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THE INJUSTICE OF CRIMINAL GUIDELINES IN THE ACT OF CORRUPTION CRIME

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ABSTRACT

Corruption is an extraordinary crime that can damage the joints of the life of the nation and state. Corruption can cause various negative impacts, such as: reducing state revenues from the tax sector, reducing government spending in the education sector, resulting in low-quality infrastructure being built, slowing economic growth, causing government instability. The aims of this study is to find out about the injustice in the regulation of criminal guidelines for corruption crimes which makes the enforcement of corruption laws less strict in their punishment. The research method used normative juridical. The results of the study state that the Criminal Guidelines for Articles 2 and 3 of the Corruption Eradication Law in order to better cover other articles of corruption crimes and must change the criminal guidelines for very large losses must consider implementing maximum punishment in accordance with the criminal guidelines, the novelty produced for the criminal guidelines for corruption crimes must be regulated regarding the highest loss value must be adjusted to the heaviest punishment in accordance with the criminal guidelines in the Criminal Code.

1. Introduction

The development of corruption in Indonesia is still relatively high, while its eradication is still very slow, Romli Atmasasmita, stated that, Corruption in Indonesia is like a flu virus that has spread throughout the government and eradication steps are still faltering until now.[1] He further said that corruption is

1 Romli Atmasasmita., *Sekitar Masalah Korupsi, Aspek Nasional dan Aspek Internasional*, Mandar Maju, Bandung, 2004, page. 1

also related to power because with that power the ruler can abuse his power for personal interests, family and cronies.[2]

Agreeing with Romli Atmasasmita, Nyoman Serikat Putra Jaya explained that it must be admitted that currently Indonesia, according to the results of research conducted by Transparency International and the Political and Economic Risk Consultancy based in Hong Kong, always occupies a vulnerable position as far as corruption is concerned. In fact, it must be admitted that corruption in Indonesia is systemic and endemic so that it not only harms state finances, but also violates the social and economic rights of the community at large.[3]

The crime of corruption has caused damage to various aspects of the lives of society, the nation, and the state[4], so it requires extraordinary handling. Eradicating corruption has always been a major concern compared to criminal acts in general.[5] This is because corruption is an extraordinary crime where the method of committing the crime by the perpetrators has used sophisticated and diverse means such as technological tools, carried out professionally by professional perpetrators, abuse of authority and so on so as to cause misery for society.[6]

Efforts to eradicate corruption in Indonesia have been carried out since Indonesia's independence, especially in the reform era.[7] As an effort to improve the eradication of criminal acts of corruption, it is realized in the form of updating the legal substance related to corruption and its structure by forming a special institution tasked with eradicating criminal acts of corruption. The renewal of the legal substance is carried out by changing the legislation on corruption which was originally based on Law No. of 1971 replaced by Law No.1 of 1999 Juncto Law No. 20 of 2001. The Indonesian government has formed a special commission tasked with preventing and eradicating corruption, namely the Corruption Eradication Commission.[8] In addition, a Corruption Crime Court has also been established based on Law No. 46 of 2009 concerning the Corruption Crime Court.[9]

2 *Ibid*.

3 Nyoman Serikat Putra Jaya., *Beberapa Pemikiran ke Arah Pengembangan Hukum Pidana,* Citra Aditya Bakti, Bandung, 2008, page. 57

4 Anirut Chuasanga, Ong Argo Victoria., Legal Principles Under Criminal Law in Indonesia and Thailand, *Jurnal Daulat Hukum*, Vol.2 No.1, 2019, page. 131-138

5 Amiziduhu Mendrofa., Politik Hukum Pemberantasan Korupsi di Era Reformasi, *Jurnal Litigasi*, Vol.16 No.1, 2015, page.28

6 Sri Endah Wahyuningsih., *The Role of Prosecutor Office In The Eradication Of Corruption Criminal Acts In Indonesia*, *Jurnal Pembaharuan Hukum,* Vol.IV No.2, May - August 2017, page. 244

7 Diana Yusyanti., *Strategi Pemberantasan Korupsi Melalui Pendekatan Politik Hukum, Penegakan Hukum dan Budaya Hukum*, *E-Journal Widya Yusticia*, Vol.1 No.2, Tahun 2015, page. 87

8 Septiana Dwiputrianti., Memahami Strategi Pemberantasan Korupsi di Indonesia, *Jurnal Ilmu Administrasi*, Vol.VI No.3, 2009, page. 242

