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Analysis of Judges' Decisions in Corruption Criminal Actions (Study of Decision Number 2205 K/Pid.Sus/2022)

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Abstract. *The eradication of corruption has not been carried out optimally, where the prosecutor's office often fails to win corruption cases, until the defendant is acquitted. One example of an acquittal for corruption in Decision Number 2205 K / Pid.Sus / 2022. This study aims to determine and analyze the judge's decision in corruption in Decision Number 2205 K / Pid.Sus / 2022 and the basis for the judge's considerations in making a decision on corruption in Decision Number 2205 K / Pid.Sus / 2022. This study uses a normative legal approach method, the research specification is descriptive analytical. The data used are primary data and secondary data while the data collection method is carried out through field studies and literature studies. The data analysis method is qualitative. TThe theories used are the theory of punishment, the theory of justice and the theory of legal certainty. Based on the research results it can be concluded that iImplementation of restorative justice in resolving traffic accidents The judge's decision in the corruption case in Decision Number 2205 K/Pid.Sus/2022 reflects a bad precedent in enforcing corruption law in Indonesia, where the cassation level decision upheld the first level judge's decision, namely that the defendant Samin Tan was declared not legally and convincingly proven to have committed a crime in the first or second indictment and was declared free from all legal charges. The judge in his consideration was not quite right, where the perpetrator should have been punished under Article 5 paragraph (1) of the Corruption Law or Article 13 of the Corruption Law, but the judge stated that the defendant's actions were those of a gratification giver so that he could not be subject to criminal penalties. The breakdown of the elements in the Samin Tan decision did not look at the legal facts directly, because the focus was only on the absence of regulations for the gratification giver, so the judge stated that the defendant was not proven to have committed the crime charged and was declared free.*

Keywords: *Corruption; Return; State Loss.*

1. Introduction

The Republic of Indonesia is a state based on law as mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) as the highest legal basis in

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this country.[1]Law has a dominant position in national and state life, as a guideline for everyone in behaving in community life.[2]Consequently, all forms of decisions, actions of state apparatus, all attitudes, behavior and actions including those carried out by citizens must have legal legitimacy.[3]

Law has an important meaning in every aspect of life in Indonesia. All actions of society are regulated by law, each aspect has its own provisions, rules and regulations, one of which is criminal law. Criminal law is a basic rule adopted by the state to enforce the law, namely by prohibiting what is contrary to the law and imposing suffering on those who violate the prohibition. Acts that are contrary to the law are called criminal acts.[4]

One type of crime that is rampant in Indonesia is corruption, which is very detrimental to the country.[5]In criminology literature, corruption is one type of white-collar crime. Corruption is able to attract public attention because the perpetrators are people who are perceived by the public as famous or respected people, but these people actually create poverty in society.[6]

Corruption in Indonesia has penetrated all lines of society, even said to have become part of the culture in society. Not only does it harm state finances, corruption has also violated social and economic rights, so it is classified as an extraordinary crime.[7]

The spread of corruption practices in various governmental joints has disrupted the wheels of government and resulted in huge losses to the country's finances and economy. Like a disease, corruption will always exist in society, therefore efforts are needed to eradicate corruption.[8]

Eradication of criminal acts of corruption is a series of actions to prevent and overcome corruption (through coordination, supervision, monitoring, investigation, prosecution and examination in court) with the participation of the community based on applicable laws and regulations.[9]

The spirit and efforts to eradicate corruption are marked by the issuance of various legislative products, including the Decree of the MPR RI No. XI/MPR/1998 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism, Law

[1]Asmak ul Hosnah and Jawade Hafidz, The Authority Of Military Court In Punishment Of Corruption Abuse Of Military Housing Savings Funds, Jurnal Pembaharuan Hukum, Volume 11 Number 2, July 2024, p. 301.
[2]Alfi Nur Fata and Umar Ma'ruf, The Prosecutor's Authority In Criminal Law Enforcement With Restorative Justice Approach, Jurnal Khaira Umma, Vol. 16 No.3, 2021, p.1
[3]Dian Yulianni and Andri Winjaya Laksana, Analysis of Judge's Decision in Case of Sexual Harassment by Doctor Against Patient, Ratio Legis Journal, Volume 3 No. 4, December 2024, p. 961.
[4]Joyo Mulyo, Legal Analysis of Acquittal Verdicts in Corruption Crimes in Indonesia, Cahaya Mandalika Journal, Vol. 4 No. 2, 2023, p. 322
[5]Angga Dwi Arifian and Sri Kusriyah, The Investigation on Criminal Acts of Corruption in the Jurisdiction of Rembang Police, Law Development Journal, Volume 3 Issue 3, September 2021, p.460.
[6]Teguh Sulista and Aria Zurnetti, 2011, Criminal Law: New Horizon Post-Reformation, Jakarta. PT. Raja Grafindo Persada. Jakarta, p.63
[7]Suwono and Jawade Hafidz, Upside of Evidence by Public Prosecutor in The Case Corruption by Act no. 31 of 1999 jo. Act No. 20 of 2001 on Combating Crime of Corruption, Journal of Sovereign Law, Volume 1 Issue 3, September 2018, p. 773
[8]Jawade Hafidz, Effectiveness of Implementing the Reversed Burden of Proof System in Corruption Cases in Realizing the Rule of Law in Indonesia, Sultan Agung Scientific Magazine, Vol.44 No. 118, 2009, p. 43.
[9]Ibid., p. 43.

