

The Disparity Of Judge's Decisions In The Same Criminal Act Of Corruption

Wahyuni Malanua ¹, Fence M. Wantu ², Dian Ekawaty Ismail ³

¹²³ Faculty of Law, Universitas Negeri Gorontalo
Korespondensi: Wahyunimalanua@gmail.com

ARTICLE INFO

Keywords :

Special crime; Corruption;
Disparity

How To Cite :

Malanua, W., Wantu, F.W.,
Ismail, D. E. (2021). *The
Disparity Of Judge's Decisions
In The Same Criminal Act Of
Corruption*
. *Estudiante Law Journal*. Vol.
2 (2): 206-218

DOI :

ABSTRACT

The purpose of this study is to find out what are the factors that cause the disparity of criminal sanctions in the verdict of criminal acts of corruption as well as the legal basis that becomes the consideration for making decisions on corruption crimes by judges, especially in the Gorontalo District Court.

The type of research used is normative juridical research, with a statutory and conceptual approach, for this approach several primary legal materials are used, namely laws and regulations relevant to the object of study supported by secondary legal materials in the form of books, journals and other sources. . The conclusion of this study found that there were differences in the results of the comparison of two different decisions where the Gorontalo District Court Decision Number 18/Pid.Sus-TPK/2020/PNGto which harmed the state by 43 billion was only given a sanction of 1 year 6 months in prison while in decision number 1/ Pid.sus -TPK/2018/PNGto which harms the state as much as 1 billion is given a prison sentence of more than 4 years so that this can be said to be a disparity of decisions.

©2021 Malanua, W., Wantu, F.W., Ismail, D. E.
Under the license CC BY-SA 4

1. Introduction

Law is political products , because the character of the contents of each legal product will be largely determined or colored by the balance of power or political configuration that gave birth to it.¹ The main characteristic of the state is the emergence of the government's obligation to realize the general welfare of its citizens.² Corruption is a common thing in Indonesia because these cases often occur and until now corruption in Indonesia has not been completely eradicated. Violation of the law of a country system is subject to sanctions as an attempt to enforce the law. Corruption can be categorized as a special crime because it is a type of criminal case that is not regulated in general criminal acts and generally has special provisions for criminal procedures.³

Eradication of corruption is still the focus of the government and is a national strategic issue in this era. To eradicate corruption, an integral and systemic corruption eradication strategy is needed.⁴ Integral corruption eradication is carried out in an integrated manner involving all state apparatus, government and society as a single unit of independent rights and freedoms as the foundation for a country in upholding the rule of law in its sovereign jurisdiction.⁵

Perpetrators must be held accountable for their crimes. The perpetrators of crimes must be brought to justice before and if found guilty he will be punished according to his guilt, but not everyone is willing to be responsible for his actions. Actors will try to avoid prosecution and threats of punishment.⁶

According to historical records of corruption cases, corruption cases seen from the practice carried out in the form of bribing bribes or giving bribes have been in effect since

¹ Ahmad Wijaya, Nasran. "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries". *Jurnal Legalitas*. Vol. 14, No. 2. 2021 . Hlm 88

² Julius T Mandjo Dan Suwitno Y Imran. "Implementasi Uud Negara Republik Indonesia Tahun 1945 Pasal 27 Ayat 2 Tentang Hak Untuk Mendapatkan Pekerjaan Dan Penghidupan Yang Layak Bagi Kemanusiaan". *Jurnal Majelis*. Edisi 08. September 2020.

³ Mohammad Ekaputra. 2015. "*Dasar-Dasar Hukum Pidana*" Medan: Usu Press. Hlm 28

⁴ Makrun Makrun, Fenty U. Pulu Hulawa, Lusiana Margareth Toijow. "Mengagas Penguatan Kejaksaan Republik Indonesia Dalam Pengamanan Dan Pengawasan Pembangunan Untuk Mencegah Tindak Pidana Korupsi". *Borneo Law Review*. Vol.4 No.2. Desember 2020. Hlm 1

