



**THE APPLICATION OF PARTICIPATED DOCTRINE IN
CORRUPTION (*STUDY OF DECISION ON CORRUPTION
CRIMINAL ACT COURT AT IA JAYAPURA DISTRICT COURT*)**

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Abstract

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Decision of Criminal Act of Corruption Court at the IA Jayapura District Court Number 05/Pid.Sus-TPK/2015/PN.Jap, and (2) Decision Number 06/ Pid.Sus-TPK/2015/PN.Jap. Both decisions show the application of participated doctrine, both in the indictment, the prosecution of the prosecutor, and the basis of the judge's judgment to result the decisions to the offenders. There are 2 (two) findings to be disclosed in the analysis of these decisions are (1) the participated doctrine which is applied apparently in their application are within separate prosecution areas between the two indictments, thereby treating the participants in the participated doctrine equally with the independent offender, even impressed as a convergence offense, (2) with prosecution in the indictment, the prosecutor and judge in applying the participated doctrine in these two decisions tend to be restrictive in view that the offender is compared to the dader not as part of the producer's entity (verzamen term) in which there are qualities of offenders who can be distinguished between pleger, doenpleger, medepleger, uitlokker or medeplichtigheid.

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INTRODUCTIONS

Criminal Acts of Corruption which handled through the criminal justice process (pre-adjudication process and adjudication) often reveal criminal act of corruption conducted by more than one offender. The condition of offenders which are thus in the criminal law constructed as a "participated doctrine" committing a crime or who is often known as "*deelneming*".

The application of participated doctrine in criminal acts including criminal acts of corruption has resulted 3 (three) legal issues, namely (1) it is often difficult to disclose the complex pattern of relationships among the offender of corruption, and (2) no clarification of the position or categorization of each offender between (*pleger*), were told to do (*doenpleger*), who participate to conduct (*medepleger*), who persuades do (*uitlokker*), and who helped conduct (*medeplichtige*), (3) sometimes in practice participated doctrine is reduced by identified it with deeds together committing a criminal offense, whereas acts which are did by more than one offenders may be prosecuted separately, because each perpetrator satisfies all the formulas of the offense.

Three legal issues concerning the application of participated doctrine are interesting to be disclosed, because in the participated doctrine desires or requires the fulfillment of some elements of the offense committed by each offender, not against the perfect offense. In addition, some of the offenders may be categorized as indirect offenders (*gehilfe*) only facilitate or assist the criminal act in this regard criminal acts of corruption is not a full offender who meet all the elements of a criminal offense.

Determining the positions of offenders as above also becomes important, because in general these participated doctrine are precisely made to hold accountability of them which enabling the offenders to commit criminal acts, even if their actions do not contain all elements of the criminal acts¹. It is so hard to imagine that the public prosecutor and the judge to ask criminal responsibility of each offender of criminal acts of corruption, when there is not clearly revealed the position of each offender. Because according to Utrecht even though they are not makers that they do not contain all the elements of criminal acts, they are also responsible or can be held the accountability of them for the criminal acts, because without their participation of course the criminal acts are never happened².

In connection with the application of the participated doctrine in the criminal acts of corruption, there are 3 (three) decisions at the IA Jayapura District Court which is being the focus of the study, namely (1) Decision Number 05/Pid.Sus TPK/2015/PN.Jap (2) Decision Number 06/Pid.Sus-TPK/2015/PN.Jap. These two decisions show the application of participated doctrine, both in the indictment, the demands of the criminal (requisitoir) of the public prosecutor, as well as basic consideration of the judge to make a decision that interesting to be analyzed through the study with entitled Application of Participated Doctrine In Criminal Acts of Corruption (*Case Study of Corruption Court at IA Jayapura District Court*).

¹ E. Utrecht. 2000. *The Essence of Series Lecture Criminal Law II*. Surabaya: Pustaka Tinta Mas 2000. p. 9

² *Ibid*

RESEARCH METHODS

The method used in this research is normative legal research that examines the application of legal principles and positive legal norms related to the application of participated doctrine in criminal acts of corruption. As a type of normative legal research, then put forward the study of legal materials. The legal materials used are (1) primary legal materials, (2) secondary legal materials, (3) tertiary legal materials. Primary legal materials are (1) UUTPK, Criminal Code, (2) Corruption Court's Decision at IA Jayapura District Court in the years 2014-2015. While secondary legal material are the result of previous research that examines the application of participated doctrine in criminal acts of corruption, while tertiary legal materials are a legal dictionary and legal encyclopedia that are used to help explaining legal terms and concepts of participated doctrine in criminal acts of corruption. Legal material was collected through a legal literature, and analyzed by descriptive analysis technique.

