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Disparity in Criminal Decisions for Corruption Cases in Indonesia

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Abstract. *The purpose of this study is to determine and analyze the Disparity of Sentencing Decisions in Corruption Crimes in Indonesia, to determine and analyze the weaknesses of the disparity of sentencing decisions in corruption cases and their solutions. This thesis uses a normative legal approach method, the research specifications are descriptive analysis, data sources consist of secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, data collection techniques through literature studies. The results of the study show that disparities in sentencing are still often seen in monitoring trials throughout 2023. The effectiveness of Supreme Court Regulation Number 1 of 2020 has also not been maximized. The weaknesses of the disparity of sentencing decisions in corruption cases are influenced by the weaknesses of the legal structure, namely the positivistic mindset of judges and the second is the non-positivistic mindset of judges. The mindset of judges with a positivistic character places great emphasis on formal text measurements in exploring legal truth, while a non-positivistic mindset can elaborate legal texts with socio-legal contexts in exploring legal truth. The weakness of the legal substance is that the Supreme Court's efforts to avoid disparities in criminal penalties for corruption crimes stipulated in Supreme Court Regulation Number 1 of 2020 concerning the Guidelines for Sentencing Article 2 and Article 3 of the PTPK Law are not accompanied by adjustments to laws and regulations such as the Criminal Code and Criminal Procedure Code. Weaknesses of Legal Culture where there are three cultural aspects that can facilitate corruption, namely family culture, paternalistic societal orientation, and a societal culture that is less courageous to be frank (non-assertive). The solution to these obstacles is based on the empirical reality that the handling of corruption cases by judges has experienced a lot of decline and failure to present laws that are fair, beneficial and protect the interests of society. The mindset of judges with a positivistic character needs to be reorganized based on a new, progressive mindset in deciding various legal problems that have emerged recently which are increasingly complex and complicated, especially in deciding corruption cases. Judge education at all levels and court environments needs to be improved so that judges are able to solve various legal problems appropriately, fairly and wisely. Progressive legal content needs to be elaborated in the education of prospective judges and legal education institutions in general.*

Keywords: *Corruption; Disparity; Sentencing.*

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

1. Introduction

The crime of corruption is an act that is very detrimental to state finances, therefore the crime of corruption must be eradicated and processed legally.[1]as stated in Article 1 paragraph (3) of the 1945 Republic of Indonesia Constitution, that the Republic of Indonesia is a State of Law, so that every action or violation that is detrimental to the interests of the State and society must be processed fairly in order to create a just and prosperous society in accordance with Pancasila and the 1945 Republic of Indonesia Constitution.

Transparency International launched the 2023 Corruption Perception Index (CPI), showing that Indonesia continues to face serious challenges in fighting corruption. Indonesia's CPI in 2023 is at a score of 34/100 and is ranked 115th out of 180 countries surveyed. This score of 34/100 is the same as the 2022 CPI score.[2]Eradicating corruption will only be successful if clean, good and corruption-free governance is implemented.[3]

To guarantee legal certainty, avoid diverse interpretations of the law and provide protection for the social and economic rights of the community, as well as fair treatment in eradicating criminal acts of corruption, the government issued Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

Criminal disparity brings its own problems in law enforcement in Indonesia. On the one hand, different punishments or Criminal Disparity are a form of judicial discretion in making decisions, but on the other hand, different punishments or criminal disparity also bring dissatisfaction to convicts and even society in general. In Indonesia, the principle of judicial discretionary power is fully guaranteed in Article 1 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that Judicial Power is the power of an independent state to organize trials to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the sake of the implementation of the Republic of Indonesia's rule of law. Judges as organizers of judicial power have the authority to examine and decide on criminal cases they handle freely from intervention by any party.[4]

The existence of Circular Letter Number 3 of 2018 of the Criminal Chamber of the Supreme Court and Supreme Court Regulation Number 1 of 2020 concerning the Guidelines for Sentencing Article 2 and Article 3 of the Corruption Eradication Law does not affect the disparity in sentencing in handling cases. The decisions whose disparities will be examined are four decisions of the first-level corruption court, as shown in the table below:

Table 1.1

Matrix of Sentencing Range of Article 2 and Article 3 of the PTPK Law

No	Case No.	Name	State Losses	Claims	Verdict

[1]Toule. The Existence of the Death Penalty Threat in the Corruption Crime Law. No.2, Jurnal Hukum Prioris, Vol II, 2016, page 7

[2] CORRUPTION PERCEPTIONS INDEX 2023 – Transparency International Indonesia, accessed on May 9, 2024

[3]Directorate of Social Resilience Statistics, 2023, Anti-Corruption Behavior Index 2023 Volume 7, Central Bureau of Statistics, Jakarta, p. 3

[4]Eva Achjani, Proportionality of Criminal Sentencing, Journal of Law and Development Year 41 No. 2 April-June 2011, p. 42

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

1	36/Pid.Sus-TPK/2021/PN Bna	Rais Nasution	Rp. 537 million	5 years	1 year
2	18/Pid.Sus-TPK/2021/PN Jmb	Kumaidi	Rp. 578 million	6 years	1 year 6 months
3	67/Pid.Sus-TPK/2020/PN Bdg	Subhadri	Rp 17.2 billion	7 years	3 years
4	31/Pid.Sus-TPK/2021/PN Bna	Kariyadi	Rp 4.2 billion	9 years	1 year 6 months
5	25/Pid.Sus-TPK/2021/PN Pbr	Handoko Setiono	Rp 156 billion	8 years	2 years

Table 1.2

Matrix for Imposing Additional Criminal Charges in Replacement Money Article 3 of the PTPK Law

No	Decision Number	State Losses	Articles of the Corruption Law Proven in the Verdict	Additional Criminal Amount UP
1	67/PID.SUSTPK/2021/PN MDN	Rp32,740,000,000	Article 3	Rp. 650,000,000
2	4/Pid.SusTPK/2022/PN Tpg	Rp513,603,958	Article 3	Rp65,584,418
3	5/Pid.SusTPK/2022/PN Tpg	Rp158,450,000	Article 3	Rp11,000,000
4	27/Pid.SusTPK/2022/PT Amb	Rp346,796,392	Article 3	Rp0

The above example is interesting to observe, especially because of the similarity in the composition of the panel of judges and the origin of the court that decided the defendant. In Decision Number 5/Pid.SusTPK/2022/PN Tpg, the panel of judges used SEMA 3/2018 and PERMA 1/2020 as references in the legal considerations of their decision, but this was not the case with Decision Number 4/Pid.Sus-TPK/2022/PN Tpg.

The excerpts of the findings above show that there are still judges who do not use SEMA 3/2018 and PERMA 1/2020 as the main references in making legal assessments and considerations. This needs to be a concern for the Supreme Court in the future, and make judges' compliance in implementing the two regulations above one of the components of the judge's performance assessment.

Disparity in decisions has a negative impact on the enforcement process, namely the emergence of public dissatisfaction, causing the loss of public trust in the legal system.

2. Research Methods

This thesis is written using a normative legal approach method, the research specifications are descriptive analysis, data sources consist of secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, data collection techniques through literature studies.

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

3. Results and Discussion

3.1. Disparity in Criminal Decisions for Corruption Cases in Indonesia

The problem of disparity in sentencing is indeed difficult to eliminate considering that each case has different problems or complexities. However, if this disparity is not minimized, it will certainly cause a problem concerning the aspect of justice. Moreover, if the disparity is very striking, especially in corruption trials, where the involvement of the perpetrators touches on public officials. Indeed, in 2020 the Supreme Court issued Supreme Court Regulation Number 1 of 2020 concerning the Guidelines for Sentencing specifically for articles related to state losses for corruption crimes. This step certainly deserves appreciation, even though there are still a number of problems that have not been resolved, for example, guidelines for sentencing for other types of corruption.

This section will review the findings in monitoring that illustrate the disparity in sentencing. Meanwhile, the table that will be shown below shows the phenomenon of disparity in two types of corruption, namely, state financial losses (Article 2 and Article 3) and the bribery article.