Number 28 of 1999 concerning the Implementation of a Clean State Free from Corruption, Collusion and Nepotism, and Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption which was amended by Law Number RI 20 of 2001 concerning Amendments to Law RI Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (UU PTPK).[10]

Law enforcement efforts against criminal acts of corruption in Indonesia have so far experienced quite significant difficulties, so that efforts to prevent and eradicate criminal acts of corruption need to be carried out continuously and sustainably and need to be supported by various resources, both human resources and other resources such as increasing institutional capacity and increasing law enforcement in order to foster awareness and attitudes of anti-corruption actions in society.[11]

The above laws and regulations may indeed be enough to make some people calm with the sanctions that can be imposed on corruptors in the country. However, it is very unfortunate that the eradication of corruption has not been carried out optimally. The prosecutor's office often fails to win corruption cases, the judge's verdict is generally much lighter than the prosecutor's demands, and there are even corruptors who are declared free by the judge.[12]

One example of an acquittal for a corruption crime is in decision Number 2205 K/Pid.Sus/2022 which is a cassation filed by the Public Prosecutor to the Corruption Eradication Commission. In this case, the defendant has been charged with an alternative, namely the defendant's actions are regulated and subject to criminal penalties in Article 5 paragraph (1) letter a of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 paragraph (1) of the Criminal Code, or the defendant's actions are regulated and subject to criminal penalties in Article 13 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 paragraph (1) of the Criminal Code. The defendant was charged with giving gratification in the form of money amounting to IDR 5 billion to member of Commission VII of the Indonesian House of Representatives for the 2014-2019 period Eni Maulani Saragih. The defendant was charged by the public prosecutor with being proven legally and convincingly guilty of committing a criminal act of corruption continuously as regulated and threatened with a criminal penalty of violating Article 5 paragraph (1) letter a of Law No. 31 of 1999 as amended by Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 Paragraph (1) of the Criminal Code as in the first alternative charge and sentenced to 3 (three) years imprisonment minus the temporary detention period that has been served by the Defendant and a fine of IDR 250,000,000.00 (two hundred and fifty million rupiah) subsidiary to a substitute imprisonment of 6 (six) months. The first instance judge who tried the case in decision Number 37/Pid.Sus-TPK/2021/PN Jkt

[10]Yusi Amdani, Criminal Law Formulation Related to Corporate Criminal Responsibility in Corruption Crimes, Samudra Keadilan Law Journal, Volume 12, Number 2, July-December 2017, p.188.
[11]Susilawati, The Role of Police Investigators in the Prevention and Enforcement of Corruption Crimes (Research Study of the Directorate of Special Criminal Investigation of the North Sumatra Regional Police), Jurnal Hukum Kaidah, Volume 19, Number 1, 2019, p. 51
[12]Jawade Hafidz, Loc. Cit.

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Pst decided that the Defendant Samin Tan mentioned above was not legally and convincingly proven guilty of committing a crime as charged in both the first alternative charge and the second alternative charge, and acquitted the defendant from all charges of the Public Prosecutor. Against this decision, the public prosecutor filed an appeal, in which in decision Number 2205 k/Pid.Sus/2022 the judge rejected the public prosecutor's cassation.

The acquittal of the defendant is a bad jurisprudence for the legal system in Indonesia, and is interesting to study. This shows that there are still weaknesses in the enforcement of criminal law against corruption in Indonesia. Therefore, the author is interested in conducting research with the title: "Analysis of Judge's Decisions in Corruption Crimes (Study of Decision Number: 2205 K / Pid.Sus / 2022)"

2. Research Methods

The specification of this research is analytical descriptive. Descriptive is intended to provide data as accurately as possible about humans, conditions or other symptoms. Analytical means that the data obtained will be analyzed to solve problems in accordance with applicable legal provisions.[13]This study aims to provide an overview of the decision to acquit corruption crimes in Decision Number2205 k/Pid.Sus/2022.

3. Results and Discussion

3.1. Judge's Decision in Corruption Crime in Decision Number 2205 K/Pid.Sus/2022

Corruption in Indonesia is generally in the form of bribery and gratification, in addition to other forms such as budget misuse, procurement of goods/services, money laundering, licensing and extortion. Corruption has a major impact on the integrity of the Indonesian nation. If it occurs frequently, the culture of corruption will continue to grow and damage the mentality of the younger generation.[14]

Efforts to eradicate corruption are still hampered, this is because the application of the Corruption Law to a corruption crime often experiences inconsistencies in application by judges, prosecutors and legal advisors. This can result in an acquittal for the perpetrator of the corruption crime. One of the corruption cases that was acquitted by the court was Decision Number 2205 K / Pid.Sus / 2022 with suspect Samin Tan. To find out the judge's decision in case Number 2205 K / Pid.Sus / 2022, the following is a description of the case.

1. Case

Defendant Samin Tan as the owner of PT. Borneo Lumbung Energi & Metal tbk (PT. BLEM) which is engaged in the field of services and coal mining which has a subsidiary PT. Asmin Kalaindo Tuhup (PT. AKT) which is also engaged in coal mining, on May 3, 2018, May 17, 2018 and June 22, 2018 has committed several acts that are related in such a way that they are seen as continuing acts in the form of giving or promising something, namely giving a

[13]Soerdjono Soekanto and Sri Mamudji, 2001, Normative Legal Research: A Brief Review, Raja Grafindo Persada, Raja Grafindo Persada, Jakarta, p. 16
[14]Joyo Mulyo, Legal Analysis of Acquittal Verdicts in Corruption Crimes in Indonesia, Cahaya Mandalika Journal, 2023, p. 323.

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sum of Rp 5,000,000,000 to a civil servant or state administrator, namely Eni Maulani Saragih as a member of Commission VII of the DPR for the period 2014 to 2019, with the intention that the civil servant or state administrator does or does not do something in his position, namely that Eni Maulani Saragih helps the defendant regarding the problem of terminating the Coal Mining Business Work Agreement (PBP2B) Generation 3 between PT. AKT and the Ministry of Energy and Mineral Resources in Central Kalimantan.