FINDINGS AND DISCUSSIONS

1. Participated Doctrine in Criminal Law

In the criminal law participated doctrine known as several terms such as (1) intervene in a criminal act (Tresna), (2) co-act offense (Karni), (3) participate (Utrecht), (4) *deelneming* (Netherlands), *complicity* (British), *Teilnahme/Tatermehrheit* (Germany), *Participation* (France)³. Satochid Kartanegara define participated doctrine

or *deelneming* can be said that *deelneming* on divulging *strafbaarfeit* or *delict* there when a *delict* snagged some people or more than one⁴.

History records that the participated doctrine was first the brainchild of Von Feuerbach who difference in the two forms of the participants, namely (a) they are directly trying the criminal act, this is called *auctores* or *urheber*, and (b) they are who only help the businesses, those who are not directly sought, is called *gehilfe*. *Urheber* is conducting the initiative, and *gehilfe* is assisting⁵.

The development of the participated doctrine then inserted in Article 55 and Article 56 of the Criminal Code and is divided into *urheber* consists of doing (*pleger*), which have (so) do (*doen pleger*), who helped conduct (*medepleger*) and were persuaded (so do) called *uitlokker*, while Article 56 of the Criminal Code be referred to those who are helping or called *gehilfe (medeplichtige)*⁶.

The division of the participant offenders between *auctores* or *urheber* with *gehilfe*, in the opinion of other scholars such as that developed in Germany participant offenders into three (3) parts, namely *tater* (maker), *anstifter* (promoters), and *gehilfe* (maid)⁷. In terms of the relationship of each participants to the offense, then there are three (3) form a relationship that are:

- a. Some people do a delict or offense;

³ Barda Nawawi Arief. 2007. *Essence of Lecture on Advanced Criminal Law*, Semarang: Lecture Material Supply Agency, Faculty of Law, University of Diponegoro. p. 35

⁴ Satochid Kartanegara. *Criminal Law A Collection of Lecture Part One*. Balai Lektur Mahasiswa, Without Year, p. 418

⁵ E. Utrecht. 2000. *The Essence of Series Lecture Criminal Law II*. Surabaya: Pustaka Tinta Mas. p. 7

⁶ *Ibid.* p. 8

⁷ Barda Nawawi Arief, *Op. Cit.* p. 36

- b. perhaps only one person who has the "willing" and "concocting" offense, but this acts are not did by alone, but they use other people to carry out the offense;
- c. may also happen that one who commits offense, while other people "help" to carry out the offense⁸.

The relationship of each participant to the offense may have a relationship and even become a benchmark to determine the liability of the participants against the offense. According Satochid Kartanegara in looking at the relationship of each participant to the responsibilities of the criminal, it is by its nature *deelneming*, it can be divided into (1) The forms of *deelneming* which stand-alone, in this form the responsibility of each participant appreciated alone, (2) The forms of *deelneming* who do not stand alone in this case are also called "*accessori deelneming*", the accountability of participants that one hung on deeds of the other participants, namely doing a deed that can give a sanction to one participant, so that the other participant was also punished⁹. However Satochid Kartanegara did not give further explanation on matters which of these two properties *deelneming* (stand-alone and does not stand alone) can be used, it is in the practice of criminal justice as if handed over to the criminal justice apparatus to use it. Linkages with it Satochid Kartanegara explained that the provisions of the Criminal Code does not differentiate between *deelneming* which are stand-alone and *deelneming* which are not stand-alone (*zelfstandige deelneming* and *onzelfstandige deelneming*), but only held a breakdown between the

offenders (*daders*) and help to conduct (*medeplegters*)¹⁰.

