

Justice in Connection with Law Enforcement Judge's Decision in Corruption

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Abstract

Justice is essential for human life, even though justice is often only a matter of debate, justice must be done to be able to interpret the rule of law. Justice is expected to begin from the time of formation of the law until the implementation of the law. Therefore, the truth of the law should be understood as the truth of the principle of fairness that underlies the law. Corruption is a problem that almost happened in the entire hemisphere. Not only developing countries, but also in developed countries. To eradicate corruption must be done comprehensively, both legal approach, moralistic approach, approach to security, educative approach and socio-cultural approach. At this time of corruption cases investigated is, on Judges through its decision has accommodated the values of justice, both from the legal basis and in terms of the sentence that contains the value of the benefit by applying the philosophy of punishment. For that the judges in prosecuting corruption cases should be more thorough, careful and always consistent and always adhered to the principle of upholding the values of the rule of law, justice and values of benefit proportionately.

Keywords: Justice, Law Enforcement, Corruption.

1. Introduction

Corruption is a problem that almost happened in the entire hemisphere. Not only developing countries, but also in developed countries. Corruption in Indonesia has made Indonesia become increasingly worse position in the milieu of the international community as one of the country's largest government practice corruption.

The problem of corruption is not only a legal factors alone, but it is comprehensive (multi-dimensional), namely in the field of moral, social, economic, cultural, bureaucratic/ administration and so on.¹ Corruption is also closely related to the three elements of the legal system, among other structures, the substance and legal culture. From the aspect of the structure is still overlapping authority, as well as on the substance and cultural aspects.

Given the negative impact of corruption on the economy of the country and the sustainability of national development, then by virtue of Law No. 31 of 1999 Jo. Law Decree No. 20 of 2001 on Corruption Eradication, has stated that corruption is a crime "Extra Ordinary Crime". Therefore, to enforce norms in a corruption case can be determined by looking at whether or not functioning criminal justice system at the stage of applied policies and the execution stage.

In order to achieve equitable enforcement of criminal law, in practice proved the Judge's decision was fair. Hakim is the implementing legislation so that the decision should be based on positive law, so the application of minimum criminal sanctions in the Court decision is appropriate for the legality. The judge in imposing a decision only based on normative law is also based on a sense of justice are the values that live in the community and also on the conscience (fairness objective and subjective). Judge's decision that breaks through the limits of criminal threats and criminal penalties of at least minimally accepted or considered valid throughout by a sense of justice and conscience, because the judge is not only law enforcement but also as an upholder of justice, provided that no interest Judges decide the case. The judge's decision to break through provisions in the legislation that normative, or in this case under the demands of the Public Prosecutor may be acceptable as long as the judge's reasoning is based on a sense of justice that objective.

2. Issues

In this paper the authors will examine Judge Decision No. 1142 K / Pid.Sus / 2008, the Supreme Court On Corruption which has granted the cassation of Cassation: Attorney / prosecutor in the State Attorney Sengeti Jambi Indonesia; and cancel Sengeti District Court Decision No. 207 / Pid.B / 2007 / SGT, April 3, 2008; Sengeti District Court, Jambi - Indonesia has acquitted the accused by granting the applicant's appeal of cassation attorney / prosecutor General, the Supreme Court declared the defendant legally and convincingly guilty of committing corruption offenses committed together and continues; Convict the accused to imprisonment for 4 (four) years, and a fine of Rp. 200.000.000, - (two hundred million rupiah).

¹Barda Nawawi Arief, *Capita Selecta Criminal Justice System*, Publisher Citra Aditya Bakti, Bandung, 2003, p. 86.

3. Discussion

3.1. Meaning of Justice

Speaking of fairness is closely related to the philosophy of law. According D.H.M. Meuwissen, stated: "Philosophy is the philosophy of law, as he thought of all the fundamental problems and issues of marginal symptoms related to the law".¹ Furthermore, Prof. Johni Najwan, SH, M.H., Ph.D states: Thinking ideal of the law, think ahead about something, it means has to philosophize, therefore, philosophy is not a complicated thing. So justice is defined as an attitude or deeds fair. John Rawls² states: "Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or Abolished if they are unjust ". John Rawls is not an jurists, but he is a political philosopher who care about justice, John Rawls theory of justice which is seen as the most comprehensive theory of justice today.

