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COMPARISON OF THE INDONESIAN LAW SYSTEM AND THE DUTCH LEGAL SYSTEM IN HANDLING THE CRIME OF CORRUPTION

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Abstract : Justice Collaborator" is a new thing in the legal provisions in Indonesia. A witness who knows firsthand whether he is directly involved in it or not and dares to report the incident is called a witness "whistleblower" and "justice collaborator". Be more specific on "justice collaborator" is the witness of the perpetrator who cooperated based on the Circular Letter of the Supreme Court of the Republic of Indonesia number 4 of 2011 concerning the Treatment of Whistleblowers of Crime (Whistleblower) and Collaborating Perpetrators (Justice Collaborator) in certain criminal cases. The research method uses normative legal research that uses primary and secondary legal materials. The processing of legal materials is basically a series of activities to systematize or classify written legal materials to facilitate the analysis of primary legal materials. The results of the study found, there are no laws and regulations that specifically regulate justice collaborators and the disparity between law enforcers has a negative impact on not being given respect and protection for justice collaborators in Indonesia. That is, the role of justice collaborators to uncover crimes more broadly, deeper, faster is not taken into account at all by law enforcers, especially the regulations that govern them.

Keywords: Law System. Legal System. Corruption

1. Introduction

In Indonesia, corruption is a very serious concern. State officials who are supposed to hold the people's mandate to carry out state life and as people who serve and dedicate themselves to the state, actually commit crimes that rob the people of their rights and use them for personal interests. This can be seen from several cases handled by the KPK from year to year, especially in recent years with the revelation of several fairly large corruption cases, including the Hambalang case, the SIM Simulator case, and the most recent case of the arrest of a Bogor city official with the initials "R" which is alleged to be more corrupt than the Hambalang case.[1]
Looking back, corruption in this country has been started since the royal era, namely with the will of the king, which was evident in the withdrawal of tribute at the will of the king, which

[1] Tunjung Mahardika Hariadi, *Perbandingan Penanganan Tindak Pidana Korupsi Di Negara Singapura Dan Indonesia, recidive Journal,* Volume 2 No. 3 Sept.- Desember 2013, hlm 265 - 266

then continued into the Dutch colonial period, more precisely when the government was held by the VOC. During the VOC period, which began with various sweet promises for the welfare of the indigenous people and gradually led to slavery called slavery. Similar to the royal period, corruption during the VOC era seemed more contrasted, namely the plundering of natural resources that were supposed to be for the natives, the imposition of arbitrary taxes, the confiscation of the property of the natives, the money that should have been used for the VOC treasury was enjoyed by VOC officials. Itself for personal interests, and so on, these are the seeds of modern corruption in this country.[2]

The past, before the Reformation, was a time when the constitution became a tool to perpetuate power, not as a control of power. The freedom of the press at that time seemed to be limited by a big wall called authoritarian power, so that power was expanding without any control in the form of transparency. In addition, there is also room for ABRI to Dominate in the government, especially in the socio-political field or better known as the ABRI Dual Function. Thus, the widest possible space was opened, which became a gap for the political elite at that time to exploit the state, thus giving birth to a corrupt state system. Corruption at that time could be said to be very organized and systematic, this can be seen by the absence of corruption cases that have emerged, which is different from now when it is reported openly even at that time there were no regulations governing acts of corruption. Corruption at that time was very neat and seemed to be covered by the existence of sustainable development and on a large scale, providing welfare for the community.[3]

During the colonial period, the colonized country was forced to adopt the colonizing country. The colonizers were the dominant nation in determining the rules that existed in society. In addition, to fill the legal vacuum in the colonial country, the existing law in the country is applied, of course with perfunctory adjustments according to the conditions of the colony. The application of a law like this, in the current legal understanding is still used, namely the law follows its citizens. The enactment of BW in the Dutch East Indies at that time was based on the principle of concordance beginsel stated in Article 131 *Indische Staatsregeling*, Commonly abbreviated as IS. This principle stipulates that for every European who is in the territory of the Dutch East Indies, civil law applies in the Netherlands. The article 131 IS is also at the same time the legal basis for the enactment of BW and WvK in the Dutch East Indies.

