Translate - English - Footnote Indo - SP3

by

Submission date: 11-Sep-2023 06:45AM (UTC-0700)
Submission ID: 2163150297
File name: Translate_-_English_-_Footnote_Indo_-_SP3.docx (58.97K)
Word count: 7690
Character count: 39475

PRETRIAL ON SP3 CORRUPTION CASE IN THE PERSPECTIVE OF VICTIM JUSTICE

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A. INTRODUCTION

In fact, Indonesia is a country that has prospered since the first day of independence. The greatest hope of society to have a prosperous, just, and prosperous country. But without forgetting the view of the founding fathers, in fact, they want the Nation of Indonesia to be a useful and great nation. Therefore, the Indonesian nation must protect its entirety in a great way, such as protecting the Indonesian nation and all Indonesian bloodshed, as well as advancing general prosperity, smartening the life of the nation, and participating in the world order.

However, if traced back, in fact Indonesia still goes a long way to achieving its own goals. One of the things that can be seen is where the legal norms upheld in this country are far from perfect words to implement. Sudikno Mertokusumo defines the rule as a rule that determines how people should

behave, behave to protect their own interests and the interests of others, or in another sense, legal norms are a concrete form of regulation.[1] As in the phenomenon of corruption crimes that are growing in Indonesia, this is what then harms many parties, ranging from the economic stability of the country to the people harmed by the perpetrators of corruption crimes, the state is forced to become a victim of such acts.

The issue of corruption seems to be always talked about by various circles. But the problem has not been resolved, although efforts to reduce such crimes have been vigorously implemented by the government, in this case by law enforcement.[2] The problem of corruption[3] is not only a problem faced by a nation or a state, but corruption is a problem faced by mankind because the impact of this crime, is extraordinary. Not only are the disadvantages of the economic aspect, but almost all aspects of life are influenced by both social, cultural, political and security.[4]

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[1] Sudikno Mertokusumo, Penemuan Hukum (Sebuah Pengantar), Liberty, Yogyakarta, 2006, hlm 11.

[2] Bambang Purnomo, *Potensi Kejahatan Korupsi di Indonesia*. (Jakarta: Bina Aksara, 1983), 6. Istilah korupsi berasal dari perkataan latin *"corruptio"* atau *"corruptus"* yang berarti kebusukan, keburukan, kebejatan, ketidakjujuran, dapat disuap, tidak bermoral. Lihat Fockema Andreae dalam Andi Hamzah, *Pemberantasan Korupsi, Melalui Hukum Pidana Nasional dan Internasional*, (Jakarta : Raja Grafindo Persada, 1994), 4-5. Menurut Lubis, M., dan Scoot, J.C. dalam pandangannya tentang korupsi disebutkan bahwa, korupsi dalam arti hukum adalah tingkah laku yang menguntungkan kepentingan diri sendiri dengan merugikan orang lain, oleh para pejabat pemerintah yang langsung melanggar batas-batas hukum atas tingkah laku tersebut, sedangkan menurut norma-norma pemerintah dapat dianggap korupsi apabila hukum dilanggar atau tidak dalam bisnis tindakan tersebut adalah tercela". lihat Lubis, M., dan Scoot, J.C., *Korupsi Politik*, (Jakarta: Yayasan Obor Indonesia, 1993), 19.

[3] Menurut Barda Nawawi Arif bahwa Korupsi sangat menjadi sulit diberantas karena berkaitan erat dengan kompleksitas masalah lain seperti :. "Masalah sikaf mental/moral, masalah pola/sikap hidup dan budaya sosial, masalah kebutuhan/tuntutan ekonomi dan struktur/sistem ekonomi, masalah lingkungan hidup/sosial dan kesenjangan sosial-ekonomi, masalah struktur/budaya politik, masalah peluang yang ada di dalam mekanisme pembangunan atau kelemahan birokrasi/prosedur administrasi (termasuk sistem pengawasan) di bidang keuangan dan pelayanan publik. Jadi kausa dan kondisi yang bersifat kriminogen untuk timbulnya korupsi sangatlah luas (multidimensi) yaitu kausa di bidang moral, sosial, ekonomi, politik, budaya, birokrasi/administrasi, dan sebagainya" lihat Barda Nawawi Arief, *Kapita Selekta Hukum Pidana* (Bandung : Citra Aditya Bhakti, cetakan ke-3, 2013) hl. 67. Hal ini dipertegas oleh Sudarto bahwa : "suatu "*clean government*", di mana tidak terdapat atau setidak-tidaknya tidak banyak terjadi perbuatan-perbuatan korupsi, tidak bisa diwujudkan hanya dengan peraturan-peraturan hukum meskipun itu hukum pidana dengan sanksinya yang tajam. Jangkauan hukum pidana adalah

Indonesia's commitment to eradicate corruption is demonstrated by the ratified United Nations Convention Against Corruption (UNCAC) with Law No. 7 of 2006, in addition to Law No. 20 of 2001 on Changes to Law No. 31 of 1999 on the Eradication of Corruption Crimes. As a criminal offence classified as an extra ordinary crime, the law enforcement has also used extraordinary means, such as the establishment of the Corruption Eradication Commission (KPK). Marwan Effendy conducted research quoted from the World Bank, stating Corruption is An Abuse of Public Power For Private Gains or could be referred to as an abuse of authority for personal gain.[5]

Eradication of corruption is one of the means to create a healthy and authoritative governance climate. A healthy and authoritative governing climate is sure to create a climate of people's lives that are comfortable, safe, protected, and have legal certainty. The eradication of corruption is not the goal, but rather the means (tools) to achieve that goal.[6] In line with this, there needs to be law enforcement in the eradication of corruption, this effort is carried out as a preventive and repressive effort.[7]

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terbatas. Usaha pemberantasan secara tidak langsung dapat dilakukan dengan tindakan-tindakan di lapangan politik, ekonomi, pendidikan dan sebagainya. Lihat Sudarto, *Hukum dan Hukum Pidana*, (Bandung: Alumni, 1981), 24.

[5] Marwan Effendy, *Sistem Peradilan Pidana: Tinjauan terhadap beberapa perkembangan hukum pidana* (Jakarta: Referensi, 2012) hlm. 81

[6] Romli Atmasasmita, "Legitimasi Pemberantasan Korupsi." Dalam Ermania W dan Septa Candra, ed, *Pemikiran Romli Atmasasmita, Tentang Pemberantasan Korupsi di Indonesia*, (Jakarta: Prenada Kencana, 2016), 62.

[7] Lihat Pidato Presiden Soeharto pada Sidang Kabinet Paripurna Tanggal 30 Januari 1970, yang menyatakan bahwa negara bertekad memberantas korupsi secara fundamental. Hal ini berarti, bahwa kita harus memberantas korupsi ini bukan hanya dengan Tindakan-tindakan represif, ialah menindak sesudah terjadinya korupsi melainkan juga harus menghilangkan sumber-sumber utama kemungkinan korupsi itu. Bahkan kita juga harus menghilangkan sumber-sumber utama segala bentuk penyelewengan yang merugikan keuangan negara dan yang merusak perekonomian negara. Inilah yang kita namakan usaha-usaha dan tindakan preventif. Dirjen Pembinaan Hukum, *Pemberantasan Tindak Pidana Korupsi, Pembentukan Undang-Undang Nomor 3 Tahun 1971*. (Jakarta: Departemen Kehakiman, 1971), 13.