The next review of the participated doctrine focused on criteria for categorization of each participant offender referred to in Article 55 and Article 56 of the Criminal Code, namely (1) *pleger* (actor), (2) *doenpleger* (those who order us to do), (3) *medepleger* (the people who participate), (4) *uitlokker* (promoters), (5) the people who are helping (*medeplechtige*).

A. Pleger

Pleger is the person who does a deed by self that meet the formulation of the offense, in practice difficult to determine, especially in the case of the legislators did not specify exactly who is the offender. According to Barda Nawawi Arief on this matter there are two opinions. (1) The Indonesian judiciary: the makers (in the narrow sense that are the offenders) are those which, according to the intent of lawmakers should be deemed have responsibility, (2) The Netherlands Judiciary *dader* (in the narrow sense) is the person who has the power or ability to put an end to the offense that forbidden, but still allowing forbidden circumstances to continue¹¹. To overcome the difficulties that good practice to follow the opinion of January Rummelink about *pleger* as follows:

The provisions of Article 47 Sr. (Article 55 of the Indonesian Criminal Code) first stipulates who committed a criminal act thoroughly. Even when the offenders (*pleger*) are not the person who participate (*deelnemer*), may be able to understand why they need to be called. Offenders, in addition to other parties participating or being involved in a criminal

⁸ Satochid Kartanegara, *Loc. Cit.*

⁹ *Ibid.* p. 419

¹⁰ *Ibid*

¹¹ Barda Nawawi Arief, *Op Cit.* p. 38

act they were doing, would be convicted with them as the offender (*dader*), while the way to participate made and the responsibility to it, also determined by its relation with criminal offenses committed by the main offender because it is the offender (*pleger*), is a person who meets all the elements of the offense (also in the form of trial or preparation), including when done through other people or their subordinates (intended here in connection with the offenses functional), because it is understandable why the offenders are always referred by lawmakers when they formulate regulations and establish criminal penalties¹².

Based on Rummelink's point above, it is clear that *pleger* is a person who is capable to realize or can fulfill all elements of the offense, but in its implementation involves other people especially in 2 (two) things: (1) how to commit criminal act, and (2) responsibility against them for a crime.

B. Doenpleger

Satochid Kartanegara call *doenpleger* as *Mideelijke Daderschap* doctrine which have meaning "act with intermediaries"¹³. In *doenpleger* recognized the existence of two (2) parties, namely (1) direct offender (*onmiddelijke dader, auctor physisus, manus ministra*), (2) indirect offender (*middelike dader, doenleger, auctor intellectualis/moralist, manus ministra*)¹⁴.

Doenpleger have three (3) elements, namely (1) the equipment used is human, (2) the equipment used that do (not a die

tool), (3) the equipment used can not be accounted for, a third element which is the sign characteristic of *doenpleger*¹⁵.

C. Medepleger

In *Ontwerp Regerings Ordinance* or the Plan of Government Regulation in Netherlands, *medeplegen* at the first called *opzettelijk medewerken* or deliberately help to do, deliberately cooperation with the offenders. Therefore there are the challenge of Tweede de Kamer because these terms difficult to distinguish from the *medeplichtigheid* (co-) then the government in this case the Ministry of Justice of Netherlands replaces it with *medeplegen* as also found in Article 55 of the Criminal Code.

Muhammad Ainul Syamsu view that if compared to other forms of participation, participated doctrine (*medeplegen*) has a different characteristic because it requires the joint action (*meedoet*) between the main offender (*pleger*) the people who are participate (*medepleger*)¹⁶.

According to Barda Nawawi Arief the regulations do not give a definition of *medepleger* (those who participated), *Memorie van Toelichting* declare those who participate do (*medepleger*) is the person who intentionally do or co-working co-occurrence¹⁷.