9 Maron.i, *Pemberantasan Korupsi Berbasis Hukum Pidana Progresif*, Universitas Lampung, Bandar Lampung, 2011, page. 11

Corruption, once considered solely an Indonesian issue, has evolved into a universal problem that plagues countries worldwide, defying easy eradication.[10] Indonesian criminal law policy considers corruption as a form of criminal act that needs to be approached specifically, and is threatened with quite severe punishment.[11] Corruption is a multifaceted act that requires the ability to think of the examining and law enforcement officers accompanied by a very neat pattern of action. Therefore, changes and developments in the law are one way to anticipate such corruption.[12]

Fockema Andreae put forward the definition of corruption which comes from the Latin word corruption or coruptus, which is further stated that corruptio also comes from the original word corrumpere, an older Latin word.[13] The term corruption can also be found in the dictionary that has entered the Indonesian language treasury, which means an act that is rotten, bad, depraved, dishonest, can be bribed, immoral, deviates from holiness, words or statements that insult or slander. In the Indonesian Dictionary compiled by Poerwadarminta, the meaning of the word corruption has been reduced to bad deeds and can be bribed. Nowadays, if we hear the word corruption[14], we associate it as an act of manipulation and cheating. Thus, seen from the original meaning of corruption, its scope is very broad.[15]

The implementation of PERMA Number 1 of 2020 on the disparity of corruption crimes must be implemented in its entirety in accordance with applicable provisions, so that the implementation of PERMA Number 1 of 2020 on the disparity of corruption crimes must be completed in accordance with applicable regulations so that the implementation of the regulation can be carried out effectively. and the implementation of PERMA Number 1 of 2020 should not only be applied to Article 2 and Article 3 of the Corruption Law, but also to other corruption articles, with the hope that the disparity in punishment can be reduced so that the problem of corruption that is detrimental to state finances can create a legal certainty that deters perpetrators of corruption that is very detrimental to the country's economy.

The role of judges is expected to reduce cases of corruption that can ensnare the perpetrators with policies in the form of heavy and targeted judge's decisions. Judges will impose criminal penalties on perpetrators of corruption by

10 Ridwan Arifin, Sigit Riyanto, Akbar Kurnia Putra., Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruptionin the Digital Era, *Legality: Jurnal Ilmiah Hukum*, Vol.31 No.2, 2023, page. 329-343

11 Elwi Danil., *Korupsi (Konsep, Tindak Pidana, dan Pemberantasannya)*, Rajawali Pers, Jakarta, 2016, page. 1

12 Surachmin, Suhandi Cahaya., *Strategi dan Teknik Korupsi*, Sinar Grafika, Jakarta, 2011, page. 11.

13 Fockema Andreae., *Webster Dictionary (Kamus Hukum, terjemahan),* Bina Cipta, Bandung, 1960, page. 105

14 Abdul Kholiq Nur and Gunarto., Concept of Criminal Law on Corruption of Corporate Criminal Liability System Based on Justice Value, *Jurnal Daulat Hukum*, Vol.4 No.1 2021, page. 82-90

15 Hamzah., *Korupsi Dalam Pengelolaan Proyek Pembangunan*, Akademika Pressindo, Jakarta, 1985, page. 3

looking at the articles violated by the perpetrators.[16] Before making a decision in a criminal case, the judge must first consider the elements in a criminal law article and must be proven to have committed the act charged against him. After that, if the defendant is proven to have committed a crime and violated a certain article, the judge will analyze whether the criminal act can be held accountable to the defendant[17]. So that if the defendant has been proven to have committed a crime in accordance with the charges and in accordance with criminal responsibility, the judge can determine the criminal sanctions that can be imposed on the defendant. In determining the criminal sanctions to be imposed on the defendant, the judge must consider whether the decision is in accordance with the purpose of punishment or not and in accordance with applicable laws or not.[18] However, in practice, judges as law enforcers in Indonesia still do not provide good decisions, this problem is in the form of an imbalance between the expected legal aspects and the legal implementation aspects that exist in society.[19]

In previous research, it was stated that Perma Number 1 of 2020 was only considered as a guideline, not seeing the Perma as procedural law whose existence is a legislative product that fills the gaps and deficiencies in the law.[20] Divani Fajria Hadi in his research stated that PERMA number 1 of 2020 has been applied in judges' decisions. However, it cannot be denied that there are still several decisions that cannot fully comply with PERMA, because so far there has been no definite benchmark for an error.[21] Boy Santoso in his research also stated that the Perma enacted by the Supreme Court is recognized as existing and has binding legal force and was formed based on the MA's attribution policy which is inherent in its authority as one of the state institutions which is given the authority to create regulations and procedural laws which are not sufficiently regulated in the Law.[22]

The purpose of this study is to find out about the injustice in the regulation of guidelines for sentencing in criminal acts of corruption which makes law enforcement for criminal acts of corruption less strict in its sentencing.