Table 1.3

Disparity Decision Article 2

Case No.	Name of Defendant	Work	State Losses	Verdict	Chapter
30/pid.sus-tpk/2022 Pn Bjm	Muhni	Village Head of Kolam Kanan	Rp. 860 million	4 years	Article 2
12/Pid.Sus-TPK/2023/PN Mtr	Friday	Head of Banyu Urip Village in 2019	Rp. 346 million	5 years	Article 2
35/Pid.Sus-TPK/2022/PN Plk	The Journey of Abdurrahman	Head of Kaburan Village for the period 2015 to 2021	Rp. 975 million	4 years	Article 2
32/Pid.Sus-TPK/2023/PN Mtr	Then Sujarwadi	Head of Pasir Putih Village	Rp. 539 million	5 years	Article 2
29/Pid.Sus-TPK/2023/PN Tpg	Herry Wahyu Muhammad	Head of Housing and Settlement Areas Service of Bintan Regency	Rp 2.4 billion	4 years	Article 2
11/Pid.Sus-TPK/2023/PN Mtr	Raden Hendra Taurus	Head of Babakan Health Center	Rp. 690 million	6 years	Article 2

Source: Directorate General of Supreme Court Decisions

Table 1.4

Disparity Decision Article 3 2022-2023

Case No.	Name of Defendant	Work	State Losses	Verdict	Chapter

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

84/Pid.Sus-T PK/2022/PN Jkt.Pst	English	President Director of PT Emco Asset Management	Rp 4.5 M	1 year	Article 3
51/Pid.Sus-T PK/2023/PN Bdg	Zainal Abidin	Head of PT LKM Karawang Branch, Tirtamulya Branch	Rp 1 M	5 years	Article 3
15/Pid.Sus-T PK/2023/PN Pdg	Yaneman Driesye	Director of PT MAM Energindo	Rp 7.3 M	1 year	Article 3
16/Pid.Sus-T PK/2023/PN Pal	Sunardi Hongkiriwang	President Director of PT. Trikora Jaya Salakan	Rp 1 M	5 years	Article 3
77/PID.SUSTPK/2022/PN MKS	Ruben Riu Mallisa	Head of To'yasa Akung Village, North Toraja	Rp 900 Million	1 year 4 months	Article 3
6/Pid.Sus-TPK/2023/PN Plg	Happy Hajarol Akbar	Head of Gunung Megang Village	Rp. 420 million	5 years	Article 3

Source: Directorate General of Supreme Court Decisions

From the table above, it is very clear that the phenomenon of disparity is still seen in many court decisions. The balance between the amount of state financial losses and the prison sentences imposed is still far apart. This means that socialization and ensuring the implementation of sentencing guidelines contained in the internal regulations of judicial institutions must be improved. Ideally, if the state financial loss is very large, it must be followed by severe punishment, and vice versa.

Table 1.5

Disparity in Bribery Cases in 2022-2023

Case No.	**Name of Defendant**	**Work**	**Bribery**	**Verdict**	**Chapter**
10/Pid.Sus-T PK/2023/PN Mtr	The Greatest Glory	Head of the Technical Implementation Unit for the Cakranegara and Sandubaya Regional Market Area, Mataram City Trade Service	Rp. 45 million	1 year	Article 11
56/pid.sus-t pk/2022 Pn Pal	Michal Andersen Tampoma	Civil Servants at the National Land Agency of Palu City	Rp. 5.5 million	1.5 years	Article 11
113/PID.SUS - TPK/2022/PN MKS	Gilang Gumilar	Public Relations and Administration Staff of BPK South Sulawesi	Rp 2.9 M	5 years	Article 11
77/Pid.Sus-T PK/2023/PN Jkt.Pst	Harno Trimadi	Director of Railway Infrastructure at the Directorate General of Railways, Ministry of Transportation	Rp 900 million	5 years	Article 11

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

87/Pid.Sus-T PK/2023/PN Jkt.Pst	Roni Aidil	Director of PT Kindah Abadi Utama	Rp 9.9 M	1.5 years	Article 11
68/Pid.Sus-T PK/2022/PN Jkt.Pst	LM. Rusdianto Emba	Self-employed	Rp 3.4 M	3.5 years	Article 11

Source: Directorate General of Supreme Court Decisions

In fact, through this monitoring it is increasingly confirmed that disparities do not only occur in crimes involving corruption of state financial losses, but also in bribery practices, for both the giver and the recipient. Therefore, the expansion of sentencing guidelines must also be prepared by the Supreme Court in order to overcome the very wide range in sentences with almost similar case characteristics.