The views of Pompe (in Barda Nawawi Arief) *medepleger* are helped do something happening criminal offense with there are three (3) possibilities, namely:

¹² Jan Rummelink. 2003. *Criminal Law, Commentary on Articles Foremost of the Criminal Code of Netherlands and its equivalent in the Criminal Code of Indonesia*, translated by Pascal Trustam Moeliono. Jakarta: Gramedia Pustaka Utama. p. 308

¹³Satochid Kartanegara, *Op. Cit.* p. 422

¹⁴Barda Nawawi Arief, *Op. Cit.* p. 38

¹⁵ *Ibid.* p. 39

¹⁶ Muhammad Ainul Syamsu. 2014. *Shifting Participated Doing the Doctrine of Participation, Critical Review Based Separation Theory of Criminal Act and Criminal Liability*. Jakarta: Prenadamedia Group. p. 59

¹⁷ Barda Nawawi Arief, *Op. Cit.* p. 41

1. Each of them fulfilled all the elements in the formulation of the offense, two people by cooperating in the theft of a rice warehouse,
2. one meets all the elements of the offense and the others are not, for example, two people pickpocket (A and B) mutually cooperate, A hit or crash the people who become the target, while B took the wallet of target.
3. none of the offenders fulfilled the elements of the offense entirely, but they are jointly to realize the offense, for example in the theft with damage (Article 363 paragraph (1) to 5 of the Criminal Code), one is oversee the surroundings, while the others entered the house and pick up the goods and then received to his friend who oversee the surroundings¹⁸.

Terms of the *medepleger* are (1) there is a conscious cooperation (*bewuste samenerking*), (2) there is joint physical implementation (*gezamenlijke uitvoering / fysieke samenwerking*)¹⁹. Note from Jan Rummelink that in the case of the *medepleger* requirement that there should be no plan or agreement made beforehand. On the contrary, it needs to be proven that there is mutual understanding among fellow offenders and when the offenses are realized each of the actors cooperates to achieve the same goal²⁰.

¹⁸ *Ibid* . p. 42

¹⁹ *Ibid*

²⁰ Jan Rummelink, *Op. Cit.* P. 314, in this case also reveals the decision Rummelink HR Arrest on February 9, 1914, that there is no participation if one person wanted to persecute perpetrators, while the other players just about to commit murder. Each of these actors who cooperate do not need to do a whole set of action implementation and does not need to meet all of the characteristics as actors, such as officers or party that controls the material.

D. Uitlokker

Article 55 (2) of the Criminal Code tends to regulate the agitator responsible for committing a criminal offense, with measures prescribed by law (limitative). The limitative measures referred to (1) by granting, (2) promises, (3) abuse of authority, (4) by force, (5) by threat, (6) by deception, (7) or by giving a means or information deliberately advocating or persuading (committing) a criminal offense shall be criminally charged as a criminal offender. Rummelink views that happenings of *uitlokker* not the person induced to commit a crime, but rather that the offense occurred because of suggestion or persuasion of others, the object is not (solely) the person who persuaded (provoked), but also offenses provoked²¹.

Furthermore, Jan Rummelink proposed 4 (four) requirements that must be met with criminal indictment, namely:

1. Deliberate action to mobilize another person to do an act that is prohibited by law with the assistance of means as stipulated in law;
2. The decision to be willing on the other side must be raised. This requirement is dealing with psychic causality;
3. A person who is moved (persuaded or provoked) to embody a plan instilled by a persuader or activator to commit a crime or at least conduct an experiment to do a crime. A bad faith of the mover is not enough, it must be manifest into action;
4. Undoubtedly persuaded people should be held criminally responsible, if not then it does not appear the inducement but the effort told to do (*doenplegen*)²².

²¹ *Ibid* . p. 328

²² *Ibid*.

E. Medeplichtigheid

Satochid Kartanegara translating, *medeplichtigheid* as "helping to do"²³. Links with this cases Barda Nawawi Arief stated that according to the basic nature which is viewed the actions, this act is *accessoir*. Which have means that for the existence of assistance there must be people who commit crimes (there must be people who are assisted). But seen from accountability it does not *accessoir* that means the sanction that give to the person who help to commit does not depend on whether the offenders are prosecuted or not²⁴. Further described by Barda Nawawi Arief that in terms of the kinds of assistance there are two (2) types, namely (1) the first type according to the time when the crime was committed, and the process is not specified in the legislation, (2) the second types according to the time before the crime is committed, the way is determined by the law that is by giving opportunity, means or information²⁵.

2. The Application of Participated Doctrine on Judge Decision

a. Decision Number 05/Pid.Sus-TPK/2015/PN.Jap

In this decision the identity of the offender is Drs. Yohosua Awaitau, M.Si, the birthplace is Jayapura, age 61, date of birth July 29, 1952, Gender Male, Indonesian Nationality, the residence is Jl. Poltekes RT.002/RW004 Hedam Distrik Heram Padang Bulan Abepura, Jayapura City, Religion is Protestant Christianity, the employment is retired of civil servants, education S2 (graduation).