Related to the discussion proposed pretrial of corruption crimes, that pretrial aims to uphold and provide protection of human rights of suspects /defendants in the examination of investigations and prosecutions. This mechanism is seen as a form of horizontal surveillance of the rights of suspects/defendants in preliminary examinations.[8]

The reasons for granting the authority to stop the investigation of these investigators are: to uphold the principles of a swift, precise and light-hearted judiciary, and at the same time to establish legal certainty in people's lives. If the investigator concludes that based on the results of the investigation and the investigation, there is not enough evidence or reason to prosecute the suspect in advance of the trial, for what protracted handling and examining the suspect. It is better for the investigator to formally declare the termination of the investigation, in order to immediately create legal certainty.

Pretrial as part of the prevailing criminal justice system in Indonesia is an effort to combat penal crimes by using criminal law as the main means of material criminal law as well as formal criminal law.

It is the nature of the purpose of the law, one of which is to talk about justice. Justice is one of the purposes of every legal system among other purposes, namely legal certainty and benefit.

This writing focuses on the pretrial of SP3 in corruption crimes and the perspective of pre-trial victims of corruption crimes which will be described normatively with the main source being legal material. The review of this legal material focuses on normative rules as well as pre-trial rulings against SP3.

Pretrial should not always be interpreted dogmatically as an order to follow the sound of the constitution, but more than that, it should pay attention to the social facts that occur in society, because legal certainty does not always

[8] *Ibid*, 28.

reflect justice, justice is desirable not only in the conceptual, but must touch feelings for everyone seeking justice or substantive justice.

B. DISCUSSION

1. Pretrial Against SP3 In Corruption Crimes

The issue of corruption is a problem that can never be solved, the position of corruptors who are good at exploiting the situation of existing legal loopholes. Either in terms of rules that have not reached the behavior of these corruption crimes or internal factors of law enforcement that are not maximal in conducting law enforcement. Good law enforcement should still refer to the existing rule of law and reflect the value of community justice. One of the legal efforts that can be made by the public as victims in the case of corruption crimes and to control the work of eradicating corruption against the case that is being handled by law enforcement officials is to submit a pretrial legal action against a corruption case that never gets certainty about the ongoing legal process both handled by the KPK, prosecutors and the police.

The debate over the importance of pretrial submissions in SP3 cases that were not issued, but the case has not been processed by law for many years, opens up the potential for the case to lose the right to be prosecuted before the law. The legal loophole stipulated in the KUHAP arrangement makes many question marks as to whether it is permissible to file a legal action beyond the one stipulated by KUHAP. In practice many corruption cases are found that are not processed but are not issued SP3 by law enforcement. The limitations that people have in accessing and putting pressure on law enforcement officials to be serious in processing the law of a corruption case is a mandate of the law. It is not uncommon when submitted to the pretrial the main difficulty is to open the veil related to the true extent that

the legal process is underway in law enforcement, on the grounds that being processed by law and in the interests of the investigation does not rarely make the public feel doubtful about the eradication of corruption that is underway. So there needs to be a special study that looks at the perspective of SP3 conducted by third parties concerned in the case of corruption crimes to become a horizontal control of the law enforcement of corruption crimes through pretrial legal efforts. Pretrial as a complaint mechanism to date has not been effective. This is in stark contrast to the spirit of pretrial protection of human rights, something that never materialized during the *Het Herziene Inlandsch Reglement* (HIR).

C. DISCUSSION

1. Pretrial Against SP3 In Corruption Crimes

The development of corruption in Indonesia is still high, while the eradication is still very slow, Romli Atmasasmita, stated that, Corruption in Indonesia is already a flu virus that has spread throughout the governing body since the 1960s. Its eradication measures are still stalled today.[9] He further said that corruption is related to power because with that power the ruler can abuse his power for the benefit of his personal, family and cronies.[10] Corruption is considered an exceptional crime or "extra ordinary crime", so it is often regarded as "beyond the law" because it involves high-level economic and high level bureaucrats, both economic and government bureaucrats. Just imagine, the crime of corruption involving this power is very difficult to prove, besides that the will of the eradication of this act is manifestly hit with the interests of power that are very likely to involve the bureaucracy, as a result, it can already be predicted that this corruption

[9] Romli Atmasasmita, *Sekitar Masalah Korupsi, Aspek Nasional dan Aspek Internasional* (Bandung: Mandar Maju, 2004), 1.
[10] *Ibid*.

seems to be "beyond the law" and as a form of "untouchable by the law" action.[11] This can certainly illustrate to all of us how easy it is to handle and prove a corruption case. Efforts to eradicate corruption have been underway since Indonesia's independence.

The flourishing of corruption in Indonesia certainly needs to be done very serious countermeasures through criminal politics either through penal efforts that are tackling after the onsanction (repressive), non-penal efforts that prevent crime (preventative), or a combination of the two.[12] It is worth remembering that now corruption is not just an extraordinary crime or an "extra ordinary crime", but rather corruption has now become a humanitarian crime or a "crime against humanity".[13]

Law enforcement to eradicate conventional corruption crimes has so far proven to be a variety of obstacles. Public perception of prosecutors and police and or government agencies is seen as not functioning effectively and efficiently in the handling of corruption cases so that the public has lost trust. In addition, corruption has been shown to have harmed the country's finances, the country's economy and hampered national development.[14]

The process of handling corruption crimes has so far been carried out with a special event law in the Corruption Crimes Act, which is different from the law of events in the general judiciary. With the nature of corruption as an extraordinary crime (extra ordinary crime) then the handling has done extraordinary (extra ordinary measures) anyway.

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[11] Indriyanto Seno Adji, *Korupsi, Kebijakan Aparatur Negara & Hukum Pidana*, (Jakarta: CV Diadit Media, 2007), 330-331.
[12] Indriyanto Seno Adji, *Korupsi, Kebijakan Aparatur Negara & Hukum Pidana*, (Jakarta: CV Diadit Media, 2007), 330-331.
[13] Moh Hatta, *Kebijakan Politik Kriminal: Penegakan Hukum dalam rangka Penanggulangan Kejahatan* (Yogyakarta: Pustaka Pelajar, 2010), 61.
[14] Putusan Perkara Mahkamah Konstitusi Nomor 069/PUU-II/2004, 27.

The issue of corruption is an issue that can never be solved, the implementation of good laws must still refer to the existing rule of law and reflect the value of community justice. One of the legal efforts that can be made by the public as victims in the case of corruption crimes and controlling the work of eradicating corruption against the cases that are being handled by law enforcement officials is to file a pretrial legal action against a corruption case that does not get certainty against the legal process that goes well.

The purpose of the Pretrial is to protect human rights against arbitrariness in the investigation process. With this pretrial institution, any action that undermines human rights, let alone related to corruption crimes, is subject to strict supervision, both vertically and horizontally from other law enforcement agencies and interested third parties.

With the presence of the pretrial institution itself aims to carry out the mandate and principles contained in KUHAP that uphold human rights. And the implied purpose of pretrial is stipulated in Article 80 of the KUHAP which is to uphold the law, the fairness of truth through horizontal supervision. The horizontal oversight here is to monitor the actions taken by investigators or prosecutors against suspects. Such actions must be carried out in accordance with the provisions of the law, carried out professionally and not in contravention of the law as stipulated in KUHAP. This is to minimize abuse of power in the implementation of law enforcement processes.[15]

In the context of pretrial submissions on the basis of material SP3 filings, mainly due to the absence of a period of investigation sometimes makes the investigation process so long that there are de facto concerns that

[15] Adi Rahmanto, "Studi Komparatif Terhadap Kewenangan Objek Praperadilan Sebagi Upaya Pembaharuan Hukum. (Studi Kasus Beberapa Permohonan Praperadilan Terkait Penetapan Tersangka Masuk Objek Praperadilan)," *Jurnal Mahasiswa S-2 Hukum Universitas Tanjungpura*, 10.

the investigation has actually been discontinued but the investigator has not issued a Termination Warrant (SP3). This prompted the Indonesian Anti-Corruption Society (MAKI) to file for pretrial. One of them is to find out if one thing is still being investigated or has even been discontinued. Pretrial institutions with submissions based on SP3 material is a form of respect for human rights, especially victims of corruption crimes in the eyes of the law. In its implementation law enforcement is far from the sense of justice expected by the community. The public judges that the state has not been able to guarantee justice and legal certainty evenly to all its citizens, because there is still a cut in the crackdown on perpetrators, especially corruption.