Purnadi Purbacaraka and Soerjono Soekanto³ declare justice is "harmony between legal certainty and proportionality law create fairness" rule of law as something that is considered to be a hint that the law is applied and the same for everyone; This is in terms of justice for social life. In the book about legal norms explained that: "The life together can order only if there is legal certainty in relation to human and personal sesame would be quiet if it can deliver what is comparable to any perikelakuan or attitude of its actions".⁴

Aristotle⁵ described the justice as follows: "Formulation of Aristotle's fairness rests on three natural law which is considered as the main principles of justice. The principle in question is: Honeste vivere, alterum non laedere, suum Quique tribuere (live in dignity, do not disturb others and giving to each person his share). The principle of fairness is the cornerstone of what is true, good, and right in life and therefore binding on everyone, both society and the authorities. "

Aristotle saw legal justice in the sense of similarity, namely the similarities numerical and proportional. Childbirth numeric similarity principle all people are equal before the law, while the proportional bore similarities prinsif give everyone what they are entitled. In addition to the similarity-based model of justice. Aristotle also filed another justice models, namely distributive justice and corrective justice. Distributive justice is synonymous with justice on an equal basis in proportion. While corrective justice (remedial) focuses on correcting wrong. Corrective justice is tasked to rebuild equity. Corrective justice is a common standard to correct any result of the act, regardless of who was responsible.⁶

Based on the formulas of justice, we can conclude that justice is essential for human life, even though justice is often only a matter of debate, but when people agree on the existence of justice, then inevitably justice should color the behavior of human life that is reflected in his relationship with God, with other people, with society, with government, with nature, with God's other creatures. In other words, justice must be done to be able to interpret the rule of law.

3.2. Law enforcement

Law enforcement has already begun at the time of the legal regulations made or created. Law enforcement is a process to realize the desires of law becomes a reality. Desires are law-making body thoughts laws formulated in legal regulations. Formulation mind legislator set forth in the rule of law to be upheld. In fact, the law enforcement process culminated in its implementation by law enforcement.⁷

Satjipto Rahardjo argued that law enforcement is in itself an enforcement ideas and abstract concepts, like the idea of justice, rule of law and social expediency. Similarly it can be said that the rule of law is an attempt to realize the ideas or desires become reality.⁸

According Soerjono Soekanto⁹ Law enforcement is harmonizing relations activities that span the 'hierarchy of values in the rules, the views are steadily and embody the attitudes, acts as a series of translation of the value of the final stages of creating peace in social life. Furthermore, the main problem lies in the law enforcement factors that may affect it. These factors have the meaning neutral, so that a positive or negative

¹Johni Najwan, *Philosophy of Law*, delivered the lecture Doctoral Program Law, 22 September 2014, the Faculty of Law, University of Jambi.

²John Rawls, *A Theory of Justice*, The Belknap Press of Harvard University Press Cambridge, Massachusetts, 1971, page. 3.

³Purnadi Purbacaraka and Soerjono Soekanto, *Flow antinomy Overview Philosophy as Basis Philosophy of Law*, Publisher Rajawali, Jakarta, 1980 p. 50.

⁴Purnadi Purbacaraka and Soerjono Soekanto, *Subject Legal Methods*, Citra Aditya Bakti, Bandung, 1993, p. 51.

⁵Tanya L. Bernard et al, *Legal Theory strategic human tongue and Space Traffic Generation*, Genta Publishing, Yogyakarta, 2010, p. 45.

⁶*Ibid.*

⁷Satjipto Rahardjo, *Law Enforcement A Sociological Review*, Genta Publishing, Yogyakarta, 2011, p. 24.

⁸*Ibid.*, p. 12.

