Estudiante Law Journal

Volume 4 Number 2, Juni 2022: Pp. 457-476
Faculty of Law, Universitas Negeri Gorontalo, City of Gorontalo, Indonesia
https://ejurnal.ung.ac.id/index.php/eslaw/index

Differences In the Imposition of Corruption Criminal Sanctions

Siti Hardiyanti Abas

Faculty of Law, State University of Gorontalo, Indonesia. E-mail: gitahardiyanti1234@gmail.com

Abstract: The purpose of this study was to find out whether or not the District Court's decision in decision No. 18/Pid.Sus-TPK/2020/Pn Gto and No. 09/Pid.Sus-TPK/2021/Pn Gto and the factors behind the differences in the imposition of sanctions in the two cases. The research method is normative research. Research resultverdict no. 18/Pid.Sus-TPK/2020/Pn Gto the three pieces of evidence which were one of the judge's considerations in imposing a sentence on the defendant. The fact of the trial was that the defendant had been legally proven to have committed a crime that was detrimental to the state so through the two conditions for imposing a sentence, the judge's conviction was built that the defendant was the perpetrator so that the decision was appropriate as a criminal responsibility committed by the defendant. Verdict No. 09/Pid.Sus-TPK/2021/Pn Gto because no evidence was found in the form of letters and witness statements which could prove that the defendant had committed a crime. The fact of the trial formed the judge's belief that the defendant was not proven to have committed a crime and the defendant must be acquitted of all lawsuits.

Keywords: *Corruption, Differences in the Imposition of Criminal Sanctions;*

How to cite (Chicago Style):

Sitti Hardiyanti Abas. "Differences in the Imposition of Corruption Sanctions." *Estudiante Law Journal*. 4, no. 2. (2022): 457-476

1. Introduction

Indonesia is the highest agreement of the state's formers, even though it experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so, the recognition of the regions under the auspices of the State of Indonesia is still recognized.[1] An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.[2] Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.[3]Therefore, in legal politics, a legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.[4]

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.[5] At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (modus vivendi) which was set forth in a basic law in the form of the state constitution.[6]Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law.[7] The state is firmly obliged to try to fulfill the rights of every citizen.[8]

Corruption as an extraordinary crime or crime is deeply rooted in this country. Abdullah Hehamahua argued that corruption in Indonesia is classified as an extra-ordinary crime because it has damaged, not only state finances and the country's

---

[1] Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109–121., 110

[2] Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China's Policy towards Uighurs and Its Implications by International Law Aspects." Jambura Law Review. 3, No. 01 (2021): 55–71., 69

[3] Ahmad and Novendri M. Nggilu Faculty, "The Pulse of the Fifth Amendment to the 1945 Constitution Through the Involvement of the Constitutional Court as the Guardian Principle." Constitutional Journal. 16, No. 4 (2019): 785–808., 791

[4] Mohamad Hidayat Muhtar, "Legal Political Model for Corruption Eradication in Indonesia in the Context of Harmonizing Law Enforcement Institutions." Jambura Law Review. 1, No. 1 (2019): 68-93., 73

[5] Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57–76., 58

[6] Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Straftrecht)," *Jambura Law Review*. 2, No. 1 (2020): 1–29., 3

[7] Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189–208., 197

[8] Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review*. 3, No. 02 (2021): 365–77., 375

economic potential, but has also destroyed the pillars of culture, morals, politics, and the legal system and national security. Therefore, the pattern of eradication cannot only be carried out by certain agencies and also cannot be done by a partial approach. It must be carried out comprehensively and jointly, by law enforcers, community institutions, and individual members of the public.[9]

From a legal standpoint, the formulation of the principles of managing state finances and the formulation of criminal acts of corruption that have been regulated in Law Number 1 of 1999 are quite broad and sufficient to ensnare various acts of corruption in Indonesia. The problem is the moral decay of the Indonesian people and the weak disclosure and processing by law enforcement institutions starting from the inspectors/supervisors, the police, the prosecutor's office and the judges.[10]

The prevalence of corruption in the Unitary State of the Republic of Indonesia, if it is not prevented and eradicated in a revolutionary manner within the corridors of legislation, our difficulties as a state in the context of the welfare of the people at large will truly become increasingly porous and only bones that are already very fragile will remain. Most people's lives are getting more difficult and the quality is decreasing. The poor really are decreasing, but on the other hand the miserable people are increasing. Extortion is becoming more rampant, new student admissions are free of educational donations, but are burdened with various kinds of fees on the grounds of education.[11]

In Indonesia, now corruption has become an octopus in the government system and is an illustration of how bad governance is in this country. This phenomenon has resulted in poverty, low levels of education and health, and poor public services. And as a result of corruption, suffering is always experienced by the community, especially small communities who are below the poverty line.[12]

*Lord Acton*states that "power tends to corrupt, and absolute power corrupt absolutely". The relationship between the opportunity to commit a criminal act of corruption and the level of position or power possessed by a person is very closely related. For people who have a high position or rank, the opportunity to commit acts of corruption will be more flexible. This is reflected in the recent rise in corruption cases committed by public officials. However, not all government actions carried out by public officials that result in losses to state finances are criminal acts of corruption.[13]

