



## Analysis of disparity of punishment: Study of district court and high court decision of corruption of Manado, Indonesia

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### Abstract

This paper discusses two problems: (1) what factors cause the emergence of criminal disparities in the decisions of the district court and the high court of corruption; (2) Efforts made to prevent the occurrence of criminal disparities. The method of data collection was carried out by document study and distribution of questionnaires to several judges. Data is processed and analyzed using qualitative descriptive analysis. The results of the study: (1) there are three factors that cause the emergence of criminal disparities: judicial factors, legal systems and regulatory factors; (2) in order to prevent the occurrence of criminal disparities, it is necessary to immediately reconstruct Indonesia's anti-corruption law. In the Anti-Corruption Law, it is necessary to regulate criminal guidelines.

**Keywords:** analysis, criminal disparity, court decision, act, corruption crime

### 1. Introduction

There is no denying that criminal disparity is one of the main problems in the criminal justice process in Indonesia. Molly Cheang<sup>[1]</sup> emphasizes that criminal disparity is the application of non-equal criminal acts to the same criminal offence or to criminal acts whose dangerous nature can be compared without a clear justification.

In other countries, the problem of criminal disparity is identified as a factor that can reduce the appreciation of both criminal offenders and the public against the court. Especially for offenders, they will consider themselves victims of the *judicial caprice* and for the criminal implementing apparatus this will be one of the obstacles to the process of re-convicting convicts<sup>[2]</sup>.

To prevent criminal disparities, the idea needs to be regulated regarding special minimum criminal provisions. Specific minimum criminal provisions have been applied in various legislation in Indonesia, among others: Law on Crime of Trafficking in Persons, Law on Money Laundering, Law on Child Protection, and Law on the Eradication of Corruption Crimes.

Specifically, it should be stressed, the inclusion of a special minimum criminal code in the Law on the Eradication of Corruption Crime (Anti-Corruption Law) is intended to prevent criminal disparities that are very striking, both in the same case in the context of inclusion (*deelneming*), and in different cases but different types of offenses violated by the perpetrators are the same or are of essentially no different quality<sup>[3]</sup>.

In this paper, we will discuss the following two main problems: (1) what factors have led to the emergence of criminal disparities in the decisions of the district court and the high court of corruption; (2) Efforts made to prevent the occurrence of criminal disparities.

The method of data collection is done by studying legal documents that are related, both statutory regulations and judges' decisions and related legal document data. In addition, the researcher will circulate a questionnaire to several judges in the District Court and the High Court of Corruption in Manado Indonesia. Furthermore, the data were analyzed using qualitative descriptive analysis.

<sup>1</sup> Muladi and Barda Nawawi Arief, in Antonius Sudirman, Eksistensi Pidana Minimum Khusus Sebagai Sarana Penanggulangan Tindak Pidana Korupsi, Jurnal Masalah-masalah Hukum, Jilid 44 No. 3 Juli 2015, pg 318-319.

<sup>2</sup> Muladi in Antonius Sudirman.....dst. Ibid. Pg. 319.

<sup>3</sup> Mohammad Amari, 2013, *Politik Penegakan Hukum dalam Tindak Pidana Korupsi*, Jakarta, Solusi Publishing, pg. 204.