16 Ahmad Rifai., *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Sinar Grafika, Jakarta, 2010, page. 100

17 Masyhadi Irfani and Ira Alia Maerani., Criminal Code Policy in The Effort of Corruption Prevention in Institutions Regional Disaster Management Agency, *Jurnal Daulat Hukum*, Vol.2 No.1 2019, page.75-82

18 *Ibid*.

19 Ucuk Agiyanto., P*enegakan Hukum Eksploitasi Konsep Keadilan Berdimensi Ketuhanan, Hukum Ransendental,* Universitas Muhammadiyah Ponogoro, Ponorogo, 2018, page. 2

20 Pniel Destenesse Diocto (etc)., Putusan Hakim Tindak Pidana Korupsi Yang Tidak Berdasarkan Dengan Perma Nomor 1 Tahun 2020 Pada Pengadilan Negeri Pontianak, *Tanjungpura Legal Review*, Vol.2 Issue.1, November 2023, page. 68 - 80

21 Divani Fajria Hadi, Efren Nova., Penerapan PERMA Nomor1 Tahun 2020 Dalam Perkara Tindak Pidana Korupsi (Studi Kasus Putusan Nomor33/Pid.Sus/TPK/2020/PN.Pdg), *Delicti : Jurnal Hukum Pidana Dan Kriminologi*, Vol.1 No.2 (Desember 2023), page. 1–14

22 Boy Santoso., Peraturan Mahkamah Agung Nomor 1 Tahun 2020 Sebagai Pedoman Pemidanaan Pelaku Tindak Pidana Korupsi, *DiH: Jurnal Ilmu Hukum*, Vol.19 No.1, Februari 2023, page. 11-22

2. Research Methods

This research method is normative juridical, the use of normative juridical methods in proving the truth in legal research.[23] or in other words, it is a study conducted on the actual situation or real conditions that occur in society with the aim of knowing and finding the facts and data needed, after the required data has been collected, it then leads to problem identification which ultimately leads to problem solving.[24]

3. Results and Discussion

3.1 The Regulation on Prevention of Disparities in Law Enforcement of Corruption Crimes

Corruption fighting has long focused on natural and legal persons as the primary units of analysis.[25] Corruption crimes are covered by Law No. 31 of 1999 concerning the Eradication of Corruption Crimes which was amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999. In addition to special crimes, corruption crimes are also classified as extraordinary crimes or extraordinary crimes that also require extraordinary handling.[26]

Disparity in verdicts is a serious problem because it concerns the value of justice that is to be achieved from a punishment in a state court. Although in reality disparity cannot be eliminated, what needs to be considered is to narrow the disparity in a punishment. The punishment is indeed the realm of judicial power to determine how much punishment is considered appropriate for each defendant, judges in carrying out their duties to resolve various disputes are not solely fixated on the law written in the books, the judge's active and creative attitude to judge, understanding the values in the midst of society is a step to judge, follow and understand the values in the midst of society.[27]

The regulation on the severity of the crime will be considered by the judge and attached in a written attachment containing the order of categories of state financial losses, level of error, impact, profit, range of criminal sentences, aggravating and mitigating circumstances, and the imposition of criminal sentences (Article 5 of PERMA Number 1 of 2020). Aspects of state financial losses are classified into the most severe, severe, moderate, light, and lightest categories based on a certain nominal amount (Article 6). Categorization also

23 Muhammad Zainuddin, Aisyah Dinda Karina., Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum, *Smart Law Journal*, 2023, Vol.2 No.2 2023, page. 114-123

24 Bambang Waluyo., *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, 2002, page 15.

25 Anne van Aaken, Effectuating International Law Against Corruption: Behavioral Insights, *International Journal of Constitutional Law*, Vol.22 Issue.2, April 2024, page.562–584

26 Erni Dwita Silambi (etc)., The Legality Questioning of The Investigation Termination Through the Investigation Warranty on Corruption Crime, *IJLR: International Journal of Law Recontruction*, Vol.8 No.1, April 2024, page. 111-128