Corruption is generally carried out by people who have authority in a position, so that the characteristics of corruption crimes are always related to the abuse of power in the perspective of organized crime. As a planned effort, of course, efforts have been made to be as efficient and effective as possible with limited funds and capabilities. However,

---

[9]Astika Nurul Hidayah, "Analisis Aspek Hukum Tindak Pidana Korupsi Dalam Rangka Pendidikan Anti Korupsi.," *Jurnal Kosmik Hukum* 18, no. 2 (2018).
[10]Evi Hartanti, *Tindak Pidana Korupsi* (Jakarta: Sinar Grafika, 2005).
[11]Surachmin, *Strategi Dan Teknik Korupsi* (Jakarta: Sinar Grafika, 2015).
[12]Lisnawaty Badu, "Euthanasia Dan Hak Asasi Manusia," *Jurnal Legalitas* 5, no. 1 (2012).
[13]Odi Faiz Guslan, "Tinjauan Yuridis Mengenai Batasan Antara Perbuatan Maladministrasi Dengan Tindak Pidana Korupsi," *Jurnal Cendekia Hukum* 4, no. 1 (2018).

while the development was being actively carried out, news emerged about the rampant cases of corruption which were being carried out with increasingly sophisticated modus operandi. The development of technological functions such as computers, the growth of banks that carry out money laundering practices, makes violations of law, especially corruption, increasingly complex. Corruption and abuse of office are indeed the enemies of society, which many people do in connection with the bureaucracy, but it is not at all a characteristic that is always inherent in the bureaucracy. corruption and abuse of office are administrative diseases that can be eradicated as long as we have a strong commitment to deal with them. If corruption, abuse and misappropriation, as well as service complications are seen as administrative ailments, then like a doctor making a diagnosis of a disease, the important thing in overcoming it is to know which parts of the bureaucracy are vulnerable to these diseases.[14]

The actions and decisions of public officials are actually protected by the principle of freedom of action in providing services to the public, in fact they are often overshadowed by concern and fear when policy regulations or decisions are suspected to have an impact on state losses and are qualified as criminal acts, so that the creativity and innovation of government officials in administering government is limited.[15]

In the Corruption case, the author analyzed, namely the decision 18/Pid.Sus/TPK/2020/PN Gto and No. 09/Pid.Sus-TPK/2021/PN Gto found differences in the decision made by the judge in the same case, namely the defendant AWB was sentenced to 1 year 6 months while the defendant GT was acquitted by the judge. This of course raises the author's anxiety because there is a significant difference in the imposition of sanctions, if you look at the facts in the trial the forerunner to the occurrence of double payments in 3 land parcels because the initial data of the entitled party was incomplete so that compensation payments were made twice with an amount of loss of Rp. 53,573,000.00. in the case of the defendant GT being dismissed for abuse of power so that the judge decided the defendant was acquitted in this case the authors are of the opinion that if there is a termination the sanction of release will apply to the defendant AWB because the initial data of the party entitled to be checked and investigated first by the defendant GT which will then minimize State losses to be incurred.[16]

Law Number 30 of 2014 concerning Government Administration emphasizes that administrative errors that cause state losses are due to misuse if done in the form of negligence. So these actions are categorized as administrative responsibility or more popularly known as position responsibility.[17]

2. Method

[14]Rumambi Devy Ch, "Rumambi, Korupsi Dalam Perspektif Hukum Administrasi Negara," *Lex et Societatis* 2, no. 7 (2014).
[15]Lisnawaty W. Badu dan Suwitno Y. Imran, *Hukum Dan HAM* (Yogyakarta: UII Press, 2021).
[16] Putusan 18/Pid.Sus/TPK/2020/PN Gt
[17]Mustandar, "Penyalahgunaan Wewenang Dalam Tindak Pidan Korupsi Menurut Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan," *Jurnal Of Lex Generalis* 2, no. 2 (2021).

The research method used in this paper is the Normative-Empirical method. By using primary data and secondary data, data collection techniques through interviews, observation and literature studies.

3. Analysis of Imposing Sanctions on Corruption Crimes in Decision No. 18/Pid.Sus-TPK/2020/PN Gto and Decision No. 09/Pid. Sus-TPK/2021/PN Gto

Imposition of criminal sanctions is a process or method of imposing penalties/sanctions on people who have committed crimes or violations. The conditions for imposing criminal sanctions are usually referred to as criminal elements, namely: the existence of human actions, fulfilling the formulation in the law, is against the law.

