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Case Study of Judicial Disparity in Corruption Verdicts Involving State Financial Losses

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Abstract

Judicial independence ensures that judges remain free from external influence and possess full discretion in determining the severity or leniency of a sentence. However, this independence can also result in sentencing disparity, particularly in corruption cases that involve state financial losses. Sentencing disparity refers to the inconsistent imposition of punishment for similar offenses under comparable circumstances, which undermines legal certainty and justice. In Indonesia, such disparity is often justified under the pretext of judicial independence, even though it contradicts the principle of equality before the law. The

inconsistency in sentencing, especially for corruption cases under Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, raises concern over the absence of clear sentencing guidelines. This research aims to examine the relationship between judicial independence and sentencing disparity in corruption cases, particularly focusing on the need for standardized sentencing mechanisms. Using normative legal research methods, this study analyzes primary, secondary, and tertiary legal materials through a literature review, supported by case decisions sourced from the Supreme Court's database. The findings indicate that although judges are mandated to uphold justice, legal certainty, and utility, the lack of clear sentencing standards contributes to disparities in rulings. Therefore, the implementation of sentencing guidelines and reliance on jurisprudence are necessary to balance judicial independence with fairness and consistency in criminal sentencing, especially for corruption crimes.

Keywords

Judicial Sentencing Disparity; Corruption Crime; Sentencing Guidelines; Legal Certainty.

I. Introduction

Judges, in rendering their decisions, are guaranteed independence and must remain free from any form of external intervention. They possess the discretion to determine the type of punishment to be imposed, whether in the form of fines or imprisonment. Furthermore, judges have the authority to assess and decide the severity or leniency of the

sentence based on the specifics of each case.¹ However, judicial independence has also given rise to a new issue—sentencing disparity among judges—which ultimately affects legal certainty and justice.

Disparity is the unequal imposition of punishment for the same crime under identical circumstances.² According to the Indonesian Dictionary, disparity means difference. Judicial sentencing disparity specifically denotes the differences between decisions rendered by various judges. In Indonesia, such disparity is often linked to judicial independence. In delivering their verdicts, judges must not be subject to any external intervention, as stipulated in Law Number 48 of 2009 concerning Judicial Power, which mandates that “judges are required to explore, follow, and understand the legal values and sense of justice prevailing in society. Judges must also consider the moral character—both good and bad—of the defendant.”³

In addition to the principles of utility and legal certainty, judges must also consider the principle of justice. Justice can be understood in two senses: formal and material. Formal justice refers to the requirement that laws apply universally, while material justice means that every law must align with the ideals of justice upheld by society.

Sentencing disparity refers to a situation where a convict receives different punishments despite similarities in the case or the severity of the offense, whether the acts were committed jointly or

¹ Muladi, Arief, and Barda Nawawi. "Teori-teori dan kebijakan Pidana." (No Title) (1998).

² RI, Mahkamah Agung. "Kedudukan dan Relevansi Yurisprudensi Untuk Mengurangi Disparitas Putusan Pengadilan." *Mega Mendung: Puslitbang Hukum dan Peradilan Mahkamah Agung RI* (2010).

³ Disparitas Putusan dan Pemidanaan yang Tidak Proporsional," *Hukumonline*, <https://www.hukumonline.com/berita/baca/lt524a2ce258cb5/disparitas-putusan-dan-pemidanaan-yang-tidak-proporsional>.

individually, without clear grounds or justification.⁴ This judicial sentencing disparity creates a new gap in legal uncertainty and injustice in Indonesia. Therefore, sentencing guidelines must be established and followed by judges when rendering decisions, with due consideration of prior judicial jurisprudence. Countries that have implemented sentencing guidelines include Finland, the United States, New Zealand, and Sweden.

Judicial sentencing disparity can occur in any criminal offense, including corruption. Literally, corruption means rotten, damaging, or evil. The term for corruption varies across countries; for example, it is referred to as “corruptive” in the Netherlands and “corruption” in France.