As reviewed in the previous section, where the Supreme Court, through its sentencing guidelines, has tried to reduce the phenomenon of disparity. Therefore, this section will look at the effectiveness of the rules that bind the judges. The indicator used is the amount of state financial loss compared to the criminal sentence. In the matrix of the range of criminal sentences in Perma 1 of 2020, a number of categories are mentioned, namely:

a) The lightest (maximum state loss of IDR 200 million, minimum prison sentence of 1 year)
b) Light (state losses above IDR 200 million, minimum prison sentence of 4 years)
c) Medium (state losses above IDR 1 billion, minimum prison sentence of 6 years)
d) Serious (state losses above IDR 25 billion, minimum prison sentence of 8 years)
e) Very serious (state losses above IDR 100 billion, minimum prison sentence of 10 years)

The following is an explanation that was captured in the monitoring regarding the implementation errors of Perma 1 of 2020:

Table 1.6

Implementation error of Perma 1 of 2020 Category Light, Medium, Heavy, Very Heavy

2022-2023

Case No.	Name of Defendant	Work	State Losses	Verdict
80/Pid.Sus-TP K/2023/PN Sby	English	Head of Mundurejo Village, Jember	Rp. 242 million	1 year
45/Pid.Sus-TP K/2022/PN Pdg	Ilyas Ismail	Head of Languang Village for the period 2014 to 2020	Rp. 457 million	2 years
12/Pid.Sus-TP K/2023/PN Pgp	Hendra Apollo	Member of the DPRD of the Bangka Belitung Islands Province	Rp. 781 million	1.5 years
106/PID.SUS-T PK/2022/PN MKS	Letterman	Director of PDAM Sinjai Regency 2014 – 2020	Rp 2 M	4 years
20/pid.sus-tpk/ 2023 Pn PTK	Razali Bustam	Director of PT Malabar Mandiri	Rp 2.1 M	1 year 3 months

The table above shows that the implementation of PerMA 1 of 2020 has not been maximized. Therefore, this should be noted by the ranks of the Supreme Court Leadership to re-intensify

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

the socialization of the rules, and even begin to formulate sanctions for judges who violate them.

Several issues can be obstacles to realizing quality decisions in the law enforcement process by the judiciary, because "enforcing the law means enforcing the Law; but enforcing the law is not the same as enforcing justice". The existence of disparity in decisions cannot be separated from the provisions of criminal law which give judges full freedom to impose the desired punishment. Disparity will continue to occur when judges are free to determine criminal penalties. (Also Read: 'Disparity in Decisions' and 'Disproportionate Sentencing') The absence of a strong basis makes disparity lead to legal uncertainty.

The Panel of Judges in deciding a case according to the Criminal Procedure Code only allows 3 (three) possibilities, namely:

1) Conviction or criminal imposition; (veroordeling tot enigerlei sanctie);
2) A verdict of acquittal (vrij spraak);
3) Decision to be acquitted of all legal charges (onslag van recht vervolging).

Questioning the judge's decision also means highlighting the judge and his duties as a law enforcer and as a law creator. The duties of a judge as mandated in Article 2 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power are none other than to receive, examine and try and resolve every case submitted to him. These three processes will later be manifested in a decision which is none other than the crown of the judge. On the one hand, the judge is bound by legal products such as the constitution, laws or precedents in carrying out his duties. The sentences contained in these legal products are references for the judge in carrying out his duties to apply the law. A legal philosopher, Lon L Fuller, in a very famous writing entitled The Case of The Speluncean Explorer, said that the court has an obligation to enforce written law and interpret the written law according to its literal meaning. "The obligation of the judiciary to enforce faithfully the written law, and to interpret that law in accordance with its plain meaning"[5]However, this will run into problems when these provisions cannot answer the existing problems.