## 2. Discussion

### 2.1 General Description of the Disparity of Decisions of the District Court and the Manado Corruption High Court

**Table 1:** Comparison of the decisions of the District Court and the High Court of Corruption

No.	District Court Decision	Decision of the High Court
1.	<ul style="list-style-type: none"> <li>▪ Decision of Mando District Court No.6/PID.SUS/TK/2016/PN Mnd.</li> <li>▪ Amar: The indictment of the Public Prosecutor Canceled For Law.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Decision of the High Court 14/PID.SUS/2017/PT MND, 2017.</li> <li>▪ Amar: Declare Defendant DRA. HJ. Marlina Moha Siahaan has been proven legally and convincingly guilty of committing a criminal act of "Corruption Together and Continuing". Therefore, the defendant was sentenced to imprisonment for 6 years and a fine of Rp. 200,000,000, provided that if the fine was not paid then it was replaced with a sentence of imprisonment for 6 months. In addition, the defendant must pay a sum of Rp. 1,250,000,000.</li> </ul>
2.	<ul style="list-style-type: none"> <li>• Number of Decision of Manado District Court: 30/Pid.Sus-TPK/2015/PN.Mnd, 2016.</li> <li>• Amar: Stating that the defendant Jefferson Soleiman Montesquieu Rumajar has been legally and convincingly proven guilty of committing a criminal act of corruption together. Therefore, the defendant was sentenced to imprisonment for 4,6 years and a fine of Rp. 200,000,000 and paid a compensation of Rp. 19,478,001,007.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Decision of the High Court : 11/PID.SUS/2016/PT.MND.</li> <li>▪ Amar: Stating that the defendant Jefferson Soleiman Montesquieu Rumajar has been legally and convincingly proven guilty of committing a criminal act of corruption together. Therefore, the defendant was sentenced to 7 years imprisonment and a fine of Rp. 200,000,000 and paid a replacement fee of Rp. 19,478,001,007.</li> </ul>
3.	<ul style="list-style-type: none"> <li>▪ Number of Decision of Manado District Court: 51/PID.SUS/TPK/2015/PN Mnd, 2016.</li> <li>▪ Amar: Declares defendant Joel CH. Kumajas, ST. legally proven and convincingly guilty of jointly carrying out Corruption Crimes. Therefore the defendant was sentenced to prison for 1, 6 years, a fine of Rp.100,000,000.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Decision of the Manado High Court 7/PID.SUS/2016/PT MND, 2016</li> <li>▪ Amar: Declares Defendant Joel Ch. Kumajas, S.T. legally and convincingly proven guilty of committing criminal acts of corruption jointly. Therefore, the defendant was sentenced to 4 years imprisonment and a fine of Rp. 200,000,000.</li> </ul>
4.	<ul style="list-style-type: none"> <li>▪ Number of Decision of Manado District Court: 3/Pid.Sus TPK/2016/PN.Mnd, 2016</li> <li>▪ Amar: Declared Defendant I or Paulus Longdong and Defendant II or Joutje Dengah were legally and convincingly proven guilty of committing criminal acts of corruption jointly. Therefore the defendants I / Paulus Longdong and Defendant II / Joutje Dengah were sentenced to 4 years in prison and a fine of Rp. 200,000,000, provided that a fine not paid must be replaced with a sentence of 1-month imprisonment.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Decision of the Manado High Court: 12/PID.SUS/2016/PT MND, 2016</li> <li>▪ Amar: Declared Defendant I or Paulus Longdong and Defendant II or Joutje Dengah were legally and convincingly proven guilty of committing criminal acts of corruption jointly. By Karen, Defendant I / Paulus Longdong and Defendant II / Joutje Dengah were sentenced to 4 years in prison and a fine of Rp. 200,000,000 each; provided that if the fine is not paid, it must be replaced with a sentence of imprisonment for 4 months.</li> </ul>
5	<ul style="list-style-type: none"> <li>▪ Number of Decision of Manado District Court: 26/Pid.Sus-TPK/2015/PN.Mnd, 2016.</li> <li>▪ Amar: Declare that the Defendant Drs Jimmy Renny Kowaas, M.Sc has been proven legally and convincingly guilty of committing Corruption Crime together and continuing ". Therefore the Defendant was sentenced to prison for 1, 6 years.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of Decision of the Manado High Court: 13/PID.SUS/2016/PT MND, 2016</li> <li>▪ Amar: Declare Defendant Drs. Jimmy Renny Kowaas, M.Sc. proven legally and convincingly guilty of committing criminal acts of corruption together and continuing. Therefore the Defendant was sentenced to imprisonment for 2 years.</li> </ul>

*Source: Manado Corruption Court, 2018.*

The description above shows that in the same case there was a disparity in punishment (which was vertical) between the decision of the District Court and the decision of the High Court.

*First*, in case number 1, there is a very striking difference between the Decision of the Manado District Court No.6/PID.SUS/TK/2016/PN Mnd, with number of decision of the Manado High Court 14/PID.SUS/2017/PT MND, 2017. In the District Court Decision, the panel of judges rejected the Public Prosecutor's indictment because it was deemed null and void. However, in the Decision of the Court of Appeal, the defendant was found guilty of committing a criminal act of corruption jointly; therefore the defendant was sentenced to 6 years in prison and a fine of Rp. 200,000,000 and pay a replacement money of Rp. 1,250,000,000.

*Second*, in case No. 3 there was a striking disparity between the decision number of the Manado District Court: 30/Pid.Sus-TPK/2015/PN.Mnd, 2016, with number of Decision of the Manado High Court: 11/PID.SUS/ 2016/PT.MND. The disparity occurs both in terms of the severity of imprisonment, and the severity of imprisonment that replaces substitute money. In the decision of the Manado District Court, the defendant was sentenced to 4, 6 years imprisonment and imprisonment that replaced the replacement money for 1 year. However, in the decision of the Court of Appeal, the duration of imprisonment imposed on the defendant was 7 years and a prison sentence for 2 years.

*Third*, in case number 4, there was a very significant criminal disparity between the District Court of Manado Number Decision 51/PID.SUS/TPK/2015/PN Mnd, 2016 with the

High Court decision number 7/PID.SUS/2016/PT MND 2016. This disparity occurs in the case of the severity of the sentence imposed on the defendant in both prison and criminal penalties. In the District Court Decision the defendant was sentenced to 1.6 years imprisonment and a fine of Rp.100,000,000. However, in the decision of the High Court the defendant was sentenced to 4 years imprisonment and a fine of Rp. 200,000,000.