The dilemma of filing SP3 material is very much clashed with formal legalistic, as well as the way law enforcement officers are still resistant to public reports or community participation represented by third parties concerned about the criminality of corruption. This is evident from what the source Boyamin Saiman said, MAKI that the clash between legal certainty and legal procedures that must be carried out, sometimes if a pretrial application is abbreviated to a legal process, often the evidence used that the law enforcement officer did not issue SP3, should if he wanted to properly postulate the right should be accompanied by supporting evidence that the case is being handled or continued handling the case. Even in the early days of the pretrial submission SP3 material is not uncommon attacks submitted to pretrial applicants that encourage that there is clarity on a corruption case, such as legal standing that must be fulfilled as an applicant, has no interest, has not been regulated by law, related to the rights of the public.

Regarding the submission of pretrial by the NGO Masyarakat Anti-Corruption Indonesia (MAKI) shows the participation of the community in the eradication of corruption. Law No. 31 of 1999 on the Eradication of

Corruption Crimes[16] regulates specifically the participation of the community in CHAPTER V Article 41 and Article 42, that the community is given the opportunity by this law to participate, as for the form of participation in the prevention of corruption crimes, especially in developing preventive and supervisory measures that advance "a culture of accountability and transparency" or a culture of accountability and openness.[17] This is strengthened by Government Regulation No. 43 of 2018 on Procedures for The Implementation of Community Participation and Awarding in the Prevention and Eradication of Corruption Crimes, which

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[16] hat Pasal 41 :
1.Masyarakat dapat berperan serta membantu upaya pencegahan dan pemberantasantindak pidana korupsi.
2.Peran serta masyarakat agaimana dimaksud dalam ayat (1) diwujudkan dalambentuk:
a.hak mencari, memperoleh dan memberikan informasi adanya dugaan telahterjadi tindak pidana korupsi;
b.hak untuk memperoleh pelaya nan dalam mencari, memperoleh danmemberikan informasi adanya aan telah terjadi tindak pidana korupsikepada penegak hukum yang menangani perkara tindak pidana korupsi;
c.hak menyampaikan saran dan pendapat secara bertanggungjawab kepadapenegak hukum yang menangani perkara tindak pidana korupsi;
d.hak untuk me roleh jawaban atas pertanyaan tentang laporannya yangdiberikan kepada penegak hukum dalam waktu paling lama 30 (tiga puluh)hari;
e.hak untuk memperoleh perlindung ukum dalam hal;1.melaksanakan haknya sebagaimana dimaksud dalam huruf a, b,dan c;2.diminta hadir dalam proses penyelidikan, penyidikan, dan disidangpengadilan sebagai saksi pelapor, saksi, atau saksi ahli, sesuaidengan ketentuan peraturan perundang-undangan yang berlaku;
3.masyarakat sebagaimana dimaksud dalam ayat (1) mempunyai hak dan Tanggungjawab dalam upaya mencegah pe rantasan tindak pidana korupsi;
4.hak dan Tanggungjawab sebagaimana dimaksud dalam ayat (2) dan ayat (93) dilaksanakan dengan berpegang teguh pada asas-asas ketentuan yang diatur dalam peraturan perundang-undang yang berlaku d engan menaati norma agama dan norma sosial lainnya;
5.ketentuan mengenai tata cara pela naan peran serta masyarakatdalam pencegahan dan pemberantasan tindak pidana korupsi sebagaimana dimaksud dalam Pasal ini, diatur lebih lanjut dengan Peraturan Pemerintah.

Pasal 42:
1.Pemerintah memberikan penghargaan kepada anggota masyarakat telah berjasamembantu upaya pencegahan, pemberantasan, at pengangkapan tindak pidana korupsi.
2.Ketentuan mengenai penghargaan sebagaimana dimaksud dalam ayat (1) diaturlebih lanjut dengan Peraturan Pemerintah

[17] Dalam Barda Nawawi Arief, *Loc. Cit.*

was ratified on September 17, 2018. In the rules are clearly regulated regarding the award to the people who have reported about the crime of corruption, then the government will reward the whistleblower with a maximum amount of 200 million rupiah (Rp).[18]

Pre-trial that has been submitted by MAKI Non-Governmental Organization is one of the reasons to find out if one case is still being investigated or has even been suspended investigation with the absence of SP3 material. The pretrial submission that has been made by MAKI is basically a form of respect for human rights, especially victims of corruption crimes in the eyes of the law. This is in line with The Opinion of

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[18] Lihat Peraturan Pemerintah Nomor 43 tahun 2018 **Pasal 11**: (1) Masyarakat dapat menyampaikan saran dan pendapat kepada Penegak Hukum mengenai penanganan perkara tindak pidana korupsi.(2) Saran dan pendapat sebagaimana dimaksud pada ayat (l) dapat disampaikan secara lisan atau tertulis baik melalui media elektronik maupun nonelektronik.(3) Dalam hal saran dan pendapat sebagaimana dimaksud pa.da ayat (2) disampaikan secara lisan, Penegak Hukum wajib mencatat saran dan pendapat secara tertulis.(4) Saran dan pendapat sebagaimana dimaksud padaayat (3) wajib ditandatangani oleh pihak yangmenyampaikan saran dan pendapat serta penegak Hukum.(5) Saran dan pendapat sebagaimana dimaksud padaayat (2) paling sedikit memuat:a. identitas diri yang disertai dengan dokumen pendukung; dan b. saran dan pendapat mengenai penanganan perkara tindak pidana korupsi; **Pasal 12** : (l) Hak untuk memperoleh pelindungan hokum sebagaimana dimaksud dalam Pasal 2 ayat huruf ediberikan oleh Penegak Hukum kepada Masyarakatdalam hal: a. melaksanakan haknya sebagaimana dimaksud dalam Pasal 2 ayat (2) huruf a, huruf b, danhuruf c; dan b. diminta hadir dalam proses penyelidikan,penyidikan, dan pemeriksaan di sidang pengadilansebagai Pelapor, saksi, atau ahli. (2) Pelindungan hukum diberikan kepada Pelapor yang laporannya mengandung kebenaran. (3) Pelindungan hukum sebagaimana dimaksud padaayat (1) dilaksanakan sesuai dengan ketentuanperaturan perundang-undangan; **Pasal 15:** (1) Penghargaan dalam upaya pemberantasan ataupengungkapan tindak pidana korupsi diberikan kepadaPelapor sebagaimana dimaksud dalam Pasal 13 ayat (2)huruf b. (2) Penghargaan sebsgaimana dimaksud pada ayat (l)dapat diberikan dalam bentuk:a. piagam; dan/ataub. premi.(3) Untuk memberikan penghargaan sebagaimanadimaksud pada ayat (2), Penegak Hukum melakukanpenilaian terhadap tingkat kebenaran laporan yangdisampaikan oleh Pelapor dalam upaya pemberantasanatau pengungkepan tindak pidana korupsi.(4) Penilaian sebagaimana dimaksud pada ayat (3)dilakukan dalam waktu paling lama 30 (tiga puluh)hari kerja terhitung sejak salinan putusan pengadilan yang telah memperoleh kekuatan hukum tetapditerima oleh Jaksa.(5) Penilaian sebagaimana dimaksud pada ayat (4) dikoordinasikan oleh Jaksa; **Pasal 17 :** (1) Dalam hal hasil penilaian sebagaimana dimaksud dalam Pasal 15 disepakati untuk memberikanpenghargaan berupa premi, besaran premi diberikansebesar 2o/oo (dua permil) dari jumtah kerugiankeuangan negara yang dapat dikembalikan kepadanegara. (2) Besaran premi yang diberikan sebagaimana dimaksudpada ayat (1) paling banyak Rp 2OO.OOO.OOO,00 (duaratus juta rupiah).(3) Dalam hal tindak pidana korupsi berupa suap, besaran premi diberikan sebesar 2o/oo (dua permil) dari nilai uang suap dan/atau uang dari hasil lelang barang rampasan.(4) Besaran premi yang diberikan sebagaimana dimaksud pada ayat (3) paling banyak Rp 10.000.000,00 (sepuluh juta rupiah).