Due to the termination, PT. AKT filed a lawsuit to the Jakarta Administrative Court and PT. AKT's lawsuit was granted, but the Ministry of Energy and Mineral Resources made an appeal and the PTUN at the appellate level granted the Ministry of Energy and Mineral Resources' request, but PT. AKT made a cassation appeal to the Supreme Court and the cassation decision rejected the request filed by PT. AKT.

During the PTUN trial process, the defendant met Melchias Marcus Mekeng to ask for assistance so that the termination of PT. AKT's PKP2B could be reviewed by the Ministry of Energy and Mineral Resources, then Marcus introduced the defendant to a member of Commission VII of the Indonesian House of Representatives, Eni Maulani Saragih, who is in charge of energy and has working partners including ESDM. The defendant asked for Eni's assistance regarding the PT. AKT PKP2B problem, and Eni agreed to facilitate communication between the Ministry of Energy and Mineral Resources and PT. AKT and asked the defendant to prepare a chronology of the PKP2B problem along with supporting documents for Eni to study, and the defendant asked Nenie Afwani as the director of PT. BLEM to prepare and submit the chronology along with supporting documents to Eni.

Around February 2018, after the interim decision was issued, the defendant met Eni at a coffee shop in Jakarta, where Eni explained to the defendant that she had discussed the PKP2B issue of PT. AKT with Ignatius Jonan, and suggested that the lawsuit process of PT. AKT at the PTUN be continued and promised that if PT. AKT's lawsuit was granted by the PTUN (first level), then Ignatius Johan would provide the necessary recommendations in order to extend the export permit that was almost dead and the permit to purchase explosives for mining, while waiting for the final decision on the State Administrative Law lawsuit of PT. AKT.

On April 5, 2018, the Jakarta Administrative Court granted PT. AKT's lawsuit and canceled the ESDM Minister's Termination Decree, then the defendant together with Eni and Melchias met Ignaitus Jonan accompanied by Bambang Gatot) at the ESDM Ministry Building who said that he had never made a promise as conveyed by Eni to the defendant. Ignatisu Jonan asked the defendant to submit a statement letter from Standard Chartered Bank stating that PT. AKT did not guarantee PT. AKT's PKP2B to the Director General of Mineral and Coal. Around May, Standard Chartered Bank, Singapore Branch issued a letter addressed to the Minister of ESDM through PT. AKT, but Ignaitus Jonan did not believe that the letter was really made by Standard Chartered Bank, Singapore Branch, and asked that a direct meeting be arranged between Bambang or the team with Standard Chartered Bank, Hong Kong or Singapore Branch. Bambang then told Ninie Afwani that a meeting was sufficient to be held with the Indonesian Branch of Bank Standard Chartered, then a meeting was held and the team asked the Indonesian branch bank to issue an additional letter stating that the statement letter that had been made and submitted by Bank Standard Chartered to the Minister of Energy and Mineral Resources was genuine, then the

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Indonesian branch bank made the letter in question to the Ministry of Energy and Mineral Resources.

Although the proof of the authenticity of the letter has been fulfilled, the Minister of Energy and Mineral Resources did not immediately process the rights, permits and recommendations for PT. AKT, but was still waiting for Ignatius Jonan's instructions. Regarding this, Eni then informed the defendant that she had discussed the matter with the Ministry of Energy and Mineral Resources, and the ministry would request a legal opinion from the Attorney General's Office of the Republic of Indonesia Jamdatun.

Eni Maulani related to the PT. AKT problem asked for some money from the defendant. Upon the request, on May 9, 2018 Tahaya Maharaya as Eni's expert met with Ninie Afwani and Indri Savanti at the Bakerzin Restaurant, and then in the Plaza Senanyan parking lot Indri handed over a sports tote bag containing 1,200,000,000 to Tahta Maharaya and then the bag was handed over to Eni Maulan at Eni's house. On May 17, 2018 on the 5th floor of the Menara Merdeka building in Jakarta, Tahta met Nenie and Indri. Indri witnessed by Nenie gave two sports tote bags containing Rp 2,800,000,000 to Tahta Maharaya, then handed over to Eni at Eni's house by Tahta. After receiving the money on June 2, 2018, Eni sent a WA message to the defendant expressing her utmost gratitude with the words “Mr. Samin, yesterday I received 4M from Ms. Neni…. thank you very much….”

. On June 5, 2018, Eni sent a WA message to the defendant to ask for additional money for her husband's interests related to the Temanggung regional election with the sentence "Mr. Samin, for the regional election, can you add it... or use it first and then return it... the survey is good... so it must continue to be fast" On June 22, 2018, Nanie told Tahta to come to the PT. AKT office, then received cash in the amount of Rp 1,000,000,000 stored in a sports bag from a fat white man and Tahta had time to sign a piece of receipt paper with the words 1K fruit. then the bag containing the money was handed over to Eni by Tahta. After that, the defendant continued his efforts to resolve the PT. AKT problem, including monitoring the development of the legal opinion related to PT. AKT and continuing to communicate with the Ministry of Energy and Mineral Resources facilitated by ENI.