27 Herdjito., *Disparitas Penjatuhan Pidana Dalam Perkara Tindak Pidana Disersi (Studi Kasus di Wilayah Hukum Pengadilan Militer II-08 Jakarta*, Penelitian Puslitbang Mahkamah Agung, Jakarta, 2014, page.2

applies to elements of degree of error, impact, and profit (categories, high, moderate, and low). Meanwhile, in terms of high error, the defendant will be qualified based on his role including: significant role, advocate, using sophisticated technology in the modus operandi, and carried out in a state of disaster or economic crisis on a national scale.[28]

Regarding the contents of PERMA Number 1 of 2020, Muzakir's view is that the regulation is not quite right. This is because PERMA can reduce the independence of judges in trying a corruption case. Independence itself can be interpreted as the freedom, independence, and flexibility of judges to exercise their authority in examining, trying, and deciding cases.[29]

The independence of judges is very important and reflects the quality of a free and independent court decision for the sake of law enforcement and justice. In making a decision, judges are not allowed to be intervened by any party. Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power states that judges are required to explore, follow, and understand the legal values and sense of justice that exist in society. Article 8 paragraph (2) of Law No. 48 of 2009 states that judges are also required to consider the good and evil nature of the defendant. Regarding this, Binsar Gultom stated that the decision made by the judge is only accountable to God Almighty and to himself. He is not responsible to his superiors, such as the public prosecutor. The independence of judges is so strong that the Supreme Court, as the highest supervisory institution for the implementation of all judicial bodies, must not reduce the freedom of judges in examining and deciding cases.[30]

Mudzakkir and Atmasasmita's view states that basically the contents of PERMA are not optional provisions. The consequence of regulating provisions on criminalizing corruption in laws and regulations is that they are binding. Thus, judges have no other choice but to refer to Articles 12, 13 and 14 in sentencing defendants in corruption cases, so that the impression arises that PERMA will "dictate" the freedom of judges in trying and deciding cases. This kind of concern is very logical, especially since Kaufman once reminded us that if we want the judiciary to remain independent as intended by the separation of powers in the constitution, then we must reject even laws that are well-intentioned but reduce the capacity of judges to provide impartial justice.[31]

However, it should be noted that judicial independence is not a stand-alone variable. As Ferejohn once stated, judicial independence is an idea consisting of

28 Orin Gusta Andini., Menakar Relevansi Pedoman Pemidanaan Koruptor Terhadap Upaya Pemberantasan Korupsi. *Tanjungpura Law Journal*, Vol.5 No.2, 2021, page.133-148,

29 Risa, Noerteta, dan Setyawan., Independensi Hakim Memutus Perkara Tindak Pidana Korupsi Dalam Perspektif PERMA No. 1 Tahun 2020 Jo. Undang-Undang No. 48 Tahun 2009, *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, Vol.24 No.1, 2021, page. 145-169,

30 Masyelina Boyoh, Independensi Hakim Dalam Memutus Perkara Pidana Berdasarkan Kebenaran Materiil, *Lex Crimen*, Vol.4 No.4, 2015, page. 120.

31 Irving R. Kaufman., The Essence of Judicial Independence, *Columbia Law Review*, Vol.80 No.4, 2016, page. 671-701

two aspects, namely internal and external aspects.[32] Normatively, independence is a quality that is expected to always exist in a judge, but they are also human beings who will not always be objective when faced with many cases that impact the lives of many people. On the one hand, this aspect of independence may also be eroded by personal feelings and desires. For that reason, according to Ferejohn, internal independence in judges needs to be fortified with the right institutional system.

From this perspective, the position of PERMA Number 1 of 2020 is actually a form of institutional protection or external support for the independence of judges. In fact, disparities in sentencing occur due to many factors, including the absence of sentencing guidelines in the Criminal Code, which is the cause of many disparities in sentencing that occur without rational reasons.

In addition, the strong character of civil law means that there is no obligation for judges to be bound by jurisprudence as in the principle of stare decicis et quieta non movere. Thus, even in similar cases, judges have the free will to decide based on their authority. The formation of PERMA Number 1 of 2020 has a strategic position and role as an effective solution in minimizing the occurrence of disparities in sentencing in eradicating corruption. At least, even if there is a disparity in sentencing, the gap is not too far, and judges have a legal basis in imposing sentences.