Komariah Emong Sapardjaja which states that in criminal law, the guarantee of human rights should be reflected in the law of his criminal proceedings.[19] Criminal proceedings should not be seen as laws that solely relate to criminals and criminal offenders only, but should also be seen as laws that guarantee the independence of citizens.[20]

In fact, respect for human rights has not been fully fulfilled both in KUHAP and in corruption crimes. The lack of attention to victim protection in KUHAP[21] is also one of KUHAP's current weaknesses, which is considered a masterpiece of the Indonesian nation. The position of victims in the criminal justice system as well as in judicial practice is relatively poorly regarded because the provisions of Indonesian law still rest on protection for offender oriented. Whereas, from a criminological and criminal law view crime is a conflict between individuals that inflicts harm on victims, communities and offenders themselves where of the three groups the interests of victims of crime are a major part of the crime where according to Andrew Ashworth, "primary an offence against the victim and only secondarily an offence against the wider comunity or state".[22]

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[19] Komariah Emong Sapardjaja, "Ajaran sifat Melawan hukum Materiel dalam Hukum Pidana." (Disertasi Universitas Padjajaran, Bandung, 1994), 228.

[20] Mien Rukmini, "Makna dan Pengaturan Asas Praduga Tak Bersalah Hubungannya dengan Asas Persamaan Kedudukan dalam Hukum berdasarkan Pasal 27 Ayat (1) UUD 1945 Pada Sistem Peradilan Pidana Indonesia." (Disertasi Bandung, 2001), 95.

[21] Pada dasarnya hak-hak korban dalam KUHAP meliputi tiga dimensi, yaitu: Pertama, hak untuk mengajukan keberatan terhadap tindakan penyidikan dan/atau penghentian penuntutan dalam kapasitasnya sebagai pihak ketiga yang berkepentingan (Pasal 109 dan 140 ayat (2) KUHAP). Kedua, hak korban yang berkaitan dengan kedudukannya sebagai saksi berupa mengundurkan diri berdasarkan Pasal 168 KUHAP dan hak bagi keluarga korban, dalam hal korban meninggal dunia, untuk mengijinkan atau tidak mengijinkan tindakan polisi untuk melakukan bedah mayat atau penggalian kubur untuk otopsi (Pasal 134-136 KUHAP). Ketiga, hak untuk menuntut ganti kerugian terhadap akibat kejahatan dalam kapasitasnya sebagai pihak ketiga yang dirugikan (Pasal 98-101 KUHAP).

[22] Andrew Ashworth, "Victim Impact Statements and Sentencing." *The Criminal Law Review* (Agustus 1993): 503.

The law has made restrictive restrictions a basis for investigators to stop an investigation. This limitative restriction to avoid the possibility of termination of the investigation that arises due to the subjectivity of the investigator of a criminal event, so of course such subjectivity is still possible. In the case of SP3 material then against the basis of submission outside the provisions of Article 109 (2) KUHAP, then the way the pretrial judge works is to do the method of legal discovery. In this case the Judge has an important position in the legal system, because the judge has a function that essentially complements the provisions of the written law through rechtvinding (discovery of the law) which leads to the creation of new law. The function of the discovery of the law must be interpreted to fill the recht vacuum and prevent the mishandling of a case on the grounds that the law is unclear or it does not exist.[23]

In the investigator's notes for a number of pretrial cases on the basis of SP3 material worth scrutiny is, the view of the judge that the actions and attitudes of law enforcement officers who do not immediately bestow the case file is one form of horizontal control to the performance of law enforcement officers:

1. **TANJUNG KARANG DISTRICT COURT RULING NUMBER 01/PID/PRA/2008/PN.TK**

   Important things to note in the judge's deliberations here are:

   1) That with the attitude, treatment and actions of the Respondent let the case of suspect Simon Susilo and the suspect Aman Susilo protracted and has exceeded the grace period long enough, when according to the respondent's confession in the answer that the examination conducted by the investigator (Police) has been

[23] Mochtar Kusumaatmadja, "Konsep-konsep Hukum dalam Pembangunan". Dalam Ahmad Rifai, *Op. Cit.,* 7.

optimal and has received the submission of the suspect along with will conduct additional examination and it turns out that from the facts revealed in the trial as considered above, it turns out that the additional examination intended by the respondent as intended by the respondent cannot be proven.

2) Based on the above considerations, according to the District Court that although the Respondent has not issued a termination letter of prosecution on behalf of the suspect Simon Susilo and the suspect Aman Susilo. However, with the attitude, treatment and actions of the respondent as considered above, the case file on behalf of suspect Simon Susilo and suspect Aman Susilo to Tanjung Karang District Court for trial can be categorized or likened to the act of "Termination of Prosecution" and therefore the actions of the Respondent shall be declared invalid.

2. **CENTRAL JAKARTA DISTRICT COURT RULING NUMBER 04/PID.PRAP/2010/PN.JKT.PST**

   The judge who examines the pretrial application case argues that the Central Jakarta District Court is authorized to examine and adjudicate the applicant's pretrial application. In the evidence of criminal law sought is material truth, so the precedence is the substance of whether the right respondent I (Government of the Republic of Indonesia, Cq President of the Republic of Indonesia cq Attorney General of the Republic of Indonesia) has conducted a secret termination of prosecution then the benchmark is the propriety. So this becomes a guideline in the action of law enforcement officers on the matters he handled.

3. **BOYOLALI DISTRICT COURT RULING NUMBER 01/PRA/2014/PN.BYL**

That in Article 109 paragraph (2) KUHAP has authorized the investigator to be able to stop the investigation based on the following reasons:

1) There is not enough evidence
2) The incident turned out not to be a criminal offence;
3) The investigation is discontinued for the sake of the law.

With the termination of the investigation, the investigator must inform the public prosecutor, the suspect or his family. In other words, the SP3 issuer is an obligation and if it is not done, then the process will certainly suffer a formal defect.

