/Pid/2003 with defendant H. Dadang Sukandar

(defendant II) and Winfried Simatupang (defendant III), Supreme Court has define an act which against material law in its positive function.

The Supreme Court's verdict that already have power in law is still become legal administration or jurisdiction, and when if it happens repeatedly, it will become a persistent jurisdiction. For a judge, jurisdiction has an important role and big influence because it will be used as a guidance to decide cases in its effort to create justice because there is no justice sense in the law formularization. Supreme Court itself through Letter of Turn/Instruction Number 02 Year 1972 stated that judges use jurisdiction in deciding cases. The Letter of Turn will be able to be understood, especially when it is related with article 32 paragraph (4) Law Number 5 Year 2004 about Supreme Court which stated that Supreme Court has authorities such as giving guidance needed to the Court from all Judicature Environment. It has tight relation with the effort to perform changes and law guidance. Moreover, if it is related with article 28 paragraph (1) Law Number 4 Year 2004 about the Power of Justice that oblige a judge to dig, follow, and understand the value of law and justice in the society. The Supreme Court guide through the jurisprudence which is hopefully able to prohibit judge giving arbitrary verdict, showing indecent behavior in deciding a case that is based on his own will which then will create injustice.

In relation with article 2 paragraph (1) Law Number 31 Year 1999, which then changed and completed with Law Number 20 Year 2001, Court of Law of Constitution has performed material test to the explanation of article 2 paragraph (1) which contains meaning of against material law in positive function. In the

verdict dated 24 July 2005 Number: 003/PUU-IV/2006 Court of Constitution decided that explanation related with any action against material law in its positive function is in the contrary with Constitution of Republic of Indonesia Year 1945, and because of it, it is stated as a law which does not have tied power of law. One of the basic considerations of this verdict is that the explanation has created a new norm and use the criteria of against the law action stated in article 1365 Civil Law Book, that is as a measurement which against the law in criminal law. Meanwhile, measurement of action against the law is different in each region; therefore the measurement is not definite.

Above verdict receives positive respond from judges in the State Court in Surabaya. The judges stated that the verdict of Court of Constitution is binding and must be performed because it is an official law product from an authorized institution which performs judicial review to the law. In the other side, from several verdicts which have been made, there is no verdict refer to the verdict of Court of Law of Constitution about the changing meaning of against the law in article 2 paragraph (1) Law Number 31 Year 1999 Jo Law Number 20 Year 2001. It is also means that the verdict does not content any consideration of Judge Committee which refuse accusations based on against material law characteristic in positive functions, as it is based on the verdict of Court of Constitution. It is caused by corruption cases which has been decided since January 2006 until November 2006 are corruption cases decided before the verdict of Court of Law of Constitution, such as:

1. Corruption cases number 51/Pid.B/2006/PN.Sby in the name of Drs. Ec. Haribowo Soekotjo, which is decided at January 2006.
2. Corruption cases number 245/Pid.B/2006/PN.Sby in the name of Ir. Sudiyono, which is decided at February 2006.
3. Corruption cases number 2654/Pid.B/2006/PN.Sby in the name of Ir. Mulyono Herlambang, which is decided at April 2006.
4. Corruption cases number 1313/Pid.B/2006/PN.Sby in the name of Moch. Sulton ST, which is decided at May 2006.
5. Corruption cases number 1314/Pid.B/2006/PN.Sby in the name of Maxwell Takasana, which is decided at May 2006.
6. Corruption cases number 1491/Pid.B/2006/PN.Sby in the name of Sri Hartatik cs., which is decided at May 2006.

If there is any case decided after the verdict of Court of Constitution, that is the verdict of High Court Surabaya 155/Pid.B/2006/PN.Sby that is decided at 31 July 2006. This verdict is an appeal verdict on the verdict of State Court Surabaya Number: 2654/Pid.B/2006/PN.Sby. In such verdict, High Court Surabaya still defines it as an act that against the law that is from article 2 paragraph (1) Law Number 31 Year 1999 Jo. Law Number 20 Year 2001 in which it still has the same meaning with the former condition before the verdict of Court of Law of Constitution.

The verdict of Court of Constitution, basically, tries to deport meaning of against the law to the legality base. Such meaning, when it is related with the history of giving a meaning to the word against the law in the formal and material

meaning as mentioned in the general explanation of Law Number 3 Year 1971 and Law Number 31 Year 1999 Jo Law Number 20 Year 2001, will bring many financial lost and to the economy of the country and also national development in which according to the society justice, it must be sued and punished, but it can be punished because it is able to fulfili formal requirement which has been determined by the law. Moreover, it will be hard to reach every modus operandi deviance from state financial or economic condition of the country that is getting more advanced and complicated. But based on its practice, it can be handled with subsidiary sue based on the kind of committed criminal action, therefore when the criminal action performer is free from corruption criminal sanction could be sued with other criminal action although with minor sanction.

ABSTRACT

The purpose of this research / thesis is knowing an application of mean that violation of law at article 2 paragraph 1 law Number 21 year 1999 jo law number 20 year 2001 after the decree of court of constitution Number 003 / PUU- IV / 2006 then an application of mean will face some problem violation of law

To solve some above problem by using juridical norm research method that suited with problem approach is law approach, concept approach, and case approach based on related law material of this research. That law material was analyzed with juridical to get some data accurately and to solve some statement of the problem.

- Conclusion of this research with some fact from statement of the problem solution to solve it and then we are expecting some benefit of law development in Indonesia generally and especially to increase consciousness of Indonesia law society.