

Disparity Of Criminal Sentence By Judges In Criminal Acts Of Corruption Done Together In Pltu Riau-1 Case

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Abstract. The criminal difference turns into a specific issue in policing Indonesia, the shortfall of a lawbreaker endorse rule in impressive crook sanctions is one of the reasons for divergence. This examination plans to know how the hypothesis of discipline and the qualities of criminal dissimilarity for decided in making sentences on defilement cases that are done together and why the Ratio Decidendi Disparity of Decisions in instances of criminal demonstrations of debasement and the lawful attributes of criminal variations in instances of debasement between District Court's choice Number: 9/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. DKI Jakarta High Court Decision Number: 16/Pid.Sus-TPK/2019/PT.DKI, jo. High Court Decision Number: 3681K/Pid.Sus/2019 and District Court's choice Number: 74/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. High Court Decision Number: 1111K/Pid.Sus/2020. This examination utilizes a subjective strategy by utilizing a standardizing juridical methodology. The hypothesis of discipline and the qualities of criminal difference for passes judgment on making sentences on defilement cases are done together. The Ratio Decidendi Disparity of Decisions in instances of criminal demonstrations of debasement and the lawful qualities of criminal incongruities in defilement cases between District Court's choice Number: 9/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. DKI Jakarta High Court Decision Number: 16/Pid.Sus-TPK/2019/PT.DKI, jo. High Court Decision Number: 3681K/Pid.Sus/2019 and District Court's choice Number: 74/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. High Court Decision Number: 1111K/Pid.Sus/2020.

Keywords: Disparity; judge; Proportionality; Conviction Theory

1 Introduction

The realization of the prevention and eradication of corruption and the noble ideals of reform that were instigated by all elements of the Indonesian nation turned out to be the only hope. Currently, the crime of corruption is not eroded by the "fangs" of law enforcement, but by many observers and anti-corruption activists, it is considered to be getting worse. Whereas in the New Order era and even during the Old Order era, corruption was only carried out by the executive and occurred at the top level, now corruption has also penetrated the judiciary and legislature, with various modes, whether carried out in a limited manner or carried out in the congregation.

The word corruption comes from the Latin corruption or corruptus. Furthermore, it was stated that corruption also came from the word corrumpere, an older Latin language. From Latin, most European languages are derived, such as English: corruption, corrupt, French: coruptio,

and Dutch: corruption (korrupsie). We can presume that it was from the Dutch language that the word came down to the Indonesian language, "corruption." According to the Big Indonesian Dictionary, the definition of corruption, as quoted by Suhandi and Surachmin, is the misappropriation or embezzlement of state or company money for personal or other people's interests.

Subekti and Tjitrosoedibio stated that corruption is a fraudulent act, a criminal act that is detrimental to state finances. Meanwhile, Baharuddin Lopa, quoting the opinion of David M. Chalmers, describes the term corruption in various fields, namely regarding the issue of bribery, relating to manipulation in the economic field, and relating to the field of public interest. It is taken from the definition of "financial manipulations and depiction injurious to the economy are often labeled corrupt."

Corruption crimes are generally not committed by just one person; corruption also involves more than two people or groups. The problem is that criminal disparities bring their problems to law enforcement in Indonesia. The criminal disparity of judges' decisions in corruption cases that are carried out jointly is about the qualification of participation. If more than two people are involved in a crime, each person's accountability in the crime must be sought. The involvement of a person in a criminal act can be categorized as one who commits it, who orders it to do it, who participates in it, who moves/recommends it to do it, and who helps to participate is regulated in Articles 55, 56, 57 of the Criminal Code.

The disparity in sentencing in the imposition of crimes occurs naturally because almost no cases are alike. In Indonesia, the disparity in sentencing related to punishment in corruption cases is not a new thing. Several cases of joint corruption that have been revealed have not deterred other corruption actors from tricking government officials. Corruption can lead to disharmony and disintegration based on the interests of groups or groups or based on ethnicity and widen the socio-economic gap between various layers of society. The application of the corruption law itself through the mechanism of the criminal justice system has not been able to do much or has not effectively functioned in fighting corruption.

Regarding the basis for imposing a judge's decision in making a decision, it is carried out after each judge member of the panel expresses opinions or considerations and beliefs or a case, and then deliberation to reach a consensus is carried out. The current criminal law adheres to general and special maximums and general minimums. This causes the judge to impose a sentence to move between the highest and lowest penalties. Since there are various kinds of criminal threats listed in the Criminal Code, Indonesian judges have vast freedom to determine the severity or severity of the crime imposed on the defendant. As a result of such provisions, sometimes criminal acts of the same quality are subject to different penalties (criminal disparity).

The disparity in the imposition of criminal decisions that are too far will create legal gaps because they will cause injustice. The existence of disparities in the sentencing of criminals brings problems to law enforcement because the defendants were sentenced to different sentences while the defendants were charged with the same case, namely related to the crime of eradicating corruption in the PLTU RIAU-1 project.