4. **BANJARNEGARA DISTRICT COURT RULING NUMBER 1 / PID PRA / 2017 / PN BNR.**

That in Article 109 paragraph (2) of KUHAP, it is stipulated that if the investigator stops the investigation, it is mandatory to let know the public prosecutor and the suspect or his family. However, in practice, Investigators rarely issue Notices of Termination of Investigation (SP3) on the grounds of fear that the victim/whistleblower will conduct a pre-trial. As a result, it is not uncommon for investigators to silence cases until the case cannot be processed because of the prosecution as stipulated in Article 78-80 of the Criminal Court. Even if the investigators file a case, there is an unfinished back-and-forth between the investigator and the prosecutor, because the investigator is not carrying out the instructions given by the prosecutor so that the file can be declared as the basis for drafting the indictment. That to overcome different perceptions even interpretations need to be carried out intense coordination measures between investigators and the Public Prosecutor. The spirit and willingness to coordinate will create a good relationship and gain one view in the case, and will eliminate selfish values in

carrying out the process of law enforcement. So in turn it will be obtained outcome better than the earlier process. KUHAP itself does not limit the number of times prosecutors can return files. Although being aware of the back-and-forth of the files reduces the efficiency of the investigation and makes the handling of the case protracted, which can create legal uncertainty in a case. The uncertainty of the legal process can cause disquiet for both the report and the suspect. If the case is doable, it should be processed according to the provisions. Otherwise, it is ideally discontinued, to create legal certainty. Second, however investigators can ask a joint title of case, to equate perception in the context of the Intergrated Criminal Justice System. Third, if the investigator has been unable to develop the investigation, then the investigator stated that the investigation is optimal.

5. **SOUTH JAKARTA DISTRICT COURT RULING NUMBER 24/PID/PRA/2018/PN.JKT.SEL.**

Because there are no standard guidelines in KUHAP and prone to irregularities in its implementation, then some judges make inroads by interpreting the actions of investigators categorized as a form of termination of investigation as referred to in the phrase "termination of investigation" in KUHAP. From the facts obtained as mentioned above, there has been sufficient preliminary evidence about alleged corruption offences in the form of abuse of authority in the granting of FPJP and The Determination of Bank Century as a Bank to fail to have a systemic impact by Bank Indonesia Officials namely Siti Ch. Fadjriah, Budi Mulya.....which can inflict financial losses of the State that can be suspected to have violated Article 3 of Law No. 31 of 1999 Eradication of Corruption Crimes jo. Article 55 paragraph (1) to -1 jo. Article 64 paragraph (1) of the Pent-Up" and the report is also known to WARIH

SADONO as Deputy for The Field of Suppression in the KPK; In this case the judge is very observant and wise in considering the legal challenges proposed by the parties. The Pretrial judge disagreed with the Applicant that the KPK had materially suspended the investigation, but in the interests of law and justice and protection of human rights, the KPK should continue to thoroughly investigate and prosecute the cases mentioned in the indictment of Budi Mulya, whatever the risks because that is the logical consequence that the KPK must bear to the public.

In some of these rulings, related to the nature of the pretrial verdict Number 01/Pid.Prap/2008/PN. TNK, 04/Pid.Prap/2010/PN.Jkt.Pst, 0101/Pid.Prap/2014/PN. Byl, /PID. Prap/2017/PN.Bjn, 24/Pid.Prap/2018/PN.Jkt.Pst is final and binding. This is as stated in Article 83 of KUHAP[24], which then becomes a juridical answer to investigators to act on the warning of the judge's ruling as a law.

Based on the above description, it is precisely said that the pretrial institution used as a form of horizontal control of law

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[24] Mahkamah Konstitusi (MK) lewat putusannya menyatakan menghapus ketentuan Pasal 83 ayat (2) UU No 8 Tahun 1981 tentang Hukum Acara Pidana (KUHAP) yang mengatur kewenangan penyidik/penuntut umum mengajukan banding atas putusan praperadilan. Putusan ini mengabulkan sebagian permohonan yang diajukan anggota polisi, Tjetje Iskandar yang memohon pengujian pasal itu. Tjeje memohon pengujian Pasal 83 ayat (1) dan (2) KUHAP lantaran dinilai diskriminatif. Sebab, pasal itu hanya membolehkan termohon (penyidik/penuntut umum) praperadilan untuk mengajukan banding jika permohonan praperadilan terkait sah-tidaknya penghentian penyidikan/penuntutan dikabulkan majelis hakim. Sementara, bagi pemohon praperadilan tidak tersedia upaya hukum banding. Pasalnya, Tjeje pernah mengalami kasus pidana yang dihentikan penyidikan (SP-3) lewat Surat Ketetapan No. Pol. S.Tap/20-BupI/VII/2002 tanggal 4 Juli 2002 yang dikeluarkan Direspidum Mabes Polri Brigjen Aryanto Sutadi. Lalu, pemohon mengajukan praperadilan yang memutuskan permohonan praperadilan ditolak lewat putusan No. 27/Pid/Prap/2011/PN Jaksel tanggal 23 Agustus 2011. Mahkamah beralasan acara praperadilan adalah acara cepat, sehingga seharusnya tidak dapat dimohonkan pemeriksaan banding (baik oleh pemohon atau termohon)
Tersedia di WWW: https://www.hukumonline.com/berita/baca/lt4f9ff3cb4fbf8/mk-cabut-aturan-banding-praperadilan/, (10 Maret 2020).

enforcement to work under the law and not apply arbitrarily, because another important issue in the application of SP3 material is related to minimal public information, many things in the legal prses subjectivity of the dominant investigator and prosecutor, so sp3 this material is akhrinya as a step to correct the matter.

1. **Victim's Perspective on Corruption Crimes**

Speaking of victims of crime at first it is certainly the victim of an individual or individual. This view is not wrong. for for the common good in society it is. For example murder, persecution, theft, and so on. In the view of Criminal Law Science the notion of "victim of crime" is the terminology of Criminology and Victimology[25] and was later developed in the criminal law and/or criminal justice system. The logical consequence of victim protection in the 1985 UN Congress in Milan (on "The Prevention of Crime and the Treatment of Offenders") suggests that victims' rights should be seen as an integral aspect of the total criminal justice system (*"victims rights should be perceived as an integral aspect of the total criminal justice system"*). With the social construction of the law itself, all crimes have victims. In fact an act, defined as a crime because a person or something is seen as a victim. In this sense, victimization–which is the conception of the

[25] Istilah Kriminologi pertama kali dipergunakan antropolog Perancis, Paul Topinard dari kata crimen (kejahatan/penjahat) dan logos (ilmu pengetahuan). Edwin H. Sutherland dan Donald R. Cassey menyebutkan kriminologi sebagai: "...the body of knowledge regarding delinquency and crime as social phenomenon. It includes within its scope the process of making law, the breaking of laws, and reacting to word the breaking of laws..". (Edwin H. Sutherland dan Donal R. Cassey, Principles of Criminology, New York: Lippincott Company, 1974,. 3). Kemudian Victimologi berasal dari katakata latin: Victima yang berarti korban, logos yang berarti ilmu, pengetahuan ilmiah, studi. (Arif Gosita, *Masalah Perlindungan Anak (Kumpulan Karangan)*, (Jakarta: PT Bhuana Ilmu Populer, 2004), 97. dan: Lilik Mulyadi, *Kompilasi Hukum Pidana Dalam Perspektif Teoritik Dan Praktik Peradilan Perlindungan Korban Kejahatan, Sistem Peradilan Dan Kebijakan Pidana, Filsafat Pemidanaan Serta Upaya Hukum Peninjauan Kembali Oleh Korban Kejahatan*, (Bandung: CV Mandar Maju, 2007), 12.

victim–precedes the definition of the act as criminal. Victims cannot be imagined, that criminal law is made not enforced. A victimless crime can only be one of the facts defined by outside observers. (*by the social construction of law itself, all crimes have a victim. Acts, in fact, are defined as criminal because someone or something is conceived of as victim. In this sense, the victim- that is a conception of the victim- precedes the definition of an act as criminal. If a victim cannot be imagined, a criminal law is nether created not enforced. A victimless crime can only be one that is defined after the fact by an outside observer*).[26]