Justice can be interpreted as a value to create an ideal relationship between one human being and another as fellow members of society, by giving the human being what is his right according to his achievements and imposing obligations according to law and morals. This is based on the opinions of experts including Plato, who stated that justice is the ability to treat everyone according to their respective rights. Roscoe Pound, sees justice in the results that can be given to society. As for Sudikno Mertokusumo, defines justice as an assessment of one person's treatment of others by using certain norms as a measure.[6]. Van Apeldoorn said that justice is not equality. Justice does not mean that everyone gets the same share. Fairness or justice according to John Rawls means containing the principles that free and rational people who want to develop their interests should get the same position when starting it and that is a fundamental requirement for those who enter the association they want which says that

[5]Lon L Fuller in Dinal Fedrian, Dynamics of the Role of Judges in Society, Judicial Commission Magazine, July September 2018, Jakarta, Judicial Commission, 2018, p. 12
[6]Sudikno Mertokusumo, Understanding the Law: An Introduction, Yogyakarta, Liberty, 2009, pp. 71-72

justice is a political policy whose rules are the basis of state regulations and these rules are a measure of what is right.

The discretion exercised by the judge has a negative impact, namely the occurrence of criminal disparities, especially in corruption crimes. The difference in sentencing becomes a problem when there is a difference in sentencing between similar cases, so that it can be seen that this is a discourse on differences in sentencing in criminal law and not to eliminate differences in sentencing for perpetrators of crimes, but to narrow the differences in sentencing.

3.2. Weaknesses of Disparity in Criminal Decisions in Corruption Crimes and How to Solve Them

1) Weaknesses of Legal Structure

Specifically, the cause of the disparity in sentencing originates from the legal system itself, because 1) judges have very broad freedom to choose and determine the severity and type of punishment (strafsoort) desired, in connection with the use of alternative systems in the threat of punishment in the law, laws that are not proportional in placing boundaries between crimes committed and the punishment threatened, between one crime and another, 3) Disparity in sentencing is a reflection of the characteristics of the modern school of thought that developed in the 19th century.

2) Weaknesses of Legal Substance

a) Only Regulated in Article 2 and Article 3 of the Corruption Law

The formulation of a criminal act indicates what must be proven in an investigation according to law. The following are the articles that define the crime of corruption in the Corruption Law:

No	Classification of criminal acts of corruption	Articles used
1	Harming state finances	Article 2 and Article 3
2	Bribery	Article 5 paragraph (1) letters a and b, Article 5 paragraph (2), Article 12 letters a, b, c and d, Article 6 paragraph 1 letters a and b, Article 6 paragraph 2, Article 11, Article 13
3	Gratification	Article 12 B in conjunction with Article 12 C
4	Embezzlement in office	Article 8, Article 9, Article 10 letters a, b and c
5	Extortion	Article 12 letters e, g and f
6	Fraudulent acts	Article 7 paragraph 1 letters a, b, c and d, Article 7 paragraph 2, article 12 letter h
7	Conflict of interest in procurement	Article 12 letter i

However, of the many provisions governing criminal acts of corruption in the Corruption Law, the provision governing “harming state finances” is only found in Articles 2 and 3 of the Corruption Law. Furthermore, criminal acts categorized as corruption do not require calculation of state financial losses. There are several articles that do not link corruption to

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

state finances, for example bribery. An official who accepts a bribe from someone cannot be said to be harming state finances.

b) Differences in meaning regarding state finances in various laws

Differences in the interpretation of these statutory regulations can cause difficulties.[7]These difficulties exist in efforts to determine how much state financial loss is due to criminal acts of corruption, and how much compensation money will be charged to the convict, in addition to difficulties regarding proof in corruption eradication trials.

The solution to the above problem is:Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, is recommended to be fundamentally and urgently changed. This is based on the results of the analysis, including: clarity of the formulation of elements of state financial losses and the state economy as a characteristic of handling Indonesian Corruption, the existence of loophole provisions in the confiscation of assets of perpetrators of corruption; the unclear boundaries between bribery and gratification have an impact on the disparity in the use of articles by law enforcement officers, and the stipulation of Law Number 1 of 2023 concerning the Criminal Code (KUHP 2023) on January 2, 2023, there was a change in the criminalization policy.

