Kanun Jurnal Ilmu Hukum
Vol. 23, Issue 3, (December, 2021), pp. 459-475.

APPLICATION OF THE REASONS FOR ELIMINATION OF CRIMINALS IN CASES OF CORRUPTION

Ifrani

Faculty of Law, Lambung Mangkurat University
Hasan Basri Street Lambung Mangkurat Complex, Banjarmasin, 70123
E-mail: ifrani@ulm.ac.id; Phone Number: +62-82148508638

Reza Noor Ihsan

Faculty of Sharia, State Islamic Institute of Palangka Raya
G. Obos Street Islamic Centre Complex, Palangka Raya, 73112
E-mail: rezanoorihsan@iain-palangkaraya.ac.id; Phone Number: +62-085248481991

Received: 29/10/2021; Reviewed: 11/12/2021; Accepted: 12/12/2021.

DOI: https://doi.org/10.24815/kanun.v23i3.23241

ABSTRACT

The purpose of this study was to find out the application of the reasons for the elimination of criminals in cases of corruption. The results of this study are case number: 87/Pid.Sus/2010/PN.Mrb, which was strengthened in the Supreme Court's Cassation decision number: 321 K/Pid.Sus/2011, was wrong in applying the excuse of forgiveness as the reason for eliminating the crime in its legal considerations, where the element of forgiving reason applied by the Panel of Judges was not fulfilled, but the justifying reason should be applied because one of the elements of Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the eradication of criminal acts of corruption was not fulfilled because it relied on legal facts and expert testimony without mentioning in detail and with certainty who was benefited from the act, so the implication in this case is that the defendant should be acquitted (vrisjpraak).

Key Words: reasons for criminal abolition; free judgement; vrisjpraak; corruption crime.

INTRODUCTION

In Indonesia, what is exposed nearly every day on television, on the radio, and print media is news about corruption committed by an individual and a corporation, but corruption in this country is prone to be done by those who have authority and power for various causes and also different reasons – which every action done will result in state losses or state losses previously occured. The face of criminal law, particularly the upcoming criminal corruption law which will change, will be more or less fundamental. The character in the criminal event bears an adversial system in order to give effect to the criminal event law system in Indonesian corruption crimes. Some countries have

originally introduced this system – which previously used a system where the accused is considered only as an inspection object and has no rights in any way – Inquisitoir System, as Indonesia with its Criminal Procedure Law. In this case, the case file is not submitted to the judge, but it only belongs to the public prosecutor, while the judge only holds an indictment and a list of evidence (Adji, 2010). With the authorization of this system, the dynamism will be slightly reduced. The option to submit evidence (e.g. witnesses are not the ones recorded in the police investigation report) in the trial process in court is given to the public prosecutor and the accused/legal counsel – although with the approval of the judge – therefore, it can be interpreted that there is an integration relationship between the investigator and the public prosecutor until the court process – does not stop when the Investigator entrusts to the Public Prosecutor.

For the perpetrators of corruption crimes in Indonesia today, law enforcement is prone to apply the concept of imprisonment (Wattimena, 2016). Though it should be known that there is currently a paradigm shift that was previously from imprisonment towards the return of state finances, so that extraordinary efforts are needed in terms of eradication (Ifrani, 2017).

In entering the third millennium, as affirmed by Andi Hamzah (Ihsan, 2017), The proliferation of acts of white collar crime with a new mode has been predicted, as well as the rise of corruption around the world. At the end of the twentieth century there were various bilateral and multilateral conventions in the world concerning the eradication of corruption. Based on the convention, both bilaterally and multilaterally, ratification is carried out. Indonesia also made ratification and some adjustments in several aspects of the law.

One of them in criminal law which is interpreted as the main choice (*premum remidium*), no longer becomes the last attempt (*ultimum remidium*), thus making the criminal law no longer becomes a "Guard" both in the realm of Civil Law and State Administrative Law, which is not what criminal law experts want. The element of "abusing the authority" of the element "against the law" is closely related to the position held by public officials, certainly not in the realm of civility either

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understanding or related. The article 3 stating "the authority abuse, opportunity, or the facilities that are available to him/her because of the position or power" should be interpreted for a public official or state apparatus as a part that meets the elements, as follows: (1) Appointed by general power. (2) Holding a public office, and (3) Carrying out duties both partially and in whole related to provisions that mean "authority abuse" should be interpreted in the context of public officials, not private officials even though the private sector also has a position (Adji, 2007).