The provisions of PERMA Number 1 of 2020 which should not be regulated through PERMA, but are included in the agenda for revising the Corruption Eradication Law. This results in the potential for overlapping regulations. This opinion is quite logical, considering that PERMA only plays a role in filling the legal vacuum regarding material that has not been regulated in the MA law. However, this does not mean that there are no limitations on what material may be regulated in PERMA. If we look closely at the provisions of Article 79, the scope of PERMA regulations is limited to the implementation of justice related to procedural law.

The lawmakers have indirectly provided guidelines so that the PERMA material does not take material that should be the material of the law. From the perspective of legal theory, the content of PERMA Number 1 of 2020 can indeed be seen as inconsistent with the theory of norm hierarchy as put forward by Kelsen and Hans Nawiaski.

Essentially, the theory of norm hierarchy idealizes legal regulations as being arranged in a hierarchical and systematic manner from the highest to the lowest, where lower rules must be derived from and must not conflict with higher rules.[33] In this context, the formation of PERMA Number 1 of 2020 formally has sufficient legitimacy based on the attribution of Article 79 of the

32 John Ferejohn., *Independent Judges, Dependent Judiciary: Explaining Judicial Independence*, S. Cal. L. Rev. 72, 1998l. page. 353

33 Azwad Rachmat Hambali, Rizki Ramadani, Hardianto Djanggih., Politik Hukum PERMA Nomor 1 Tahun 2020 dalam Mewujudkan Keadilan dan Kepastian Hukum terhadap Pemidanaan Pelaku Korupsi, *Wawasan Yuridika*, Vol.5 No.2, 2021, page. 200-203

Supreme Court Law and Law No. 12 of 2011 which recognizes PERMA as one type of statutory regulation. However, materially, the substance of PERMA Number 1 of 2020 does not have a basis in its parent law, namely the Corruption Eradication Law or the Criminal Code.

There are no provisions for delegation from the Corruption Eradication Law regarding the guidelines for sentencing which will be further regulated in other regulations. In other words, the contents of the provisions of PERMA Number 1 of 2020 regulate something completely new and are not based on the command of the Law. Whereas according to the two-faced theory of Adolf Merkel, a material for statutory regulations, ideally, originates from higher regulations and can also be a source of law for regulations below it.[34]

The solution to this problem is that the government and the DPR must immediately schedule changes to Law No.1 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption. In the revision, the lawmakers can add provisions regarding sentencing guidelines as a reference for judges, or include provisions regarding the delegation of sentencing guidelines to be regulated in Supreme Court regulations. Thus, PERMA Number 1 of 2020 has a clear legal basis, both in terms of the authority to form and the substance of its regulations.

Supreme Court Regulation Number 1 of 2020 has a strategic position as a legal update in the field of criminalizing corruption in order to prevent disparities in corruption crimes. Unfortunately, this Regulation limits the scope of application of Article 2 and Article 3 of the Corruption Eradication Law which is limited to losses, impacts and benefits. This Regulation should also cover perpetrators of crimes, such as law enforcers or state civil servants who commit corruption, bribery, so that there is a scheme for increasing the punishment for them. Therefore, the author suggests that this Supreme Court Regulation should not only limit Article 2 and Article 3, but also other articles. Because, according to the author, disparities often occur in other forms of corruption, such as bribery, gratification. The Supreme Court needs to create other similar regulations, but with different clauses. Such as Article 5 and Article 12 of the Corruption Eradication Law.

3.2 The Injustice in the Regulation of Criminal Guidelines for Corruption Crimes

Law cannot be seen as something final, but law must continue to move, changing following the dynamics of human life. Therefore, law must continue to be dissected and explored through progressive efforts to reach the light of truth in achieving a noble goal, namely justice. Humans as important and main actors behind legal life are not only required to be able to create and implement law, but also have the courage to break and destroy it when the law is unable to

34 Amrizal J Prang., Implikasi Hukum Putusan Mahkamah Konstitusi*, Kanun: Jurnal Ilmu Hukum*, Vol.13 No.1, 2011, page. 77-94

present the spirit and substance of its existence, namely creating harmony, peace, order, and social welfare.[35]

The concept of corruption evolved from the governmental failure to maintain the balance of power to the immorality of political patronage and the favouring of certain groups.[36] Corruption always gets more attention compared to other crimes. This phenomenon is understandable because the negative impacts it causes can affect various areas of life. Corruption can endanger the stability and security of society, endanger socio-economic development, and also politics, and can damage democratic values and morality because this act seems to be a culture. Corruption is a threat to the ideals of a just and prosperous society.