*Fourth*, in case number 2, there was a considerable disparity between Number of the decisions of the Manado District Court 3/Pid.Sus-TPK/2016/PN.Mnd, 2016 with the Manado High Court decision number 12/PID.SUS/2016/PT MND, 2016. This disparity occurs in the event that the defendant is sentenced to imprisonment in lieu of a fine. In the decision of the Manado District Court the duration of imprisonment substituted a fine for 1 month, while in the decision of the Manado High Court the defendant was sentenced to imprisonment instead of a fine for 4 months.

*Fifth*, in case number 5 there are differences between the decisions Number of the Manado District Court 26/Pid.Sus-TPK/2015/PN.Mnd Tahun 2016 dengan Putusan Putusan PT MANADO Nomor 13/PID.SUS/2016/PT MND Tahun 2016. This disparity occurs in the event that the defendant is sentenced to imprisonment and confinement in lieu of a fine. In the decision of the Manado District Court the duration of imprisonment substituted a fine of 1.6 years, while in the decision of the Manado High Court the defendant was sentenced to 2 years imprisonment and confinement to replace the fine for 2 months.

## 2.2 Factors affecting the disparity of Criminality in the Corruption Court Decision

Based on the results of research by researchers in the District Court and the Manado High Court that there are several things that cause the appearance of criminal disparities.

### i) The Legal Flow adopted by the judges

It cannot be denied that in deciding a case, the judge is very dependent on what flow he adheres to. Is a judge adhering to a traditional or non-traditional law stream. This is in line with the opinion of several judges of the High Corruption Crime Court in Manado<sup>[4]</sup> which confirms that the flow of thought adopted by the judge is crucial in making decisions and in determining the severity of the criminal imposed by the judge, or compliance with the judge's criminal provisions (minimum) in the law, this will lead to the occurrence of criminal disparities.

### ii) Independence of judges

Briefly it can be stated that the factor of judges' independence also influences the emergence of criminal disparities. Because an independent judge will not be bound by criminal provisions in the law<sup>[5]</sup>. In connection with that, all judges of the Manado

High Corruption Court<sup>[6]</sup> confirms that the freedom of judges guaranteed by the Constitution and the Basic Laws of the Judicial Authority of the Republic of Indonesia also affect the emergence of criminal disparities in corruption cases. In this case the judge is given the freedom to impose a criminal proportionally. That means the criminal imposed by the judge is adjusted to the level of seriousness of the crime committed.

### iii) Judge's Morality

The judge's morality and integrity aspects also influence the emergence of the severity of the crime and also lead to criminal disparities<sup>[7]</sup>. In connection with that, all judges of the Manado High Corruption Court<sup>[8]</sup> asserted that there was influence from the morality and integrity factors of judges on the emergence of criminal disparities in corruption cases. Therefore, the accountability of the judge's morality is absolutely necessary in the process of examining, adjudicating and deciding cases in order to create a quality decision. In this case, the low integrity of judges can make judges deviate from the minimum criminal provisions in the Anti-Corruption Law. In this case, the penalty imposed by a judge can be lower than the minimum criminal provision in the Anti-Corruption Law.

### iv) Legal System Aspects

The legal system adopted in Indonesia places more emphasis on provisions in the Law than jurisprudence<sup>[9]</sup>. This can be the cause of the appearance of criminal disparities in corruption cases. This is in line with the opinion of the judges of the Corruption Criminal Court in Manado<sup>[10]</sup> which confirms that there is influence from the prevailing legal system in Indonesia, that judges in Indonesia are bound by the provisions of the applicable law in Indonesia but the judge is not bound by the previous judge's decision. In this case the judge may follow or not follow the Jurisprudence insofar as it does not conflict with the Law.

### v) Legal Aspects or Legislation

Provisions in the Anti-Corruption Law can affect the appearance of disparities in judges' decisions. In connection with that, the researcher cited the opinion of one of the judges of the Manado Corruption High Court<sup>[11]</sup> who emphasized: "In my opinion that the criminal interval in the Anti-Corruption Law needs to be regulated properly so that it can be guided by the judge in the imposition of criminal charges. If it is properly regulated, namely guaranteeing legal certainty and justice, the judge will submit to the law. But the problem is with the Anti-Corruption Law, Law No. 31 Tahun 1999 jo 20 Tahun 2001, does not reflect justice, namely between the

<sup>4</sup> Questionnaire that answered by some judges Act Criminal Corruption of Manado, 2018.

<sup>5</sup> Comparabel with Antonius Sudirman, Hati Nurani Hakim dan Putusannya .....dst. *Op.cit.* pg. 91-96.