Corruption in Indonesia is regulated under Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001. The law implements a special minimum sentencing system, with the shortest possible penalty being one (1) year and the longest being twenty (20) years. This means that the severity or leniency of the sentence is entirely at the discretion of the judge, which can lead to sentencing disparities. Acts categorized as corruption crimes that cause state financial losses are stipulated in Article 2, Paragraph (1) of the Corruption Eradication Law, *“Any person who unlawfully commits an act of enriching themselves, another person, or a corporation that can cause a loss to the state finances or the national economy shall be punished with life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years, and a fine of at least Rp200,000,000.00 (two hundred million rupiah) and at most Rp1,000,000,000.00 (one billion rupiah).”* And in Article 3 of the Corruption Eradication Law *“Any person who, with the intent of*

⁴ Muladi, Arief, and Barda Nawawi. “Teori-teori dan kebijakan Pidana.” (No Title) (1998), cited in Abdurrachman, Hamidah, Rahmad Agung Nugraha, and Nayla Majestya. *Palu Hakim Versus Rasa Keadilan Sebuah Pengantar Disparitas Putusan Hakim Dalam Tindak Pidana Korupsi*. Deepublish, 2020. .

benefiting themselves, another person, or a corporation, abuses the authority, opportunity, or means available to them due to their position or office, and thereby causes a loss to the state finances or the national economy, shall be punished with life imprisonment or a minimum imprisonment of 1 (one) year and a maximum of 20 (twenty) years, and/or a fine of at least Rp50,000,000.00 (fifty million rupiah) and at most Rp1,000,000,000.00 (one billion rupiah).”

Corruption is considered an extraordinary crime, requiring extraordinary efforts for its eradication. In combating corruption, it is essential that the law enforcement process upholds the principles of justice, legal certainty, and utility.

Based on the foregoing explanation, there is considerable debate surrounding the concept of judicial independence today. Judges must be independent and free from any external intervention. However, on the other hand, judges must also uphold the principle of legal certainty. Therefore, the author proposes that judicial independence should be accompanied by clear sentencing guidelines and greater consideration of prior judicial jurisprudence to minimize sentencing disparities.

Based on the background outlined above, the author is interested in writing a study titled “Judicial Disparity in Corruption Crimes: A Case Study on Legal Decisions in Corruption Cases Involving State Financial Losses.”

II. Method

The research method employed in this article is normative legal research. Normative legal research involves examining secondary data or library materials. Data collection is conducted through a literature review, which includes gathering and analyzing primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal

materials, such as judicial decisions, are collected online by accessing the Supreme Court's website. The analysis of the collected legal materials from various sources is carried out by compiling data comprehensively to produce a logical, objective, and rational discussion. Therefore, the author conducts the data and legal materials analysis from a normative perspective.

III. Judicial Consideration Patterns in Corruption Crime Verdicts

According to John Rawls, justice is a fairness principle based on the idea that free and rational individuals seek to secure equal standing for themselves.⁵ Article 5, paragraph (1) of Law Number 48 of 2009 essentially states that judges are required to explore the legal values and sense of justice that live within society. Therefore, justice is one of the fundamental principles that must be upheld by the courts.

Disparity is a denial of the concept of parity, which means equality or similarity of value. In the context of sentencing, disparity refers to the unequal punishment given for the same crime under the same conditions.⁶

Harkristuti Harkrisnowo categorizes sentencing disparity into several types as follows:

- a. Disparity in sentencing for the same crime
- b. Disparity in sentencing for crimes with the same level of seriousness
- c. Disparity in decisions made by a single panel of judges for the same case

⁵ Margono, H. "Asas Keadilan, Kemanfaatan, dan Kepastian Hukum dalam Putusan Hakim." (2019).

⁶ Manson, Allan, *The Law of Sentencing*, cited in Abdurrachman, Hamidah, Rahmad Agung Nugraha, and Nayla Majesty. *Palu Hakim Versus Rasa Keadilan Sebuah Pengantar Disparitas Putusan Hakim Dalam Tindak Pidana Korupsi*. Deepublish, 2020.

- d. Disparity in decisions made by different panels of judges in similar cases.⁷

Spohn outlines the types of sentencing disparity as follows:⁸

1. Inter-Jurisdictional Disparity

This occurs when there are differences in sentencing patterns imposed by courts in different jurisdictions due to variations in the perceived severity of a crime between one region and another. This can be categorized as inter-jurisdictional disparity.

2. Intra-Jurisdictional Disparity

This occurs when there are differences in decisions on cases with the same typology and characteristics but within the same court jurisdiction. Such differences can arise from judges having varying perceptions regarding the severity of sentencing.