In some European and American states, the problem with abuse of authority and corruption is not coming from understanding the policy itself, but rather in the relationship between the inherent authority of a public office. The authority of public officials either directly or indirectly with regard to a policy, whether or not it is bound or active, is not the domain of criminal law so that it causes cases that today often occur in Indonesia (President, Minister, Governor, Regent, Mayor, Member of the House of Representatives (DPR), or Regional House of Representatives (DPRD) in regency/city) and always related to the alleged abuse of authority and unlawful acts that cause an impression of criminalization of policy – as stated on Articles 2 and 3 of Law No. 31 of 1999 juncto Law No. 20 of 2001 on Combating Criminal Acts of Corruption (Law of the Republic Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, n.d.). There are several articles that are interconnected, although they have nothing in common between the element of "authority abuse" and the element of "against the law", but all have an unlawful connection with committing acts of abuse of office and authority.

As for the following case involving defendant NAZHIRNI SE., MM Bin H. ASRANUDDIN based on the Decree of the Regent of Barito Kuala was appointed as Director of Municipal Waterworks (PDAM) of Barito Kuala Regency from 2006 to 2010. The case began in 2006 until 2008, the defendant did not carry out his duties and authority by not making a Work Plan and Annual Company Budget. In 2006, the defendant had abused his authority as Director of Municipal

Waterworks (PDAM) of Barito Kuala Regency to organize general and financial administration – making a document of accountability for procurement of goods in the form of Goods Receipt Report (LPB), Purchase Order (PP), a list of item requests (DPB), Receipts and Vouchers that seemed to have held 100 pieces of 1/2 diameter of stop krant amounting to Rp. 600,000.00 (six hundred thousand Rupiah) and 1,000 pieces of goods. lat DS worth Rp. 3,500,000.00 (three million five hundred thousand Rupiah) in the handicraft business H. JUHRAN when in reality the H. JUHRAN Handicraft Business never makes goods in the form of stop krant or DS plates.

In fiscal year 2007, he has used his authority as Director of Municipal Waterworks (PDAM) of Barito Kuala Regency to organize general and financial administration – making a document of accountability for procurement of goods in the form of Goods Receipt Report (LPB), Purchase Order (PP), a list of Item Requests (DPB), Receipts and Vouchers, whereas UD Iriana Banjarmasin did not serve the sale of chemicals to PDAM Barito Kuala Regency from mid-2007 to mid-2009. In the span of 2006 to 2007, the defendant has abused his authority as Director of Municipal Waterworks (PDAM) of Barito Kuala Regency to organize general and financial administration by eliminating proof of purchase to third parties in the form of store notes or purchase invoices and commanding the Head of Finance, Suriansyah, and the Head of Warehouse, Fahrulrazi for forging signatures of the third-party and affixing fake third-party stamps to procurement vouchers. In the period 2006 to 2010, the defendant as as Director of Municipal Waterworks (PDAM) of Barito Kuala Regency has abused his authority to manage and manage PDAM's wealth by using PDAM Barito Kuala money without going through the procedure of use and accountability to finance activities that cannot be accounted for – directly or indirectly taking money from PDAM Marabahn cashiers or at the cashier of the District Capital (IKK) Alalak.

As in the subsidair indictment filed by the public prosecutor in article 3 of Law number 31 of 1999 as amended and supplemented by Law number 21 of 2001 Jo. Article 64 paragraph (1) of the Criminal Code where all elements have been fulfilled, but in its legal consideration of the judges of

Marabahan District Court Number: 87/Pid.Sus/2010/PN. Mrb (*Marabahan District Court Decision No. 87/Pid.Sus/2010/PN. Mrb*, 2010) declaring the defendant's actions could not be convicted for forgiving reasons, which in his legal considerations, the judge erred in applying the reason for criminal elimination, so the public prosecutor in this case filed a cassation legal effort which then the Supreme Court decided the case in the decision Number: 321 K/Pid.Sus/2011 (Agung, 2011) which in the verdict declared it unacceptable to apply for cassation from the applicant in this case is the Prosecutor/Public Prosecutor at the Marabahan State Prosecutor's Office.