The existence of the Criminal Code, which is applied in the Indonesian national legal system through the principle of concordance is something that should be questioned in terms of its applicability in Indonesia. The existence of a very pluralist Indonesian society and the existence of various normative systems that develop in Indonesian society are a further factor and the most important factor to see whether the Criminal Code applied by Indonesia through Article II of the Transitional Rules of the 1945 Constitution is the best solution for the Indonesian people to achieve law and order. After approximately 3 (three) centuries in the colonial period, including

[2] *Ibid*
[3] *Ibid*

colonialism in the realm of law enforcement, after independence Indonesia was faced with the choice to re-implement the rules of the Dutch East Indies or in a state of legal vacuum (although in the social aspect, Indonesian society has a system of norms that develops in it).

The Netherlands as one of the countries with tradition European Civil Law and use the prosecution system inquisitorial, Views the criminal justice process as a process that must be carried out legally to find the truth rationally and impartially. Therefore, the legal system is seen as a rational instrument that applies the scientific method to find truth and justice, so that the law is a science because it is a product of rational decisions that can present truth and provide justice through logic and balanced analysis.[4]

As a consequence of the inquisitorial prosecution system he adheres to, the public prosecutor in the Netherlands has a strong and dominant position in every stage of the criminal process. The public prosecutor also has the authority to order the police some things that must be done in the investigation stage, and the public prosecutor is also authorized to continue or not to take the case to court. The principles that form the basis for the discretion of the prosecution authority are the principle of expediency that is, the public prosecutor can discontinue the prosecution of a case when the guilt of the perpetrator is still a minor crime and if the trial is continued it cannot fulfill the interests of public.[5]

"Justice Collaborator" is a new thing in the legal provisions in Indonesia. Witnesses who know firsthand are either directly involved directly at it or not and dare to report the incident is called "*whistleblower*" and "justice collaborator". Be more specific on "justice collaborator" is the witness of the perpetrator who cooperated based on the Circular Letter of the Supreme Court of the Republic of Indonesia number 4 of 2011 concerning the Treatment of Whistleblowers of crime (Whistleblower) and Witnesses of Collaborating Actors (Justice Collaborators) in Certain Criminal Cases.[6]

Whistleblower and justice collaborator are someone who reveals the truth or reports an organized and serious criminal act such as corruption, narcotics crime, money laundering, terrorism, human trafficking, and others. Corruption is one of the problems that the Indonesian people face every day. The losses that the Indonesian state can cause are quite large due to this criminal act of corruption.

Corruption crimes are classified as white collar crimes or white-collar crimes and the perpetrators of corruption are mostly people who have a certain position. Corruption is a crime that often occurs in Indonesia, the topic of corruption has been never absent from public

[4] Luna, E., & Wade, M. (2010). *Prosecutors as Judges. Washington and Lee Law Review*, 67(4), 1429.
[5] *Ibid*
[6] Nixson, et.al, *"Perlindungan Hukum Terhadap Whistle Blower dan Justice Collaborator dalam Upaya Pemberantasan Tindak Pidana Korupsi",* Universitas Sumatera Utara Law Journal Vol. II-No.2 (Nov 2013), Sumatera Utara: Universitas Sumatera Utara, hlm. 40

discussion and information media. The number of criminal acts of corruption has had a widespread impact on the community, both in terms of the amount of state losses and in terms of the quality of the criminal acts committed more systematically so that the crime of corruption has entered the scope of all aspects of people's lives. The consequences of this corruption affect every corner of life.

2. Method

The type of research in this writing is the normative legal research. Normative legal research is research that examines document studies, using various secondary data such as laws and regulations, court decisions, legal theory, and can be in the form of opin ions of scholars. The things studied in normative legal research include several things such as legal principles, legal systematics, the level of legal synchronization, legal comparisons and legal history

3. Findings And Discussion

a. Corruption Crimes and Comparison of Legal Systems

Corruption is the misappropriation or embezzlement of state or company money as a place for someone to work for personal or other people's gain.[7] According to Lubis and Scott, corruption is behavior that benefits self-interest at the expense of others, by government officials who directly violate the legal boundaries of such behavior.[8]

Corruption is an act to enrich oneself or a group is an act that is very detrimental to other people, the nation and the state.[9] Corruption is a disease that has plagued Indonesia. Like a disease, this corruption must be cured so that it does not spread to other parts of the body. For body parts that have rotted and cannot be saved anymore, then that body part must be amputated so that the virus does not spread to other parts that can endanger the life of the sufferer. Likewise with this corruption.[10] Corruption is behavior that deviates from the official duties of a state office because of personal gains of status or money (individual, close family, own group), or violates the rules for the implementation of some personal behavior.[11]
Rudlof B. Schlesinger said that comparative law is a method of investigation with the aim of obtaining deeper knowledge about certain legal materials. Comparative law is not a set of rules and legal principles and is not a branch of law, it is a technique for dealing with elements of a

