

Disparity of Judges' Decisions in the Application of Elements Damages to State Finances Criminal Act of Corruption

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Abstract. *This study uses the theory of punishment, the theory of legal systems and progressive legal theory, the method of normative legal approach, the research specifications are descriptive analysis, the 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 punishment are still often seen in the verdicts of judges' decisions. So it is necessary to reformulate articles 2 and 3 of the tipokr Law by considering several aspects including determining state financial losses, perpetrators are required to return state financial losses, making the best evidentiary system the main evidence. The weakness of the legal structure regarding the existence of Ad Hoc Judges in the Corruption Court at the Center and Regions has not been effective. The solution to this problem is that it is necessary to review the regulation on the formation of corruption courts at the district/city level. Supervision carried out by Law Enforcement Agencies is not yet optimal. The solution is that law enforcement agencies authorized to eradicate corruption and supervisory institutions must have adequate resources and independence in carrying out their duties. The weakness of the LHKPN examination by the KPK is not yet optimal. The solution is to strengthen the LHKPN examination mechanism by involving other institutions, for example the Inspectorate General of the Ministry (delegating the authority for initial analysis), then escalating to the KPK when action needs to be taken. The weakness of the legal substance consists of the element of state financial loss which is only regulated in Article 2 and Article 3, as well as the difference in meaning regarding state finances in various laws. The solution to this problem is that the DPR needs to renew the laws and regulations. The weakness of the legal culture which includes family culture, paternalistic orientation of society, and a culture of society that is less brave to be honest (non*

assertive) The solution is to provide outreach about the dangers of corrupt behavior.

Keywords: Decision; Disparity; Financial; Judge's.

1. Introduction

Sentencing disparity is one of the important topics in criminal law. Sentencing disparity means the difference in the amount of punishment imposed by the court in cases that have the same characteristics. Specifically for the eradication of corruption, the phenomenon of disparity in sentencing is not only limited to the principal sentence, but also includes substitute money sentences. As we know, substitute money sentences are a characteristic of corruption. In its implementation, it is not uncommon to find a phenomenon of disparity in the imposition of prison sentences and substitute money in decisions on corruption cases. Research notes found several disparities in sentencing which the author presents in the table below.

Table Disparity Decision

Case No.	Defendant	Work	Loss Country	Verdict	Chapter
30/pid.sus-t pk/2022Pn Bjm	Muhni	Head Village Right Pool	Rp. 860 million	4 years	Chapter 2
12/Pid.Sus-T PK/2023/PN Mtr	Friday	Head Village Water Life Year 2019	Rp. 346 million	5 years	Chapter 2
35/Pid.Sus-T PK/2022/PN Plk	Tumon Abdurrahman	Head Village Mistiness Period year 2015s/d year 2021	Rp. 975 million	4 years	Chapter 2
32/Pid.Sus-T PK/2023/PN Mtr	So The Sujarwadi	Head Village White sand	Rp. 539 million	5 years	Chapter 2
29/Pid.Sus-T PK/2023/PN Tpg	Herry Revelation Muhammad	Head of Department Housing area and Settlement Regency Bintan	Rp2.4 billion	4 years	Chapter 2
11/Pid.Sus-T PK/2023/PN Mtr	Lord Hendra Taurus	Head Health Center Chapter	Rp. 690 million	6 years	Chapter 2

Source: ICW Report 2023

Table Disparity Decision 2022-2023

Case No.	Name Defendant	Work	Loss Country	Verdict	Chapter
84/Pid.Sus-T Jkt.Pst PK/2022/PN	Eddy The Curiosity	Director Main PT Emco Asset Management ent	Rp 4.5 M	1 year	Article 3
51/Pid.Sus-T Bdg PK/2023/PN	Zainal Abidin	Leader PT Branch LKM Karawang Branch Tirtamulya	Rp 1 M	5 years	Article 3
15/Pid.Sus-T Pdg PK/2023/PN	Yaneman Driesye	Director PT MAM Energy	Rp 7.3 M	1 year	Article 3
16/Pid.Sus-T Pal PK/2023/PN	Sunardi Hongkiriwang	Director Main PT. Trikora Jaya Salakan	Rp 1 M	5 years	Article 3
77/PID.SUSTPK/2022 /PN MKS	Ruben Riu Mallisa	Head Village To'yasa Toraja North Dear,	Rp. 900 Million	1 year 4 months	Article 3
6/Pid.Sus-TP Plg K/2023/PN	Happy Hajarol Akbar	Head Village Mountain Holding	Rp. 420 million	5 years	Article 3

Source: ICW Report 2023

The problem of disparity in punishment 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. Especially if the disparity is very striking, especially in corruption trials, where the involvement of the perpetrators touches on public officials.

2. Research Methods

This research is a type of normative legal research with a conceptual approach and data analysis methods are carried out by collecting data through reviewing library materials or secondary data which include primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations related to normative legal analysis.

3. Results and Discussion

3.1. Disparity in Judges' Decisions in Applying the Element of Detriment to State Finances in Corruption Crimes

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.

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.³

The progressive legal paradigm initiated by the legal expert Prof. Dr. Satjipto Rahardjo is a phenomenal idea aimed at law enforcement officers, especially judges, so that they are not bound by legal positivism which has so far given injustice to yustisiaben (justice seekers) in enforcing the law because law enforcement is a series of processes to describe values, ideas, ideals that are quite abstract which are the objectives of the law. The objectives of the law or legal ideals begin with moral values, such as justice and truth. These values must be able to be realized in real reality. The existence of law is recognized if the moral values contained in the law are able to be implemented or not.