In a case of Corruption Crime in decision No.18/Pid.Sus-TPK/2022/Pn Gto the defendant has committed a Corruption Crime with a total state loss in this decision of Rp. 53,573,000.00 (Fifty Three Million Five Hundred Seventy Three Rupiah) which was then sentenced to 1 year and 6 months imprisonment. The defendant in this case is KPA or the Head of Budget Organizer for the Gorontalo Provincial Government. The defendant while serving as KPA was alleged to have been negligent in carrying out his duties and obligations resulting in a double payment of compensation for land rights which resulted in state losses.[18]

Furthermore, in the same case as decision No. 09/Pid.Sus-TPK/2021/PN Gto the defendant who served as Head of the National Land Agency was released by the Court on the consideration that the state was not harmed and the public interest was served and then the defendant also did not benefit. However, according to the author, this is an irregularity where there is a difference in the verdict against the two defendants. This of course started when the head of the BPN validated the data which resulted in a double payment of land compensation. It can be said that the mistakes made by the defendant GT were the forerunners of state losses because the defendant GT was not careful in validating the initial data.[19]

3. 1 Decision No. 18/Pid.Sus-TPK/2020/Pn Gto

There is no corruption that does not start with maladministration, corruption is the aftermath of acts of maladministration either in the form of procedural deviations, partiality or other forms of maladministration which then cause losses.

In the Decision Number 18/Pid.Sus-TPK/2020/Pn Gto there are several legal facts that were revealed based on witness statements, namely as follows:

1. That on May 2, the Government of Prov. Gorontalo again sent the application document which was signed by the regional secretary without the complete PYB

[18] Putusan No.18/Pid.Sus-TPK/2022/Pn Gto

[19] Putusan No. 09/Pid.Sus-TPK/2021/PN Gto

data and then received the request and then formed the arrangement for implementing land acquisition for the construction of GOR
2. That in order to carry out the inventory and identification of the head of the BPN regional office as the head of the implementation of land procurement for the construction of the gor formed task forces a and b
3. Whereas task force a and b are to carry out an inventory and identify task force a and b not using the initial PYB data
4. That subsequently Ir. Gabriel Triwibawa submitted the documents requested for appraisal including nominative data, the contents of which were mostly not equipped with special rights to state land tenure, but with the incomplete condition of the nominative list, Ir. Farid Siradju and Ibrahim ST as KJJP Anas assessors were used in the appraisal process, even though one of the indicators for assessing compensation is proof of ownership or control.
5. So that later there were payments made by the defendant twice for the same object, namely 3 plots of land worth Rp. 53.573.000.00 (Fifty Three Million Twenty Three Rupiah)

After seeing the legal facts above, the legal panel did not get a reason for the abolition of the crime on the defendant so that the panel of judges decided on a 1 year 6 month sentence and a fine of Rp. 100,000,000.

The judge in deciding a case does not only look at that particular case but also the judge looks at the impact that will occur on society, whether this decision can fulfill the principle of benefit or not. From this case the legal panel decides a case on the basis of the judge's belief, the judge's trust is based on the facts of the existing trial. A judge in carrying out his duties has quite special powers that have been delegated to him by law.

With a knock of a hammer a judge can transfer a person's material ownership rights, revoke a person's freedom, even order the removal of a person's right to life. This enormous authority gives birth to a very large responsibility for a judge. A judge in his oath of office is not only responsible to the law, to himself, to the people, but is responsible to God Almighty.

The balance of judges in imposing criminal sanctions on corruptors, regarding the requirements for a decision in examining a case is stated in Article 197 of the Criminal Procedure Code, these conditions are contained in a decision. Talking about the considerations included in a judge's decision, there are several things that must be included:

a. Consideration (weighing) by citing the contents of the criminal charge
b. Consideration (weighing) by citing the defense
c. Consideration (weighing) by citing the facts obtained in court
d. Consideration (considering) of the crime charged with the detailed elements of the crime charged
e. Consideration (considering) about the facts that have to do with the elements of the crime being charged
f. Other considerations in relation to the indictment

Based on the considerations above, the judge can decide according to valid evidence, the facts of the trial and finally the judge's conviction. A judge should always listen to his conscience when deciding a case. If a judge has not arrived at his conviction then he should not pass a verdict on the accused. The purpose of imposing criminal sanctions is influenced by the reasons used as the basis for threatening and imposing a sentence, in this context the reasons for punishment are retaliation, expediency, and a combination of those that have a specific purpose.

In deciding a case, the judge should look at and examine the Evidence that has been submitted by the public prosecutor during the trial as a very important consideration in order to get a proportional decision, Evidence that is valid itself according to the Criminal Procedure Code (KUHAP) Article 184 is in the form of:

1. Witness Statement
2. Expert statement
3. Letter
4. Instruction
5. Defendant's Statement

In Decision No. 18/Pid.Sus-TPK/2020/Pn Gto during the trial Through Documentary Evidence shown by the public prosecutor in front of the panel of judges, at least most of the witnesses confirmed the existence of documentary evidence shown by the public prosecutor in the trial. The document evidence in question is:[20]

1. Evidence Letter No. 33 regarding recommendation evidence
2. Nominative List Evidence
3. Proof of Receipt of Planning
4. Proof of SPPF Letter (Physical Examination Order)
5. Evidence of the RPJMD Letter (Regional Medium Term Development Plan) as a condition for submitting a budget

The evidence which eventually became one of the judge's considerations in imposing a sentence on the defendant, so that according to the author, the sentence was appropriate. Because it is in accordance with the provisions of article 184 of the Criminal Procedure Code.
Then the facts of the trial which were revealed in decision No. 18/Pid.Sus-TPK/2020/Pn Gto namely:[21]

1. The defendant regretted his actions and promised not to reoffend
2. The defendant testified frankly in court
3. The accused has never been convicted
4. The defendant was polite and cooperative during the judicial process

From the facts of the trial that the defendant had been legally proven to have committed a crime that was detrimental to the state, so that through the two conditions

[20] Putusan No. 18/Pid.Sus-TPK/2020/Pn Gto

[21] Putusan No. 18/Pid.Sus-TPK/2020/Pn Gto

for imposing a sentence, the judge's conviction was built that the defendant was the perpetrator so that the decision was appropriate as criminal responsibility for the crime committed by the defendant.