Corruption cases are difficult to reveal because the perpetrators use sophisticated equipment and are usually carried out by more than one person in a covert and organized manner. Therefore, this crime is often called while collar crime or white collar crime.[37] Realizing the complexity of the problem of corruption in the midst of a multidimensional crisis and the real threat that will definitely occur, the crime of corruption can be categorized as a national problem that must be faced seriously through firm and clear steps by involving all potential in society, especially the government and law enforcement officers.

The quality of perfection here can be verified into factors of justice, welfare, concern for the people and others. This is the essence of law which is always in the process of becoming law as a process, law in the making. Law does not exist for the law itself, but for humans". More progressive law enforcement is needed, namely law enforcement that is full of courage, pro-people and achieves substantive justice in its application where correct law enforcement is fair and just law enforcement, fair law enforcement is law enforcement that provides protection and great benefits for everyone and the seeker of justice themselves. The extent to which understanding of the meaning and implementation of law enforcement will really determine the real image of law in society.[38]

The application of the principle of justice and other legal attributes used by judges as a basis for implementing the law can be realized by determining a legal basis that is in accordance with the values of justice adopted by society.[39] Progressive law starts from the basic assumption that law is for humans, not the other way around. Law is not an absolute and final institution, but rather a moral, conscientious institution and therefore is very much determined by its

35 Satjipto Rahardjo., *Membedah Hukum Progresif*, Kompas, Jakarta, 2007, page. 13

36 Sandra Damijan., Corruption: A Review of Issues, *Economic and Business Review*, Vol.25 No.1, 2023, page.1-10

37 Evi Hartanti., *Tindak Pidana Korupsi*, Cet Ke- 3, Sinar Grafika, Jakarta, 2009, page.73

38 Muhammad Irwan, Slamet Sampurno Soewondo, Julianto Jover Jotam Kalalo., Hukum Progresif Sebagai Paradigma Hukum Dalam Pemberantasan Tindak Pidana Korupsi di Indonesia, *Papua Law Journal*, Vol.7 No.1, 2018, page. 65-76

39 Mardjono Reksodiputro, dkk., *Reformasi Hukum di Indonesia*, Cyber Consult, Jakarta 1999, page 41.

ability to serve humans.[40] Law is an institution that aims to lead humans to a just, prosperous and happy life. Humanity and justice are the goals of everything in our legal life. So the sentence law for humans also means law for justice. This means that humanity and justice are above the law, the essence of which is the emphasis on enforcing just law.

Corruption challenges some key assumptions of existing theories of management. Scholars need to test and expand these existing theories by considering corruption as an important issue.[41] According to John Rawls, law enforcement is an effort to realize three main elements, namely legal certainty, legal justice and legal benefits.[42] The meaning of justice is often interpreted differently and is abstract because what is fair for one party is not necessarily fair for the other party. Justice also has many dimensions, in various fields, such as economics and law. Nowadays, talking about justice is something that is always the main topic in every resolution of problems related to the enforcement of criminal law on corruption. Law enforcement of corruption crimes in Indonesia from the perspective of Lawrence M. Friedman's theory, is still not running effectively. This can be seen from the existence of laws and law enforcers such as prosecutors, police and the Corruption Eradication Commission (KPK) which regulate corruption crimes in Indonesia, but there are still cases of corruption, even in these cases there are also suspects of corruption crimes who are law enforcers themselves which is possible because the legal awareness of law enforcers or the community is lacking.[43]

Based on comparative studies, Singapore's regulation of corruption is based on various strict regulations and laws to prevent and prosecute corruption. One of the main laws that regulates this is the Prevention of Corruption Act. This law sets out a series of rules and prohibitions against various acts of corruption, including giving bribes, accepting bribes, and other acts of corruption involving public and private officials. In addition, Singapore also has a very well-known anti-corruption agency, namely the Corrupt Practices Investigation Bureau (CPIB). The CPIB is responsible for investigating, preventing, and prosecuting corruption. This institution has broad authority to conduct investigations, including the use of sophisticated investigative tools and working with international institutions to effectively address corruption. Singapore also introduces high transparency and accountability measures in various aspects of government and business to prevent corruption cases. With strict regulations and firm law enforcement, Singapore has built a reputation as a country that is

40 Dani Amran Hakim dan Muhamad Rusjana., Wacana Perpanjangan Masa Jabatan Presiden Perspektif Pemikiran Hukum Progresif, *Viva Themis*, Vol.6 No.1, 2023, page.85-105