Theoretically and in practice in the Indonesian Criminal Justice System the interests of victims of crime are represented by the Public Prosecutor as part of the protection of society in accordance with the theory of social contract argument and social solidarity theory (social solidary argument).[27] In general in the theory there are two models of protection, namely: First, the procedural rights model[28] or in France called the partie civile model (civil action system). In short, this model emphasizes the possible role of victims in criminal justice processes such as assisting prosecutors, being involved in every level of judicial examination, must be heard if the convicted is released on parole, and so on. In addition, by actively participating in the criminal justice process, the victim can regain her self-esteem and confidence. However, with the involvement of victims has a positive facet in law enforcement, and has a negative facet because the active participation

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[26] Israel Drapkin, ed., *Victimology* (Lexington: Lexington Books, DC Health and Company, 1975), 103.
[27] Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Bandung: PT Alumni, 1992), 78.
[28] Dalam kaitan dengan hak-hak prosedural korban kejahatan dapat mengacu pada hak korban untuk mengajukan pra peradilan terhadap penghentian penyidikan maupun penuntutan sebagaimana dikenal dalam hukum positif Indonesia.

of victims in the implementation of criminal justice processes can cause personal interest to lie above the public interest. Victims who are interested in criminal cases that have caused harm to him are terminated due process will also be suspended his right to justice. Article 80 KUHAP only accommodates the application to check the valid or not termination of the investigation or prosecution, so in this case the more interested are the victims. Victims of crime can perform the role and function of horizontal supervision of the implementation of the criminal justice system to uphold law, justice and truth. Supervision carried out by the victim as an interested party in the form of a request for examination about the legitimate or not termination of the investigation and prosecution through the pre-trial institution.[29]

The process of resolving criminal cases through criminal justice is interesting when viewed from the perspective of the victim as the party that suffers the most losses. It is unfortunate that in the criminal justice process victims are not actively involved. Criminal justice prosecutes perpetrators for allegedly violating criminal law, not violations of the rights of victims, although it is the victims who suffer the most harm. As stated at the beginning of this section of the paper, that in the early stages of the process of resolving cases through criminal justice, victims of crime have great and decisive authority but at the next stage that authority becomes lost, while the authority of the police and prosecutors strengthens. The loss of the victim's authority in the criminal justice settlement process will invite a lot of problems, especially about the roles of police, prosecutors, and judges as well as

[29] Mudzakir, "Korban Kejahatan Dalam Perspektif Peradilan Pidana Indonesia" (Tesis Program Pascasarjana Fakultas Hukum Universitas Indonesia, Jakarta, 1992), 126.

the mechanism of settlement of criminal cases through criminal justice according to the view of the victims of crime.

The legal conceit that will arise if no proper formulation of SP3 material or SP3 is secretly issued by the investigator is that the case will lose the right to be prosecuted in advance of the law, and will return to the provisions of the provisions of daluarsa in Article 78 of the Criminal Code. Regarding the prosecution provision stipulated in Article 78 paragraph (1) of the Penal Code, which states that the authority to prosecute criminals is removed due to expiry: about all violations and crimes committed by printing after one year; crimes threatened with a fine, imprisonment, or imprisonment of at least three years, after six years; about crimes threatened with a prison sentence of more than three years, after twelve years; crimes threatened with the death penalty or life imprisonment, after eighteen years.[30]

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[30] Dalam kasus tindak pidana korupsi mengenai suap Traveller Cheque (TC) oleh Miranda Goeltom terkait dengan Pasal 13 UU 31/1999, pada eksepsi yang diajukan oleh penasihat hukum Miranda, Andi F. Simangunsong dikatakan, dakwaan ketiga dan dakwaan keempat dalam surat dakwaan penuntut umum telah daluwarsa. Hal ini sesuai dengan Pasal 78 ayat (1) ke-2 KUHP. "Penyuapan terjadi Juni 2004 telah daluwarsa pada Juni 2010 yang lalu," ujar Andi saat membacakan eksepsinya di persidangan. Penuntut umum KPK, Supardi, mengatakan pendapat tim penasihat hukum terdakwa yang menyatakan dakwaan ketiga dan dakwaan keempat dalam surat dakwaan penuntut umum telah daluwarsa sejak Juni 2010 lalu, adalah tidak benar. Menurutnya, perkara pemberian Traveller Cheque ke puluhan anggota DPR periode 1999-2004 terkait dalam pemilihan Deputi Gubernur Senior BI tahun 2004 baru terungkap oleh lembaganya pada tahun 2009 lalu. Menurutnya, tak ada alasan bagi tim penasihat hukum terdakwa menganggap Pasal 13 UU 31/1999 yang masuk ke dalam dakwaan ketiga dan dakwaan keempat sudah daluwarsa. Terlebih, jenis dakwaan yang dikenakan ke terdakwa Miranda adalah alternatif. Jadi, berapapun pasal yang didakwakan, hanya satu yang akan dikenakan.Selengkapnya, simak artikel KPK Anggap Dakwaan Miranda Belum Daluwarsa. Pendapat penuntut umum di atas pun menurut hemat kami sejalan dengan pendapat dari pakar hukum acara pidana UII Yogyakarta, Mudzakir sebagaimana telah dijelaskan di atas bahwa penghitungan kedaluwarsa, untuk tindak pidana tersembunyi (terselubung). Maka, penghitungan sejak diketahui tindak pidana terungkap.
Adapun pada praktiknya ada dua pendapat yang berbeda yang diterapkan kedalam putusan. Berikut penjelasannya:
1. Pada kasus Miranda melalui Putusan Mahkamah Agung Nomor 545 K/Pid.Sus/2013, Majelis Hakim yang diketuai oleh Artidjo Alkostar menyatakan bahwa hakim pada putusan sebelumya yang menyatakan bahwa tindakan Miranda tidak daluwarsa telah benar menerapkan hukumnya. Hal tersebut didasari Article 29 United Nations Conventions Againts Corruption 2003 yang telah diratifikasi Undang-

Against the actions of investigators who do not follow up on a criminal case that has been reported to the authorities, then the Whistleblower or Victim of a Crime, or Suspect, pursues a legal path by submitting a request for examination through the Pretrial Institution, i.e. to conduct a test against the legitimate or not a termination of the investigation. Although there is an application received or granted by the Judge of the Pretrial Institution with legal consideration, that even if, the fact of the trial there is no Termination of Investigation Warrant (SP3) in the investigation process, but on the other hand, there is also a test application for the termination of the investigation which is rejected with the consideration of the law that for the actions of the investigator who does not follow up on a criminal case, as long as it is not issued or issued an Investigation Termination Warrant (SP3) , does not include the termination of the investigation

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Undang Nomor 7 Tahun 2006 tentang Pengesahan United Nations Convention Againts Corruption, 2003 ("UU 7/2006"):

Each state party shall, where apropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence estabilished in accordance with this convention and established a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice. Yang pada intinya karena tindak pidana korupsi adalah kejahatan luar biasa (extra ordinary crime), maka ketentuan Pasal 78 ayat (1) butir ke-2 KUHP dapat disimpangi (judge made law). Sehingga di sini dakwaan penuntut umum KPK pada tingkat pertama telah sah dijadikan dasar untuk memutus perkara ini.