⁵ Fence M. Wantu dan Usman Rasyid. "Redefinisi Kewenangan Komisi Yudisial Dalam Konstitusi: Upaya Mengharmonisasikan Putusan Pelaku Kekuasaan Kehakiman Indonesia". *Jurnal Majelis*. Edisi 08. September 2020

⁶ Dian Ekawaty Ismail, Novendri M. Nggilu. "The Urgency of Indonesia-Singapore's Extradition Agreement in the Corruption Law Enforcement". *Advances in Social Science, Education and Humanities Research*, volume 358 (ICGLOW 2019)

ancient Greece in terms of bribing judges who try cases .⁷

Based on Law No. 28 of 1999 concerning state administration that is clean and free from KKN , it regulates the rules that must be obeyed in state administration and state financial management, which are as follows.⁸

1. The principle of public interest, namely the principle of prioritizing the general welfare in an aspirational, accommodative and selective manner;
2. The principle of proportionality, namely the principle that prioritizes the balance between the rights and obligations of state administrators;
3. The principle of accountability, namely the principle that determines that every activity and the final result of the activities of state administrators must be accountable to the community or the people as the holder of the highest sovereignty of the state in accordance with the provisions of the applicable laws and regulations.

Eradicating corruption is very important, as is the existence of progressive law. The government that sits as an agent of eradicating corruption in this case the corruption eradication commission must be a person who has noble character and has high responsibility and integrity.⁹

Corruption eradication will be more optimal if the existing law can be implemented according to its urgency. The function of an organization or the like in which there is no pressure and tension in its implementation.¹⁰ Of course, with legal certainty that has binding power and clear scope, it will strengthen sanctions against law violators so that it is not easy for someone to find loopholes and not underestimate the crime of corruption. Recently, the inequality of criminal decisions has brought a polemic of its own issues for law enforcement in Indonesia. On the one hand, the difference in punishment is a form of *judicial discretion* in making decisions, but on the other hand, the difference in punishment also creates dissatisfaction among the convicts and even society in general. Criminal disparities can be caused by the application of unequal punishments to the same offense (same offense) or to crimes whose dangerous nature can be compared without a clear justification. There is stigma and negative public opinion towards the judiciary. As we know that Corruption is one of the crimes that is the biggest problem in Indonesia.

⁷Rony Saputra. "pertanggungjawaban pidana korporasi dalam tindak pidana korupsi" jurnal cita hukum. Vol 3, nomor 2 desember 2015.

⁸Fance m. Wantu, dkk. 2012. "Psikologi Anti Korupsi" Yogyakarta: pustaka pelajar. 36

⁹Marjan Miharja. 2020. *Korupsi, integritas, & hukum tantangan regulasi di indonesia*. Medan: Yayasan Kita Menulis. Hlm 3

¹⁰Nur Fitriyanti Siregar. "Evektifitas Hukum" vol 18, nomor 2, 1 Desember 2018.

Based on the author has said previously in strengthening the scope and strengthening the Corruption Law, the Supreme Court issued (Perma) Number 1 of 2020 concerning Guidelines for Criminalizing Article 2 and Article 3 of the Corruption Eradication Law (UU Tipikor).

According to this Perma, judges have at least a benchmark in issuing a decision. In determining the severity and severity of sanctions according to this regulation, there are two categories that must be used as benchmarks for judges, the first is state financial losses, the second is the level of error, the third is the impact of a criminal act of corruption, the fourth is the benefits obtained by the defendant and the fifth is the circumstances under which the defendant is entitled. burden and relieve the perpetrator.¹¹

According the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption, Article 6 paragraph (2) states: State financial losses are divided into 5 (five) categories as follows:

1. The heaviest category, more than Rp. 100,000,000.00 (one hundred billion) Rupiah
2. Heavy category, more than Rp 25,000,000,000.00 (twenty five billion rupiah) up to Rp 100,000,000,000.00 (one hundred billion rupiah)
3. Medium category, more than Rp. 1.000.000.000,00 (one billion rupiah)
4. Light category, more than Rp. 200,000,000.00 (two hundred million rupiah) up to with IDR 1.000.000.000,00 (one billion rupiah)
5. The lightest category, up to Rp. 200,000,000.00 (two hundred million rupiah).¹²