[7] Sudarsono, 2009, *Kamus Huku*m, Jakarta: Rineka Cipta, Hlm. 231.
[8] Jawade Hafidz Arsyad, 2017, Korupsi dalam Perspektif HAN, Jakarta: Sinar Grafika, Hlm. 168.
[9] Chatrina Darul Rosikah dan Dessy Marliani Listianingsih, 2016, *Pendidikan Anti Korupsi*, Jakarta: Sinar Grafika, Hlm. 5
[10] Jawade Hafidz Arsyad, *op.*cit., Hlm. 3
[11] Robert Klitgaard, 2001, *Membasmi Korupsi*, Jakarta: Yayasan Obor Indonesia, Hlm. 31

legal problem. In contrast to Wineton, that comparative law is a method, namely the comparison of legal systems and the comparison produces data on which legal systems are compared.[12]

According to Randall, the purpose of comparative law is to collect various information about foreign law, to explore the experiences made in the study of foreign law in the context of legal reform.[13] It is undeniable that a comparative study of law is carried out by studying the law outside the law that applies to the investigator. But in this way, it cannot be said to conduct a comparative study of law. Gathering materials derived from foreign laws is not the same as conducting legal comparisons. It was only when people worked on the collected materials according to certain directions that a comparative study of law took place. Cultivation of this can be done on the basis of desire, among others, first, showing the differences and similarities that exist between the legal system or legal fields studied. Second, explain why there are differences or similarities so it is and what factors cause it. Third, provide an assessment of each system used and fourth, find the principles of the system obtained as a result of the tracking carried out by comparing them.[14]

b. Comparison of the Indonesian Legal System with the Dutch Legal System in Handling Corruption Crimes

In the opinion of Evi Hartanti, the negative impact of corruption can result in reduced trust in the government, reduced government authority in society, reduced state revenues, fragile state security and resilience, personal mental destruction and the law is no longer respected.[15] The crime of corruption is a very serious problem, because this crime can endanger the stability and security of the state and its people, endanger the social and economic development of society, politics, and can even damage democratic values and the morality of the nation because it can have an impact on the culture of the criminal act of corruption.

The criminal act of corruption can be considered and seen as a form of administrative crime that can hinder development efforts in order to realize the welfare of the people. In addition, corruption can also be seen as an act of violating legal rules and other social norms.[16] Seeing the impact that can be caused by this criminal act of corruption, making corruption as one of the serious crimes that not only according to national views, but have also reached international attention which can be seen by the existence of the United Nations convention on anti-corruption. This is as stated in The 4th Preamble of the United Nations Convention Against

[12] Barda Nawawi Arif, *Perbandingan Hukum Pidana* Semarang : Rajawali Pres, 2010 , hlm 23
[13] Munir Fuady, *Perbandingan Ilmu Hukum*, Bandung : Refika Aditama, 2007, hlm 19.
[14] Satjipto Rahardjo, *Ilmu Hukum*, Bandung : PT Citra Aditya Bakti, 2012, hlm 394
[15] Suhandi Cahaya dan Surachmin, *Strategi dan Teknik Korupsi Mengetahui Untuk Mencegah*, Jakarta, Sinar Grafika, 2011, hlm. 85-86
[16] Elwi Danil, *Korupsi: Konsep, Tindak Pidana, dan Pemberantasannya*, Jakarta, Raja Grafindo, 2011, hlm.70

Corruption, 2003 – The United Nations Convention Against Corruption, 2003, which states as follows:[17]

> Convinced that corruption is no longer a local matter but transnasional phenomenon that affects all socities and economies, making international cooperation to prevent and control it essential.

So judging by the existence of the United Nations Convention, it is believed that corruption is no longer a local problem, but a transnational phenomenon that affects the whole society and economy that encourages international cooperation to prevent and control it essentially.It is not only carried out by an official, but along with the times, corruption is carried out in an organized manner so that its eradication is increasingly difficult to do. Therefore, justice collaborator can be one of the most effective efforts in combating this organized corruption.