3. Intra-Judge Disparity

This occurs when a judge is inconsistent in the sentencing decisions across different cases they handle.

There are many factors that cause sentencing disparity. According to Nimerio Gulo, the causes of sentencing disparity can be viewed from theoretical, juridical, and empirical perspectives. From the theoretical juridical perspective, the cause of sentencing disparity is the existence of freedom and independence granted to judges by the Constitution and laws. From the empirical perspective, the causes include considerations

⁷ Harkrisnowo, Harkristuti. "Rekonstruksi Konsep Pemidanaan: Suatu Gugatan Terhadap Proses Legislasi dan Pemidanaan di Indonesia." Universitas Indonesia, Depok (2003).

⁸ Spohn, Cassia. *How do judges decide?: the search for fairness and justice in punishment*. Sage, 2009, cited in Abdurrachman, Hamidah, Rahmad Agung Nugraha, and Nayla Majesty. *Palu Hakim Versus Rasa Keadilan Sebuah Pengantar Disparitas Putusan Hakim Dalam Tindak Pidana Korupsi*. Deepublish, 2020.

of the defendant's conditions such as economic status, personality, social circumstances, and community response.

Another factor causing sentencing disparity is Indonesia's legal system, which follows the Continental European (civil law) system. This system emphasizes the positive legal rules applicable in Indonesia. Although judicial precedents (*yurisprudensi*) from previous judges serve as persuasive precedents, they are not mandatory to follow. Additionally, judges' diverse ideological understandings can also lead to sentencing disparities. Judges who adhere to the positivist school tend to impose lighter sentences compared to those who follow the classical school. This is because positivist judges believe that punishment should fit the criminal, whereas classical school judges believe that the punishment should fit the crime.

Differences in sentencing (penal sanctions) are basically natural, as it can be assured that almost no cases are exactly the same. Sentencing disparity becomes problematic when the range of differences in penalties imposed on similar cases is excessively large.⁹ Specifically in the eradication of corruption crimes, the phenomenon of sentencing disparity is not limited to the principal penalty but also includes the replacement fines. As we know, replacement fines are a distinctive feature of corruption offenses.¹⁰

If we look at the provisions before the issuance of Supreme Court Regulation No. 1 of 2020 concerning Sentencing Guidelines, there were no provisions categorizing the penalties under Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes. However, after the issuance of this Perma, in adjudicating corruption cases that cause state financial or economic losses under Article 2, the penalties can be categorized into four categories, namely :

⁹ Komisi Yudisial, R. I. "Disparitas Putusan Hakim: Identifikasi dan Implikasi." Jakarta: Sekjen Komisi Yudisial RI (2014).

¹⁰ Indonesia Corruption Watch (ICW), Studi atas Disparitas Pemidanaan Tindak Pidana Korupsi.

1. Light: more than IDR 200,000,000 (two hundred million rupiah) up to IDR 1,000,000,000 (one billion rupiah);
2. Moderate: more than IDR 1,000,000,000 (one billion rupiah) up to IDR 25,000,000,000 (twenty-five billion rupiah);
3. Heavy: more than IDR 25,000,000,000 (twenty-five billion rupiah) up to IDR 100,000,000,000 (one hundred billion rupiah); and
4. Very heavy: more than IDR 100,000,000,000 (one hundred billion rupiah).

Meanwhile, the categories of corruption causing losses to the state finances or the state economy under Article 3 can be classified into five categories, namely:

1. Very light, up to Rp 200,000,000.00 (two hundred million rupiah);
2. Light, more than Rp 200,000,000.00 (two hundred million rupiah) up to Rp 1,000,000,000.00 (one billion rupiah);
3. Medium, more than Rp 1,000,000,000.00 (one billion rupiah) up to Rp 25,000,000,000.00 (twenty-five billion rupiah);
4. Heavy, more than Rp 25,000,000,000.00 (twenty-five billion rupiah) up to Rp 100,000,000,000.00 (one hundred billion rupiah);
5. Very heavy, more than Rp 100,000,000,000.00 (one hundred billion rupiah).