Considering these categories, judges can impose penalties based on regulations that are adjusted to the size of the impact obtained by the state as a result of the criminal act of corruption. In the lightest category, which only applies to Article 3 of the law on eradicating corruption, is sentenced to 3-4 years in prison and a fine of Rp. 150-200 million, imprisonment of 2-3 years and a fine of Rp. 100-150 million, or imprisonment of 1-2 years and a fine of IDR 50-100 million in line with the impact and profit of the perpetrator.¹³

¹¹Pasal 5 ayat 1 perma no 1 tahun 2020

¹²Adi Nur Rohman, dkk. *“tinjauan yuridis penerapan peraturan mahkamah agung nomor 1 tahun 2020 tentang pedoman pemidanaan pasal 2 dan pasal 3 undang-undang pemberantasan tindak pidana korupsi dalam mengkualifikasi kerugian negara pada tindak pidana korupsi (analisis putusan nomor : 18/tipikor/2020/pt.pd)”* jurnal lex specialis. Vol 1, nomor 1, 1 agustus 2021.

¹³perma no 1 tahun 2020

According to the clerk who accompanied this case, that one of the judges in this case considered the existence of this regulation number 1 of 2020 which should decide case number 18/pid-sus/tpk gto to be over 4 years taking into account the amount of loss, but the other two judges were based on that the defendant's fault was an administrative error that caused a loss. If it is based on administrative law, the defendant will only receive administrative sanctions, whether it is dismissal or payment of compensation according to administrative law regulations.

The corruption case raised by the author Number 18/Pid.Sus-TPK/2020/PN Gto which ensnared Asri Banteng as a suspect had harmed the state by 43 billion rupiah, only received a criminal sanction of 1 year 6 months and a fine of 100 million in exchange for a prison term of 1 month prison . This criminal case in Law No. 1 of 2020 Article 6 paragraph one is included as a severe category of corruption because it has harmed the state more than 25 billion rupiah. In another decision number 1/Pid.sus-TPK/2018/PN Gto the judge sentenced the defendant BENNY Rasyid, ST. with imprisonment for 4 (four) years and 6 (six) months and a fine of Rp. 200,000,000, - (two hundred million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 4 (four) months and added Imposing an additional penalty on the defendant to pay compensation in the amount of Rp.269,229,918.00 (two hundred sixty-nine million two hundred twenty-nine thousand nine and eighteen rupiah), if the replacement money is not paid within 1 (one) month After the court decision has obtained permanent legal force, the property belonging to the convict will be confiscated and auctioned to cover the replacement money.

If the convict does not have sufficient assets to pay the replacement money, then it is replaced with imprisonment for 6 (six) months; If the convict pays the replacement money which is less than the entire obligation to pay the replacement money, then the amount of replacement money paid will be calculated with the additional length of punishment in the form of imprisonment as replacement obligation pay money replacement. In both decisions, it can be seen that state losses of 43 billion in Law No. 1 of 2020 state losses reaching more than 25 billion rupiahs, the judge can impose sanctions according to the impact, errors and profits which are categorized into three, namely the high category of imprisonment 13- 16 years and a fine of 650 million rupiah to 800 million rupiah, the medium category is 10-13 years in prison and a 500 million rupiah to 650 million rupiah fine and the lowest category is 8-10 years in prison and a 400 million rupiah to 500 million rupiah fine. But in reality the judge only imposed a penalty of 1 year and 10 months.

Meanwhile, in case 1/Pid.sus-TPK/2018/PN Gto, the judge sentenced the defendant to an additional sentence of Rp.269,229,918.00 (two hundred sixty-nine million two hundred twenty-nine thousand nine hundred eighteen) rupiah), if the replacement money is not paid within 1 (one) month after the court's decision which has obtained permanent legal force, the property belonging to the convict will be confiscated and auctioned to cover the replacement money. If the convict does not have sufficient assets to pay the replacement money, then it is replaced with imprisonment for 6 (six) months; If the convict pays the replacement money which is less than the entire obligation to pay the replacement money, then the amount of the replacement money paid will be calculated with the additional length of punishment in the form of imprisonment as a substitute for the obligation to pay the replacement money.