In view of the portrayal of the foundation over, the essayist isolates into two issue definitions: How are the hypothesis of discipline and the qualities of criminal difference for decided in making sentences on defilement cases that are completed together? For what reason is the Ratio Decidendi Disparity of Decisions in instances of criminal demonstrations of debasement and the lawful qualities of criminal inconsistencies in defilement cases between District Court's choice Number: 9/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. DKI Jakarta High Court Decision Number: 16/Pid.Sus-TKP/2019/PT.DKI, jo. High Court Decision Number:

3681K/Pid.Sus/2019 with District Court's choice Number: 74/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. High Court Decision Number: 1111K/Pid.Sus/2020?

2 Research Method

The method concerns the problem of how it works, namely how to understand the object that is the target of the science concerned. Research for the most part means to create or test the reality of information. Observing means attempting to get something that makes up for a lack of shortfall or. Creating implies growing and digging further into something that as of now exists. Testing the fact of the matter is done in the event that what as of now exists is still or becomes suspicious. This exploration movement is supposed to get total and responsible information, so it must be based on particular thoughts and methods as a requirement for scientific writing. Thus the writing does not deviate from what is the goal.

3 Findings and Discussion

Criminal Theory and Characteristics of Criminal Disparity for Judges in Sentencing Criminal Cases Conducted Together

The theory of punishment adopted in a decision can be seen from the considerations used by the judge in making the decision. The words used in the consideration also describe the theory of punishment adopted in a decision. In addition to the judge's considerations, the judge's judgment (the type of punishment imposed) also illustrates the philosophy of punishment in a decision. This can also be done by comparing the demands with the decisions handed down if they are threatened with the same article.

The use of the doctrine of responsible ability in the perpetrator can be said that the judge has applied the theory of retribution in his decision because the perpetrators must be held responsible for their mistakes. In addition, the use of the word "criminal commensurate with the guilt" to give the right dose "also shows the judge using the theory of retribution. "Considering, that furthermore, to give the right dose of the punishment to be imposed against the Defendant, the Panel of Judges thinks that it is necessary to consider the variables surrounding the imposition of a crime by looking at the socio-juridical dimension."

The words "recovering state finances" indicate the judge uses a retributive theological theory. This means that the judge aims to protect the public by restoring state finances and retaliating for the defendant to pay a sum of money that has been corrupted as a form of state financial recovery in giving this consideration. Meanwhile, the use of the word "provides the impact of Pascaychology dwang" indicates that the judge applies the theory of deterrence/particularly general prevention, namely preventing people from committing acts as committed by the Defendant.

"That in essence the Corruption Crime Law aims, among other things, to restore state finances and or state assets, in addition to imposing criminal penalties on perpetrators to give a psychological impact on the community." defendant's fault." In the editorial quoted below, it is very clear that the judge applies the theological theory of retribution. "That is a principle in the imposition of a criminal must be proportional to the weight of the defendant's guilt.

Sentencing should not reflect arbitrariness without looking at the function and meaning of the punishment itself. Also, punishment must consider the benefits and harm to self (body and soul). The use of the phrase "it is hoped that a feeling of deterrence will arise in the defendant" and can prevent other people from making the same mistake shows that the judge applied the theory of deterrence, both general and specific prevention. "That the nature of the punishment

must reflect the purpose of coaching and teaching the Defendant, which in turn the Defendant can reflect on what he has done."

Factors that can cause criminal incongruities are the shortfall of condemning rules for decided in overwhelming wrongdoings. Sudarto said that the rules for giving the sentence would make it simpler for the appointed authority to decide his sentence in the wake of demonstrating that the respondent had committed the demonstration he was accused of.

Leo Polak's opinion states that one of the conditions in giving a criminal sentence is that the severity of the crime must be balanced with the severity of the offense. The severity of the crime must not exceed the severity of the offense; this is intended so that criminals are not punished unfairly. Concerning the purpose of holding the maximum and minimum limits, it is to provide the judge with the possibility to take into account the background of the incident, namely the severity of the offense and the manner in which the offense was committed, the personality of the perpetrator of the offense, age, and the circumstances and atmosphere at which the offense was committed in addition to his intellectual level or intelligence.

With the decision on the criminal disparity in the Corruption Crime case of PLTU RIAU - 1, where the criminal disparity occurs in the unequal punishment of those who commit together in a criminal act as is the case in the Cases of the Defendants IDRUS MARHAM and SOFYAN BASIR which have the same legal characteristics will but then the verdict handed down was different. The disparity in punishment has a profound impact because it contains constitutional considerations between individual freedom and the state's right to punish—considering that the defendant SOFYAN BASIR was not proven to have committed a criminal act of corruption. Hence, in cases that were decided in the same case, it is possible to correct the decision at a higher judicial level by adjudicating itself.