The offender was charged with *subsidiary* charges²⁶, which is the primary charge, the act of defendant as stipulated and punishable under Article 2 (1) in conjunction with Article 18 Act Number. 31 of 1999 about Eradication of Corruption, as amended and supplemented by Act Number 20 of 2001 about Amendment of Act Number 31 of 1999 in conjunction with Article 55 paragraph (1) of the Criminal Code, in conjunction with Article 64 of the Criminal Code. Then in the subsidair indictment the act of defendant as already arranged and threatened criminally in Article 3, jo Article 18 of Act Number 31 of 1999 about the Eradication of Corruption as amended and supplemented by Act Number 20 of 2001 regarding Amendment of Act Number 31 of 1999 in conjunction with Article 55 paragraph (1) of the Criminal Code, jo Article 64 of the Criminal Code.

Application of participated doctrine in this decision can be understood in the judge considerations ad.5 about "*People who committing the offense, people who telling to do, or participate doing the offense.*" Part of judge considerations covering linkages the offense of offender Drs.Yohosua Awaitau, M. Si who become Regent Functionary of Sarmi 2010-2011, in relation to conduct corruption together with Ir. Johanes Rinaldo Sare as manager of BPD, Branch of Sarmi 2010-

²³ Satochid Kartanegara, *Op. Cit.* p. 449

²⁴ Barda Nawawi Arief, *Op. Cit.* p. 51

²⁵ *Ibid.* p. 52

²⁶ See Hari Sasangka and Tjuk Suharjanto. 1988. Prosecution and Techniques Make Indictment. Surabaya: Pustaka Tinta Mas. p. 111 describes subsidiary charges the prosecutor is not in doubt about the type of the crime, but the issue is the qualification of the crime that would indicted whether the offense is included serious qualification or qualifying on lighter in weight. The indictment prepared in the form of the primary, subsidiary, and so the order of chapters toughest first and lightweight article criminal threat.

2011, and Arnold Penehas Marwa as Daily Cash Holder of Sarmi since 2006.

The pattern of relationships committed crime is revolved around the offense of the offenders, with Ir. Johannes Rinaldo Sare and Arnold Penehas Marwa (whose case was filed separately) in the withdrawal and use of funds sourced from the Sharing Fund of PBB and TW III Oil and Gas Mining in 2010 for activities which is not budgeted in the Budget of Sarmi District and for personal gain.

The role of the offenders are to give orders to Arnold Penehas Marwa as Daily Executor of Regional Cash Holder of Sarmi Regency since 2006 to (1) to open current account deposit funds of Sarmi Regency, (2) change the account of current account deposit funds of Sarmi Regency became the account of General Cash Sarmi Regency, with bank account number 106.23.30.02.01640.9 to with bank account number 106.21.10.06.00094-6, (3) block the account of the Regional General Cash of Sarmi with bank account number. 106.21.10.06.00094-6 (4) to unblock the account of the General Treasury of Sarmi, with bank account number 106.21.10.06.00094-6, (5) to withdraw the account at BPD Sarmi Branch with bank account number 106.21.10.06.00094-6 for several times either consecutively or at any time with the amount of state losses as revealed in the facts of the trial is 1,401,100,000 rupiah. (One billion four hundred one, one hundred thousand rupiah), and the amount charged by the offender is 590.000.000 rupiah (five hundred ninety million rupiah).

Listening carefully to the role of offenders embodied in the form of giving orders through their disposition as revealed in the hearing to perform the act of opening accounts, blocking accounts, and

withdrawal of funds sourced from the Sharing Fund of PBB and TW III Oil and Gas Mining 2010 for the activities which are not budgeted in the District Budget of Sarmi and for personal interest, then the question is the role of the offenders qualified as actors which form in the construction *deelneming* in accordance with Article 55 of the Criminal Code. Qualifying participants referred to the offenders namely *pleger*, *doenpleger*, *medepleger*, *uitlokker* or *medeplichtigheid*.