2. Method

This research uses normative research methods. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find the truth based on scientific logic from the normative side. The normative side here is not limited to laws and regulations. As stated by Peter Mahmud, legal research is normative research, but not only positivist law research .

Types of approaches in scientific writing include:

1. Approach through legislation
2. Approach the case through the verdict

3. Analysis and Discussion

3.1 Factors Causing Disparity in Decisions on Criminal Sanctions in Sentences for Criminal Acts of Corruption

Harkristuti Harkrisnowo believes that criminal disparities can be divided into several categories, namely the same crime Having a criminal act or in the same case with the same article Having the same seriousness means Having the same level of seriousness in the same crime The crime is decided by one panel of judges , decided by a different judge with the same crime , t the same crime but a different panel of judges.¹⁴

The opinion above, it is found that the disparity occurs not in the same criminal act but also in the seriousness of the crime and also from the judge's decision, both by the panel of judges and by different judges with the same crime.

Through the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption, Article 6 paragraph (2) states: State

¹⁴Hamidah Abdurachman, dkk. 2020. "palu hakim versus rasa keadilan sebuah pengantar disparitas putusan hakim dalam tindak pidana korupsi" Yogyakarta: Depublish. 14

financial losses are divided into 5 (five) categories as follows:¹⁵

1. The heaviest category, more than Rp. 100,000,000.00 (one hundred billion) Rupiah
2. Heavy category, more than Rp 25,000,000,000.00 (twenty five billion rupiah) up to Rp 100,000,000,000.00 (one hundred billion rupiah)
3. Medium category, more than Rp. 1.000.000.000,00 (one billion rupiah)
4. Light category, more than Rp. 200,000,000.00 (two hundred million rupiah) up to Rp. 1,000,000,000.00 (one billion rupiah)
5. The lightest category, up to Rp. 200,000,000.00 (two hundred million rupiah).

Considering these categories, judges can impose penalties based on regulations that are adjusted to the size of the impact obtained by the state as a result of the criminal act of corruption. In the lightest category, which only applies to Article 3 of the law on eradicating corruption, is sentenced to 3-4 years in prison and a fine of Rp. 150-200 million, imprisonment of 2-3 years and a fine of Rp. 100-150 million, or imprisonment of 1-2 years and a fine of IDR 50-100 million in line with the impact and profit of the perpetrator.¹⁶

Based on the state loss is 43 billion in Perma No. 1 of 2020, the state loss reaches more than 25 billion rupiah, the judge can impose sanctions according to the impact, error and profit which are categorized into three, namely the high category of imprisonment of 13-16 years and a fine of 650 million rupiah. up to 800 million rupiah, the medium category is 10-13 years imprisonment and a fine of 500 million rupiah to 650 million rupiah and the lowest category is 8-10 years imprisonment and a 400 million rupiah to 500 million rupiah fine. But in reality, in the decision number 18/Pid.Sus/PN Gtlo, the judge only imposed a sanction of 1 year and 10 months.

Meanwhile, in the case of 1/Pid.sus-TPK/2018/PN Gto, the judge sentenced the defendant BENNY RASYID ST with a state loss of less than 1 billion rupiah, the judge sentenced him to 4 years and 6 months and added 6 months in prison if the defendant was unable to compensate. compensation money.

The concept of parity itself cannot be separated from the principle of proportionality, the principle of punishment promoted by Beccaria where it is hoped that the punishment imposed on the perpetrator of a crime is proportional to the crime he has committed. If the concepts of parity and proportionality are seen as a single unit, then the disparity in

¹⁵Adi Nur Rohman, dkk. *"tinjauan yuridis penerapan peraturan mahkamah agung nomor 1 tahun 2020 tentang pedoman pemidanaan pasal 2 dan pasal 3 undang-undang pemberantasan tindak pidana korupsi dalam mengkualifikasi kerugian negara pada tindak pidana korupsi (analisis putusan nomor : 18/tipikor/2020/pt.pd)"* jurnal lex specialis. Vol 1, nomor 1, 1 agustus 2021.