The defendant gave money amounting to Rp5,000,000,000 to Eni because of the power or authority attached to Eni's position as a member of Commission VII of the DPR RI or by the defendant the provision was considered attached to Eni's position or position as a member of Commission VII of the DPR RI as regulated in Article 81 letter g of Law of the Republic of Indonesia Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council in conjunction with Article 12 letter g of Regulation of the DPR RI Number 1 of 2014 concerning Rules of Procedure as amended several times and most recently by Regulation of the DPR RI Number 3 of 2016 concerning the second Amendment to Regulation of the DPR RI Number 1 of 2015 concerning the Code of Ethics of the DPR RI and contrary to the obligations of the Defendant as a State Administrator as regulated in Article 5 number 4 and number 6 of Law of the Republic of Indonesia Number 28 of 1999 concerning State Administrators who are Clean and Free from Corruption, Collusion and Nepotism.

2. The indictment

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In case Number 37/Pid.Sus-TPK/2021/PN Jkt Pst, the defendant was charged by the public prosecutor as follows:

a. First: The defendant's actions constitute a criminal act as regulated in and threatened in Article 5 Paragraph 1 letter a of 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 in conjunction with Article 64 paragraph (1) of the Criminal Code, namely anyone who gives or promises something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position that is contrary to his obligations.

b. Second: the defendant's actions constitute a criminal act as regulated and threatened in Article 13 of 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 in conjunction with Article 64 paragraph (1) of the Criminal Code, namely anyone who gives a gift or promise to a civil servant taking into account the power or authority inherent in his position or position, or by the giver of the gift or promise is considered to be inherent in his position or position.

3. Claims

a. Declaring that the defendant Samin Tan has been proven legally and convincingly guilty of committing a criminal act of corruption continuously as regulated and is subject to criminal penalties for violating Article 5 paragraph (1) letter a of 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 in conjunction with Article 64 paragraph (1) of the Criminal Code as the first alternative charge.

b. Sentencing the defendant Samin Tan to 3 years in prison minus the temporary detention period that the defendant has served and a fine of Rp. 250,000,000,- subsidiary to a substitute prison sentence of 6 months.

c. Determine that the defendant will remain in detention

4. Decision

First stage court decision:

a. Declaring that the defendant Samin Tan was not proven legally and convincingly guilty of committing the crime as charged in both the first alternative charge and the second alternative charge.

b. To acquit the defendant therefore of all charges of the public prosecutor.

c. Ordering that the accused be released from detention

d. Restoring the rights of the accused in terms of his ability, position, dignity and status.

e. Determining evidence Number 1 to number 722, in full as in the Public Prosecutor's Charges.

f. Charge court costs to the state.

Decision at the cassation level:

a. Rejecting the cassation application from the Cassation Applicant/Public Prosecutor to the Corruption Eradication Commission

b. The costs of court proceedings at all levels of the court and at the cassation level are charged to the State.

Based on the description of the case in Decision Number 2205 K/Pid.Sus/2022, it can be seen that the judge rejected the cassation application filed by the public prosecutor. Thus, the decision of the Central Jakarta District Court Number 37/Pid.Sus-TPK/2021/PN Jkt Pst which acquitted the defendant Samin Tan remains valid and binding. The Supreme Court judge is of the opinion that there was no error in the application of the law in the previous decision.

Bribery is a paired crime, the theory is called noodzakelijke deelneming, absolute participation is necessary, meaning that there is an active bribe giver and a passive recipient, so that a consensus is found, a deal is made, a meeting of minds between the giver and the recipient. The giver intends something by giving, namely an act of abusing the authority of the recipient. Likewise, the recipient understands that the gift is intended so that he does or does not do something that is contrary to his obligations in office.[15]

3.2. The Judge's Consideration in Sentencing Corruption in Decision No. 2205 K/Pid.Sus/2022

Article 1 of Law Number 48 of 2009 states that judicial power is the power of an independent state to administer justice 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. In reality, judges are bound by the contents of the indictment. The indictment and the results of the examination at trial are the basis for the panel of judges to make a decision. Although judges are free to consider and determine what is conveyed to them by the public prosecutor or the defendant/legal counsel, judges must pay attention to what is the purpose of criminal proceedings. It is generally agreed that the purpose of criminal proceedings is to obtain material truth, namely the most complete truth of a criminal case by applying the provisions of criminal procedure law.

Judges must pay attention to the sentencing guidelines contained in the Criminal Code along with the objectives to be achieved with their decisions. To realize these objectives, it is necessary to have a wise, truth-loving, just and honest judge in examining and trying and making the right decision on the case that is his responsibility. A judge in making a decision to solve a case that is satisfactory, adjusting to the needs of society, then a discovery of rechtsvinding law must be carried out.[16]

The basis for the judge's consideration to reach a decision is rational. In the Great Dictionary of the Indonesian Language, ratio means thinking according to common sense, reason, logic. Ratio means having a ratio, being able to use ratio (reason) well, the ability to understand, conclude, think logically (reasonably).[17]

[15]Joyo Mulyo, Op.Cit., p. 330.
[16]Djoko Prakoso, 1984, Duties and Authorities of Prosecutors in Development, Ghalia Indonesia, Jakarta, p. 12.
[17]Hasan Alwi, Op.Cit., page 933.

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A judge's decision is said to be very reasonable if the decision is made based on the theory of punishment. This includes several guidelines for punishment that must be considered by the judge. A rational decision is a decision made based on rational considerations, which considers the theory of the purpose of punishment. In Indonesia, the purpose of punishment must be based on Pancasila, which is the source of all sources of law including sources of criminal law.