From a functional point of view, the author assesses that the criminal system can be interpreted as an entire system for the functionalization of punishment and the entire system that regulates how criminal law is enforced or operationalized in a concrete way so that a person is subject to criminal sanctions. From this point of view, the criminal justice system is synonymous with the criminal law enforcement system, which consists of sub-systems of material, formal, and criminal law enforcement. While substantive norms, the criminal system can be interpreted as the entire material criminal law system for the administration and execution of punishment.

3. 2Decision 09/Pid.Sus-TPK/2021/Pn Gto

The decision with Number 09/Pid.Sus-TPK/2021/Pn Gto contains several legal facts that were revealed based on witness statements, namely as follows:

1. Whereas the land acquisition for the construction of the GOR road section is divided into 3 segments, which in practice starts from segment II then continues to segment I and part of segment III

2. After the preparatory phase was completed, witness Winarni Monoarfa, MS. As Regional Secretary of Gorontalo Province on 17 February 2014 submitted a request for the implementation of land acquisition for the construction of the GOR road section to witness Rowland P. Sidjib (Head of the Gorontalo Province BPN Regional Office at that time) by attaching complete supporting data in the form of location determination, development land acquisition planning documents Gorontalo Outer Ring Road section and preliminary data on the entitled parties and land acquisition objects.

3. That the request could not be followed up by the witness Ir. Rowland as head of BPN Gorontalo Province because: the initial data of the entitled party is incomplete and has not been signed by the head of the preparatory team in accordance with Article 28 of the Presidential Regulation of the Republic of Indonesia number 71 of 2012, the public consultation document and its minutes have not been signed by the head of the preparatory team and its members and the entitled parties from each village in accordance with article 29 to article 40 of the regulation of the president of the republic of Indonesia number 71 of 2012, which has not been ratified by the team leader and its members and the entitled parties, the location determination has not been accompanied by a location map and an announcement notification letter as well as the minutes according to Article 42 and Article 45 of the Regulation of the President of the Republic of Indonesia number 71 of 2012.

4. Whereas after there was a change in the position of the head of the BPN regional office to Gabriel Triwibawa, then on May 2, 2014 witness Prof. Dr. Ir. Winarni

Monoarfa, as regional secretary of Gorontalo submitted another application for the implementation of land acquisition for the construction of the GOR road segment for segment II.

5. Whereas at the time of receiving the application the defendant Ir. Gabriel Triwibawa, did not examine and examine in detail the completeness of the application documents in the form of location determination, land acquisition planning documents for the construction of the GORR ring road section, initial data of the entitled parties and land acquisition objects submitted by the Gorontalo provincial government as the agency requiring land, as was previously done by the previous head of the Provincial BPN, because the initial data on the rightful parties submitted by the Gorontalo Provincial government turned out to be incomplete, because they had not included the status of the land and the basis for land rights to be acquired for the construction of the GOR road section.
6. Whereas the defendant Gabriel Triwibawa followed up on the request by continuing the process of implementing land acquisition for the GOR road section and forming a membership structure for the implementation of GOR land acquisition.[22]

After looking at the legal facts above, the panel of judges stated that the charges against the defendant Gabriel Triwibawa had been proven but were not criminal acts, released the defendant from all lawsuits, restored the defendant's rights in terms of ability, dignity and status to their original state.

As with the discussion of evidence in the previous decision, valid evidence in the eyes of the law in accordance with Article 184 of the Criminal Procedure Code is:[23]

1. Witness Statement
2. Expert Statement
3. Letter
4. Instruction
5. Defendant's Statement

Because no evidence was found in the form of letters and witness statements which could prove that the defendant had committed a crime which was later corroborated by the testimony of the expert witness explaining the elements of the crime, self-benefit, abuse of authority, detrimental to state finances, the defendant cannot be held liable. answer as an unlawful act and cannot be held responsible for the occurrence of state losses.

[22]Putusan Nomor 09/Pid.Sus-TPK/2021/Pn Gto.
[23] Pasal 184 Kitab Undang-undang Hukum Acara Pidana

Then the facts of the trial which were revealed in decision No. 09/Pid.Sus-TPK/2021/Pn Gto namely:

1. As the Head of the Land Procurement team, the State is not disadvantaged
2. The public interest is served
3. The accused himself did not benefit

From the facts of the trial, the judge's belief was formed that the defendant was not proven to have committed a crime and the defendant must be acquitted of all lawsuits, so that the decision given by the Panel of Judges to the defendant, according to the author, based on the facts and the strength of the evidence in the trial, was correct.