2.Pada kasus Toriq Baya'sut. mantan Kepala Biro Hukum PT SIER (Persero). Tindak pidana yang dilakukan ialah memberi atau menjanjikan sesuatu berupa uang oleh PT SIER (Persero) kepada seorang pegawai negeri sipil dengan jabatan Kasubdit Kasasi Perdata di Mahkamah Agung Republik Indonesia. Perbutan itu memenuhi unsur dengan maksud menggerakkannya untuk berbuat atau tidak berbuat sesuatu dalam jabatannya yang bertentangan dengan kewajibannya, yang terdapat di Pasal 43A ayat (1) UU 20/2001 jo. Pasal 55 ayat (1) ke-1 KUHP jo. Pasal 64 ayat (1) KUHP. Namun Majelis Hakim pada Pengadilan Negeri Surabaya melalui Putusan Pengadilan Negeri Surabaya Nomor 81/Pid.Sus/2011/PN.SBY berpendapat bahwa dalam kasus ini dakwaan Penuntut Umum tidak dapat diterima sehingga penuntutan terhadap terdakwa Toriq hapus karena telah lewat waktu (daluwarsa). Yang mana kasus itu telah diketahui pada tanggal 30 Juli 1999 sampai dilimpahkannya berkas perkara di Pengadilan Tindak Pidana Korupsi Surabaya pada tanggal 18 Juli 2011 (12 Tahun) sehingga memenuhi unsur daluwarsa di Pasal 78 ayat (1) ke-3 KUHP (sumber: https://www.hukumonline.com/klinik/detail/ulasan/lt58e921c313b7b/daluwarsa-penuntutan-dalam-tindak-pidana-korupsi, diakses pada tanggal 23 Maret 2020).

and therefore, is not the object of the Pretrial, so the Pretrial Judge rejects the Pretrial Application submitted by the Pretrial Applicant. Moreover, in KUHAP that applies in Indonesia, it does not contain provisions regarding the understanding of the termination of the investigation, resulting in different interpretations related to the termination of the investigation. The fact of this law, increasingly shows that there has been a legal blurring of Article 77 KUHAP related to the authority of the Pretrial Institution to test the validity of the termination of the investigation as one of the objects or scope of the Pretrial as stipulated in the applicable Criminal Code in Indonesia, and with the rejection of the Pretrial Application for a termination of the investigation in the absence of follow-up and clarity from the Investigator , with legal consideration due to the absence of formality of the Termination of Investigation Warrant (SP3) issued by the Investigator and notified to the Whistleblower or Victims of Criminal Acts or Suspects, precisely resulting in the criminal case not also getting follow-up and protracted until an indefinable time limit, thus indicating that the Pretrial Institution has not been able to provide legal protection, either for the Whistleblower, The Victim of the Crime , or suspects whose criminal cases are not followed up at the level of investigation.[31]

In looking at the issue of SP3 material or discreetly that has no rules in the current criminal proceedings' law, then, the author then asks a mediator why then the evidence to propose the basis of SP3 material or the cessation of investigation in secret can seek the

[31] Bernadetta Rumondang F S, Masruchin Ruba'i, dan Bambang Sugiri, "Pengujian Sah Tidaknya Penghentian Pneyidikan Melalui Lembaga Praperadilan." (Program Studi Magister Ilmu Hukum Pascasarjana Fakultas Hukum Universitas Brawijaya 11 TAHUN 2016), 5.

presence of a sense of justice for the community. The protection of victims of crime in carrying out legal efforts of its existence is very important considering that based on empiric studies it turns out that the victim's reaction to the court's ruling is judged incompatible with the sense of justice while from another dimension it turns out that the victim himself[32] can not do something to test the verdict because the existing law does not provide an opportunity to make legal efforts against the court's ruling. Departing from the above dimensions, there may be constraints manifested in the protection of victims through procedural rights.[33]

The criminal justice system is a system in a society to ward off crime, with the aim of preventing people from becoming victims of crime, resolving crimes that occur as the public is satisfied that justice has been upheld and the guilty convicted and trying those who have committed crimes not to repeat their crimes.[34] If we look at that from a justice perspective, then we can do that in the theory of dignified justice , who adheres to the principle that a legal practitioner cannot say that he works without inspiration from legal philosophy, legal theory or doctrinal.

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[32] Pada dasarnya ketentuan Hukum Positif di Indonesia memberikan perlindungan terhadap korban kejahatan yang bersifat tidak langsung baik dalam ketentuan Kitab Undang-Undang Hukum Pidana (KUHP), Kitab Undang-Undang Hukum Acara Pidana (KUHAP), maupun dalam UndangUndang Nomor: 7/drt/1955, Undang-Undang Nomor 23 Tahun 1997, Undang-Undang Nomor 27 Tahun 1999, Undang-Undang Nomor 8 Tahun 1999 dan Undang-Undang Nomor 31 Tahun 1999 yo Undang-Undang Nomor 20 Tahun 2001. Kemudian dalam kebijakan formulatif yaitu Undang-Undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP) dan Kitab Undang-Undang Hukum Pidana (KUHP) maka untuk pengertian korban dipergunakan terminologis yang berbeda-beda yaitu sebagai pelapor (Pasal 108 KUHAP), pengadu (Pasal 72 KUHP), saksi korban (Pasal 160 KUHAP), pihak ketiga yang berkepentingan (Pasal 80, 81 KUHAP), dan pihak yang dirugikan (Pasal 98 s/d 9 KUHAP).

[33] Lilik Mulyadi, *Upaya Hukum Yang Dilakukan Korban Kejahatan Dikaji Dari Perspektif Sistem Peradilan Pidana Dalam Putusan Mahkaah Agung Republik Indonesia*.

[34] Romli Atmasasmita, *Sistem Peradilan Pidana* (Bandung: Binacipta, 1996), 2.

Some legal studies assert that victims and witnesses should get legal protection as a form of reward for their contribution to the judicial process, rather than simply being treated as a "tool" in the judicial process. The issue of crime always revolves around the question of what can be done to criminals and no one questions what can be done to the victim. Everyone thinks that the best way to help the victim is to catch the criminal. So far the victim has not received enough attention. With the taking of an action or criminal against the perpetrator, the problem against the victim is considered to have been resolved.[35] There is still an understanding that crime is a form of an attack on the state so that the crime is a conflict between the perpetrator and the victim.

The state provides protection to citizens, so it is the country that is dealing with the perpetrators of the crime. This is where the position of the victim appears as the party that is basically the most harmed related to a crime of losing its role.[36] The terminology "the aggrieved party" refers to the victim, as set out in the explanation of the article. By incorporating civil proceedings into criminal proceedings, legislators intend to expedite procedures and cut the cost of litigation that is known to be high enough.

Termination of investigation or termination of prosecution harms victims who suffer as a result of a crime. In the case of corruption the victims are the state and the community because in the finances of the state there are also sourced from the community such

[35] Nur Azisa, "Kompensasi Dan Restitusi Bagi Korban Kejahatan Sebagai Implemnetasi Prinsip Keadila" (Disertasi Program Pascasarjana Universitas Hasanuddin Makassar, 2015), 1.

[12] Eva Achjani Zulfa, "Restorative Justice dan Peradilan Pro-Korban", dalam Adrianus Meliala, ed., *Reparasi dan Kompensasi Korban dalam Restorative Jusctice* (Jakarta: Lembaga Perlindungan Saksi dan Korban dan Departemen Kriminologi FISIP UI, 2011), 27.

as taxes that will be returned to the community in the form of the construction of projects for the benefit and prosperity of the community.