⁹Soerjono Soekanto, *Several Factors Affecting Law Enforcement*, Raja Wali, Jakarta, 1986, p. 14.

impact lies in the content of these factors. These factors are as follows:¹

1. Factors own law that restricted the statute;
2. Factor law enforcement, the parties, and apply the law;
3. Factors means or facilities to support the rule of law;
4. Factors society, the environment in which they may apply or applied;
5. The cultural factor, ie as a result of the work, creativity and taste which is based on human initiative in social life.

These five factors are interrelated tightly, therefore, is the essence of the rule of law and also is a benchmark rather than the effectiveness of law enforcement. Furthermore, Soedikno Mertokusumo² states: enforce the law there are three elements that must be considered are: legal certainty (*rechtssicherheit*), utility (*Zweckmassigkeit*) and justice (*Gerechtigkeit*).

In enforcing the law should be a compromise between these three elements. The three elements that must receive attention proportionally balanced. But in practice it is not always easy to work out a compromise proportionally balanced between the three elements. Without the legal certainty of people do not know what to do and finally raised concerns but too much emphasis on the rule of law, are strictly obeying the rule of law as a result of rigid and would pose a feeling of unfairness. Whatever happens, the rules are such and must be followed or implemented. Otherwise it can be grown proportionally presence then at least three factors that should exist in the verdict. If the selection decision until there is a conflict between justice and legal certainty and expediency, then *keadilan* should take precedence.³

Law enforcement is a long process in order to realize the goals, values, messages contained in the legislation in force. The long journey that must be taken in the process are certainly influenced by the operation of various factors both legal factors as well as other non-legal factors, such as social, economic, political and cultural co-conditioned whether law enforcement can be carried out properly or not. Problems that occur when this is why law enforcement happened has touched the public sense of justice is clearly visible even in favor of the of power and economy.

3.3 Fairness in Law Enforcement Decisions Relating Judge Anticorruption

In a criminal case a judge can make a decision: namely (1) acquittal (if proven legally and convincingly); (2) the decision free from any lawsuits (if proven, but the act was not a crime); and (3) criminal decisions (if proven legally and convincingly).

The figure of a judge should have the legal knowledge and insight adequate enforcement. They are not only required to master the vagaries of the game positive law, but the important thing is to have sensitivity to the sense of justice, also has a commitment to optimize the role of individual self to impose decisions that are alive and breakthroughs have insight into the philosophical and sociological good. Do not let the matter should have been acquitted even sentenced or otherwise. Supposedly the judges deciding the case based on justice and truth.

One major factor in the deterioration of our Indonesian law, law enforcement and law enforcement often ignore the "sense of justice" and just focus on the "formality" and "procedures" mere. Worse precisely by doing "justification" through legislation and other provisions, the criminals usually hide behind it.⁴

Taverne a philosopher once said: "Give me a prosecutor and judge who is honest and intelligent, then by law the most bad though, I would make a fair decision"⁵ The command to decide a case in a fair and true Islam requires that in Surah Al-Maidah: 42 which means "and if you judge them, then decide the matter between them fairly. For Allah loves those who are fair ". To the authors will see how a judge's decision to give justice to the community, meet at least three (3) aspects, namely:

3.3.1. Prosedur Code of Criminal Procedure In Decision

Observing the decision of the Supreme Court Number 1142K / Pid.Sus / 2008 on Corruption which is the object of this study can be said to have included whole grains listed in Article 197 paragraph (1) of Act No. 8 Year 1981. But Grains contained in the provisions of Article 197 paragraph (1) letter d which is arranged brief consideration of the facts and circumstances as well as the tools of evidence obtained from examination before deciding on which the guilt of the accused needs to be sharpened, namely respect the facts and circumstances, according to the explanation of Article 197 paragraph (1) d, which is a "facts and circumstances" is what exists and what is found in the trial by the parties in the process, including public prosecutors, witnesses, experts, defendants, legal counsel, and witnesses.