The criminal punishment system based on the concept of individualization of criminal does not mean giving full freedom to judges and other officials without guidance or control. The formulation of objectives and punishment is intended as a controlling function and as a philosophical basis, rational basis and motivation for clear and directed punishment. In determining the severity of the punishment imposed by the judge on the defendant in accordance with the concept of the Criminal Code.[18]

From the description above, it can be explained that the judge in determining criminal responsibility is based on legal considerations which are used as the legal basis in determining the severity of the criminal sanctions to be applied to the perpetrator of the crime. According to Lilik Mulyadi, legal considerations are proof of the elements of a crime whether the defendant's actions meet and are in accordance with the crime charged by the public prosecutor so that these considerations are relevant to the judge's verdict/dictum.[19]

Legal considerations are judges' considerations based on legal facts revealed in the trial and stipulated by law as must be included in the verdict, for example the public prosecutor's indictment, the defendant's statement, witness statements, evidence and articles in criminal law regulations. Legal considerations of the criminal act charged must also be in accordance with theoretical aspects, doctrinal views, jurisprudence, and the position of the case being handled, only then are their founders limited.[20]

In addition to legal considerations, the judge's decision must also be based on non-legal considerations, namely looking at the defendant's background, the defendant's condition and the defendant's religion.[21]Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power Article (Judicial Law) regulates that judges are required to explore, follow, and understand the legal values and sense of justice that live in society. The purpose of this provision is so that every judge's decision is in accordance with the provisions of the law and the sense of justice for society. If there is a clash of legal terms between what is felt to be fair by society and what is called legal certainty, then legal certainty should not be forced so that the sense of justice is sacrificed for society.[22]

In the corruption case with the defendant Samin Tan in the decision Number 2205 K/Pid.Sus/2022, it is known that the defendant was declared not legally proven to have committed the crime charged by the public prosecutor. The decision was based on considerations as will be described below. In order to find out the judge's considerations,

[18]Gregorius Aryadi, 1993, Judge's Decision in Criminal Cases, Atmajaya University Yogyakarta, Yogyakarta, p. 71.
[19]Lilik Mulyadi, 2007, Compilation of Criminal Law in Theoretical Perspective and Trial Practice, Mandar Maju, Bandung, p. 193.
[20]Adami Chazawi, 2010, Crimes against Body and Life, PT. Raja Grafindo, Jakarta, p. 73
[21]Muhammad Rusli, 2007, Contemporary Criminal Procedure Law, PT Citra Aditya Bakti, Bandung, p. 212
[22]Bismar Siregar, 1989, Anthology of Scattered Compositions, Rajawali Press, Jakarta, p. 33

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the author first describes the judge's legal considerations in the first instance court decision first.

In the first instance court decision, namely decision Number 37/Pid.Sus-TPK/2021/PN.Jkt Pst, the defendant was declared not legally and convincingly proven to have committed the crime charged by the public prosecutor. The decision was based on considerations whether based on the legal facts revealed in court. In this case, the defendant has been charged by the Public Prosecutor with an alternative charge. The first charge is Article 5 paragraph (1) letter a of the Corruption Law in conjunction with Article 64 paragraph (1) of the Criminal Code, with the following elements: "Any person who gives or promises something to a civil servant or state administrator with the intention that the civil servant or state administrator does or does not do something in his position, which is contrary to his obligations"

1. Each person

Every person in a criminal act of corruption is regulated in Article 1 number 3 of the Corruption Law, namely an individual or including a corporation. The word every person is equivalent to the word whoever is usually included in the formulation of the crime, namely a term that is an element of the article that refers to anyone individually as a supporter of rights and obligations who commits or has been accused of committing an act prohibited by applicable laws and regulations. Every person is attached to every element of the crime. so that it will be fulfilled and proven if all elements of the crime in the crime are proven and the perpetrator is held criminally responsible. This understanding is related to the indictment, which has submitted the defendant Samin Tan as an individual whose actions will be proven as indicted by the Public Prosecutor. thus the element of every person has been fulfilled.

2. The element of giving or promising something to a civil servant or state administrator

Based on the provisions of Article 1 number 2Law 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, the term civil servant is defined as referred to in the Civil Service Law, civil servants in the Criminal Code, people who receive salaries and wages from state or regional finances, people who receive salaries or wages from a corporation that receives assistance from state or regional finances; people who receive salaries or wages from other corporations that use capital or facilities from the state or the community.

The Corruption Crime Law does not provide a clear definition of what is meant by giving a gift and does not explain the meaning of giving a gift. The act of giving or promising is a general act that can be understood by all people who use Indonesian. Considering that the elements of giving gifts or promises to civil servants are the same as the elements contained in the first indictment, the panel of judges took over the second element to be taken into consideration in the second element in article 13Law 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, giving gifts or promises to civil servants, then mutatis mutandis is included again in the consideration of the second element of Article 13 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law Number

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20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 64 paragraph (1) of the Criminal Code. Thus, the element of giving gifts or promises to civil servants is not proven.

Considering one of the elements of Article 13Law 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 in conjunction with Article 64 paragraph (1) of the Criminal Code is not fulfilled, then the defendant must be declared not legally and convincingly proven to have committed the criminal act as charged in the second alternative charge so that the defendant must be acquitted of the charge.

Considering that related to the criminal act of gratification in Article 12B of the Corruption Crime Law, it is very unlikely that in the case of gratification, a criminal penalty will be imposed on the person who gives it. From the beginningLaw 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 was formed, gratification was not designed to also become a criminal act of bribery. The manifestation of the crime of gratification as a prohibited act occurs when the recipient of the gratification does not report until the deadline determined by law has passed. The unlawful act arises because he does not report the gratification he received. The unlawful nature of gratification lies in the recipient and not in the giver. The unlawful nature of gratification is indicated by the passing of the reporting deadline, not in its receipt. This is what distinguishes gratification from bribery. The crime of gratification becomes perfect when the state administrator who receives the gift of something does not report the receipt of something within 30 days since the gift of something has been received by the recipient as stipulated in Article 12C. Based on the explanation above, the provisions in Article 12B are not directed at the giver of something and it is not necessary or cannot be held accountable. Based on these considerations, in the decision of case Number 100/Pid.Sus.TPK/2018/PN.Jkt Pst, where the defendant Eni Maulani Saragih by the panel of judges who received and tried the case has been decided and proven to have committed a crime violating Article 12B paragraph (1) of 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 where the defendant Eni Maulani Saragih has received a gift from Samin Tan as the owner of PT. Borneo Lumbung Energi and Metal through the intermediary Tahta Maharaya, therefore the defendant Samin Tan who gave money to Eni Maulani cannot be held accountable.

