



Judges' considerations in determining the criminal action of corruption relationship with the principle of legal assurance

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Abstract

One of the important issues towards the future of legal development including law enforcement in Indonesia is how to exercise judicial power in accordance with the laws and regulations and fulfill the principles of justice for the perpetrators of corruption who are charged with Articles 2 and 3. In this study the author uses a normative juridical approach. The results of this study are: *First*, the basis of the judge's considerations in imposing a sentence on the defendant in the corruption case article 3 of Law number 20 of 2001, namely the basis of the judge's juridical considerations, namely the judge's consideration from a legal point of view, based on the evidence provided. there is. Non-judicial considerations are considerations that are seen from non-legal aspects, namely in considering the severity of corruption. *Second*, the application of PERMA Number 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption is normatively only devoted to criminal acts of corruption contained in Article 2 and Article 3 of the Corruption Criminal Act, because in general Article 2 and Article 3 is a criminal act of corruption that is very common in Indonesia. Therefore, the application of this regulation is only applied to articles 2 and 3 of the corruption law number 20 of 2001 concerning the Eradication of Corruption Crimes.

Keywords: judges, sentencing, criminal acts of corruption

Introduction

One of the important issues towards the future of legal development including law enforcement in Indonesia is how to exercise judicial power in accordance with the objectives of the 1945 Constitution and Law no. 48 of 2009 concerning Judicial Power. Realizing law enforcement in the field of judicial power that is free, independent and independent is one of the goals to be achieved within the framework of a rule of law and democracy (Fence M. Wantu, 2013:206) ^[12].

Judge etymologically means "the person who decides the law". The judge is the main element in the court. In fact he is "identical" with the court itself. The freedom of judicial power is often identified with the freedom of judges. Likewise, court decisions are identified with judge decisions. Therefore, the achievement of law enforcement and justice lies in the ability and wisdom of judges in formulating decisions that reflect justice. (Cik Hasan Bisri, 1996:55) ^[9]

The independence of the Judicial Power or judicial/judicial bodies is one of the foundations for the implementation of a democratic government under the *rule of law* as the idea of a modern rule of law was sparked at a conference by the *International Commission of Jurists* in Bangkok in 1965 The importance of the independence of judicial bodies and powers has been universally accepted and emphasized in various international legal instruments as follows: 1) Article 10 *Universal Declaration of Human Rights*, 2) Article 14 *International Covenant of Civil and Political Rights*, 3) paragraph 27 of the *Vienna Declaration and Program for Action* of 1993, 4) *International Bar Association code of Minimum Standards of Judicial Independence* of 1982 in New Delhi, 5) *Universal Declaration on the Independence* of 1983 in Montreal, Canada, 6) *Beijing Statement of Principles of the Independence of Judiciary in the Law Asia Region* 1995. (Mariyadi, 2014:17) ^[14] Judges should not be influenced by the circumstances around them or pressure from anyone in making decisions. Judges must stay away from situations that can affect them in upholding justice, both inside and outside the court. (Abdul Manan, 2007:5) ^[2]

There are three duties of a judge when examining a case, namely 1) To check the legal events proposed by the parties, whether the proposed legal events actually occurred or not. The judge tries to find out and believe whether the legal events that have been proposed are true or not. 2) Qualify the legal events submitted by the parties to him. That is, the judge assesses the event that is considered to have actually occurred has a certain legal relationship in the applicable laws and regulations. This legal relationship is referred to and used as the legal basis for decision making. 3) Meng Constituir, namely establishing the law, or giving a decision to the litigants. (Abdul Halim Talli, 2014:2-3) ^[1].

The task of the judge in examining a case by always being guided by the reference to laws and regulations as well as the professional code of ethics and coupled with earnest efforts to always greet the legal feeling of the community's sense of justice, is expected to become an ideal judge. Namely, a judge who is not only a mouthpiece of the law, but who is far more important as a mouthpiece of law and justice that is beneficial to society, can be tangible and not just wishful thinking. The absolute requirement or condition *sine qua non in a*

country based on law is an independent, neutral (impartial), competent and authoritative court capable of enforcing legal authority, protecting law, legal certainty and justice. (Nurlaila Harun, 2017:107) ^[18].

The goodness and badness in carrying out state duties by this judge is an assessment taken based on the attitude of the judge in the trial. A one-sided decision will greatly affect the public's assessment of the judge's performance. The experience as described in the case of law enforcement which is still problematic above shows that intentional partisanship with knowledge and willingness in making decisions made by judges is still common. (Jatmika Nugraha, 2013:139) ^[13]

In explaining law enforcement in Indonesia itself which is full of irregularities in the law, Sidharta explains this through what is called a legal gap. The legal gap has become very open because the legislators have never been able to fully predict the variants of concrete events that will occur in the future. If the provisions do not accurately address the need to resolve concrete events, then these normative provisions can be expanded or narrowed in their area of meaning. The legal study community calls this process a legal discovery as an effort to fill the gap in the law itself.