When referring to the understanding of the facts and circumstances in Article 197 paragraph (1) letter d,

¹*Ibid.*

²Soedikno Mertokusumo, *Know the Law, (An Introduction)*, Liberty, Yogyakarta, 1986, p. 130.

³Soedikno Mertokusumo, *Invention Law*, Publisher Liberty, Yogyakarta, 2009, p 92.

⁴Achmad Ali, *Reveals the Reality of Law, Anthology Columns & Articles options in the field of law*, Prenada Media Group, Jakarta, 2008, p. 3.

⁵*Ibid.*, p. 12

seharus Panel of Judges to explain briefly the findings of fact in the examination of court the facts can be revealed by evidence authorized by law, namely Article 184 Criminal Procedure Code, namely the testimony of witnesses, expert testimony, letters, instructions, and keterangan the defendant himself.

In connection with the legal facts, in this decision the judges did not include legal facts. The fact legally part of the facts obtained in the hearing relating to the rule of law, which in criminal cases legal fact is the facts relating to the elements of the offense charged. Legal facts obtained in court by a match between the evidence of witnesses, expert testimony, documentary evidence or testimony of the defendant. In the legal reasoning deductive syllogism, the legal fact is the minor premise which is then connected with the provisions of the legislation which is the major premise (in criminal law in the form of the elements of the offense), then made a conclusion (conclusion). If the legal facts revealed meet all the elements of the offense of which the accused, then the accused is guilty of an offense.

According Suhadibroto¹ fact that law in our legal system qualified as evidence. Is the legal facts or the evidence was sufficient as a basis for the judge took the decision, entirely it becomes the right judge. In other words, if the legal facts have fulfilled the offense defined in law, is entirely dependent on the assessment of Judges. The task of the judge is concrete abstract elements with the facts of law or otherwise abstract concrete facts to the elements defined in the legislation. Positive law gives authority to the judge to assess the facts of law in accordance with the belief that it is subjective with regard to the rule of law, the legal facts in a criminal case is related to the fact that criminal elements were indicted.

But although the law preposition Thus, it turns out justice according to the community is not homogenous. That is, the size and dimension of justice is situational, contextual and casuistry. Because of this, the objective of the law which refers to justice should be reflected in the legal provisions. Strictly speaking, the context of justice "according to law" defined what is expressly required by the legislators. "

Before the judge make a decision if there is between the facts and the law are not synchronized trial judge should examine the conviction based on the theory of the decision made by the judge to determine whether the defendant is guilty or not. The theory most widely used in decision making is descriptive. According Yusti Probawati Rahayu.² In this descriptive theory of decision-making on the criminal case is done with the approach among others; 1) The probability, 2) Algebra, and 3) cognitive (model story).

Supreme Court Decision Number 1142 K / Pid.Sus / 2008, which has canceled Sengeti Court Decision No. 207 / Pid.B / 2007 / PN.SGT, April 3, 2008 which granted the cassation Prosecutor / Public Prosecutor and the accused were found guilty and sentenced, Judges used a probability approach and a cognitive model (story). In the approach is highly subjective probability measure based on subjective beliefs.

Moreover, in this case the defendant objected to the witnesses and experts presented by the Prosecution, while the approach of cognitive models (story) do well, just can not provide satisfaction to the defendant who refused or objected to the testimony of witnesses and expert testimonies should judge may use Article 180 paragraph (1) Criminal Procedure Code were formulated; in terms of seats needed to clarify issues raised at the hearing. The presiding judge may request expert trial and may also request that a new material submitted by the interested parties. This evidence is essential to meet the requirements of whether or not the defendant is liable as referred to in Article 183 of Act No. 8 of 1981 on Criminal Procedure.

According to Article 183 of Law No. 8 of 1981: "The judge must not convict someone unless at least two valid evidence he gained confidence that a crime actually occurred and that the defendant is guilty of doing it". In the theory of criminal procedural law, this authentication system, called a negative verification system according to the legislation.