The application of consistency and clear standards in the regulation of state financial loss calculations is important. This includes the methods and parameters used to create uniformity in handling various cases. Involving qualified public accountants and audit professionals is important in ensuring the accuracy of the calculation results that can strengthen the integrity of the calculation according to statutory standards and have clear authority in providing reports and assessments. This effort aims to increase transparency, accountability, and trust in the process of calculating state financial losses.

3) Weaknesses of Legal Culture

There are three aspects of culture that can facilitate corruption, namely family culture, paternalistic societal orientation, and a culture of society that is less courageous to be frank (non-assertive). Family culture has many positive aspects for the life of a nation, but from the negative side, family culture will make it difficult for people to act decisively, indecisiveness in implementing regulations will be an obstacle to eradicating corruption. Paternalistic culture will also make it difficult to eradicate corruption because every time there is an act of corruption by a leader or someone who is respected in society, then the act will be easily imitated by others who have a lower status, this will be even worse if there is no openness to criticism from society. While a culture that is less courageous to be frank (non-assertive) will cause people to choose to remain silent rather than report violations committed by others.

4) SolutionsWeaknessesDisparity in Criminal Decisions in Corruption Cases

The solution to these obstacles is based on the empirical reality that the handling of corruption cases by judges has experienced a lot of decline and failure to present fair, beneficial laws that protect the interests of the community. The positivistic mindset of judges needs to be reorganized based on a new, progressive mindset in deciding various legal

[7]Interview with Qemal Candra Maulana, SH, Prosecutor of the Kotawaringin District Attorney's Office on May 25, 2024

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

problems that have emerged recently that are increasingly complex and complicated, especially in deciding corruption cases.

Progressive law offers a form of thinking and law enforcement that is not submissive (fully subject) to the existing system, but rather affirmative. Affirmative means requiring the courage to liberate oneself from conventional practices and affirm the use of other methods. These affirmative steps will create breakthroughs or are often called rulebreaking. Progressive law proposes the maxim, "law for humans or the people and not the other way around". This can be expanded into principles and doctrines for the people, not the other way around. With this paradigm, if the people face or are plagued by a problem, then it is not the people who are blamed, but a way out must be sought through existing law, including reviewing the principles, doctrines, substances, and procedures that apply.[8]

The restructuring offered by progressive law certainly requires a model or framework that can guide the implementation of the progressive law. Without a clear guide or model that functions as a platform, it is difficult for progressive legal forces to unite in one commitment. Without a unified commitment, directed reform steps are difficult to realize, and it is not impossible that the individual initiative of a legal actor can become wild and arbitrary. L. Tanya put forward three considerations, first, that progressive law tries to reject the status quo, when such conditions give rise to decadence, a corrupt atmosphere, and a spirit that harms the interests of the people; second, in progressive law there is an inherent spirit of resistance and rebellion to end legal paralysis through creative and innovative actions of legal actors; and third, progressive law requires the presence of an exemplar or example/model, which will be able to unite progressive legal forces on a platform of action. The exemplar provides three software needed by a movement, namely first, the ideological foundation underlying the movement being fought for; second, problems that are considered relevant and important to fight for and work on; and third, the right and effective method or procedure to solve the problem in question. The clarity of these three things, in theory, will unite the potential forces of progressive law in one agenda and line of struggle. That way, the hope of uniting the forces of progressive law as called for by Rahardjo will be easier to realize.[9]

Among the existing models, Interessenjurisprudenz is one model that seems more in line with the spirit of progressive law. In line with progressive law, this school of thought adheres to the principle that serving the interests and fulfilling human needs is the main goal of law. Efforts to achieve this goal cannot only rely on the application of black and white legal rules.[10]

Human interests are very diverse, and usually unique according to space and time. Therefore, law enforcement officers are required to take a position as if they were experiencing the case being handled themselves. This is what Aristotle called apiekeia. In this way, justice can be

[8]Satjipto Rahardjo, 2009. op.cit. pp. 141-142. See and compare with Theresia Anita Christiani, "Legal Studies Based on the Development of Legal Thought Paradigms Towards Holistic Methods", Jurnal Hukum Pro Justitia, Vol. 26 No. 4 October 2008, pp. 347-358.