As executors of laws, judges at court should not only find the truth in court proceedings, they should also equip themselves with the spirit of eradicating corruption and high integrity. Therefore, even though the freedom of judges to make decisions is guaranteed and protected by law, the released decisions should not violate the principle of freedom and independence of judges.

Based on Supreme Court Jurisprudence No. 42.K/Kr/1996, it is stated that there are 3 factors that can erase the unlawful nature of an act, namely:[24]

the defendant does not benefit, the public interest is served, and the state is not harmed. According to the panel of judges, based on the facts revealed at trial in relation to the jurisprudence, the panel of judges was of the opinion that the project did not benefit the defendant and this was a sense of responsibility and good faith of the defendant, therefore it had been resolved by the defendant, then the public interest has been served and there are no more losses to the State. This was the reason for the panel of judges to abolish the defendant's responsibility for the mistakes he had made, so that the nature of the act was not a crime.

Thus according to the panel of judges for the defendant's actions there were reasons to erase his responsibility for the mistakes he had committed, so even though all elements of the public prosecutor's indictment were fulfilled according to law, the act was not a crime. Therefore:

1. The defendant's actions are not a crime, so the defendant must be released from all lawsuits
2. Against the accused being declared acquitted of all lawsuits, the dignity of the accused must be rehabilitated
3. Regarding the evidence in this case, because it is still needed for investigations in other cases, the evidence is returned to the investigator through the public prosecutor to be used as evidence in other cases.

[24] Yurisprudensi MA No. 42.K/Kr/1996

4. That because the defendant was acquitted of all lawsuits, the costs of the case were borne by the State

According to the author, the decision of the panel of judges above still contains the following weaknesses:

1. That because all the elements of the crime referred to in Article 3 of RI Law No. 31 of 1999 as amended and supplemented by RI Law No. 20 of 2001 concerning eradication of the Corruption Crime Jo article 55 paragraph (1) of the Criminal Code has been proven and according to the law by the actions of the defendant, then the defendant should be subject to punishment according to the demands of the public prosecutor and/or according to the criminal threat of Article 3 of the Republic of Indonesia Law No. . 31 of 1999

2. Therefore, according to the authors, the panel of judges had misapplied the law. Especially with the decision stating that the defendant was therefore released from prosecution, because Article 191 paragraph (2) of the Criminal Procedure Code does not explain at all what is meant by "the act does not constitute a crime"

The Tipikor Law does not only regulate the formulation of the problem of corruption but also regulates types of derivative crimes, namely certain acts or actions that are not types of corruption, but can be charged under the Corruption Law. These actions can be subject to articles in the Corruption Law because they are related to the handling of criminal acts of corruption.

3.3 What Factors Caused the Difference in the Imposition of Criminal Sanctions in Decision No. 18/Pid.Sus-TPK/2020/PN Gto and Decision No. 09/Pid. Sus-TPK/2021/PN Gto

Corruption, for example, is a criminal act that is categorized as a crime with the greatest impact in a country because it will reduce the quality of the country due to the lack of supply of funds that should be used to improve the quality of the country are now used to satisfy individual or group desires. This is meant to weaken laws or regulations in certain groups.

Corruption is inversely correlated with the level of people's income which is a symbol of a country's economic development. Thus corruption is related to the government of the State. Viewed from this angle, corruption is a deviation from the norms that apply to a person in office of the State government. The essence of corruption lies on the one hand in the use of power or authority contained in a position, and on the other hand there is an element of gain or profit, whether in the form of money or not money.[25]

The disparity in sentencing in sentencing occurs naturally, because there are almost no cases that are really the same. In Indonesia, the disparity in sentencing related to sentencing in corruption cases is nothing new. Several cases of joint corruption which

[25]Nur M. Kasim, "Politik Hukum Tindak Pidana Korupsi," *Jurnal Inovasi* 5, no. 1 (2008).

have been uncovered have not deterred other corrupt actors from deceiving government officials in particular. Corruption can lead to disharmony and disintegration either based on group or group interests or based on ethnicity and widens the gap in socio-economic differences between various layers.
Public.[26]

The application of the corruption law itself through the mechanism of the criminal justice system has apparently not been able to do much or has not functioned effectively in the fight against criminal acts of corruption. According to the author, the reality of the decisions handed down against perpetrators of corruption is still quite low and there are often differences in sentencing and cause disparities. Regarding the basis for imposing a judge's decision in making a decision, it is carried out after each member of the panel of judges expresses opinions or considerations as well as convictions or a case is then carried out deliberation for consensus. The criminal law currently in effect adheres to a general and special maximum system as well as a general minimum. This causes the judge in imposing a sentence to be able to move between the highest and lowest sentences. Since there are various kinds of criminal threats listed in the Criminal Code, Indonesian judges have very broad freedom to determine the severity or lightness of the sentence to be imposed on the defendant. As a result of such provisions, sometimes criminal acts of essentially the same quality are subject to different punishments (criminal disparities).[27]