According to Article 197 paragraph (2) of Law No. 8 of 1981 "noncompliance with the provisions of paragraph (1) alphabet a, b, c, d e, f, h, j, k and l of this article resulted in null and void". Supreme Court Decision Number 1142K / Pid.Sus / 2008 on Corruption which is the object of this study can be said to have included whole grains listed in Article 197 paragraph (1) of Law No. 8 of 1981, supported the theory of decision-making by the Panel of Judges by using a probability approach and a cognitive model (story).

3.3.2. Legal Aspect Material In Decision

In criminal proceedings in principle in addition to the formal legal rules apply also apply the rules of substantive law, therefore, for the commencement of judicial proceedings initiated by the alleged criminal acts which have violated criminal law material. The application of the rules of substantive criminal law by the judge restricted rules of substantive criminal law indicted by the public prosecutor in the indictment. Examination of the case and the decision of the judge is limited to the indictment, so the judge should not decide a case outside the indictment. In connection with the decision of the judges of the Supreme Court have identified several legal issues as follows:

¹Suhadibroto, *Notes on the Result Evaluation study Decision-Decision On Judge*, Paper presented at the training of investigators and researchers of the judicial commission in Jakarta February 2, 2008, p. 4.

²Yusti Probawati Rahayu, *Behind Judge Decision Psychology Study of Law in Criminal cases*, PT. Deta persada, Surabaya, 2005, p. 57.

1. The legal basis used by the judges in accordance with the demands of the indictment and the Prosecution, so that there is consistency between the legal basis in the indictment, a warrant and judgment.
2. Substantively, the substantive legal basis used by the judges is that Article 2 (1), Article 3 in conjunction with Article 18 paragraph (1) of Act No. 31 Year 1999 jo Act No. 20 of 2001 in conjunction with Article 55 paragraph (1) 1st Criminal Code in conjunction with Article 64 paragraph (1) Criminal Code.

Based on the construction of the offense Article 2 (1) of the act No. 31 of 1999 on Eradication of corruption as amended and supplemented by Act No. 20 of 2001 according to the author of the judges had the right to put its elements, namely; a) any person, b) unlawfully, c) enrich themselves or another person or a corporation, d) that can be detrimental to state finance and economy, plus the elements contained in Article 55 of the Criminal Code, namely; Persons who commit, told to do and participating. Article 64 paragraph (1) of Criminal Code, some acts of transportation, is seen as an act passed.

To that should be examined in view of the enforcement of criminal law in order to achieve the desired goals should first understand three key issues in criminal law, namely: a) how the act is categorized sebagai criminal act of a crime; b) How do you determine a person's mistake can be criminally; c) criminal sanction which is how it deserved to fall on such actions. To answer the three key issues in criminal law that is not as easy as what we think especially in the case of corruption, especially concerning Article 2 (1) of Act No. 31 of 1999 on Corruption Eradication jo act No. 20 of 2001 on Amendments of Law Number 31 Year 1999 on Corruption Eradication. For that need to be described and analyzed the elements contained in article that became the indictment prosecutors.

Of the elements of Article indicted assemblies use only a few elements correctly, while the state loss and the meaning of each person associated with the meaning of the perpetrator is not described in detail either by law or legal doctrine. In addition it also assemblies in proving the elements to enrich themselves or others or korporasi on the first charge public prosecutors are appropriate, considering the elements contained in Article 2 (1) of Act Number 31 Year 1999 on Pemberantasan Corruption should be read one breath, meaning that the element of unlawful elements should be fulfilled to enrich themselves or any person or corporation with its own fulfilled. So also against indictment Both the Prosecution, the panel stated that the defendant proved advantageous yourself or another person or corporation, because tort actions met then rewarding yourself is also fulfilled.

The substantive legal basis used was appropriate, only the elements contained in article has not been explored in depth by the legal doctrine and legislation is another example; loss of state who is authorized to conduct the audit. Given the losses the country is an essential element in the application of Article 2 and Article 3 of Law No. 31 of 1999. Also the meaning of the elements have not been understood comprehensively.