[9]Bernard L. Tanya, 2005, Law, Politics and KKN. Surabaya: Srikandi. p. 39. Also read Satjipto Rahardjo, "Unite Progressive Law", Kompas, September 6, 2024. Also see Yohanes Suhardin, "Rule Breaking Paradigm in Just Law Enforcement", Jurnal Hukum Pro Justitia, Vol. 26 No. 3 July 2008, pp. 282-291.

[10]Ibid

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

found, because it must be recognized that justice cannot be directly found through a logical-formal process. Justice is actually obtained through intuition.[11]

The school of thought that emerged in Germany around the early decades of the 20th century relies on a careful and serious examination of the interests at stake in a concrete case, along with its relevant context. Then, by weighing and delving into the weight of the interests at stake, a decision is made that supports the more important interest. Interessenjurisprudenz firmly rejects legalistic legal considerations that are carried out in a disinterested, detached and in-abstract manner. This school of thought does not start the examination from the black and white regulatory structure, but from a special case outside the textual narrative of the regulation itself. This method is a strategy to cover the limitations of regulations and legal texts that may not explicitly regulate a problem. Here, the principle of "justice cannot be sacrificed just because of the limitations of existing norms and legal texts" is firmly upheld. Therefore, legal arguments are sought after justice is found to frame the decision that is believed to be just in a juridical formal way.[12]

From the description above, we can find the same goals and spirit between progressive law and interessenjurisprudenz, at least in five things, namely first, the spirit of placing the interests and needs of humans/people as the main goal of the law; second, the will to implement the law creatively; third, the importance of sensitivity, empathy, and dedication in implementing/enforcing the law; fourth, human wisdom (law enforcement officers) is the key word for achieving justice; and fifth, not being anti-regulation, but trying to continuously give new meaning in the right space and time.[13]

In addition to requiring new examples, progressive law also requires wise and creative legal practitioners to work on it because the key to change lies in the contextual interpretation of the law. Progressive law, like Interssenjurisprudenz, never denies existing regulations as recommended by the Freirechtlehre school. Even so, progressive law is not like legism which sets regulations as fixed prices. Progressive law is also not like analytical jurisprudence which only focuses on logical-formal processes. Progressive law embraces both regulations and social reality/needs as two things that must be considered in every decision.[14]

Combining rules and reality fairly is not an easy task. A reality that is usually specific cannot always be placed properly in the framework of a rule that is usually very general. Moreover, the reality that is presented is often not a black and white reality. It is not uncommon in the real world to have to face the reality and circumstances where considerations of right and wrong based on legal rules do not always help. The reality or circumstances where decisions must be taken by taking the existing context into account. Reality is so complex that it is almost impossible to obtain a fair decision by relying solely on legalistic considerations.

Therefore, the presence of wise and creative legal actors is absolutely necessary to guide the broad and creative interpretation of such rules. A progressive legal actor tries to seek and find justice within the limits and amidst the limitations of existing legal rules. That is also why, the ingenuity and wisdom of legal actors in delving into the spirit of a regulation, as well as the

[11]Ibid
[12]Ibid
[13]Ibid
[14]Ibid

E-ISSN: 2988-3334
ISSN: 1907-3319
Vol. 19 No. 1 March 2024

ability to accurately determine the priority of a social interest/need that must be served by the law, is the key strength of progressive law.

Therefore, progressive legal practice relies more on the wisdom of legal practitioners, namely judges, police, prosecutors, and advocates in interpreting the law now and here. It is the progressive judges, police, prosecutors, and advocates who are actually the spearheads of the struggle for progressive law. To realize the law, they must act as a creative lawyer. It is from them that decisions of 'jurisprudential' quality (quality decisions that are worthy of being references) are expected to be born to guide progressive legal change. Without this guidance, progressive law will be difficult to realize. In the midst of most people (including law enforcement officers) being dominated by pragmatic-naive attitudes, it is possible that the freedom granted by progressive law is misused to violate the law itself for the sake of evil.