Based on the above case, the author is interested in raising the issue in this research with the title "Application of the Reasons for Elimination of Criminals in Cases of Corruption (Study of Marabahan District Court Decision Number: 87/Pid.Sus/2010/PN. Mrb and Supreme Court number: 321 K/Pid.Sus/2011)."

RESEARCH METHODS

Reviewing in the background above, therefore, the research problem is how to apply the reasons for elimination of criminals in cases of corruption so as to break free from all lawsuits (*onslaag van recht vervolglging*) (Study of Marabahan District Court Decision Number: 87/Pid.Sus/2010/PN. Mrb and Supreme Court number: 321 K/Pid.Sus/2011)?

The purpose of this research is to find out the application of the reasons for elimination of criminals in cases of corruption so as to break free from all lawsuits (*onslaag van recht vervolglging*) (Study of Marabahan District Court Decision Number: 87/Pid.Sus/2010/PN. Mrb and Supreme Court number: 321 K/Pid.Sus/2011).

The research method used in this research is a normative method by reviewing the application of the reasons for elimination of criminals in cases of corruption so as to break free from all lawsuits (*onslaag van recht vervolglging*) (Study of Marabahan District Court Decision Number:

87/Pid.Sus/2010/PN. Mrb and Supreme Court number: 321 K/Pid.Sus/2011). The approach used in this study is a case approach.

DISCUSSIONS AND ANALYSIS OF RESULTS

1) The Application of the Reasons for Criminal Elimination

Laws and regulations basically regulate things that are common in nature. According to Utrech, unfair criminal convictions open the possibility of sentencing an innocent person (Zulfa, 2010). For this reason, the legislators feel the need to contain certain conditions or circumstances to negate the application for someone.

The reason for criminal Elimination in criminal law is expected to accommodate the reasons on which the judges are based not to hand down sentencing against defendants who are considered or should be suspected or suspected of committing criminal acts – in the case of criminal acts of corruption. In the process, the judge is authorized to determine whether the defendant in this case has special circumstances that affect both in terms of subjectiveity when a criminal act occurs (Hamdan, 2012).

In the case of Court of Justice Decision of Marabahan District Court Number 87/Pid.Sus/2010/PN. Mrb. on 29 November 2010 which basically states that the defendant, NAZHIRNI SE., MM Bin H. ASRANUDDIN, has been proven legitimately and convincingly to commit a criminal act of corruption as charged in the subsidair indictment, but the act is not a criminal act, therefore the defendant is terminated from all lawsuits (*Onslaag Van Recht Vervolging*) which is strengthened by the Supreme Court's Cassation decision Number: 321 K/Pid.Sus/2011 with the verdict declaring it indible cassation application from the cassation applicant: Prosecutor/Public Prosecutor at the Marabahan State Prosecutor's Office.

In consideration of Court of Justice Decision of Marabahan District Court Number. 87/Pid.Sus/2010/PN. Mrb. which states: "Considering that since basically the State is not harmed in

a certain and real way, the public interest is served, and the accused does not acquire any additional wealth or profit in real, can be used as a forgiving reason that can eliminate the guilt of the accused, so that the defendant's actions are not an act that can be punished or in other words, the act is not a criminal act and thus a criminal offense. Criminal liability cannot be applied to the accused, and therefore the accused shall be released from prosecution."