From the above description it can be said that it is not easy to realize substantial legal justice in law enforcement in Indonesia. The Pretrial Institution, which is expected to be the umbrella of the law so that there is no violation of the rights of a person or those caught up in a litigation, does not fully meet expectations, because there are still irregularities due to abuse of power or the use of legal loopholes, let alone talk about the rights of victims of such space seems to have not been granted. various influential factors in it. Victims of crime are the most suffering as a result of crime, instead not getting as much protection as the law provides to the perpetrators of the crime. As a result, by the time the perpetrator of the crime has been convicted by the court, the condition of the victim of such a crime is not cared for at all. Whereas the issue of justice and respect for human rights applies not only to the perpetrators of crimes, but also victims of crime.

A. CONCLUSIONS and RECOMMENDATIONS

1. Conclusions

a) Pre-Trial Against SP3 In Corruption Crimes

The debate over the importance of pretrial submissions in SP3 cases that were not issued but the case has not been processed by law for many years, opens up the potential for the case to lose the right to be prosecuted before the law. In practice many corruption cases are found that are not processed but are not issued SP3 by law enforcement. The limitations that people have in accessing and putting pressure on law enforcement officials to be serious in processing the law of a corruption

case is a mandate of the law. So there needs to be a special study that looks at the perspective of SP3 conducted by third parties concerned in the case of corruption crimes to become horizontal control of the law enforcement of corruption crimes through pre-trial legal efforts. The work of law enforcement officers in eradicating corruption needs to be supervised in order for actions taken under the law to boil down to community justice. The submission of SP3 material looks at the purpose of the Pretrial itself which is to protect human rights based not only on the defendant but also in the victim's side, against the arbitrariness in the investigation process of the case. With this pretrial institution, any action that undermines human rights, let alone related to corruption crimes, is subject to strict supervision, both vertically and horizontally from other law enforcement agencies and interested third parties. That the basis of SP3 is legal, should not be based on the subjectivity of law enforcement officers. The need for legal certainty in the investigation of a corruption case not only provides legal protection for the accused, but also to the victims of corruption in order to continue to push the legal process to other agencies, so that no violator of the law who has committed corruption activities that loses the finances of the country is free from the deterrent of punishment (loss of the right to prosecution due to daluarsa, or loss of evidence or suspects fleeing). Public participation becomes an inevitable in eradicating corruption in its capacity as a third party of interest in filing a material SP3 pretrial application (cases that are stopped silently or without clarity). Law enforcement to eradicate corruption crimes committed so far has proven to be a variety of obstacles. Even today corruption has become an extraordinary crime so it must be dealt with extraordinarily (extraordinary measures). The public's view of prosecutors and police

and or government agencies is seen as not yet effective and efficient in its handling of corruption cases so that the public almost loses trust in law enforcement. The criminal justice system is essentially a criminal law enforcement process, while the purpose of Pretrial is to protect human rights against arbitrariness in the investigation process. With this pretrial institution, any action that undermines human rights, let alone related to corruption crimes, is subject to strict supervision, both vertically and horizontally from other law enforcement agencies and interested third parties. In the context of pretrial submissions on the basis of material SP3 filings, mainly due to the absence of a period of investigation sometimes makes the investigation process so long that there are de facto concerns that the investigation has actually been discontinued but the investigator has not issued a Termination Warrant (SP3). This prompted the Indonesian Anti-Corruption Society (MAKI) NGO to file for pre-trial. One of them is to find out if one thing is still being investigated or has even been discontinued. Pretrial institutions with submissions based on SP3 material is a form of respect for human rights, especially victims of corruption crimes in the eyes of the law. The dilemma of filing SP3 material is much bumped up with formal legalistic, as well as the perspective of law enforcement officers who are still resistant to community reports or community participation represented by third parties concerned about the criminality of corruption. Pre-trial that has been submitted by MAKI NGO one of the reasons is to find out if one case is still being investigated or has even been suspended investigation with the absence of SP3 material. The pretrial submission that has been made by MAKI is basically a form of respect for human rights, especially victims of corruption crimes in the eyes of the law. The lack of attention to victim protection in KUHAP is

also one of KUHAP's weaknesses at this time. The position of victims in the criminal justice system as well as in judicial practice is relatively poorly regarded because the provisions of Indonesian law still rest on protection for offender oriented. The function of horizontal supervision of the preliminary examination process conducted by the pretrial institution is part of the framework of the integrated criminal justice system. Public participation is to correct or provide this feedback can evaluate the actions of law enforcement officers. In the case of SP3 material that is the basis of filing outside the provisions of Article 109 (2) OF KUHAP, then the way the pretrial judge works is to perform the method of finding hokum, because the judge has a function that in fact complements the provisions of the written law through rechtvinding (discovery of the law) that leads to the creation of new law. The opportunity for a new legal effort on the basis of submission of SP3 material to reduce the release of legal deterrents against perpetrators of corruption should be based on clear rule of law, such as the new rule of law which contains time limits related to the investigation and prosecution of cases. So it can then be said that pretrial agencies are used as a form of horizontal control of law enforcement to work under the law and not to apply arbitrarily, due to other important issues in the filing of SP3 material.

b) Pre-Trial Victim Perspective in Corruption Crime

In fact, the provisions in KUHAP contain human rights protections and formal-adjudicatives that must go through various procedures or stages such as: investigation, investigation, arrest, detention, search, seizure, pretrial, prosecution, examination at a court hearing (through regular or brief or quick examination), to the implementation of the court's ruling, as well as legal efforts based on the procedures specified

in KUHAP. In the process of resolving the case through criminal justice the victim of the crime has great authority and determines but at a later stage that authority becomes lost, while the authority of the police and prosecutors strengthens. The loss of the victim's authority in the criminal justice settlement process will invite a lot of problems, especially regarding the roles of police, prosecutors, and judges as well as the mechanism of settlement of criminal cases through criminal justice according to the view of the victims of crimeThe legal consequence that will arise if the discovery of the proper formulation of SP3 material or SP3 issued secretly by the investigator is that the case will lose the right to be prosecuted in advance of the law, and will return to the provisions of daluarsa in Article 78 of the Criminal Court. Against the actions of investigators who do not follow up on a criminal case that has been reported to the authorities, then the Whistleblower or Victim of a Crime, or Suspect, pursues a legal path by submitting a request for examination through the Pretrial Institution, i.e. to conduct a test against the legitimate or not a termination of the investigation. There are several weaknesses in the pretrial institution, one of which is that there are many legal loopholes in the provisions of KUHAP where the practice relies heavily on the discretion of law enforcement officers. Pretrial is judged to be able to work when violations of the implementation of forced attempts have occurred (post factum), so it is more repressive than preventive. Efforts to combat and win resistance to corruption certainly cannot be done individually, but it needs the involvement of the wider public. To make sure justice for the parties who are litigation in court. In the case of pre-trial applications whose material is outside the provisions of Article 77 KUHAP is decided not granted and or rejected because the judge thinks in a conventional way solely based

solely on the provisions of KUHAP in a normative juridical perspective. The protection of victims of crime in carrying out legal efforts of its existence is very important considering that based on empiric studies it turns out that the victim's reaction to the court's ruling is judged incompatible with the sense of justice while from another dimension it turns out that the victim himself can not do something to test the verdict because the existing law does not provide an opportunity to make legal efforts against the court's ruling. Departing from the above dimensions, there may be constraints realized victim protection through procedural rights. Victims and witnesses should receive legal protection as a form of reward for their contribution to the judicial process, and not simply treated as a "tool" in the judicial process.

A. Recommendation

1. There needs to be clear rules on the basis of pretrial submissions based on the reason for the sp3 material as well as the arrangement of more assertive pretrial objects.
2. There needs to be a judge's independence, related to the pretrial on corruption matters.
3. That victims should be given special attention in the criminal justice system, taking into account the rights of victims in legal protection and regulated in the new KUHAP

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