41 Salman Bahoo, Ilan Alon, Andrea Paltrinieri, Corruption in international business: A review and research agenda, *International Business Review*, Vol.29 Issue.4, August 2020, page.1-24

42 Hasaziduhu Moho., Penegakan Hukum Di Indonesia Menurut Aspek Kepastian Hukum, Keadilan Dan Kemanfaatan, *Jurnal Warta Dharmawangsa*, Vol.13 No.1, 2019, page. 1-13

43 Ana Aniza Karunia, Penegakan Hukum Tindak Pidana Korupsi di Indonesia Dalam Perspektif Teori Lawrence M.Friedman, *Jurnal Hukum dan Pembangunan Ekonomi*, Vol.10 No.1, 2022, page. 115-128

serious about eradicating corruption and maintaining integrity and trust in its judicial system and public administration.[44]

Many corruption cases whose verdicts do not reflect the value of justice, even the cases are not resolved because they are drawn into political issues. Legal truth and justice and justice are manipulated in a systematic way so that the courts do not find the real situation. Government policy is unable to make the law the commander in determining justice, because the law is castrated by a group of people who can afford it or people who buy it or people who have higher power.[45]

The criminal penalties stipulated in Article 6 show that the most severe category, more than IDR 100,000,000,000.00 (one hundred billion rupiah), clearly cannot provide legality for cases with losses above trillions of rupiah, so that it is considered the most severe category, resulting in a disparity in penalties for corruption with the value of state economic losses at a loss value of trillions.

Legal certainty regarding justiciable protection against arbitrary actions, which means that a person will be able to obtain something that is expected in certain circumstances. The community expects legal certainty, because with legal certainty the community will be more orderly and security stability can be controlled properly because the law aims to maintain public order.[46] Efforts to prevent criminal acts of corruption should further improve the systems contained in the legislative, executive and judiciary institutions, both from the central government to the regions.[47]

Corruption is an extraordinary crime[48] The high rate of corruption in Indonesia is a collective responsibility to eradicate it and we cannot just stand idly by and leave it entirely to law enforcement officials.[49] Perma Number 1 of 2020 concerning the Guidelines for Sentencing Article 2 and Article 3 of the PTPK Law is a strategy to prevent disparities in sentencing in Article 2 paragraph (1) and Article 3 of the Law on the Eradication of Corruption. The Perma regulates the range of imprisonment and fines according to the level of error, impact and

44 Jevan Edberd Harefa (etc)., Analisis Perbandingan Penegakan Hukum Pidana Korupsi di Indonesia Dengan Singapura: Pendekatan Normatif Terhadap Kriteria Keberhasilan Penindakan Korupsi, *Jurnal Ilmu Hukum Prima*, Vol.7 No.1 April 2024, page.97-109

45 Muhammad Novaldy dan Antoni Alfarizi., Penerapan Positivisme Hukum Terhadap Asas Keadilan Dalam Putusan Pengadilan, *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat*, Vol.2 No.1, 2023, page. 1-25

46 Hasaziduhu Moho, *Op.Cit*, page 1-13

47 Bambang Tri Bawono., The Strategy for Handling Corruption's Criminal Action Relationship to Saving of State Financial Losses, *JPH: Jurnal Pembaharuan Hukum*, Vol.7, No.3, December 2020, page.222-231

48 Guntur Rambey., Pengembalian Kerugian Negara Dalam Tindak Pidana Korupsi Melalui Pembayaran Uang Pengganti Dan Denda. *De Leg Lata: Jurnal Hukum*, Vol.I No.I, 2016, page. 137-147

49 Imme Kirana, Khairani, Nani Mulyati., The Discretion of Internal Prosecutor Apply in Article 2 & 3 for Law Eradication of Corruption, *Law Development Journal*, Vol.6 No.2, June 2024, page.226-238

benefits made by the defendant which are arranged in a table or matrix with the categories of the most severe, severe, moderate, light and lightest state losses so that with the existence of the Perma it is hoped that it can produce decisions that are not too striking or too different for similar cases so that judges can be consistent or use a consistency approach in sentencing and realizing proportionality of sentencing.[50]