In the verdict that the author of the examined adheres to the teachings of nature against material law. This is reinforced by the results of a direct interview with one of the judges who decided the case as a source who stated that the defendant was declared free from all lawsuits (*onslaag van recht vervolging*) although in his subsidair indictment the defendant could be subject to article 3 of Law number 31 of 1999 Jo. Law Number 20 of 2001. However, because there is no evidence that the defendant made a fictitious procurement as in the Prosecution's indictment. So in its legal considerations, the judge stated that the defendant's actions did not constitute a criminal offence for forgiving reasons. Here we see, although the defendant is found legitimately guilty by abusing his authority, but the criminality is eliminated because in the judgment of the Judge the defendant's actions are only administrative errors, the defendant does not enjoy profits, does not harm the finances and economy of the country and the public interest is served so that from the defendant's actions eliminate the element of blame that is on him. In this case we as the panel of judges who decided the case apply the teaching against the material law in a negative sense that states the act even though it is regulated by the law, but according to the judgment of the community, the act is not unlawful, so that the defendant's actions are only judged to have committed administrative errors only. Here the Panel of Judges argues that justice lies not only in justice in terms of its legal aspects but also in sociological-community aspects (Hakim, 2021).

In this case, the Author disagrees with the legal considerations of the Court of Justice of Marabahan District Court in the case of Corruption Number: 87/Pid.Sus/2010/PN. Mrb which apply forgiving reasons to the accused as a reason for criminal removal. However, in its application, the

element of forgiving reasons is not fulfilled because the elements of forgiving reasons applied by the Panel of Judges are elements of the reason for the revamping in its domain as a reason for criminal elimination outside the Criminal Code. In the legal considerations of Marabahan district court, judges who apply excuses for forgiveness in cases of corruption in Marabahan PDAM is not appropriate, as the excuse of forgiveness used by the judge as his consideration in deciding is not fulfilled at all because the actions of the accused are not based on the defendant's inner state (*mens rea*), which is the most fundamental element to be said as a reason for forgiveness so that the error can be eliminated. Thus the reasons applied by the Panel of Judges in its consideration precisely lead to the reason for the correction where the actions committed by the accused are appropriate and justifiable.

In such cases, the defendant is convicted of all lawsuits (*onslaag van recht vervolging*) since the judge relies on forgiving reasons as a reason for criminal removal in his legal considerations. The reason for criminal removal (*strafuitsluitingsground*) is interpreted as a special circumstance, meaning it becomes a matter that must be stated, but does not need to be proven by the defendant even though all elements of the decal have been fulfilled and the legal consequences against the accused are not criminally imposed.

The reason for criminal removal has been regulated in the Criminal Code, in the Criminal Code does not provide a detailed explanation regarding the reason for the criminal elimination, but the reason for criminal elimination is classified into two – the reason for criminal removal in the form of forgiving reasons and reasons for criminal removal (Hamdan, 2012). The basis of criminal removal in the Criminal Code divides into articles that contain special circumstances/certain to negate the application for a person, among others as follows: (1) The arrangement of responsible capabilities is regulated by article 44 of the Criminal Code; (2) The arrangement contains force and the circumstances are forced to be stipulated in article 48 of the Criminal Code; (3) Arrangements on the defense must be regulated Article 49 of the Criminal Code; (4) Arrangements on carrying out

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statutory orders are regulated by article 50 of the Criminal Code; and (5) Arrangements containing about carrying out superior orders are stipulated in article 51 of the Criminal Code.

According to Adami Chazawi (Chazawi, 2007), The basis of criminal elimination is divided into 2 (two), namely: (1) The general basis of criminal elimination (*strafuitsluitingsgronden*); (2) The special elimination policy (*bijzondere strafuitsluitingsgronden*).

The general elimination policy (strafuitsluitingsgronden) is implied in articles 44-51 of the Criminal Code (Indonesian Criminal Law Book), as for the basis of a special elimination (*bijzondere strafuitsluitingsgronden*) applies only to certain criminal acts, for instance, those contained in article 110 paragraphs (4), 166, 186, 221 paragraph (2), 310 paragraph (3) and 314 of the Criminal Code (Abidin, 2010).