From time to time the perpetrators of corruption come and go along with the succession of law enforcement officers who carry out the task of eradicating corruption. The National Police Chief changed, the Attorney General changed, the head of the Corruption Eradication Commission changed, even the President changed, anti-corruption institutions were formed, laws and regulations were made, but corruption still existed. It is as if no official or leader of this country is able to stop it with all kinds of laws or existing commissions and institutions. Various studies and research were conducted. Various seminars, debates, and *workshops* have also been held to eradicate corruption, but until now corruption has not been stopped and is even getting worse. People become apathetic, whether this country's legal apparatus is able to eradicate corruption. (Oxidelfa Yanto, 2017:50) ^[19] Corruption in various cases that were revealed took various forms such as corruption in the form of bribery between businessmen and unscrupulous legislative, executive and judicial officials, giving gratuities, trading in influence (*illicit enrichment*) and corruption in the abuse of authority as regulated in Articles 2 and 3. One element of Corruption in Articles 2 and 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Criminal Acts of Corruption is the element of state loss, this element has the consequence that the eradication of Corruption is not only aims to deter corruptors by imposing heavy imprisonment, but to restore state finances due to corruption as stated in the preamble and general explanation of the Anti-Corruption Law. (Suryadi, 2017:101) ^[27]

One of the efforts to eradicate corruption is the confiscation of assets resulting from corruption, but many people are pessimistic about efforts to return assets resulting from criminal acts of corruption. Mainly related to the imbalance between the number of assets returned to the state and the cost of pursuing the assets themselves. The issue of asset *recovery* must be seen as important as convicting the perpetrators with the harshest possible punishment in an effort to eradicate corruption. (Selviria and Isma Nurilah, 2019:44) ^[25]

According to ICW's monitoring, in general, corruption perpetrators receive sentencing decisions in Articles 2 and 3 in the form of light imprisonment by court judges and criminal sanctions for returning state losses have not been maximally returned. Observing this condition, the author is of the view that perpetrators of corruption should be sentenced to imprisonment and a maximum fine, including a criminal return for state losses.

In imposing the corruption crime regulated in Articles 2 and 3, the judges gave different decisions and found decisions that were lower than the minimum standard set by law. For example in the corruption case with the defendant Akhmad Hasyim Firmansyah in decision No. 382 K/Pid/2016 sentenced to 2 years even though in the formulation of Article 2 the minimum penalty is 4 years in prison. Another example is the corruption case where the defendant Sumantri *et al.* were proven to have committed Article 2 corruption but the Panel of Judges through the decision No. 2359 K/Pid/2016 but the Panel of Judges only sentenced 1 year 2 months in prison and 3 years 6 months to the defendant Dudung Rusmana in the verdict of the Corruption crime case. No. 640 K/Pid/2017 while the minimum penalty is imprisonment of 4 (four) years. In another corruption case, the defendant Syamhari Saleh Bin Saleh was proven guilty of corruption Article 3 in the verdict of the Corruption crime case no. 2359 K/Pid/2006 was sentenced to only 6 months in prison while the minimum penalty for Article 3 is 1 year imprisonment.

In response to this problem, the Court adopted a policy by issuing Supreme Court Regulation No. 1 of 2020 concerning Guidelines for the Criminalization of Articles 2 and 3 of the Law on the Eradication of Criminal Acts of Corruption. Based on the following considerations: 1) That every criminal sentence must be carried out with due regard to the certainty and proportionality of sentencing in order to realize justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia; and 2) That in order to avoid disparity in cases having a similar character, punishment guidelines are needed.

This consideration shows that the Supreme Court wants to fulfill the principle of justice that can be felt for perpetrators of corruption crimes ensnared in Articles 2 and 3 and the principle of legal certainty to avoid a wide disparity in sentencing crimes between convicts with one another. The author considers that this Perma should be appreciated as a form of the Supreme Court's effort to realize legal certainty as one of the legal goals that must be felt by justice seekers (*justitia bellen*) including in corruption cases which often cause debate when the decisions handed down are not in accordance with public expectations. However, it should be investigated further whether this Perma has met the expectations of the community to provide legal certainty and justice, especially to reduce the number of sentencing disparities.

Then a problem arises that needs to be studied more deeply 1) What is the basis for the judge's consideration in determining the punishment for criminal acts of corruption? And 2) How is the application of punishment for

criminal acts of corruption related to the principle of legal certainty? The purposes of this paper are 1) To find out the basis for judges' considerations in determining the punishment for criminal acts of corruption in Articles 2 and 3 of Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption; and 2) To analyze the application of criminal penalties for criminal acts of corruption Articles 2 and 3 based on Perma No. 1 of 2020 concerning Guidelines for the Criminalization of Articles 2 and 3 of the Law on the Eradication of Corruption Crimes related to the principle of legal certainty.