In the cassation level decision in Decision Number 2205K/Pid.Sus/2022 in the corruption case with the defendant Samin Tan. the judge decided to reject the public prosecutor's appeal. The judge's decision to reject the public prosecutor's appeal was based on the following considerations:

1. The Public Prosecutor's cassation reasons cannot be justified because the judex facti (District Court) did not make a mistake in applying the law, the judex facti tried the defendant in the a quo case in accordance with applicable criminal procedure law, and the judex facti did not exceed its authority.

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2. The reason for the Public Prosecutor's cassation is essentially regarding the judex facti not applying the law or applying the law incorrectly because the judex facti stated that the Defendant was not proven to have committed a crime as charged by the Public Prosecutor.

3. Based on the trial facts from the statements of the Witnesses, Experts and the Defendant, connected with the evidence, the following facts were obtained:

PT Asmin Koalindo Tuhub (PT AKT) with the Decree of the Ministry of Energy and Mineral Resources Number 3174/30/MEM/2017 dated October 19, 2017 has terminated the PKP2B (Coal Mining Work Agreement) which resulted in PT AKT no longer being able to mine and sell its coal mining products. Due to the moral burden over the fate of its 4,000 employees due to the Decree, the defendant has taken several steps including taking legal action by suing the Decree of the Ministry of Energy and Mineral Resources Number 3174/30/MEM/2017 through the Jakarta PTUN and by the Jakarta PTUN, the Decree of the Ministry of Energy and Mineral Resources was declared null and void. Then the Ministry of Energy and Mineral Resources appealed to the PT TUN, and the PT TUN decision granted the Ministry of Energy and Mineral Resources' appeal by canceling the Jakarta PTUN decision. Furthermore, PT AKT filed a cassation appeal to the Supreme Court but the cassation was rejected.

In addition to filing a lawsuit through the PTUN, the Defendant also met with his colleague, namely Witness Melchias Marcus Mekeng, Chairman of the Golkar Faction in the DPR. The Defendant told Witness Melchias Marcus Mekeng about the termination of PT AKT by the Ministry of Energy and Mineral Resources, then Witness Melchias Marcus Mekeng introduced the Defendant to Witness Eni Maulani Saragih and asked Witness Eni Maulani Saragih, who is also a member of the DPR from the Golkar Faction and is assigned to Commission VII, one of which is in charge of Energy and Mineral Resources, to ask the Ministry of Energy and Mineral Resources about the termination of PT AKT. At the request of Witness Melchias Marcus Mekeng, Witness Eni Maulani Saragih together with Witness Melchias Marcus Mekeng and the Defendant met with the Minister of Energy and Mineral Resources Ignatius Jonan and asked about the termination of PT AKT. In response to the question of the termination of PT AKT, witness Ignatius Jonan said that he would continue to take legal action until a decision with permanent legal force (inkracht van gewijsde) was obtained and Witness Ignatius Jonan said that the termination was a recommendation from the Director General of Mineral and Coal stating that PT AKT had violated Article 30 in the PKP2B (Coal Mining Work Agreement), namely that PT AKT had pledged PT AKT's PKP2B to Standard Chartered Bank, Singapore Branch.

In between the time of managing PT AKT, Witness Eni Maulani Saragih once told Witness Melchias Marcus Mekeng, that Witness Eni Maulani Saragih needed a lot of money in order to finance her husband's candidacy as Regent of Temanggung. Then between May 2018 and June 2018, Witness Eni Maulani Saragih received money from Witness Nenie Afwani and Witness Indri Savatri Purnama Sari, the money was received by Tahta Maharaya as Witness Eni Maulani Saragih's Expert Staff at the DPR. The total money received amounted to Rp4,000,000,000.00 (four billion rupiah), with the following details:

a. On May 3, 2018, Witness Tahta Maharaya received money from Nenie Afwani and Indri Savitri Purnamasari amounting to Rp1,200,000,000.00 (one billion two hundred million rupiah) at the Bakerzin Restaurant, Plaza Senayan. At the meeting, Witness Tahta Maharaya

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was only told by Witness Eni Saragih to meet with Witness Nenie Afwani. At the meeting, the witness knew that Witness Tahta Maharaya was given money by Witness Nenie Afwani, but did not know the amount. There was a statement from Witness Nenie Afwani "one point two out of five in stages" but Witness Tahta Maharaya did not know what it meant. Regarding Witness Nenie Afwani's statement "sir agrees but in stages", Witness Tahta Maharaya also did not know what it meant. Meanwhile, according to Witness Nenie Afwani, the meeting with Witness Tahta Maharaya was a meeting to submit documents as requested by Witness Eni Maulani Saragih.

b. On May 17, 2018, Tahta Maharaya received money from Nenie Afwani and Indri Savitri Purnamasari amounting to Rp2,800,000,000.00 (two billion eight hundred million rupiah) at the 5th floor of the Menara Merdeka Building in Jakarta, which is none other than the office of PT AKT.

c. On June 22, 2018, witness Tahta Maharaya received money from a fat man amounting to Rp. 1,000,000,000.00 (one billion rupiah).