Article 5 of Supreme Court Regulation No. 1 of 2020 states that the way to determine the severity or leniency of the sentence imposed by the judge must sequentially consider the following stages:

1. The category of loss to the state finances or the state economy;
2. The level of fault, impact, and benefit;
3. The range of sentencing;
4. Aggravating or mitigating circumstances;
5. The sentencing itself; and
6. Other provisions related to sentencing.

The following are several examples of corruption cases involving financial losses to the state, categorized as very light/light, moderate, and heavy;

1. *Very Light/Light Category Case*

Case Number: 12/Pid.Sus-TPK/2021/PN Jkt

Defendant: Mark Sungkar

Prosecutor's Charges:

Mark Sungkar was found legally and convincingly guilty of corruption as regulated and threatened with punishment under Article 3 in conjunction with Article 18 Paragraph (1) letter b of Law No. 31 of 1999 on the Eradication of Corruption Crimes as amended by Law No. 20 of 2001, as stated in the secondary indictment by the Public Prosecutor

Sentence:

1. Imprisonment for 2 years and 6 months, with credit for time already served in detention and city custody, with an order that the defendant be immediately detained in the detention center.
2. fine of Rp50,000,000 (fifty million rupiah), subsidized by 3 months imprisonment if unpaid.
3. Ordered to pay compensation amounting to Rp694,900,000 (six hundred ninety-four million nine hundred thousand rupiah), based on the Audit Report on the State Financial Loss Calculation by BPKP concerning suspected corruption in the distribution of aid from the Ministry of Youth and Sports (Kemenpora RI) to the Central Board of the Indonesian Triathlon Federation (PPFTI) for the National Sports Achievement Improvement Activities in Fiscal Year 2018 (Letter No. SR-477/PW09/5.1/2019 dated September 23, 2019).

4. The financial loss to the state was Rp694,900,000, which was compensated by the amount already deposited by the defendant at the Central Jakarta District Attorney's Office.

Amount of Loss: IDR 694,900,000.00 (six hundred ninety-four million nine hundred thousand rupiahs)

Judge's Considerations:

Aggravating circumstances:

1. The defendant's actions do not support the government's program in eradicating corruption crimes;
2. The defendant has used the proceeds of the criminal act.

Mitigating circumstances:

1. The defendant has returned the state losses amounting to Rp694,900,000.00 (six hundred ninety-four million nine hundred thousand rupiahs), which was deposited through the Central Jakarta District Attorney's Office account.
2. The defendant has never been convicted before;
3. The defendant is elderly and in poor health.

Court Verdict:

1. Declares that the Defendant Mark Sungkar is not legally and convincingly proven guilty of corruption as charged in the primary indictment;
2. Acquits Defendant Mark Sungkar of the primary indictment;
3. Declares that the Defendant Mark Sungkar is legally and convincingly proven guilty of corruption as charged in the subsidiary indictment;
4. Sentences the Defendant to imprisonment for 1 (one) year and 6 (six) months and a fine of Rp50,000,000.00 (fifty million rupiah),

with the provision that if the fine is not paid, it will be replaced by imprisonment for 1 (one) month;

5. Imposes an additional penalty on the Defendant to pay replacement money for state financial losses amounting to Rp694,600,000.00 (six hundred ninety-four million six hundred thousand rupiah), which is compensated by money confiscated from the Defendant, Andi Ameera Sayaka, Wahyu Hidayat, Eva Desiana, Jauhari Johan, and The Cipaku Garden Hotel totaling Rp694,600,000.00, to be confiscated for the state and counted as payment for the replacement money for state financial losses;
6. Determines that the detention period already served by the Defendant shall be fully deducted from the imposed sentence;
7. Orders the Defendant to remain under house arrest.

2. *Moderate Category Case*

Case Number: 43/Pid.Sus-TPK/2020/PN Jkt.Pst

Defendant: Kamaruddin Siregar, S.S.

Prosecutor's Charges (as per primary indictment):

Adrian Herbowo is proven legally and convincingly guilty of corruption, as regulated and penalized under Article 2(1) in conjunction with Article 18 of Law No. 31 of 1999 on the Eradication of Corruption Crimes, as amended by Law No. 20 of 2001, and Article 55(1)(1) of the Criminal Code.