¹⁶perma no 1 tahun 2020

sentencing can also occur in the event that the same sentence is imposed on perpetrators who commit crimes with different levels of crime. The existence of differences in sentencing or disparity in sentencing is basically a natural thing, because it can be said that almost no cases are really the same. The disparity in punishment becomes a problem when the range of differences in sentences handed down between similar cases is so large, that it creates injustice and can raise suspicions in the community. Therefore, the discourse on the disparity of punishment in criminal law and criminology was never intended to eliminate the difference in the amount of punishment for the perpetrators of crimes, but to reduce the range of differences in sentencing.¹⁷

Based on the principle of proportionality, punishment is known as retributive and preventive perspectives. Retributive views proportionality as the center of criminal imposition, while preventive views proportionality as a limiting principle which prohibits the imposition of a crime that is not commensurate with the crime and the responsibility of the maker. Based on the retributive of criminal acts, criminal responsibility is the ethical basis for imposing criminal penalties, the maker is deemed worthy of being punished if the conditions for punishment are met. From a preventive perspective, errors are viewed prospectively as a measure to determine criminal acts that are oriented towards general and specific prevention.¹⁸

According to Gustav Radburg's theory that the purpose of the law is justice, certainty, and legal benefit, the legal objectives should be realized through punishment based on proof of the calculation of state financial losses in order to recover assets resulting from criminal acts. Every criminal imposition must be carried out by taking into account the certainty and proportionality of punishment to achieve justice. In the Regulation of the Supreme Court Number 1 of 2020, it has been stated that the guidelines for punishment along with the amount of loss are in line with the sanctions given.¹⁹

The application of the principles of justice, legal certainty and expediency in the judge's decision is very difficult to implement because each principle has its own purpose and for cases of corruption, the principle of justice is needed. Considering the case of a criminal act of corruption is an unusual/mild case, so that its resolution also requires the

¹⁷Tama S. Langkun, dkk. 2014. "Studi atas disparitas putusan pemidanaan perkara tindak pidana korupsi" Jakarta: Indonesian corruption Watch. Hlm 10

¹⁸Handrawan. 2019. "pencabutan hak politik dalam pemidanaan tindak pidana korupsi". Surabaya : Media Sahabat Cendekia. Hlm 268-269

¹⁹Kurnia Siwi. "pembaruan hukum pedoman pemidanaan terhadap disparitas putusan pengembalian kerugian keuangan negara akibat tindak pidana korupsi" jurnal IJLC. Vol. 2, No. 2, Juli 2021

principle of justice as a substantive embodiment of legal objectives.²⁰

Another decision number 1/Pid.sus-TPK/2018/PN Gto the judge sentenced the defendant Benny Rasyid, ST. with imprisonment for 4 (four) years and 6 (six) months and a fine of Rp. 200,000,000, - (two hundred million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 4 (four) months and added Imposing an additional penalty on the defendant to pay compensation in the amount of Rp.269,229,918.00 (two hundred sixty-nine million two hundred twenty-nine thousand nine and eighteen rupiah), if the replacement money is not paid within 1 (one) month After the court decision has obtained permanent legal force, the property belonging to the convict will be confiscated and auctioned to cover the replacement money. If the convict does not have sufficient assets to pay the replacement money, then it is replaced with imprisonment for 6 (six) months; If the convict pays the replacement money which is less than the entire obligation to pay the replacement money, then the amount of the replacement money paid will be calculated with the additional length of punishment in the form of imprisonment as a substitute for the obligation to pay the replacement money. From the two decisions, it is known that the decision number 18/Pid.sus-TPK/2020 PN Gto (1 year 6 months sentence) totaling 43 billion losses takes into account:

1. violates Article 2 paragraph (1) juncto. Article 18 paragraph (1) letter b, paragraph (2) and paragraph (3) of the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and added to the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) of the 1st Criminal Code;
2. violates Article 2 in conjunction with Article 18 paragraph (1) letter b, paragraph (2) and paragraph (3) of the Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended and supplemented by Law of the Republic of Indonesia Number 20 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption juncto Article 55 paragraph (1) of the 1st Criminal Code.

Both of these cases violated Article 2 in conjunction with Article 18 of Law Number 31 of 1999 concerning the eradication of criminal acts of corruption juncto. Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of corruption .