If followed by the Public Prosecutor's attitudes, the indictment clearly states that "the offenders commits the act individually or collectively" and is followed by accusing the offender also with Article 55 paragraph (1) of the Criminal Code. With reference to the provisions of Article 55 paragraph (1) point 1 of Criminal Code as claimed by the prosecutor, then referred by the prosecutor is the offenders can be qualified between (1) the person who committ an offense (*pleger*), (2) were told to do (*doenpleger*) (3) that participate to do (*medepleger*).

If the offender qualifies as *pleger* so the offender become the people who have power or ability to realize all the elements of the offense contained in Article 2 (1) UUTPK (primary charge) as well as elements of the offense contained in Article 3 UUTPK (the subsidiary charges). However, the fact is the offeder in realizing his actions are still there are other participants namely Ir. Johannes Rinaldo Sare, who facilitated, provided opportunities, means and information to open accounts, block accounts, reopen and withdraw funds from the account of Sarmi Regency, and the role of Arnold Penehas Marwa who exercised orders from the offender to open accounts, block accounts, reopen and withdraw funds from the account of the General Treasury of Sarmi,

and the proceeds of the offender actions which did together with Ir. Johannes Rinaldo Sare and Arnold Penehas Marwa were also given to both participants.

While Arnold Penehas Marwa as a principal participants who execute orders the offender is a legal subject which is not categorized as an *astronomer ministra* (*onmiddellijke dader*), because Arnold Penehas Marwa is the perpetrator of participants who should be accountable for the criminal which did by himself. In addition, there is no reason inherent in Arnold Penehas Marwa and deeds that could qualify as an *astronomer ministra* in *doenpleger* quality²⁷. Likewise with Ir. Johannes Rinaldo Sare who also could not be categorized or qualify as an *astronomer ministra* in *doenpleger* quality. It is therefore become deemed appropriate attitude of the prosecutor to qualify the offender in the quality of participated (*medepleger*).

Linkages with quality categorization of offender as a *medepleger* in the case corruption, should be described clearly and unequivocally the relationship patterns between the offense of the offender with the perpetrator of the other participants in *medepleger* that are Arnold Penehas Marwa and Ir. Johannes Rinaldo Sare. The purpose

²⁷ See Barda Nawawi Arief, *Op. Cit.* P. 39, which explains that the things that cause the instrument (maker of material) can not be accounted is (1) if it is not perfect in soul growing or soul damaged (Article 44 of the Criminal Code), (2) when they did because of force (Article 48 of the Criminal Code), (3) if they do so at the command post of unauthorized as referred to in Article 51 paragraph (2) of the Criminal Code, (4) when they mistakenly (misguided) on one of the elements of the offense, eg A tells B to monetize post wissel whose signature forged by A, while B does not know the forgery. (5) if they have no such intent required for the crime in question. Example A tells B (coolies) to take goods from one place. B took it for submission to A and he did not have the intent to have by himself

of the description pattern of relationship was meant to be the fulfillment of the requirements of *medepleger* that (1) there is a close cooperation which did by conscious (*bewuste samenwerking*), and (2) there is joint physical implementation (*gezamenlijke uitvoering*)²⁸.

In addition unless these two criterias, Utrecht asserts that such a perfect and close cooperation is not to be promised and planned by the main offenders, example before they begin their deeds. It is sufficient there is mutual understanding, that is when the offenses are done perfect and close cooperation that is aimed at same purpose²⁹. It is clear in this case that indeed the accused of criminal act of corruption never made any discussion with Arnold Penehas Marwa and Ir. Johannes Rinaldo Sare about the plans, objectives and expected results of each offense done, but all offenses that lead to the corruption has been understood by fellow offenders namely Arnold Penehas Marwa and Ir. Johannes Rinaldo Sare.

b. Decision Number 06/Pid.Sus-TPK/2015/PN.Jap

In this decision the identity of the offender is Ir. Johannes Rinaldo Sare, the birthplace is Central Lombok Praya, Age 48 Years, Date of Birth 16 May 1965, Gender Male, Indonesian Nationality, Residence Jl. No. 19 Gajah Putih RT.002/RW001 Numbay, South Jayapura, Jayapura City, Relegion Catholic Christianity, Employment Staff at Bank Papua Center, Education S1 (graduated).