The defendant and witness Eni Maulani Saragih both stated that there was no deal or agreement regarding the provision of money amounting to Rp4,000,000,000.00 (four billion rupiah). Witnesses Nenie Afwani and Indri Savatri Purnama and Tahta Maharaya also did not provide a definite statement as to why the money was given to Witness Eni Maulani Saragih. Witness Eni Maulani Saragih had sent a thank you message via WA to the Defendant for the money amounting to Rp4,000,000,000.00 (four billion rupiah), but the message was not responded to by the Defendant.

Witness Nenie Afwani is the Director of PT Borneo Lumbung Energi dan Metal (PT BLEM), PT BLEM itself is the majority shareholder of PT AKT. While the Defendant is the founder of PT BLEM, was once the Director of PT BLEM in 2010, and was also the Director of PT AKT in 2008 to 2009. Regarding the WA from Witness Eni Maulani Saragih, Witness Nenie Afwani always communicated with the Defendant including additional requests from Witness Eni Maulani Saragih which Witness Nenie Afwani did not know the meaning of. In court, it was not revealed regarding the origin of the money and the purpose of the money given by Witness Nenie Afwani to Witness Tahta Maharaya.

4. The defendant was declared not proven guilty of committing the act as in the Public Prosecutor's indictment by the judex facti. The consideration of the First Instance Court's judex facti which stated that the Defendant was not proven guilty of committing the act as in the First and Second indictments was that in the crime of gratification, the act of giving gratification is not punishable because it is not a crime. The main purpose of the crime of gratification is to maintain the honesty of every civil servant in carrying out their work from giving gratification. Thus, by considering Article 1 paragraph (1) of the Criminal Code, the judex facti stated that the Defendant could not be charged with the crime of gratification if it was linked to the giving of money to Witness Eni Maulani Saragih, who had been convicted in another case.

5. Apart from these considerations, in the first indictment, the Defendant was charged with Article 5 paragraph (1) letter a of 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

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Corruption in conjunction with Article 64 paragraph (1) of the Criminal Code. This article constitutes a bribery crime. The requirement for a bribery crime is an agreement (meeting of minds) between the giver and receiver of the bribe, in this case the Defendant and Eni Maulani Saragih in relation to the provision of money amounting to Rp. 4,000,000,000.00 (four billion rupiah).

Based on the above considerations, the Applicant/Public Prosecutor cannot prove that the judex facti decision does not fulfill the provisions of Article 253 paragraph (1) letters a, b, c of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). Thus, based on Article 254 of the KUHAP, the Public Prosecutor's cassation application is rejected.

Based on the description above, it can be seen that the judge's consideration in sentencing Samin Tan in decision No. 2205 K/Pid.Sus/2022 was because the Public Prosecutor could not prove that the judex facti decision did not fulfill the provisions of Article 253 paragraph (1) letters a, b, c of the Criminal Procedure Code. In this case, the judge was of the opinion that the previous level court was not wrong in applying the law.

In the author's opinion, the consideration is not quite right. To analyze the acquittal of Samin Tan, one must look at the legal construction of bribery and gratification that Samin Tan was charged with. The defendant was charged with alternative charges, namely the first charge is Article 5 paragraph (1) letter a of 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 and the second alternative is Article 13 of 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. In this case, the charge against Samin Tan is one act, namely giving a sum of money to Eni Maulani Saragih who has been convicted first. Therefore, it is necessary to see the legal relationship between Eni Maulani Saragih and Samin Tan, so it is necessary to first assess the Decision against Eni Maulani Saragih who was previously found guilty of committing a crime of gratification in decision No. 100 / PID-Sus / TPK / 2018 / PN. Jkt.Pst.

In the verdict No. 100/PID-Sus/TPK/2018/PN. Jkt.Pst. Eni Maulani Saragih was proven guilty of committing a criminal act of gratification as charged in the second alternative charge of Article 12 letter a of 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. In the second charge, Eni Maulani Saragih received gratification, one of which was from Samin Tan in the form of money amounting to Rp 5,000,000,000.00 related to Eni Maulani Saragih's position as a Member of Commission VII of the Indonesian House of Representatives. In this case, the Panel of Judges considered that the elements of Article 12B paragraph (1) of 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 are that Civil Servants or state administrators; receive gratuities; are considered to have given bribes because they are related to their

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position and are contrary to their obligations or duties.[23]

The act of receiving must be an active act that must have physical indicators that there has been acceptance and transfer of power over the thing given.[24]However, Lamintang stated that the acceptance does not have to be directly by civil servants or state administrators, but can also be by their representatives such as their families.[25]In this element, the goods must be proven to have been received and controlled by the recipient. The act is considered complete when there is a statement or gesture indicating the acceptance of the gift. The act of receiving must indeed be marked by intent, but because the element of intent is not written explicitly in the formulation of the crime, it is sufficient to prove the act of receiving alone to prove intent.[26]

The discussion of the meeting of minds by Decision Number 2205K/Pid.Sus/2022 is not appropriate if only looking at several factors. According to the Supreme Court, there is no evidence of an agreement on the purpose of the gratification, whether related to ESDM matters or purely to help Eni Maulani Saragih's husband's campaign. It was also revealed in court that there was a message of thanks from Eni Saragih to the Defendant which the defendant did not respond to, indicating no agreement. In this case, the panel of judges did not discuss the elements of Article 13 of the Corruption Crime Law which regulates the element of "considering the power or authority inherent in his position or position". The Supreme Court has decided the discussion by saying that there is no regulation on the provision of gratification, so the discussion of the meeting of minds element has also stopped and is not continued. In fact, with Samin Tan meeting with Eni Saragih in his capacity as a Member of Commission VII of the Indonesian House of Representatives in charge of ESDM, it is evidence that Samin Tan, who works in the ESDM sector, has an interest in the revocation of the termination of PT AKT's PKP2B.