Reasons for criminal elimination known in the study of deeds and people (*daad-dader strafrecht*), divided into: (a) Reasons for Revamping (*rechtvaardigingsgrond*), are to make the loss of nature against the law an act that in this case is always related to criminal offense (*strafbarfeit*) or known as *actus reus* in some countries that apply a legal system, called *anglo saxon*. (b) Forgiving Reasons (*schuldduitsluiitingsgrond*), are the reasons that make the defendant's guilt removed, which relate to the consequences as part of liability (*toerekeningsvatbaarheid*) or known as *mens rea* in some countries that apply a legal system called *anglo saxon*.

The reason for criminal abolition outside the Criminal Code recognized in the realm of criminal law was originally born through doctrine and jurisprudence which ultimately became a very important part in the efforts to develop criminal law in this country, because, on the other hand, it can occupy the legal vacuum (*rechtsvacuum*) that exists in every stage of community development. The reason for this elimination consists of approval, permission, and willingness to educate parents, teachers, doctors, pharmacists, lawyers, sportsmen (boxers) not against material law, *Desuetudo, Non usus Zaakwarneming,* Right against foreign occupation, *Keine Strafe ohne Schuld,* putative forgiving base (Abidin, 2010). In the current development of criminal law for

judges, it is so essential to produce a verdict that is weighted and has the value of justice so that it can be said to be a comprehensive verdict, while jurisprudence should be through methods of seeking and interpreting and discoveries of law in an effort to explore the unwritten law that lives in society (*rechvinding*). It is very valuable for the development of legal science which will eventually become an entry in the development of the upcoming criminal law or better known as *ius constituendum*.

The reasons for criminal elimination outside the Act or unwritten are divided into reasons of forgiveness and forgiving reasons. The term reason for the revamping (*rechtvaardigingsgrond*) and the forgiving reason (*schuldduitsluiitingsgrond*) is basically based on the view of Law as the basis and reason that abolishes a criminal act.

The reason for the destruction is the reason that makes the elimination or loss of its unlawful nature from an act, so that the actions / actions committed by a defendant can be categorized as right and appropriate so that the juridical implication is that the defendant must be released from all lawsuits (*onslaag van recht vervolging*), while the reason for forgiveness is the reason that makes the loss of the nature of the guilt of the accused, where the actions committed by the accused remain unlawful, but still a criminal act, but the maker cannot be held criminally responsible because there is no error where the juridical implication is that the defendant must be released (*Vrijspraak*).

The Reason for Forgiveness and the Forgiving Reason is as a principle, which is the basis of this unwritten reason in practice known as: (1) AVAS or *Afwezigheid Van Alle Schuld* Or known as the principle "*Geen Straf Zonder Schuld"* which means no criminal without error. (2) AVMW or *Afwezigheid Van Alle Materiele Wederechtelijkheid* which means No Criminal Without Criminal Acts Materially (Abidin, 2010).

Basically the forgiving reasons can be categorized into AVAS or *Afwezigheid Van Alle Schuld,* while the justifiable reasons are classified into AVMW or *Afwezigheid Van Alle Materiele Wederechtelijkheid.*

Here there is a clear difference between the forgiving reasons and the justifiable reasons, where the reason for forgiveness emphasizes the subjective element, where the subjective element is the reason for aborting the defendant's guilt. The actions / actions carried out by the accused still contain unlawful nature so that it is categorized as a criminal act, but the defendant cannot be held criminally responsible for the absence of error, while the justifiable reasons focus on the objective element, where the reason eliminates the unlawful nature of the act, so that what is done by the accused then becomes an appropriate and true act (Chazawi, 2007).

In doctrine, intentionality focuses on will and knowledge. Intentionality that focuses on the will is known as the theory of will developed by Von Hippel, a German who defines intentionality is a will intended to do deeds. While intentionality that emphasizes knowledge gives birth to a theory known as the theory of knowledge developed by Von Listz and Van Hamel that means intentionality is everything that he should know consciously and imagine before a person does the deed and everything around his actions that will be done as formulated by the Law (Chazawi, 2007).

The difference from the theory of will to the theory of knowledge lies only in elements other than deeds and consequences only, not against other elements in the formulation of non-criminal.

In the doctrine of criminal law, there are known to be three forms of intentionality, as follows: (a) Intentionality as a means/purpose; (b) Intentionality as a certainty; (c) And intentionally as a possibility (Chazawi, 2007).