Sentence:

1. Imprisonment for 7 (seven) years, with credit for time spent in pretrial detention; the defendant remains in the penitentiary.
2. A fine of Rp 500,000,000 (five hundred million rupiah); if unpaid, the fine will be commuted to 6 (six) months' imprisonment.
3. Ordered to pay replacement money amounting to USD 121,800 (one hundred twenty-one thousand eight hundred U.S. dollars), offset by seized evidence numbered 14.409 and 15.411, totaling

Rp 1,649,902,800 (one billion six hundred forty-nine million nine hundred two thousand eight hundred rupiah), which has been confiscated from the defendant and deposited in the Central Jakarta

Amount of Loss: Rp 20,318,992,278.78 (twenty billion three hundred eighteen million nine hundred ninety-two thousand two hundred seventy-eight-point seventy-eight rupiah).

Judge's Considerations:

Aggravating Circumstances:

1. The defendant's actions did not support the government's active efforts in eradicating corruption.
2. The defendant's conduct resulted in wasteful use of state finances.

Mitigating Circumstances:

1. The defendant behaved respectfully during the trial.
2. The defendant has no prior criminal record.
3. The defendant has dependents to support.

Court Verdict:

1. Declares that the Defendant, Adrian Herbowo, has been legally and convincingly proven guilty of committing the criminal act of corruption jointly, as charged under the primary indictment, namely Article 2 paragraph (1) in conjunction with Article 18 of Law No. 31 of 1999 on the Eradication of Corruption, as amended by Law No. 20 of 2001, in conjunction with Article 55 paragraph (1) point 1 of the Indonesian Penal Code.
2. Sentences the Defendant to 4 (four) years and 6 (six) months of imprisonment, and a fine of IDR 250,000,000.00 (two hundred fifty million rupiah), with the stipulation that if the fine is not paid, it shall be replaced with 3 (three) months of imprisonment.

3. Imposes an additional penalty on the Defendant to pay restitution in the amount of USD 121,800 (one hundred twenty-one thousand eight hundred US dollars), to be offset against the amount of IDR 1,649,902,800 (one billion six hundred forty-nine million nine hundred two thousand eight hundred rupiah) already seized from the Defendant, which shall be calculated as restitution payment.
4. Orders that the period of arrest and detention already served by the Defendant shall be fully deducted from the sentence imposed.
5. Orders that the Defendant shall remain in detention.

3. Case Category: Heavy or Very Heavy Case

Case Number: 42/Pid.Sus-TPK/2021/PN Jkt.Pst

Name of Defendant: SUNARYA alias RIAN

Prosecutor's Demands:

Declares that the Defendant, SUNARYA alias RIAN, has been legally and convincingly proven guilty of committing a criminal act of corruption jointly, as stipulated and punishable under Article 2(1) in conjunction with Article 18 of Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001, in conjunction with Article 55(1) point 1 of the Indonesian Penal Code, as stated in the primary indictment.

1. Sentences the Defendant SUNARYA alias RIAN to 10 (ten) years of imprisonment, minus time already served in pre-trial detention, with an order that the Defendant remain detained at a State Detention Center (Rutan).
2. Imposes a fine of IDR 500,000,000 (five hundred million rupiah), with a subsidiary sentence of 6 (six) months imprisonment in case the fine is not paid.
3. Orders the Defendant to pay restitution (replacement money) in the amount of IDR 7,598,361,000 (seven billion five hundred ninety-eight million three hundred sixty-one thousand rupiah).

4. If the convict does not pay the restitution within 1 (one) month after the verdict becomes legally binding, the prosecutor is authorized to seize and auction the convict's assets to cover the restitution amount.
5. If the convict does not have sufficient assets, he shall be sentenced to an additional 5 (five) years of imprisonment.

Amount of Loss: IDR 95,404,225,425 (ninety-five billion four hundred four million two hundred twenty-five thousand four hundred twenty-five rupiah).

Judge's Consideration :

Aggravating Circumstances:

1. The Defendant's actions did not support the government's program for the implementation of a clean state free from Corruption, Collusion, and Nepotism (KKN);
2. The Defendant benefited from the proceeds of the crime;
3. The Defendant did not return the financial losses suffered by the state.

Mitigating Circumstances:

1. The Defendant behaved respectfully and cooperatively during the trial, thereby not obstructing the proceedings;
2. The Defendant has family dependents;
3. The Defendant has no prior criminal record.