3.3.3.Aspek Philosophy Imposition of Criminal

There are three basic idea of law as stated by Gustav Radbruch, namely: fairness, expediency and certainty.¹ An understanding of the rule of law should not just be understood as "the certainty of the law", but rather the certainty that the sense of justice will always be ignored in all policies and decisions of law enforcement.² So justice is not merely enforcing the law is legal certainty, but also justice.

In connection with the criminal prosecution according P.A.F. Lamintang³ has the objective to be achieved as follows: (a) To fix the personal from the culprit himself; (B) To make people become a deterrent to commit crimes; (C) To hunt down certain criminals become unable to perform crime the offenses of others, namely criminals in other ways already irreversible.

As already noted the application of substantive law that apply the rule of material criminal law Article 2 (1) in conjunction with Article 3 in conjunction with Article 18 paragraph (1) of Law No. 31 Year 1999 jo Law No. 20 of 2001 in conjunction with Article 55 paragraph (1) to -1 Penal Code in conjunction with Article 64 paragraph (1). In this case substantively appropriate. This is in accordance with the legal facts revealed in court, so that the defendant legally and convincingly proven to violate Law No. 31 of 1999 jo act No. 20 Year 2001 concerning the Eradication of Corruption.

In this regard it can be stated that: This decision has been to accommodate the values of justice and the value of expediency. The value of justice here good views of the legal basis used, Article 2, paragraph (1) in conjunction with Article 3 in conjunction with Article 18 paragraph (1) of Law No. 31 Year 1999 jo Law No. 20 of 2001 in conjunction with Article 55 paragraph (1) to -1 Penal Code in conjunction with Article 64 paragraph (1) of Criminal Code, because in accordance with the legal facts revealed in court. The value of the benefit in terms of the purpose of punishment is a special prevention (*speciale preventie*) and general prevention (*generalae preventie*) has been reached. Because the Panel of Judges of the Supreme Court has considered the following

¹Achmad Ali., *Loc.Cit.*

²*Ibid.*, p. 11.

³P.A.F. Lamintang, *Legal Penitensier Indonesia Publisher*; Sinar Grafika, 2nd Edition Cet 1, Jakarta, in 2010.

matters:

1. Consider non juridical factors are socioeconomic factors.
2. The philosophy of sentencing is relative theory or the theory of goal-oriented that the purpose of punishment is not solely in retaliation for the actions of the defendant, but rather aims to foster and educate for the accused to be aware of and realize the mistake, so be a good member of society in the future.

According to Lord Denning, that in order to obtain a fairness issue that decides the quality of a person is crucial. In criminal law, to obtain a fair decision requires a very long process, namely through the proceedings. In the process, the nature of which will reach is about to discover the truth of the material, which is a cornerstone in the imposition of criminal sanctions in order to achieve a sense of justice. Fair decision can be obtained if handled by a judge who not only has high academic integrity, but also by the soul must be based ahlakul karimah. But we should also realize that in this world there is no justice is essential, but more is justice relative.

In its decision, already accommodate the values of justice both in terms of the legal basis used and in consideration of Justice has given the value of the benefit. In the decision of the judge who declared the defendant legally and convincingly proven guilty, already consider element in a comprehensive article, just thinking assemblies judge in consider still partial.

4. Conclusion

Based on the arguments which have been put forward, it can be concluded that Amar Hakim Decision No. 1142K / Pid.Sus / 2008, the Supreme Court has applied the procedural rules of the applicable law is the provision of Article 197 paragraph (1) Criminal Procedure Code, supported the theory of decision-making by the Assembly Judge using probability approach and a cognitive model (story). Substantially the judge's ruling has accommodated the values of justice, both from the legal basis and in terms of the sentence. Also includes the value of the benefit from the perspective specific preventive and general preventive. In this ruling the judge to apply the philosophy of punishment aimed at the criminal intent was dropped not because people do evil but rather so that people do not commit a crime what is disclosed in accordance Johannes Andenaes.

Panel of Judges of the Supreme Court should hear the case more thoroughly, carefully and always consistent and always adhered to the principle of upholding the values of the rule of law, values of fairness and values the benefit proportionally.

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