While the form of decrehesion is a situation in which a person is considered to have committed a criminal act but done accidentally. Intentionality and accident are closely related to the subjective element which in this case relies on the inner element of the sip as itself. Regardless, the reason for the destruction can be applied when an act that although it is against the law but against matters of an urgent and emergency nature, then the act will lose its unlawful nature because the act

is justified when a person does not have the choice to do an act that consciously deserves to be known the act is an act against the law.

It can hereby be said that the teaching of unlawful acts materially in a negative sense is one of the reasons that eliminates a criminal offense that can be used as criminal elimination outside the Act.

2) Teachings of Unlawful Nature

According to Simons, *Wederrechtelijk* is an act that is contrary to the law *Wederrechtelijk* is also defined as an act that is contrary to the rights of others according to Noyon, whereas according to Hoge Raad, *Wederrechtelijk* is defined as without the right that exists in yourself. According to Lamintang, *Wederrechtelijk* is defined as an unlawful act (Lamintang, 1997).

The teaching of unlawful nature in criminal law is known as *Wederrechttelijkheid* which is divided into 2 (two), namely: (1) The teaching of unlawful nature of the formal law, or (2) The teaching of unlawful nature of the material law.

This material teaching is then further divided into 2 (two), namely the nature against the material law in positive function and the nature against the material law in its negative function. In the teaching of nature against the law formil, an act is said to be punishable, if the act is as unlawful according to the legislator. The shaper of the law states in a criminal law, then the act cannot be said to be a criminal act.

By declaring an act to be criminally liable, the legislator informs him that he views an act contrary to the law as a formal unlawful nature. Simons argued that the notion of against the law in the formal sense, can be interpreted as an act against the law if every act that is considered contrary to the written rules only, so every act against the law is contrary to the law (*Wet*), simply because the law is considered the same as the law (Mispansyah, 2007).

The nature of the material law is an act although it has not been regulated in the law, but the act according to the community, if the deed is a despicable act, it can be punished. The nature of this material law is then divided into 2 parts, as follows: (Wiyono, 2008) (1) The nature of the law is material in a positive sense is an act, although by law is not determined as against the law, but if the public assessment of the act is against the law, then the act in question can be categorized as unlawful and can be criminalized. (2) The nature of the law against material in a negative sense is an act that is clearly regulated by the laws and regulations is an unlawful act, but if the community judges that the act is not unlawful, then the act is not an unlawful act and the criminal can be eliminated. This means that a defendant who is proven to have committed a criminal act, but the defendant is declared free from all lawsuits (*onslaag van recht vervolging*), as in this case, there are factors that eliminate the unlawful nature of the defendant's actions, namely in the form of: (a) Public interests undertaken or served by the accused; (b) Personal interests/benefits not obtained by the accused, and (c) Losses not suffered by the state or society.

In legal considerations at the decision of the judges of Marabahan District Court Number: 87/Pid.Sus/2010/PN. Mrb regarding the crime of corruption in Marabahan PDAM that breaks the accused free from all lawsuits (*oonslag van recht vervolglging*) which contains forgiving reasons as a reason for criminal elimination strengthened in the Supreme Court's Cassation Decision No: 321 K/Pid.Sus/2011 with the verdict declaring it indestiable cassation application from the cassation applicant: Prosecutor / Public Prosecutor in Marabahan State Prosecutor, then according to the author's frugality is not fulfilled which based on his legal considerations, the judge contains discretionary authority (*Discretioner Power*) as a consideration to make excuses for forgiveness. According to Philip M. Hadjon, discretionary authority will only apply when in a state of urgency, and emergency nature so as to deviate the existing laws and products (Adji, 2007).