Court Verdict

1. Declares that the Defendant, Sunarya, as mentioned above, is legally and convincingly proven guilty of committing the criminal act of "Corruption Committed Jointly" as set forth in the primary charge.
2. Sentences the Defendant to five (5) years of imprisonment and a fine of IDR 300,000,000 (three hundred million rupiah), with the

- provision that if the fine is not paid, it shall be replaced by four (4) months of imprisonment.
3. Orders the Defendant to pay compensation for state financial losses in the amount of IDR 7,598,361,000 (seven billion five hundred ninety-eight million three hundred sixty-one thousand rupiah) no later than one (1) month after this decision becomes legally binding. If the Defendant fails to pay within the stated time, the Prosecutor shall confiscate and auction the Defendant's assets to cover the compensation. Should the Defendant lack sufficient assets, the penalty shall be replaced by three (3) years of imprisonment.
 4. Determines that the period of arrest and detention already served by the Defendant shall be fully deducted from the sentence imposed.
 5. Other considerations include that sentencing is not a tool of retaliation, there were no justifying or excusing reasons found during the trial, and the Defendant was capable of answering all questions posed by the panel of judges.

A judge is a title attributed to an individual possessing specific qualifications in the field of law and judiciary. This role inherently involves frequent interaction with the principles of judicial independence and justice, particularly in the context of rendering decisions in legal cases.¹¹

There is no mathematical formula in the imposition of imprisonment, detention, or fines. However, judicial considerations can provide an explanation as to why a defendant is sentenced in a particular way. One benchmark that may be used is the consideration of aggravating and mitigating circumstances. The legislation does not explicitly define what constitutes aggravating and mitigating

¹¹ Kamil, Ahmad. *Kebebasan Hakim dalam Perspektif Filsafat Kebebasan* Franz Magnis Suseno, Cited in Supandriyo, *Asas Kebebasan Hakim dalam Penjatuhan Pidana* (Yogyakarta: Arti Bumi Intaran, 2019)

circumstances, nor does it specify which factors may be assessed as such.¹²

Based on the aforementioned court decisions, it can be concluded that the pattern of judicial considerations regarding aggravating and mitigating circumstances is largely similar, regardless of whether the perpetrator of the corruption offense causing state financial losses falls into the light, moderate, or severe category.

With regard to the defendant's courteous behavior during trial, as often cited by judges as a mitigating circumstance, it does not diminish the seriousness of the offense or the level of threat posed by the perpetrator. Nor does it constitute an effort on the part of the defendant to reduce the severity of the criminal act. Therefore, it is inappropriate to consider such behavior as a mitigating factor. Moreover, maintaining proper courtroom decorum is an obligation imposed on all participants, including the defendant and public attendees.

In relation to sentencing disparities, aggravating and mitigating factors may serve as a basis for comparison between the sentence to be imposed on one defendant and that imposed on another in similar cases. When the degree of culpability, the resulting harm, and the relevant aggravating and mitigating circumstances are substantially similar, the severity of the sentences imposed should, in principle, also be relatively consistent.¹³

IV. How to Overcome Disparities in Judges' Decisions in Corruption Crimes Causing State Financial Losses

Based on data from Indonesian Corruption Watch in 2015, out of 524 corruption verdicts involving 564 defendants, at least 401 verdicts fell

¹² Dwi Hananta, "Jurnal Hukum dan Peradilan" 7, no. 1 (2018): 88.

¹³ Hananta, Dwi. "Pertimbangan keadaan-keadaan meringankan dan memberatkan dalam penjatuhan pidana/aggravating and mitigating circumstances consideration on sentencing." Jurnal Hukum dan Peradilan 7, no. 1 (2018): 87-108.

into the light category and 68 verdicts were acquittals, while only 3 verdicts were classified as heavy. In 2013, as many as 79% of defendants were sentenced lightly. Similarly, in 2014, the figure reached 78.6%. The trend remained the same in 2015, with a percentage of 71.1%.¹⁴

In 2021, there were 184 cases of state financial losses in the first semester in Indonesia, with a total loss amounting to IDR 26,610 trillion.¹⁵ This proves that there is still a significant disparity in sentencing in corruption cases, particularly those involving state financial losses in Indonesia.