This can prove that if there is a gift from Samin Tan, then it will fulfill the element of "considering the power or authority inherent in his position or position" because Samin Tan and Eni Saragih do not have a working relationship, family relationship, or other relationship that can prove that the gift is not due to Eni Saragih's power as a Member of the Indonesian House of Representatives Commission VII. In addition, in the consideration it is said that Samin Tan does not have a direct relationship with Nenie Afwani who is the Director of PT BLEM as the giver of the 4 M money. However, the Gratification Decision with the defendant Eni Saragih is said to be a legal fact that Eni Maulani Saragih received gratification from Nenie Afwani who is an intermediary for Samin Tan as the founder of PT BLEM. Based on these legal facts, it cannot be said that Samin Tan was not involved in the case. However, the Panel of Judges did not consider Samin Tan's intention to save the PKP2B of PT AKT.[27]

As is known, Samin Tan was charged with an alternative charge that applies mutatis mutandis, namely if in Article 5 paragraph (1) letter a of Law Number 31 of 1999 concerning

[23]Muhammad Fatahillah Akbar, Op.Cit., p. 693
[24]R Wiyono, 2012, Discussion of the Law on the Eradication of Criminal Acts of Corruption, Sinar Grafika, Jakarta, p. 206
[25]PAF Lamintang, 1991, Crimes of Office and Certain Crimes of Office as Criminal Acts, Sinar Grafika, Jakarta, p. 326
[26]Muhammad Fatahillah Akbar, Op.Cit., p. 693
[27]Ibid.

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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 there are elements that are not quite right, then the charge can be changed with the second alternative article, namely Article 13 of 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. The giver of gifts or promises to civil servants already has the intention to move civil servants to do or not do an act related to their position where the act done by the civil servant is contrary to their obligations and duties. Regarding the second charge, namely Article 13 of the Corruption Crime Law, the judge ignored the legal facts presented in the trial. From this result, the defendant should have been punished under Article 13 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, because in this article the element of "giving gifts or promises" can be used more.[28]

Expert opinions regarding the giver of gratification are also reflected in the examination carried out at the Faculty of Law UGM in collaboration with the KPK in 2023. The KPK entered into a cooperation agreement with the Faculty of Law UGM to conduct an examination of the verdict of the corruption court and the Supreme Court on behalf of the Defendant Samin Tan to analyze the verdict from the perspective of the Principles of criminal law, laws and regulations, and previous court decisions. This examination was carried out by a Team from the Department of Criminal Law, Universitas Gadjah Mada chaired by Dr. Supriyadi, SH, M.Hum and consisting of Muhammad Fatahillah Akbar, SH, LL.M. The results of the examination were discussed in a Focus Group Discussion (FGD) which was held on Thursday, November 23, 2023, at the Faculty of Law, Universitas Gadjah Mada, which was attended by Prof. Dr. Marcus Priyo Gunarto, SH, M.Hum (Head of the Department of Criminal Law UGM), Diantika Rindam Floranti, SH, LL.M. (Lecturer of the Department of Criminal Law UGM), Representative of the High Prosecutor's Office of the Special Region of Yogyakarta, Representative of the Yogyakarta District Prosecutor's Office, and Representative of the Sub Directorate of Corruption Crimes of the Yogyakarta Special Region Police. The examination concluded that the provision of gratification can be punished at least with Article 5 paragraph (1) letter a, Article 5 paragraph (1) letter b, 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 or at least Article 13 of 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. The difference in the application of the article depends on the intention of the gift, whether there is an intention in a certain authority or only because of the position. There are several previous court decisions that have imposed criminal penalties in cases of giving gratification. Therefore, the Supreme Court needs to emphasize

[28]Enggelina Margaritha Fiah, Debi F.Ng. Fallo, Sigit Prabowo, Op.Cit, p. 208

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its position on the act of giving gratification.[29]From the description above, by examining the existing legal facts, Samin Tan should be subject to Article 5 paragraph (1) letters a and b or at least Article 13 of 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.

4. Conclusion

1. The judge's decision in the corruption case in Decision Number 2205 K/Pid.Sus/2022 reflects a bad precedent in the enforcement of corruption law in Indonesia, where the cassation level decision upheld the first level judge's decision, namely that the defendant Samin Tan was declared not legally and convincingly proven to have committed a crime in the first or second indictment and was declared free from all legal charges. This is not in line with the objectives of criminal punishment related to injustice and the failure to realize the principle of justice because it has not fulfilled the principle of justice for the people. The public has lost confidence in the ability of the justice system to enforce the law. When perpetrators of corruption do not receive appropriate punishment, the assumption arises that there is no justice, which can create a deep sense of dissatisfaction for the community.
2. The basis for the judge's consideration in issuing a verdict on the crime of corruption in decision Number 2205 K/Pid.Sus/2022 is not quite right, where the perpetrator should be punished with Article 5 paragraph (1) of the Corruption Law or Article 13 of 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, as previously there was a similar decision where the recipient of the gratification was punished with Article 12B while the giver of the gratification was charged with Article 5 paragraph (1) or Article 13 of 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, this considering that the mens rea in giving bribes is similar to the mens rea in the article on giving gratification in Article 12B of the Corruption Crime Law, the breakdown of elements in the Samin Tan decision does not look at the legal facts directly, because it focuses only on the absence of regulations for giving gratification, so the judge stated that the defendant was not proven to have committed the crime charged and was declared free.

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