Justice collaborators can facilitate the disclosure of criminal acts of corruption that occur in Indonesia. Besides being needed for the process of eradicating corruption, it can also indirectly prevent a criminal act of corruption. However, legal protection and legal certainty for justice collaborators in Indonesia are currently still very minimal and are divided into various laws and regulations.

Understanding of justice collaborators for law enforcers still has different perspectives from each other which causes legal disparities in the implementation of legal protection and legal certainty for justice collaborators. There are no laws and regulations that specifically regulate justice collaborators and the disparity between law enforcers has a negative impact on not giving awards and protection of justice collaborators in Indonesia. That is, the role of justice collaborators to uncover crimes more broadly, deeper, faster is not taken into account at all by law enforcers, especially the regulations that govern them.

Legal arrangements in Indonesia regarding justice collaborators have not specifically regulated, although Indonesia has ratified and ratified Law No. 5 of 2009 concerning the Ratification of the United Nations Convention Against Transnational Organized Crime (UNTOC) and the United Nations Convention Against Corruption (UNCAC) in Law No. Law number 7 of 2006. This law was the beginning of the regulation of justice collaborators in Indonesia.

After that, it was strengthened by Law no. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, then in 2011 the Supreme Court then issued a Circular Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Criminal Acts Reporters and Perpetrators of Witnesses who cooperate in certain criminal cases, then in 2011 the Minister of Law and Human Rights, the Prosecutor Agung, the National Police Chief, the KPK chairman and the LPSK chairman issued a joint regulation regarding the protection of whistleblowers, witnesses of perpetrators who cooperated.

[17] Alinea ke-4 *Preamble The States Parties to this Convention of United Nations Convention Against Corruption, 2003* (Konvensi Perserikatan Bangsa-Bangsa Antikorupsi, 2003).

However, from the laws and regulations, there is still nothing that regulates the principles and mechanisms in the implementation of the justice collaborator, so the problems that still arise due to the absence of regulation regarding these matters in the implementation of justice collaborators in Indonesia, one of which is a judge who does not consider the need for awards or protection for justice collaborators. Therefore, Indonesia still needs to perfect the laws and regulations regarding this justice collaborator so that it can become a new tool that is useful in providing justice and legal certainty in Indonesia.

The Netherlands as an Indonesian colonial state for three and a half centuries caused Indonesia to have the same legal system as the Netherlands, so that many legal regulations in Indonesia were the result of the legacy of the Dutch government during the colonial period, and are still valid and used today in legal practice in Indonesia. . But along with the times, the Netherlands is more adequate in terms of legal protection, one of which is in terms of justice collaborators.

The crime of corruption itself has principles that can be used as a basis for someone to support the implementation of the provisions of justice collaborator, namely as in Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption which was amended by Law Number 20 of 2001 concerning amendments to the Act. -Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Article 28 states that:

> "For the purposes of the investigation, the suspect is obliged to provide information regarding all of his property and the assets of his wife or husband, children, and the property of any person or corporation that is known and or suspected of having a relationship with the criminal act of corruption committed by the suspect."

In the Netherlands, the laws and regulations and the implementation of justice collaborators have been carried out in such a way, one of which is in an effort to tackle serious crimes and organized crime which has been promulgated since 2006, legislation that specifically regulates the implementation of Witness Agreenents. Or in Indonesia better known as Justice Collaborator. That is regulated in the Second book of the Code of Criminal Procedure, Title III, Section 4B-4D, articles 226g-226.

> “1. The public prosecutor shall notify the examining magistrate of the agreement he intends to make with a suspect who is prepared to give a witness statement in the criminal case against another suspect in exchange for the prosecutor’s promise to demand a reduced sentence in his own criminal case under application of section 44a of the Criminal Code. The agreement shall exclusively relate to a witness statement to be given in the context of a criminal investigation into serious offences, as defined in section 67(1) of the Code of Criminal Procedure, which are committed by an organised group and in view of their nature or the relation to other serious 111 offences committed by the suspect constitute a serious breach of law and order or into serious offences which carry a statutory term of

> imprisonment of at least eight years. The agreement shall exclusively relate to a sentence reduction as referred to in section 44a(2).