Therefore, efforts are needed to overcome the disparity in corruption sentencing in Indonesia. Below are several solutions that can be implemented to prevent and address the disparities in judicial rulings in Indonesia;

1. Reformulation of the Criminal Law on corruption regarding specific minimum penalties. The specific minimum penalty in Article 2 paragraph (1) is 4 years, whereas the specific minimum penalty in Article 3 is 1 year. The large gap between these minimum penalties can cause sentencing disparities. Article 2 paragraph (1) states: "Any person who unlawfully enriches themselves, another person, or a corporation that causes losses to the state finances or the state economy shall be punished with imprisonment of at least 4 years and at most 20 years and a fine of no less than 200 million rupiah and no more than 1 billion rupiah." Meanwhile, Article 3 states: "Any person who, with the intention of benefiting themselves, another person, or a corporation, abuses the authority, opportunity, or means available to them due to their position or office causing losses to state

¹⁴ "Hasil Pemantauan ICW: Hukuman Koruptor Semakin Ringan," Antikorupsi.org, accessed on April 10, 2025, at 10:04 PM Jakarta's Time, <https://www.antikorupsi.org/id/article/hasil-pemantauan-icw-hukuman-koruptor-semakin-ringan>.

¹⁵ Anandya, Diky, Lalola Easter, Kurnia Ramadhana, Adnan Topan Husodo, Agus Sunaryanto, and Indonesia Corruption Watch. "Hasil pemantauan tren penindakan kasus korupsi semester I 2021." Jakarta: Indonesian Corruption Watch (2021).

finances or the state economy shall be punished with life imprisonment or imprisonment of at least 1 year and at most 20 years and/or a fine of no less than 50 million rupiah and no more than 1 billion rupiah.” According to Shinta Agustina¹⁶, the difference between Article 2 paragraph (1) and Article 3 lies in the subject. Article 2 paragraph (1) applies to general individuals, whereas Article 3 applies to persons who hold authority such as a position or office. However, the minimum penalty in Article 3 is actually lower than the minimum penalty in Article 2 paragraph (1), even though the minimum penalty in Article 3 should be higher because committing corruption requires first holding authority or a position.

2. Prioritizing Precedents of Previous Judges, Indonesia adopts the Continental European legal system, judicial precedent remains one of the sources of law in Indonesia. According to Jazim Hamidi and Winahyu Erwiningsih, jurisprudence serves the following functions:
 - a. To uphold the existence of a uniform legal standard in the same or similar cases where statutory law does not provide regulation;
 - b. To create a sense of legal certainty in society by establishing a consistent legal standard;
 - c. To establish legal uniformity and predictability in legal resolutions;
 - d. To prevent disparities and differences in various judicial decisions on the same case, so that if differences arise between judges in the same case, these differences do not lead to disparity but rather exist as casuistic variables. Thus, jurisprudence can be seen as a manifestation of legal discovery. Jurisprudence holds binding power over the parties involved and is binding based on the principle of *Res Judicata Pro Veritate Habetur* (a final judgment is regarded as the truth). Jurisprudence serves as an institution to fill the gaps in the law and plays a crucial role in addressing weaknesses within the positive legal system. The judge’s assessment is highly influential in the application of

¹⁶ Shinta Agustina, “Sekali Lagi: Pasal 2 dan Pasal 3 UU Tipikor,” Hukumonline, accessed on May 06, 2025, at 08.03 PM, <https://www.hukumonline.com/berita/a/sekali-lagi--pasal-2-dan-pasal-3-uu-tipikor-lt5719ec2e3894a>.

jurisprudential legal reasoning. When discussing jurisprudence, it is important to consider the legal system in place. In our country, which adheres to the Civil Law system, jurisprudence holds significant importance. Under the Civil Law system, which is based on written law (*ius scripta*), judges are strictly bound by the provisions set forth in statutes. Whatever the content of those provisions, judges must apply the law as written. Judges are not permitted to deviate from what is explicitly stated in the legislation. This restricts a judge's opportunity to make legal breakthroughs or innovations. However, attention must be given to situations where the law (statute) does not regulate a specific matter, and the judge must render a decision based on societal justice. In such cases, the judge's acuity and sensitivity are essential in creating jurisprudence.¹⁷