" Every person who unlawfully commits an act of enriching himself or another person

²⁰Sutrisno Sutrisno, Fenty Puluhalawa, Lusiana Margareth Tijow. "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi". *Gorontalo Law Review*. Vol 3. No 2. 2020

or a corporation that can harm the state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 4 years and a maximum of 20 years and a minimum fine of Rp. 200 million and a maximum of Rp. 1 billion.”

Decision number 18/Pid.Sus-TPK/2020/PN Gto and decision number 1/Pid.sus-TPK/2018/PN Gto the Gorontalo District Court occurred disparities or differences in decisions. The disparity occurs because the judge considers the magnitude of the mistakes made by the actors and the results of the project work. In the decision number 18/Pid.Sus-TPK/2020/PN Gto, the defendant's fault, namely as a Budget User, did not test the material truth of the land status and rights because by ascertaining the status of the land and the basis of rights whether the certificate, sale and purchase grant or SPPF had been confirmed. according to the rules or not, so that there are many SPPFs and other evidence of ownership that are not in accordance with the provisions of Article 26 of Presidential Regulation Number 71 of 2012 concerning Land Procurement for Development in the Public Interest, the disbursement is still carried out so that the state suffers a loss of 43 billion.

Whereas in the decision 1/Pid.sus-TPK/2018/PN Gto, the defendant's mistake was to deliberately prepare the RAB not based on a price survey and the defendant determined the terms of the auction winner based on the responsive price, submitting the responsive price to the committee to be used as a reference for determining the auction winner. this is contrary to the operational technical guidelines of PNMPM MP3KI then the boat mooring work in the village of Dulupi for the 2014 fiscal year was not completed or could not be utilized by the community, especially the people of the village of Dulupi, this was the result of the draft RAB so that the state lost approximately 482 million.

Observing what was decided on the crime of corruption mentioned above, with the same subsidiary charges, but with different decisions, resulting in disparity. Is this as a result of the judge's freedom to impose a sentence (judicial discretion in sentencing)? With the disparity of decisions on cases with the same subsidiary charges, a conflict arises, namely for the defendant with the lowest or lightest decision there is satisfaction, but for the victim there is dissatisfaction because of the act or mistake committed by the defendant and the decision that has been determined by the Court. not comparable.

If we talk about the pattern of formulating criminal sanctions in a legislation, the discussion cannot be separated from the criminal system in a narrow sense, namely the criminal system contained in positive criminal law legislation.

There are several problems in the criminal system in a narrow sense, namely the various types of criminal sanctions, the pattern of formulating criminal sanctions, the pattern of formulating the severity and lightness of criminal sanctions. In the Criminal Code, the

pattern of formulating criminal sanctions is divided into: alternative formulation and cumulative formulation. The alternative formulation pattern is indicated by the phrase or, while the cumulative formulation pattern is indicated by the phrase and. At first glance, the alternative and cumulative pattern of formulating criminal sanctions does not have any implications for the sentencing process, but if studied further, the formulation also has an impact on the existence of sentencing disparities.

Sentencing is a process, namely the process of enforcing legal norms in abstracto into law in concreto. Sentencing is very complex, in the sense that in addition to punishment, it is only one of the sub-systems in the administration of criminal law. If traced, the existence of criminal disparities in the punishment of criminals, the causal factors can be estimated to be multi-causal and multi-dimensional. First of all, it can be stated that the criminal disparity starts from the law itself, which is more specific in the pattern of criminal formulation and punishment in a criminal law legislation. This problem continues in the existence of very broad freedom to choose the type of crime (strafsoort) desired.

This will be clearly seen in relation to the use of alternative systems in criminal threats in the law. To obtain a clearer picture, the provisions of Article "Anyone who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state's finances or the state's economy, shall be sentenced to life imprisonment or a minimum imprisonment of 4 years. years and a maximum of 20 years and a fine of at least Rp. 200 million and a maximum of Rp. 1 billion."

From the sound of the article, it appears that this Law opens up opportunities for disparities because it contains a minimum and maximum assessment of the provision of criminal sanctions.

