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

Elly Sudarti*  Sri Rahayu  Dhil’s Noviades
Student of Doctoral Program of Law, Faculty of Law, Jambi University, Jambi-Indonesia

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. 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". 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 Rawls 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 Soekanto 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 perikelakuwan or attitude of its actions". Aristotle 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, alterrum 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.

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

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 Mertokusumo states: enforce the law there are three elements that must be considered are: legal certainty (rechtssicheit), 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 keadilannyahal should take precedence.

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. 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" 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,
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 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 1142 K / 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:

2Yusti Probowati 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) of 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 koporasi on the first charge public prosecutors are appropriate, considering the elements contained in Article 2 (1) of Act Number 31 Year 1999 on Pemberantan 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. 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. So justice is not merely enforcing the law is legal certainty, but also justice.

In connection with the criminal prosecution according P.A.F. Lamintang 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 (generale preventie) has been reached. Because the Panel of Judges of the Supreme Court has considered the following

---

1Achmad Ali., Loc.Cit.
2Ibid., p. 11.
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 specile preventie and generale preventie. 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.

References
Ali, Ahmad. (2008), “Reveals the Reality of Law, Anthology Columns & Articles options in the field of law”, Publisher Prenada Media Group, Jakarta.
Act Number 8 of 1981 About the Code of Criminal Procedure.
Act Number 31 Year 1999 on Eradication of Corruption and act No. 20 of 2001 Concerning Amendements to the Act No. 31 of 1999.