In essence, in the Netherlands witness agreements or so-called justice collaborators have been regulated in such a way as to provide protection and legal certainty in the practice of witness agreements so that there are no differences in understanding between law enforcers, both judges, prosecutors, and lawyers. Prior to the regulation of the legislation, Witness agreements had been practiced by the police and prosecutors in the Netherlands in combating serious crimes and organized crime. As stated by Dr. J. H. Crijns in an international seminar on "Witness Agreements in Dutch Criminal Law" in Jakarta on 19 July 2011:[18]

> *"*That's why in 2006 the possibility to make such agreements was embedded in the Dutch Code of Criminal Procedure. Obviously this doesn't mean that before that time witness agreements weren't used at all in the Dutch administration of criminal justice. Of course different types of these agreements were sometimes made. Although this wasn't declared unlawful by the Dutch Supreme Court, there wasn't an explicit legal basis for this practice either. It was for this reason that the Dutch Supreme Court at the end of the twentieth century in various decisions made clear that a firm legal basis for witness agreements was highly recommended."

Seeing what the Dutch state has done, that there is under legal development so as to create justice and legal certainty in an effort to eradicate serious crimes and organized crime through witness agreements or the same as justice collaborators. Seeing the differences in legal provisions regarding justice collaborators in Indonesia and in the Netherlands, it can be said that there are differences in the legal system between Indonesia and the Netherlands in handling corruption crimes, especially regarding justice collaborators.

Rudolf B. Schlesinger, said that, comparative law is a method of investigation with the aim of obtaining deeper knowledge about certain legal materials.[19] Lemaire argued that comparative law as a branch of science (which also uses the comparative method) has the following scope: (content of) legal rules, similarities and differences. The causes and the basics of society. Comparison of the legal system between the Netherlands and Indonesia is actually still in the same legal family, namely civil law due to the history of Dutch colonialism in Indonesia which lasted for three and a half centuries. Even though they are in the same legal family, it does not mean that the Netherlands and Indonesia are not different from each other.

The characteristics of criminal law in the Netherlands can be seen from several things such as simplicity, practicality, trust in the courts, adherence to egalitarian principles, consideration of

[18] JH. Crijns,*Internastional Seminar and Focus Group Discussion on The Protection of Whistleblowers as Justice Collaborators–Witness Agreements in Dutch Criminal Law*, 2011,hlm.1
[19] Romli Atmasasmita, *Perbandingan Hukum Pidana*, Penerbit Mandar Maju, Bandung, 2000, hlm. 7.

social crimes, the absence of certain religious influences and recognition of the importance of legal awareness. The simplicity is evident from the legal definition of a criminal offense, the division between crime and violation and from its sanctions system which only consists of three main punishments, namely imprisonment, detention and fines. Trust in the courts is evident in the absence of specific minimum penalties for serious offences and broad powers to choose punishments.

Another characteristic of the Dutch legal system is that it is rooted in the Constitution, the Act, Customs (case law) and doctrine. Judging from the legal sources of the legal system from the Netherlands, this is what distinguishes the characteristics between the Dutch legal system and the Indonesian legal system. Although the Indonesian legal system is heavily influenced by the Dutch legal system due to the history of Dutch colonialism in Indonesia, the legal system Indonesian law which has developed from time to time has changed and currently the legal system in Indonesia is a combination of religious law, customary law, and European law, especially the Netherlands as a country that once colonized Indonesia. Sources of law in Indonesia itself consist of statutory regulations, customs (customs), judges' decisions (jurisprudence), treaties and doctrines.

4. CONCLUSION

Comparison of the Indonesian Legal System with the Dutch Legal System in Handling Corruption Crimes, namely in the Netherlands, the laws and regulations and the application of the Dutch justice collaborator in handling corruption have been carried out in such a way, one of which is in an effort to tackle serious crimes and organized crime. Which laws and regulations have been promulgated since 2006, specific laws and regulations governing the application of Witness Agreenents or Justice Collaborators to provide protection and legal certainty in the practice of witness agreements so that there are no differences in understanding between law enforcers, both judges, prosecutors, and lawyers.

Meanwhile, in Indonesia, the understanding of justice collaborators for law enforcers still has different points of view from each other which causes legal disparities in the implementation of legal protection and legal certainty for justice collaborators. There are no laws and regulations that specifically regulate justice collaborators and the disparity between law enforcers has a negative impact on not being given respect and protection for justice collaborators in Indonesia. That is, the role of justice collaborators to uncover crimes more broadly, deeper, faster is not taken into account at all by law enforcers, especially the regulations that govern them.

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