Limiting Judicial Discretion, Judges are completely free to issue rulings at their own will. Ethics and morality act as binding principles that commonly govern judges' conduct. In Indonesia, this is embodied in the Code of Ethics and the Code of Judicial Conduct for Judges, which are promulgated by the Supreme Court and the Judicial Commission.¹⁸ According to Austin Lovegrove, the source of disparity in sentencing lies in the difficulty of controlling judicial discretion.¹⁹ Thus, in this context, the authority of judges to exercise discretion can become a factor causing disparities in sentencing, both generally and specifically in criminal cases. In carrying out their duties, although judges are granted a degree of freedom, they remain bound by rules and norms. These limitations are not only those written in the law but also

¹⁷ Weda, Made Darma "Relevansi Yurisprudensi untuk Mengurangi Disparitas Putusan Pengadilan (Studi dalam Kasus Pidana Korupsi).

¹⁸ "Diskresi Hakim: Pandangan Orang Dalam," Hukumonline, accessed on May 06, 2025, at 07.03 PM <https://www.hukumonline.com/berita/a/diskresi-hakim--pandangan-orang-dalam-lt5398229f7930c?page=2>.

¹⁹ Lovegrove, Austin. *The framework of judicial sentencing: A study in legal decision making*. Cambridge: Cambridge University Press, 1997.

include the principles of justice that reside within the judge's conscience. Establishing guidelines that can serve as a reference for judges in imposing criminal sanctions, according to Prof. Dr. Bagir Manan, S.H., MCl., although there is currently no established "sentencing pattern" regarding the qualitative and quantitative criteria for determining special minimum sentences, one possible solution is to consider the development of criminal doctrine and/or conduct comparative studies on the criminal laws of other countries. These guidelines should regulate, including the substance of the extent to which judicial discretion is permitted to reduce (to a certain extent) below the statutory special minimum sentence limits, so that the implementation of just law enforcement remains within the bounds of legal certainty.²⁰

V. Conclusion

There is no mathematical formula for imposing penalties such as imprisonment, detention, or fines. However, the judge's considerations can explain why a defendant is sentenced. One of the benchmarks used is the weighing of aggravating and mitigating circumstances. The pattern of judicial consideration regarding aggravating and mitigating factors is largely similar, whether concerning perpetrators of corruption involving state financial losses categorized as minor, moderate, or severe.

Regarding the defendant's courteous behavior in court as a mitigating factor, this does not reduce the seriousness of the crime or the threat posed by the offender and is not considered an effort to diminish the severity of the offense. Therefore, it is inappropriate to regard such behavior as a mitigating circumstance. Moreover, behaving

²⁰ Simarmata, Edward. "Kedudukan dan Relevansi Yurisprudensi Untuk Mengurangi Disparitas Putusan Pengadilan." Laporan Penelitian, Puslitbang Hukum Dan Peradilan Mahkamah Agung RI (2010).

politely in court is an obligation for everyone, including the defendant and court visitors.

Regarding disparities in judicial decisions, the factors of aggravating and mitigating circumstances can be used as benchmarks to compare the sentences imposed on one defendant with those given to another defendant in similar cases. When the offenses are nearly identical, the consequences are almost the same, and the aggravating and mitigating factors are comparable, the corresponding sentences should also be similar in severity.

There are several efforts to minimize disparities in sentencing for corruption cases:

1. Reformulation of Criminal Law related to corruption regarding special minimum sentences, The special minimum sentence in Article 2 paragraph 1 is 4 years, whereas the special minimum sentence in Article 3 is only 1 year. The significant gap between these minimum sentences can also lead to disparities in sentencing.
2. Prioritizing previous judicial jurisprudence, Although Indonesia adopts the Continental European legal system, previous judicial decisions remain one of the legal sources in Indonesia.

Minimizing judicial discretion, although judges have discretion, it does not mean they are completely free to make decisions at will. Ethics and morality act as binding constraints commonly recognized. In Indonesia, this is embodied in the Code of Ethics and the Guidelines for Judges' Conduct issued by the Supreme Court and the Judicial Commission. While judges are granted freedom in carrying out their duties, they are still bound by rules and norms. These limitations are not only those written in the law but also include the values of justice deeply rooted within the judges themselves.

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