The agenda of the progressive legal paradigm also cannot be separated from the "jurist factory". Legal education institutions as producers of legal experts become strategic institutions in the socialization of Progressive Law. A fairly urgent agenda in the realm of higher legal education is to reform the curriculum in the field of law. As mentioned earlier, the main agenda of the progressive legal paradigm is to place humans as the main centrality of all discussions about law. The philosophy and paradigm of progressive law is "law for humans". With such a framework of understanding, the curriculum of higher legal education must discuss humans and humanity as the initial discourse in law. So the sequence is, humans first, then followed by law with all its attributes and problems.[15]

It does not mean that after completing the discussion of humans, it is then closed to move to the discussion of law. Not so. Discussion of law for the next stage will not close the door to human and humanitarian issues. Progressive law does not make such boundaries. Human and humanitarian issues will continue to flow into the law. So it becomes that the law is not for itself, but to serve and preserve humans with all the discussions about truth and justice in it. With such a curriculum, it will offer graduates who are ready to uphold human dignity, help the poor, be enthusiastic about loving and provide a guarantee that its alumni will never collaborate with criminals to engineer the law as a tool for crime.[16]

When human and humanitarian factors become the center of discussion of progressive law, then ethical and moral factors will automatically be dragged into it. Therefore, progressive law cannot be separated from discussing justice, truth, and humanity. So progressive law firmly rejects the opinion that separates law from humanitarian and moral factors. This is where the enlightenment factor carried out by progressive law.

To make it easier for readers to understand the weaknesses of disparities in criminal decisions in corruption cases and their solutions, the author summarizes them in the table below:

Table 1.7

Weaknesses of disparity in criminal decisions in corruption cases and their solutions

No	Weakness	Information	Solution

[15]Satjipto Rahardjo, “Humanity, Law and Technocracy”, Paper on Doctoral Program in Law, Diponegoro University, 2005.
[16]ibid

E-ISSN: 2988-3334
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Vol. 19 No. 1 March 2024

1	Legal Structure	• The judge's mindset is positivistic • the judge's mindset is non-positivistic	The positivistic and non-positivistic mindset of judges needs to be reorganized based on a new, progressive mindset in deciding various legal problems.
2	Legal Substance	The Supreme Court's efforts to avoid disparities in criminal penalties for corruption crimes as stipulated in Supreme Court Regulation Number 1 of 2020 concerning the Guidelines for Sentencing Article 2 and Article 3 of the PTPK Law are not accompanied by adjustments to laws and regulations such as the Criminal Code and Criminal Procedure Code.	There is an update to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption
3	Legal Culture	• Family culture, • The paternalistic orientation of society, • A societal culture that does not dare to be frank (non-assertive).	Conducting outreach and education to the community to care about corruption

4. Conclusion

Disparity in Criminal Decisions for Corruption Cases in Indonesia still often seen in trial monitoring throughout 2023 due to the effectiveness of Supreme Court Regulation Number 1 of 2020 not being optimal. Weaknesses disparity in criminal decisions in corruption case consists of weaknesses in the legal structure, namely the judge's mindset which is positivistic and the judge's mindset which is non-positivistic. The judge's mindset with a positivistic character places great emphasis on formal text measurements in exploring legal truth, while the non-positivistic mindset can elaborate on legal texts with a socio-legal context in exploring legal truth. Weaknesses in the legal substance, namely the Supreme Court's efforts to avoid disparities in criminal penalties for corruption crimes stipulated in Supreme Court Regulation Number 1 of 2020 concerning Guidelines for Sentencing Article 2 and Article 3 of the PTPK Law are not accompanied by adjustments to laws and regulations such as the Criminal Code and Criminal Procedure Code. Weaknesses in Legal Culture where there are three aspects of culture that can facilitate corruption, namely family culture, paternalistic community orientation, and a community culture that is less brave to be frank (non-assertive). The solution to these obstacles is based on the empirical reality that the handling of corruption cases by judges has experienced a lot of decline and failure to present laws that are fair, beneficial and protect the interests of the community. The positivistic mindset of judges needs to be reorganized based on a new, progressive mindset in deciding various legal problems that have recently emerged that are increasingly complex and complicated, especially in deciding corruption cases. The education of judges at all levels and court environments needs to be improved so that judges are able to solve various legal problems

E-ISSN: 2988-3334
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Vol. 19 No. 1 March 2024

appropriately, fairly and wisely. Progressive legal content needs to be elaborated in the education of prospective judges and legal education institutions in general.

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