PERMA 1 of 2020 Sentencing Guidelines contain regulations on the stages that must be carried out by judges in imposing penalties for cases under Article 2 and Article 3 of the Corruption Eradication Law. What is meant by imposing penalties in these sentencing guidelines is the imposition of principal penalties for cases under Article 2 and Article 3 of the Corruption Eradication Law, namely: the death penalty, imprisonment, and/or a fine. Efforts to combat corruption through the Perma Sentencing Guidelines are to clarify the sanctions that must be imposed on the perpetrators so that the Judges are more focused in making their considerations. However, efforts to combat corruption carried out through the Perma Sentencing Guidelines are inadequate because the Supreme Court has no authority other than to regulate imprisonment and fines. In addition, the Perma Sentencing Guidelines only apply to perpetrators of corruption who violate the provisions of Article 2 and Article 3 of the Corruption Eradication Law.[51]

The implementation of PERMA Number 1 of 2020 concerning Guidelines for Criminalization of Article 2 and Article 3 of the Corruption Eradication Law is normatively only specific to corruption crimes contained in Article 2 and Article 3 of the Corruption Eradication Law, because in general Article 2 and Article 3 are corruption crimes that very often occur in Indonesia. Therefore, the implementation of this PERMA is only applied to Article 2 and Article 3 of the Corruption Law No.1 of 1999 concerning the Eradication of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No.1 of 1999 concerning the Eradication of Corruption.

From the perspective of legal political studies, the formation of PERMA Number 1 of 2020 is the Supreme Court's response to fill the legal vacuum due to the absence of guidelines for sentencing corruption perpetrators which has led to rampant disparities in criminal penalties, thus having a close relationship in realizing legal certainty and justice for the community. However, the substance of the regulation does not seem to be fully able to realize legal certainty, which can be seen from the limited scope of the regulation only in Articles 2 and 3 of the Corruption Eradication Law. In addition, there are no clear provisions from the Supreme Court for judges who do not comply with the provisions of the PERMA.

50 Helmi Muammar (etc)., Analisa Peraturan Mahkamah Agung Nomor 1 Tahun 2020 tentang Pedoman Pemidanaan kaitanya dengan Asas Kebebasan Hukum dalam Tindak Pidana Korupsi, *Widya Pranata Hukum*, Vol.3 No.2, September 2021, page.75-97

51 Agustiar Hariri Lubis, Febby Mutiara Nelson., Analisis Perma Nomor 1 Tahun 2020 dalam Kaitannya dengan Penanggulangan Tindak Pidana Korupsi, Dinasti Review: Jurnal Ilmu Hukum, Humaniora dan Politik, Vol.4 No.5, July 2024, page.1407-1418

In terms of justice, the formulation and classification of criminal penalties in PERMA Number 1 of 2020 not only use considerations of state losses (nominal) as indicators, but also aspects of benefits, roles, and impacts that arise proportionally. If implemented consistently and consequently, it can realize the justice expected by the community and anti-corruption activists. In the future, it is hoped that the government can revise the provisions of the Corruption Eradication Law in order to provide clear legitimacy for the existence of PERMA Number 1 of 2020. In addition, the existence of this PERMA needs to be followed up with synergistic policies from other law enforcement agencies such as the prosecutor's office and the KPK, through the preparation of regulations regarding guidelines for prosecuting corruption crimes.

The issuance of Perma Number 1 of 2020 concerning the Guidelines for Sentencing Article 2 and Article 3 of the Eradication of Corruption Law regarding the principle of judicial freedom, namely not reducing the principle of judicial freedom or the independence of judges in deciding cases, in the Perma using a range of criminal sentences (range) so that there is still room for the freedom of judges in making decisions with the range of sentencing stipulated in the Perma on the Guidelines for Sentencing Article 2 and Article 3 of the Corruption Eradication Law.

In order to realize just law enforcement through the formation of Regulation Number 1 of 2020 concerning the Guidelines for Sentencing Articles 2 and 3 of the Corruption Eradication Law in order to better cover other articles of corruption crimes and must change the guidelines for sentencing for very large losses, consideration must be given to implementing maximum sentencing in accordance with the sentencing guidelines regulated in Article 10 of the Criminal Code.

4. Conclusion

Injustice in the regulation of criminal guidelines for corruption crimes that make law enforcement for corruption crimes less strict in its punishment, the Supreme Court has stipulated Regulation Number 1 of 2020 concerning Guidelines for Punishment of Articles 2 and 3 of the Corruption Eradication Law. In order to realize just law enforcement through the establishment of Regulation Number 1 of 2020 concerning Guidelines for Punishment of Articles 2 and 3 of the Corruption Eradication Law so that it reaches other articles of corruption crimes and must change the guidelines for punishment for very large losses must consider implementing maximum punishment in accordance with the guidelines for punishment.

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