<sup>6</sup> Questionnaire that answered by some judges Act Criminal Corruption of Manado, 2018.

<sup>7</sup> Read article from Antonius Sudirman, Hati Nurani Hakim dan Putusannya dst. *Op. cit* pg. 27-51

<sup>8</sup> Questionnaire that answered by some judges Act Criminal Corruption of Manado, 2018.

<sup>9</sup> Andreas Lumme, Hakim pada Pengadilan Tinggi Tindak Pidana Korupsi Manado, Questionnaire that answered by some judges Act Criminal Corruption of Manado, 2018.

<sup>10</sup> Questionnaire that answered by some judges Act Criminal Corruption of Manado, 2018.

<sup>11</sup> Questionnaire that answered by some judges Act Criminal Corruption of Manado, 2018.

minimum criminal threat and the maximum threat is too far. For example the provisions contained in Article 2 paragraph (1) of the Anti-Corruption Law, the threat of a maximum of life imprisonment or 20 years in prison, while the minimum threat is 4 years in prison. Disparity also occurs because of the minimum uniform criminal regulation in the Anti-Corruption Law. Examples of Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law. Concretely, for example, the District Court imposes a criminal offense under Article 2 paragraph (1) with a minimum sentence of 4 years, while the High Court applies Article 3 with a minimum sentence of 1 year ".

### 2.3 Solution: Legal reconstruction in Overcoming Criminal Disparities

The most important step in preventing criminal disparities in the judge's decision, namely the reconstruction of the Anti-Corruption Law, in particular, needs to be regulated regarding the guiding guidelines for punishment.<sup>[12]</sup> It is desirable that criminal prosecution be based on the value of State losses and the reasons for the severity and mitigation measures. In addition, it is necessary to stipulate in the Law that the minimum criminal threat in the Anti-Corruption Law is mandatory to be applied by the judge in deciding cases of corruption that are classified as extraordinary crimes. If the judge ignores the minimum sentence, then this is seen as an illegal act.

The various solution steps mentioned above are a serious effort in order to minimize the occurrence of criminal disparities, so that people increasingly respect the law and its enforcement, especially in the enforcement of criminal acts of corruption which are classified as extraordinary crimes and crimes that cause large losses to the country's economy.

### 3. Conclusion

Based on the discussion in the future it can be concluded as follows. First, there are three factors that cause the emergence of criminal disparities in the Corruption Criminal Court Decision, namely: judicial factors, legal systems and regulatory factors.

Second, in order to prevent the occurrence of criminal disparities, several things need to be done immediately, namely: (1) the recruitment of judges must be conducted fairly and transparently, and then the instrument of supervision of judicial behavior is strictly created. (2) special minimum criminal provisions in the Anti-Corruption Law are stipulated as mandatory provisions applied by judges in deciding corruption cases. (3) the severity of the specific minimum criminal threat in the Anti-Corruption Law should be proportional.

### 4. References

1. Acmad Ali. *Keterpurukan Hukum di Indonesia: Penyebab dan Solusinya*, Ghalia Indonesia, 2005.
2. Andi Hamzah. *Pemberantasan Korupsi Melalui Hukum Pidana Nasional dan Internasional*, RajaGrafindo Persada,

Jakarta, 2007.

3. Antonius Sudirman. *Hati Nurani Hakim dan Putusannya, Suatu Pendekatan dari Perspektif Ilmu Hukum Perilaku (Behavioral Jurisprudence) Kasus Hakim Bismar Siregar* 11, PT. Citra Aditya Bakti, Bandung, 2007.
4. Antonius sudirman, *eksistensi pidana minimum khusus sebagai sarana penanggulangan tindak pidana korupsi*, jurnal masalah-masalah hukum undip semarang, jilid, 2015.
5. Antonius Sudirman. *Specific minimum criminal and prevention of disparity of sentencing: Legislative policy analysis in the law of the republic of Indonesia on corruption*", *International Journal of Law*. 2017; 3(6):82-91.
6. Bambang Widjojanto. *Berkelahi Melawan Korupsi: Tunai Janji Wakafkan Diri*, Intrans Publishing, Malang, 2016.
7. Barda Nawawi Arief. *Bunga Rampai Kebijakan Hukum Pidana*, Bandung, Citra Aditya Bakti, 1996.
8. Esmasjah Djaja. *Memberantas Korupsi Bersama KPK*, Sinar Grafika, 2010.
9. Mohammad Amari. *Politik Penegakan Hukum dalam Tindak Pidana Korupsi*, Jakarta, Solusi Publishing, 2013.

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<sup>12</sup> Antonius Sudirman, "Specific minimum criminal and prevention of disparity of sentencing: Legislative policy analysis in the law of the republic of Indonesia on corruption", *International Journal of Law*, Volume 3; Issue 6; November 2017, Page No.90.