Basically, in order to get a decision that is as fair as possible and fulfill the humanity that exists in a decision, the judge seeks all aspects of retaliation, deterrence (prevention) provides a deterrent effect, imposing a decision is beneficial to society and the accused, and so on. This is because the values of social justice are not based on what theory is adhered to but based on humanist elements relating to the condition of society and the maker (criminal) which is processed through a combination of logic and a heart that is born in a conscience. To find out which sentencing theory is adopted in a decision, it can be seen from the considerations used by the judge in making the decision. The words used in consideration also describe the theory of punishment adopted in a decision. In addition to the judge's considerations, the imposition of a judge's decision on the type of punishment imposed) also describes the philosophy of punishment in a decision. This can also be done by comparing the demands and decisions handed down, if the threat is the same article.[28]

The factors that are considered by the judge in imposing a sentence consist of internal factors and external factors where the internal factors explain the judge's perspective

---

[26] Evi Hartanti, *Tindak Pidana Korupsi, (*Sinar Grafika, Jakarta, 2007), 1 .

[27] Ajeng Arindita Lalitasari dan Pujiyono, Purwoto, Disparitas Pidana Putusan Hakim Dalam Kasus Korupsi Uang Dilakukan Secara Bersama-sama DI Pengadilan Negeri Tindak Pidana Korupsi Semarang, DIPONEGORO LAW JOURNAL, 8, No 3, (2019), 1692

[28] Ibid, 1692

while the external factors are formed through the provisions that become the judge's benchmark in making decisions.

The aggravating and mitigating circumstances listed in the court decision are taken into consideration by the judge in determining the severity of the sentence imposed. in decision no. 09/Pid.Sus-TPK/2021/Pn Gto the things that lighten the defendant in this decision are

(1). The state is not harmed

(2). The public interest is served.

(3). And the defendant himself did not benefit.

Meanwhile in decision No. 18/Pid.Sus-TPK/Pn Gto mitigating matters are:[29]

(1). The defendant's actions were caused by a related work system and interdependence.

(2). The defendant did not benefit from the criminal act of corruption he committed.

(3). The accused has never been convicted.

(4). The defendant was polite and cooperative in undergoing the judicial process.

As for the things that aggrieved the defendant in Decision No. 18/Pid.Sus-TPK/2020/PN Gto namely

(1). The defendant as KPA was not careful in carrying out his duties

(2). The defendant's actions contributed to the loss of the state. In other cases there was no information about aggravating matters because the final result or decision of the defendant was not convicted or acquitted.[30]

Then, the amount of loss incurred. The level of loss incurred also affects the severity of the sentence that will be imposed in a corruption case which will be a consideration for judges to impose a heavier sentence than a crime with a smaller level of loss. Based on the factors that arise from the judge himself, these are in the form of:

(1). Social background factor. A judge who is very close to the community around him will certainly be different from a judge who has a social background that is close to the surrounding community, of course it will be different from the community of judges who usually live in cities and have less interaction with their surroundings. Influence can occur due to the factor of the judge's own emotional closeness to the environment and of course the various life experiences that he often encounters and feels so that even in court hearings these feelings and inner experiences sometimes influence him.

[29] Putusan No. 18/Pid.Sus-TPK/Pn Gto
[30]Putusan No. 18/Pid.Sus-TPK/2020/Pn Gto.

(2). educational factor. The educational background of the judge also influences the decisions handed down. This can be seen when judges face cases that are very complicated and require in-depth scientific analysis.

(3). Temper factor. Judges who have sensitive or subtle feelings will certainly produce lighter decisions compared to judges who are rigid in dealing with criminal cases.[31]The differences in the imposition of criminal sanctions mentioned above can be seen that the causes of differences in the imposition of sanctions can originate from the criminal law rules themselves, aggravating and mitigating matters as stated in the court decision, the amount of losses incurred, the judge factor. Specifically regarding judges, Indonesian judges have the freedom to impose types of criminal sanctions and the severity of the sentence, because Indonesian criminal law adheres to the principle of criminal individualization.

This can lead to the possibility of differences in the imposition of criminal sanctions, namely the application of criminal sanctions that are not the same for the same crime or for criminal acts whose dangerous nature can be compared.

So that from the description it shows the difference in the imposition of sanctions, namely:

Verdict No. 18/Pid.Sus-TPK/2020/Pn Gto (1 year 6 month sentence)

1. Considering that in the coordination meeting for implementing land acquisition, it was discussed regarding the incompleteness of the nominative list, especially the status of the land and the rights on it, Ir. Gabriel Triwibawa did not stop the land acquisition process but continued the GOR land acquisition process by instructing the task force a and b land acquisition implementing teams to complete the administration that was lacking

2. Considering that on the basis of a validation letter issued by Ir Gabriel Triwibawa as the chief executor of land acquisition, the defendant made land compensation payments for the construction of the GOR road section by signing a receipt for the construction of land compensation for the construction of the GOR road section

3. Considering that there is cooperation between Ir. Gabriel Triwibawa as the chief executor of land acquisition who issued validation for 3 land parcels with double payment of compensation in the amount of 53,573,000.00 which was also disbursed by the defendant. Has made payments which resulted in 3 plots of land having double payments even though in the appraisal results they did not conduct two appraisals on the same object.