In addition, the author argues that the judge's consideration as a reason for forgiveness that can eliminate the defendant's guilt is to rely that basically the state is not harmed in a certain and

real way, the public interest is served, and the defendant does not gain additional wealth or benefit in real terms, when it is clearly and properly known that such considerations can be categorized among the categories of reasons for the improvement because they are directly related to the circumstances. an that is outside the will of the sip as, which is although prohibited by law, but there is no other option to take it. According to R. Wiyono, although the defendant, whose actions have fulfilled the criminal provisions, but the defendant is declared free from all lawsuits (*onslaag van recht vervolglging*), because there are factors that eliminate the unlawful nature of the defendant's actions, namely in the form of: (a) Public interests undertaken or served by the accused; (b) Personal interests not gained by the accused, and (c) Losses not suffered by the state or society (Wiyono, 2008).

In this case also according to the author, the Panel of Judges is not appropriate in applying its law, where the Panel of Judges in its consideration contains the reason for forgiveness as the reason for the criminal elimination, so that in the decision decision, the Panel of Judges decides the accused free from all lawsuits. (*onslaag van recht vervolging*). Though it is worth knowing if the Forgiving Reason is fulfilled then the legal consequence is that the accused must be cut free. (*vrisjpraak*), while if the Reason for the Revamping is fulfilled, then the consequences of the law the accused must be released from all lawsuits. (*onslaag van recht vervolging*).

In its legal considerations, the Panel of Judges applies forgiving reasons so that although the defendant's actions have been proven legitimately and convincingly, but the defendant's actions cannot be classified as criminal acts, then the defendant's actions are only seen as administrative errors only, so that the consequences of the law the accused is released from all lawsuits. In other words, the Panel of Judges declared that the element had been fulfilled.

Here the Author has another opinion, where should the defendant be cut free (*vrisjpraak*), because in proving, where one of the elements of article 3 of Law number 31 of 1999 as amended and supplemented by Law no. 20 of 2001 on Combating criminal acts of corruption regarding the

second element contained in the sentence "For the purpose of benefiting oneself or others or a corporation" should not be fulfilled because it relies on legal facts and expert information by not mentioning in detail about who is Ang benefited from the act so that there is no need to prove the next elements.

From the statement of the Panel of Judges in its consideration, the Author can draw conclusions, where the Judge in proving the elements of Article 3 are guided by the core element (*Bestanddel Delict*) namely "Abusing the authority, opportunity, or means that exist with him because of his position or position". In this element, it has been fulfilled in the actions of the accused, so that against other elementary elements (*Element Delict*) automatically fulfilled because it is bound by the presence of the core element (*Bestanddel Delict*). The Panel of Judges should have to prove element by element without being tied to one core element (*Bestanddel Delict*).

With the unfulfillment of one of the elementary elements (*Element Delict*) in the subsidair indictment of Article 3 of Law number 31 of 1999 as amended and supplemented by Law number 20 of 2001 on Combating the crime of corruption, the defendant NAZHIRNI SE., MM. Bin H. ASRANUDDIN should be cut off free (*Vrisjpraak*).

According to Yahya Harahap, (Harahap, 1988) : Free verdict (*Vrisjpraak*) is a verdict in which in the proof, all elements or one of the elements of offense of an article charged to the accused are not fulfilled, while the verdict apart from all lawsuits (*onslaag van recht vervolging*) is a verdict which in the proof has been fulfilled all elements of the article, but the defendant's actions cannot be classified as criminal acts because of the justifiable reason..

CONCLUSIONS

From the discussion above, it can be concluded as follows: That the Panel of Judges in the decision of Marabahan District Court number: 87/Pid.Sus/2010/PN. Mrb which is strengthened in the Supreme Court's Cassation decision number: 321 K/Pid.Sus/2011 is not appropriate to apply

excuses for forgiveness to their legal considerations, where the element of forgiving reasons applied by the Panel of Judges is not fulfilled and is an element of the reason for the revamping. The Panel of Judges in the decision of Marabahan District Court number: 87/Pid.Sus/2010/PN. Mrb is not appropriate to apply the law, where one element of Article 3 of Law number 31 of 1999 as amended by Law no. 20 of 2001 on the eradication of criminal acts of corruption "with the aim of benefiting oneself or others or a corporation" is not fulfilled because it relies on legal facts and expert information by not mentioning in detail and certain about who benefits from the act, therefore, in this cas,e the accused should be cut off freely (*vrisjpraak*).

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