4. Conclusion

The factors that become the benchmark for decision making are a). Factors that come from judges, judges have the freedom to hear a case in accordance with what is stated in Law Number 48 of 2009 concerning Judicial Power. The judge's power is an opportunity to make decisions that are in accordance with the character, characteristics and peculiarities of the case. b) factors originating from the defendant, the judge saw from the attitude or behavior that existed in the defendant during the trial, for example the defendant was polite and regretted his actions. c) factors originating from the law as regulated in the 2020 Supreme Court regulations regarding guidelines for the punishment of criminal acts of corruption open up opportunities for disparity because the assessment is not only based on the amount of loss but also the level of guilt of the accused.

Reference

Books:

- Fance m. Wantu, dkk. 2012. "Psikologi Anti Korupsi" Yogyakarta: pustaka pelajar.
- Handrawan. 2019. "Pencabutan Hak Politik Dalam Pemidanaan Tindak Pidana Korupsi". Surabaya : Media Sahabat Cendekia
- Marjan Miharja. 2020. *Korupsi, integritas, & hukum tantangan regulasi di indonesia*. Medan: Yayasan Kita Menulis. Hlm 3
- Mohammad Ekaputra. 2015. "Dasar-Dasar Hukum Pidana" Medan: Usu Press
- Tama S. Langkun, dkk. 2014. "Studi atas disparitas putusan pemidanaan perkara tindak pidana korupsi" Jakarta: Indonesian corruption Watch.

Journal

- Adi Nur Rohman, dkk. "tinjauan yuridis penerapan peraturan mahkamah agung nomor 1 tahun 2020 tentang pedoman pemidanaan pasal 2 dan pasal 3 undang-undang pemberantasan tindak pidana korupsi dalam mengkualifikasi kerugian negara pada tindak pidana korupsi (analisis putusan nomor : 18/tipikor/2020/pt.pd)" *jurnal lex specialis*. Vol 1, nomor 1, 1 agustus 2021.
- Ahmad Wijaya, Nasran Nasran. "Comparison Of Judicial Review: A Critical Approach To The Model In Several Countries". *Jurnal Legalitas*. Vol. 14, No. 2. 2021.
- Dian Ekawaty Ismail, Novendri M. Nggilu. "The Urgency of Indonesia-Singapore's Extradition Agreement in the Corruption Law Enforcement". *Advances in Social Science, Education and Humanities Research*, volume 358 (ICGLOW 2019).
- Fence M. Wantu dan Usman Rasyid. "Redefinisi Kewenangan Komisi Yudisial Dalam Konstitusi: Upaya Mengharmonisasikan Putusan Pelaku Kekuasaan Kehakiman Indonesia". *Jurnal Majelis*. Edisi 08. September 2020
- Julius T Mandjo dan Suwitno Y Imran. "Implementasi UUD Negara Republik Indonesia Tahun 1945 Pasal 27 Ayat 2 Tentang Hak Untuk Mendapatkan Pekerjaan dan Penghidupan Yang Layak Bagi Kemanusiaan". *Jurnal Majelis*. Edisi 08. September 2020.
- Kurnia Siwi. "pembaruan hukum pedoman pemidanaan terhadap disparitas putusan pengembalian kerugian keuangan negara akibat tindak pidana korupsi" *jurnal IJLC*.

Vol. 2, No. 2, Juli 2021.

Makrun, Fenty U. Puluhulawa, Lusiana Margareth Toijow. "Mengagas Penguatan Kejaksaan Republik Indonesia Dalam Pengamanan Dan Pengawasan Pembangunan Untuk Mencegah Tindak Pidana Korupsi". *Borneo Law Review*. Vol.4 No.2. Desember 2020

Nur Fitriyanti Siregar. "Evektifitas Hukum" Vol 18, Nomor 2, 1 Desember 2018.

Rony Saputra. "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi" *Jurnal Cita Hukum*. Vol 3, Nomor 2 Desember 2015.

Sutrisno Sutrisno, Fenty Puluhulawa, Lusiana Margareth Tijow. "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi". *Gorontalo Law Review*. Vol 3. No 2. Desember 2020.