4. Primary-Subsidiary Charges filed by the public prosecutor:

a. 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

[31]*Ibid.*

Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended and supplemented by 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 juncto Article 55 paragraph (1) 1st of the Criminal Code;

b. violates Article 3 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 supplemented by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to RI Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption junto Article 55 paragraph (1) 1st of the Criminal Code;

Comparison of Decision No.09/Pid.Sus-TPK/2021/Pn Gto (sentence released)

1. Considering that in the preparatory meeting for the implementation of GORR land acquisition which was attended by the defendant Ir. Gabriel Triwibawa, witness Asri Wahjuni Banten, it was noticed that the initial data of the entitled party was incomplete due to a notification from Ibrahim Utiarahman, but witness Asri Wahjuni Banten and the GORR procurement implementation team did not refuse and did not return it to the preparatory team. On the other hand, the defendant as chairman of the meeting said that later it would be completed.

2. considering, that in practice the data/documents collected by the task force against those who control State land in each segment are only in the form of KTP, KK, certificates of ownership and land tax letters even though it is based on article 57 of presidential regulation Number 71 of 2012 concerning land acquisition for development public interest states that "the task force in charge of inventorying and identification of data on entitled parties and land acquisition objects as referred to in Article 54 paragraph (1) letter b carries out data collection at least" namely:

a. name, occupation, and address of the entitled party

b. identification number or other identity of the entitled party

c. proof of mastery and/or ownership of land, buildings, plants, and/or objects related to land

d. land location, land area and field identification number

e. land status and documents

f. type of use and utilization of land

g. ownership and/or control of land, buildings, and/or other objects related to land

h. release of land rights

i. the upper room and the basement.

3. Considering, that if Task Force B in data collection does not find the necessary documents as proof of mastery and/or ownership of land that has not been registered, then the proof of control and/or ownership of land is based on a written statement regarding physical control of land parcels from those who concerned and witnessed by at least two witnesses from the local environment who do not have family relations with the person concerned up to the second degree both in vertical and horizontal kinship stating that the person concerned is right as the owner or control of the land parcel.

4. Considering that for segment II, Task Force A has carried out an inventory and identification of physical data on control, ownership, use and utilization of land totaling 544 land parcels and 20 sheets of land plot maps, and Task Force B has carried out an inventory and identification of juridical data of the entitled parties and objects. land procurement amounted to 544 which were made in the nominative form.

5. In essence, the charges filed by the public prosecutor are as follows: stating that the defendant Gabriel Triwibawa has been legally and convincingly proven guilty of committing the crime of "collective corruption" as regulated and threatened in Article 3 juncto Article 18 paragraph (1). Law number 31 of 1999 concerning the eradication of criminal acts of corruption in conjunction with law number 20 of 2001 concerning amendments to law number 31 of 1999 in conjunction with article 55 paragraph (1) to 1 of the Criminal Code as a subsidiary indictment of the prosecutor general

2. impose a sentence on the defendant. Gabriel Triwibawa with a sentence of 1 year and 10 months reduced while the defendant is in temporary detention with an order for the defendant to remain in custody and pay a fine of 100,000,000.00 (one hundred million rupiah) subsidiary 2 months in prison.

The judge's considerations in sentencing decisions are divided into two, namely juridical considerations and non-juridical considerations. The judge's considerations that are juridical in nature are the indictment of the public prosecutor, the statement of the defendant, the testimony of witnesses in the trial and evidence. While considerations that are non-juridical in nature are the actions behind the defendant in committing this crime, the consequences of the defendant's actions, psychological conditions, socio-economic and religious factors. In addition, in giving a decision the judge also pays attention to 3 things as follows:

a) deed

b) accountability

c) forgetfulness (culpa)[32]

[32]Putri, "Disparitas Putusan Hakim Pada Kasus Tindak Pidana Korupsi Putusan Mahkamah Agung Nomor 10/Pid-Sus-TPK/2021/PT DKI," *Jurnal Ikamkum* 2 (1AD).

As previously stated, in Indonesia the difference in the imposition of sanctions is often related to the independence of judges, consideration of the pros and cons of the accused and criminal justice policies. So the idea to develop and improve sentencing guidelines is an urgency that is seen as capable of reducing the subjectivity of criminal law. Sentence guidelines are seen as guidelines for judges in imposing or applying sentencing. The judge's decision is prone to have the possibility of being wrongly used. So that sentencing guidelines are considered the best way to limit the freedom of judges in deciding a case of corruption.