²⁸ *Ibid.* p. 43

²⁹ E. Utrecht, *Op. Cit.* P. 37. Further quoting D. Hazewinkel-Suringa view on whether the condition that a cooperation so perfect and tight, it means that each participant wants to do the same act, which is prohibited by the criminal law.

The offender was charged with the *subsidiary* charge³⁰, which is the *primary* charge, offender as stipulated and punishable under Article 2 (1) in conjunction with Article 18 of Act No. 31 of 1999 about Corruption Eradication, as amended and supplemented by Act Number 20 of 2001 about amendment to Act Number 31 of 1999 in conjunction with Article 55 paragraph (1) of the Criminal Code, Article 64 of the Criminal Code. Then in the subsidair indictment the offense of the offender as already arranged and threatened criminally in Article 3, jo Article 18 of Act Number 31 of 1999 about Eradication of Corruption as amended and supplemented by Act Number 20 of 2001 regarding Amendment of Act Number 31 of 1999 in conjunction with Article 55 paragraph (1) of the Criminal Code, jo Article 64 of the Criminal Code.

If traced both primary and subsidiary charges against the offense of the offender Ir.Johanes Rinaldo Sare, then the act against the law of the offender lies in the conclusion of the accusation of the Public Prosecutor as follows:

Whereas the result of the offense that done by the offender is in accordance with the report of the audit result in the framework of calculating the State Financial Losses from BPKP Papua Province Number SR-1762/PW26/5/2013 dated October 25, 2013 on Criminal Acts of Corruption with Withdrawn some money on Regions Cash account at Papua Bank, Branch of Sarmi in 2010 to 2011 there was a misuse of procedures and mechanisms of the expenditure of funds on the Treasury of Sarmi Regency Rp. 1.401.100.000, (One Billion Four Hundred One, Hundred

Thousand Rupiah)³¹.(the bottom line of the pen.)

From the act against the law that done by Ir. Johanes Rinaldo Sare as revealed above, clearly focused on 2 (two) acts, namely (1) deviation of the use of funds in Treasury of Sarmi Regency, and (2) procedures and mechanism of expenditure of funds in Treasury of Sarmi Regency, that causes state losses. Rp 1.401.100.000, - (One Billion Four Hundred One, Hundred Thousand Rupiah). However, in the offense of the offender which do not did by himself but together with Yohosua Awoitaw and Arnold Penchas Marwa who was charged in the indictments separately. Public prosecutor indicted due to the offender by applying *deelneming* construction, then it must be resolved or clearly demonstrated the proper form of *construction deelneming* with the offender acts as a principal participant in this corruption.

In order to obtain clarity about the quality of the offender as the perpetrator of the participants in this *deelneming* construction, of course we must searching or disclosed regarding the offender's role in the realization of corruption. The role of the offender is clearly revealed in connection with the position of the offender who was Branch Manager of BPD Sarmi 2010-2011 in a joint action of Mr. Yohosua Awoitaw as the Regent functionary of Sarmi and Arnold Penchas Marwa as Treasury Holder and Daily Cash Manager of Sarmi who charged in separate indictments to commit: (1) Uncompleted account opening requirements, (2) Changes in Account Number 106.23.30.02.01640.9, as Deposit

³⁰ See Hari Sasangka and Tjuk Suharjanto, *Loc. Cit.*

³¹ Decision of the Corruption Court on IA Jayapura District Court No. 06/ Pid.Sus-TPK/2015/PN Jap, dated June 23, 2016. p. 19

Cash become Treasury Cash with Account Number 106.21.10.06.00094-6, (3) To block the Deposit Cash account of Sarmi Regency with Account Number 106.23.30.02.01640.9, (4) Reopened the Treasury Cash that blocked by Manager of Financial Section of Sarmi Regency Obeth Mehara, and (5) Withdarwn from the Treasury Cash of Sarmi for several times that sourced from Sharing Fund of PBB and TW III Oil and Gas Mining in 2010 for activities which is not budgeted in the Budget of Sarmi District and for personal gain that did by Arnold Penehas Marwa as corresponding command Yohosua Awoitaw as Regent Functionary of Sarmi just based disposition without SP2D and all of it was committed with the consent of the offender or by using his authority as manager of the BPD Sarmi Branch.