According to Soerjono Soekanto, conceptually the core meaning of law

enforcement lies in the activity of harmonizing the relationship between values that are outlined in solid rules and embodying attitudes and actions as a series of final stage value explanations, to create, maintain and defend peaceful social interactions.

1) Weaknesses of Disparity in Judges' Decisions in Applying the Element of Detriment to State Finances in Criminal Acts of Corruption

a. Weaknesses of Legal Structure

a) The existence of Ad Hoc Judges in Corruption Crime Courts at the Center and Regions is not yet effective

In fact, the number of ad hoc judges needed at the first instance Corruption Court is always unfulfilled.⁵ From several recruitments of ad hoc judges, it was found that many applicants did not meet the expected criteria or qualifications, so that the Supreme Court had difficulty obtaining qualified ad hoc judges.⁶ While the costs required for the process of selecting or recruiting judges are not small. In addition, the possibility of budget inefficiency occurs because it was found in several corruption courts because of the imbalance costs incurred for cases accepted, taking into account the costs of judges' salaries and allowances, the formation of special clerkships and so on.

b) Supervision carried out by law enforcement agencies is not yet optimal

Until now, supervision has been carried out internally. These institutions and supervisory institutions are considered to be less than optimal. Currently, there are still law enforcement agencies that are caught in corruption, even at the leadership level, for example the case of the arrest of a Supreme Court Justice at the Supreme Court, cases in the Police, and the Prosecutor's Office. Therefore, law enforcement institutions that have the authority to eradicate corruption and supervisory institutions must have adequate resources and independence in carrying out their duties. In addition, each law enforcement institution must organize *whistleblower system* (WBS) to support the optimization of supervision. As a violation reporting system that allows for the active role of employees and external parties of the organization to submit complaints regarding acts of violation and alleged violations committed by employees in government agencies, then this WBS becomes an important part of efforts to prevent and eradicate criminal acts of corruption.

c) The KPK's examination of LHKPN is not yet optimal

According to the KPK Annual Report, the level of reporting and compliance of LHKPN in 2020 was 96.26%, in 2021 it was 94.47%, and in 2022 it increased

to 95.47%. In 2022, the level of compliance in the executive branch reached 98.43%, in the judiciary it reached 98.7%, in the legislative branch it reached 95.14% and in BUMN/BUMD it reached 99.3%.⁷ This figure is actually quite good, and always exceeds the target set by the KPK. However, there are still many problems related to the effectiveness of LHKPN registration and examination.

b. Weaknesses of Legal Substance

a) Only Regulated in Article 2 And Article 3

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 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 The definition of state finance in the Corruption Law is also different from the State Finance Law and the BUMN Law. In the General Explanation section of the Corruption Law, it is stated that state finance is all state assets in any form, separated or not separated, including all state financial losses and all rights and obligations arising from:

(1) Be under the control, management and accountability of state institution officials both at the central and regional levels;

(2) Being under the control, management and accountability of State- Owned Enterprises/Regional-Owned Enterprises, Foundations, Legal Entities and Companies which include state capital, or companies that include third party capital based on agreements with the state.

A number of the descriptions above show that there is no uniformity understanding of state finance in the State-Owned Enterprises Law, the State Finance Law, and the Corruption Eradication Law. Differences in the interpretation of these statutory regulations can cause difficulties. 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.

c. Weaknesses of Legal Culture

There are three aspects of culture that can facilitate corruption, namely family culture, a paternalistic societal orientation, and a societal culture

that is less willing 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 brave to be frank (*non-assertive*) will cause people to choose to remain silent rather than report violations committed by others.

4. Conclusion

Disparity in judges' decisions regarding the element of state financial losses in Indonesia is still often seen in verdicts because the effectiveness of Supreme Court Regulation Number 1 of 2020 has not been maximized. So it is necessary to reformulate articles 2 and 3 of the Tipokr Law by considering several aspects including determining state financial losses, Perpetrators are required to return state financial losses, Making the best evidentiary system the main evidence. Weaknesses in the legal structure regarding the existence of Ad Hoc Judges at the Corruption Crime Court at the Center and Regions have not been effective solutions to these problems, namely the regulation on the establishment of corruption courts at the district/city level needs to be reviewed. Supervision carried out by law enforcement agencies is not yet optimal. The solution is that law enforcement agencies authorized to eradicate corruption and supervisory agencies must have adequate resources and independence in carrying out their duties. The weakness of the LHKPN examination by the KPK is not yet optimal. The solution is to strengthen the LHKPN examination mechanism by involving other institutions, for example the Inspectorate General of the Ministry (delegating the authority for initial analysis), then escalating to the KPK when action needs to be taken. The weakness of the legal substance consists of the element of state financial loss only regulated in Articles 2 and 3, as well as the difference in meaning regarding state finances in various laws. The solution to this problem is that the DPR needs to renew the laws and regulations. The weakness of the legal culture which includes family culture, paternalistic orientation of society, and a culture of society that is less brave to be frank (*non assertive*) The solution is to provide outreach about the dangers of corrupt behavior.

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