In the principle of proportionality of punishment, there is a retributive and preventive perspective. Retributive views proportionality as the center of criminal imposition, while preventive views proportionality as a limiting principle that prohibits criminal imposition not commensurate with the criminal act and the responsibility of the maker. Based on retributive criminal acts, criminal responsibility is the ethical basis for criminal imposition, the maker is deemed worthy of being punished when the conditions for sentencing are met. From a preventive point of view, errors are viewed prospectively as a measure for determining criminal acts that are oriented towards general and specific prevention. In accordance with Gustav Radburg's theory that the purpose of law is justice, certainty, and legal benefits, law should be able to be realized through punishment based on proof of calculation of state financial losses in order to return assets resulting from criminal acts. Every sentence sentence must be carried out with due regard to the certainty and proportionality of sentencing in order to achieve justice.[33]

The legal system is the elements of the system related to the mechanism of a collection of functions in achieving a concrete goal. The elements of the system are:

1. Components of the soul of the nation
2. Substance components
3. Structural components
4. Components of legal culture

Law in Indonesia is a legal system with elements of that system. Referring to the theory of Ludwig Von Bertalanffy. These four components are highly influential for certain Indonesian laws to apply. The Indonesian legal system itself is an open system, meaning that the four systems influence each other. In addition, they also receive influence from the environment, both in the form of information and in the form of pressure from the political elite, namely groups that suppress and impose their will on the executive body in implementing existing laws and regulations.

[33]C

4. Conclusion

In decision No. 18/Pid.Sus-TPK/2020/Pn Gto the three pieces of evidence which were one of the judges' considerations in imposing a sentence on the defendant, according to the author, are appropriate. Because it is in accordance with the provisions of article 184 of the Criminal Procedure Code.

From the facts of the trial that the defendant had been legally proven to have committed a crime that was detrimental to the state, so that through the two conditions for imposing a sentence, the judge's conviction was built that the defendant was the perpetrator so that the decision was appropriate as criminal responsibility for the crime committed by the defendant.

In decision No. 09/Pid.Sus-TPK/2021/Pn Gto because no evidence was found in the form of letters and witness statements which could prove that the defendant had committed a crime.

From the facts of the trial, the judge's belief was formed that the defendant was not proven to have committed a crime and the defendant must be acquitted of all lawsuits. So the judge released the defendant from all lawsuits. Then the factors behind the differences in the imposition of criminal sanctions consist of 2 factors, namely internal and external factors.

Referensi

Buku

Hartanti, Evi. *Tindak Pidana Korupsi*. Jakarta: Sinar Grafika, 2005.

Lisnawaty W. Badu dan Suwitno Y. Imran. *Hukum Dan HAM*. Yogyakarta: UII Press, 2021.

Surachmin. *Strategi Dan Teknik Korupsi*. Jakarta: Sinar Grafika, 2015.

Journal:

Ahmad dan Novendri M. Nggilu Fakultas, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian." *Jurnal Konstitusi.* 16, No. 4 (2019): 785–808., 791

Badu, Lisnawaty. "Euthanasia Dan Hak Asasi Manusia." *Jurnal Legalitas* 5, no. 1 (2012).

Devy Ch, Rumambi. "Rumambi, Korupsi Dalam Perspektif Hukum Administrasi Negara." *Lex et Societatis* 2, no. 7 (2014).

Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of

Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57–76., 58

Guslan, Odi Faiz. "Tinjauan Yuridis Mengenai Batasan Antara Perbuatan Maladministrasi Dengan Tindak Pidana Korupsi." *Jurnal Cendekia Hukum* 4, no. 1 (2018).

Hidayah, Astika Nurul. "Analisis Aspek Hukum Tindak Pidana Korupsi Dalam Rangka Pendidikan Anti Korupsi." *Jurnal Kosmik Hukum* 18, no. 2 (2018).

Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189–208., 197

ulius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review.* 3, No. 02 (2021): 365–77., 375

Kasim, Nur M. "Politik Hukum Tindak Pidana Korupsi." *Jurnal Inovasi* 5, no. 1 (2008).

Kurnia Siwi, "Pembaruan Hukum Pedoman Terhadap Disparitas Putusan Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi," *Jurnal IJLC* 2, no. 2 (2022).

Mustandar. "Penyalahgunaan Wewenang Dalam Tindak Pidan Korupsi Menurut Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Of Lex Generalis* 2, no. 2 (2021).

Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review.* 3, No. 01 (2021): 55–71., 69

Lisnawaty Badu, "Euthanasia Dan Hak Asasi Manusia," *Jurnal Legalitas* 5, no. 1 (2012).

Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review.* 1, No. 1 (2019): 68-93., 73

Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal.* 5, No. 2 (2020): 109–121., 110

Putri. "Disparitas Putusan Hakim Pada Kasus Tindak Pidana Korupsi Putusan Mahkamah Agung Nomor 10/Pid-Sus-TPK/2021/PT DKI." *Jurnal Ikamkum* 2 (1AD).

Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Straftrecht)," *Jambura Law Review.* 2, No. 1 (2020): 1–29., 3

Siwi, Kurnia. "Pembaruan Hukum Pedoman Terhadap Disparitas Putusan Pengembalian Kerugian Keuangan Negara Akibat Tindak Pidana Korupsi." *Jurnal IJLC* 2, no. 2 (2022).

Putusan

Putusan No. 18/Pid.Sus-TPK/2020/Pn Gto.

Putusan Nomor 09/Pid.Sus-TPK/2021/Pn Gto.