Based on the disclosure of the role of the offender in this case, the offenders are likely qualified as "those who have committed participated crime (*medepleger*)". *Medepleger* quality is based on two (2) requirements: (1) there is close cooperation between the offender with Arnold Penehas Marwa corresponding command Yohosua Awoitaw. (2) the offender has committed the physical act together (*gezamenlijke uitvoerin*), and (3) there is a same purpose which gain and it was revealed by several times the offender also get a share of the funds. These three criteria *medepleger* accordance with the provisions of Article 55 paragraph (1) pont 1 Criminal Code. One of the facts in the trial that withdrawn the Sarmi Treasury from Account Number 106.23.30.02.01640.9 on September 21, 2010 amount Rp. 200.000.000, - (two hundred million), the offender get a share of Rp. 30.000.000, - (thirty million rupiah).

Actually, the role of the offender as the perpetrator participants were more likely tend to provide opportunities, including the ease with dignity abusing power or position as manager of BPD to Mr. Arnold Penehas Marwa corresponding command Yohosua Awoitaw, which is similar to the quality of the promoters or the persuader³² to commit the crimes (*Utitlokker*) as referred in Article 55 paragraph (1) pont 2 of Criminal Code. However, in this case the offender is not categorized as those who mobilize others to commit an offense by using the means specified by law³³.

CONCLUTIONS

Application of participated doctrine from in those decision shows the same view between the general prosecutor and the judge. Commonality of views can be seen from the way to disclose the quality of participants, that the general prosecutor and the judge agreed to qualify the participant in the decision as *medepleger* (those who participate do), namely Drs.Yohosua Awoitaw, M.Sc., in the first decision or Ir Johanes Sare in a second decision and one more Arnold Penehas Marwa whose decisions are not analyzed in this

³² See AZ Abidin and Andi Hamzah. 2010. *Introduction to the Indonesian Penal Code*. Jakarta: PT Yasir Watampone. p. 511 translates *uitlokker* as an angler, and their *uitgelokte* or people hooked. Against anglers are limited to acts that intentionally fished alone is accountable to him.

³³ Barda Nawawi Arief, *Op. Cit.* p. 44, further Barda Nawawi Arief filed five (5) requirements for their suggestion who may be liable, (1) there is a deliberate intention to move others do forbidden actions, (2) move it by using the efforts (means) such as in the legislation (to be limitedly), (3) the decision of the will of the creator of the material caused by such things at 1 and 2 (so there *psychischecausaliteit*), (4) the creator of the material are committing a criminal act which is recommended or attempted to commit criminal, (5) the material makers must be accountable in criminal law.

research. With the attitude or those the opinion can be understood that the participated doctrine in criminal acts of corruption in both decisions the general prosecutor and the judge believes restrictive view which view the maker as being equated with the offender and therefore can stand alone and charged in the indictment were separated from one offender participants with other participants.

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BIBLIOGRAPHY

- Abidin, AZ, and Andi Hamzah. 2010. *Introduction to the Indonesian Penal Code*. Jakarta: Yasir Watampone.
- Arief, Barda Nawawi. 2007. *Essence of Lecture on Advanced Criminal Law* Semarang: Lecture Material Supply Agency Faculty of Law, Diponegoro University.
- Kartanegaara, Satochid. Without Year . *Criminal Law A Collection of Lecture Part One*. Balai Lektur Mahasiswa.
- Rummelink, Jan. 2003. *Criminal Law, Commentary on Articles Foremost of the Criminal Code of Netherlands and its equivalent in the Criminal Code of Indonesia*. translated by Pascal Trustam Moeliono. Jakarta: Gramedia Pustaka Utama.
- Sasangka, Hari, and Tjuk Suharjanto. 1988. *Prosecution and Techniques Make Indictment*. Surabaya: Pustaka Tinta Mas.
- Syamsu, Muhammad Ainul. 2014. *Shifting Participated Doing the Doctrine of Participation, Critical Review Based Separation Theory of Criminal Act and Criminal Liability*. Jakarta: Prenadamedia Group.
- Utrecht, E. 2000. *The Essence of Series Lecture Criminal Law II*. Surabaya: Pustaka Tinta Mas.