The Ratio Decidendi Disparity Of Decisions In Cases Of Criminal Acts Of Corruption And The Legal Characteristics Of Criminal Disparities In Cases Of Corruption Between District Court's Decision Number: 9/Pid.Sus-TPK/2019/PN.Jkt.Pst, Jo. DKI Jakarta High Court Decision Number: 16/Pid.Sus-TKP/2019/PT.DKI, Jo. Supreme Court Decision Number: 3681K/Pid.Sus/2019 With District Court's Decision Number: 74/Pid.Sus-TPK/2019/PN.Jkt.Pst, Jo. Supreme Court Decision Number: 1111K/Pid.Sus/2020

According to Barda Nawawi Arief, the criminal disparity applies unequal punishment to the same crime or to crimes whose dangerous nature can be compared without a clear justification. Criminal disparities that still occur often can have fatal consequences. The consequences of criminal disparities can impact the convict and the wider community. The impact of criminal disparity for convicts is that, after being sentenced, the convict compares the punishment he has received.

According to Harkristuti Harkrisnowo, criminal disparities can occur in several categories, in particular:

- a. Disparities between a similar wrongdoing
- b. Disparities between wrongdoings that have a similar earnestness level
- c. Criminal difference forced by one board of judges
- d. The difference between the sentences forced by various adjudicators for a
- e. similar wrongdoing.

In legal considerations, there are 2 (two) things are part of it, namely the Ratio decidendi and the obiter Dictum. The ratio decidendi as part of the consideration cannot be separated from the decision and has legally binding power which can be formulated as a legal rule. In addition, a considerable section is not directly related to the legal problems faced and therefore is not

related to the decision, and this section is called the *obiter dictum*. This part of the consideration is often done because it is used as an illustration or analogy in formulating legal considerations, in which case the *obiter dictum* does not have binding legal force.

The judge's decision as to the final process in law enforcement, the court decision is the result of a legal interaction in the Court Session, which incorporates analyzing observers, looking at litigants, and inspecting proof. Officially there are 2 (two) things that the appointed authority should consider prior to settling on his choice. The arrangements viewing these two things are as managed in the Criminal Procedure Code (KUHAP), where the dynamic construction is: first thought of current realities (whether the litigant perpetrated the demonstration he was blamed for); the two contemplations in regards to the law (whether the respondent's activities are criminal demonstrations and the litigant is blameworthy) so a criminal decision can be forced.

There is a difference (disparity) in the judge's decision handed down to the defendant, both in terms of fines and additional penalties in the form of replacement money. Different punishments must be based on clear and justifiable reasons. This view aligns with the principle of freedom of judges in making decisions on cases submitted to them. The judge must account for his decisions by giving valid and reasonable reasons about the case he is examining in his efforts to maintain legal authority.

Facing the problem of criminal disparity, judges must appreciate the principle of proportionality in punishing defendants with the exact nature and object of the case for the sake of the interests of the perpetrators of the crime and the interests of the victims of criminal acts, as well as the interests of the state because they are related to state finances. Because eliminating criminal disparities is entirely impossible, what needs to be worked out is an appropriate and harmonious punishment.

4 Conclusion

The theory that underlies the sentencing decision against the perpetrators of the Corruption Crime is based on all cases that have been analyzed against the theory of punishment applied by the judge in his decision. Apart from using sentences in the judge's consideration based on the decision handed down and comparing it with the articles required in the Law on the Eradication of Corruption Crimes. The author concludes that the decision on the Corruption case at the Kendari Corruption Court tends to apply a combination of retribution theory and the theory of special and general prevention in its decision, known as the Combined theory.

Legal characteristics: The case between the District Court's decision Number: 9/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. DKI Jakarta High Court Decision Number: 16/Pid.Sus-TKP/2019/PT.DKI, jo. Supreme Court Decision Number: 3681K/Pid.Sus/2019 with District Court's decision Number: 74/Pid.Sus-TPK/2019/PN.Jkt.Pst, jo. Supreme Court Decision Number: 1111K/Pid.Sus/2020 is the very legitimate occasion with the very conditions that should be dealt with similarly founded on the standard of relative equity, so that assuming treated in light of the guideline of corresponding correspondence, the condemning choice ought to likewise be something similar.

Ratio Decidendi in Imposing Decisions Judges' considerations are divided into juridical considerations based on trial facts by relying on evidence and related legal regulations and non-juridical considerations, namely aggravating and mitigating reasons, to determine the severity of the punishment imposed. Handed down is entirely left to the judge. Then the proof of the article imposed is the same. Hence, the sentencing of the crime does not have to be different but is treated the same as the principle of proportionality. The occurrence of criminal disparity is

also influenced by the ideology of the judge or the different thoughts and philosophies of punishment between retaliation and coaching.

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