Results and Discussion

1. The basis for judges' considerations in determining the punishment for criminal acts of corruption

Corruption is the subordination of the public interest to the interests of personal goals which include violations of norms, duties, and public welfare, accompanied by confidentiality, betrayal, fraud and extraordinary ignorance of the consequences. - Consequences suffered by society. In short, corruption is the misuse of trust for personal gain. (Aziz Syamsudin, 2011:137) ^[8]

Eradication of criminal acts of corruption in various countries is basically based on the spirit to save state assets even though by applying different methods. Therefore, the law on corruption eradication must be designed in such a way as to facilitate comprehensive and systematic efforts to eradicate corruption in order to achieve these objectives. The norms for eradicating corruption must be formed and compiled with strong foundations that are also appropriate in representing that goal, both from a philosophical point of view and from the theories used. Along with the development of human life and civilization, it turns out that the implementation of criminal sanctions for revocation of independence contains more negative aspects than positive aspects. The negative aspects that arise from the imposition of a criminal revocation of independence are for example the occurrence of *dehumanization, personalization and stigmatization*. (Muladi and Barda Nawawi Arief, 1984:78) [17] In addition, another negative aspect is the exhaustion of energy for law enforcement and the state budget to focus on efforts to physically punish criminals rather than focus on recovering the consequences of the crimes committed. Whereas in many criminal cases, the loss or negative consequences caused by a crime are more important to be repaired than depriving the freedom of a criminal.

In terms of eradicating corruption, there are two determining factors, namely the legal factor (*laws*) and the human factor (*men*), namely the ability and authority of law enforcement to understand these factors first, then apply them in concrete situations in accordance with the demands of national development. Especially law graduates whose professions are in the field of law application such as prosecutors, judges and lawyers, need to have three things, namely knowledge, deep understanding and skills in addition to a deep sense of morality. (Sudarto, 1977:20) ^[26]

In corruption cases, there are many factors that serve as the basis for judges' consideration in deciding to be acquitted if they are not proven to have committed a crime and there is not enough evidence or determine the severity of the crime that will be imposed on the perpetrator of a criminal act of corruption if it is proven to have committed a crime.

Judges, who in this case are the central figures in the court process, are always required to learn moral sensitivity, maintain moral intelligence and increase professionalism in upholding law and justice for all levels of society as a whole without exception. The judge acting as an independent and impartial person is expected to rectify everything that according to the defendant's feelings has occurred unilaterally, half rightly and also an inappropriate attitude was carried out by the officers before the court session. (Roeslan Saleh, 1983:45)

The judge's decision is indeed demanded by the community to be fair, but as human beings as well as judges in their decisions it is impossible to satisfy all parties, but even so the judge is also expected to produce the fairest decision according to the legal facts in in the consideration of the trial based on clear legal basic rules and accompanied by the conscience of the judge.

The imposition of a criminal or sentencing is the realization of criminal regulations in the law which is something abstract. In imposing a criminal decision, the judge must really understand whether the decision handed down has reached the target for the purpose of sentencing. The criminal system according to positive law, judges have the freedom to determine the severity of the punishment to be imposed on the defendant, between the general minimum and the special maximum, although judges are free to consider the severity of the sentence to be imposed and do not arbitrarily comply with their subjective feelings. The purpose of the formation of a law using this system is to provide freedom for judges in determining the severity of the sentence imposed on the defendant by considering various factors aimed at achieving justice.

In the case of corruption, many factors are used as the basis for judge's consideration in deciding to be acquitted if it is not proven to have committed a crime and there is not enough evidence or determine the severity of the crime that will be imposed on the perpetrator of a criminal act of corruption if it is proven to have committed a crime. In his decision, the judge must state which actions of the defendant, based on the facts revealed at the trial, meet the formulation of certain articles of the legislation.

Based on the power of the judiciary, the judge can determine how much punishment is appropriate for the perpetrators of criminal acts of corruption on the basis of justice, so that according to Article 50 paragraph 1 of Law No. 48 of 2009 firmly that all court decisions must contain the reasons and basis for the decision, including certain articles of the relevant laws and regulations or unwritten sources of law that are used as judges to adjudicate, and the judge's obligation to give sufficient consideration to the decisions handed down to limit the arbitrary actions of the judges.

The formulation of the article on the crime of corruption is contained in Article 3 of the Republic of Indonesia Law no. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the eradication of criminal acts of corruption which reads: "Every person who, with the aim of benefiting himself or another person or a

corporation, abuses the authority, opportunity or means available to him because of his position or position. Which can harm state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

The basis for the judge's consideration in imposing a sentence on the defendant in the corruption case is Article 3 of Law number 20 of 2001 in conjunction with Law number 31 of 1999, namely the basis for consideration of juridical and non-juridical judges. It can be explained as follows:

The basis for juridical considerations is the judge's consideration from a legal point of view. So that in deciding the crime of corruption in Article 3 of Law No. 20 of 2001 in conjunction with Law No. 31 of 1999, the judge must examine carefully and thoroughly based on what was revealed at the trial, namely based on the available evidence, whether the defendant's actions met the elements of corruption. -The elements of article 3 are: (R. Wiyono, 2012:45) ^[24] 1) Benefit oneself or another person or a corporation; 2) Abusing the authority of existing opportunities or facilities because of their position or position; and 3) Harm the state finances or the state economy.

The basis for non-juridical considerations are considerations that are seen from non-legal aspects. The application of the severity of the sentence imposed on a judge is adjusted to the motivation and consequences of the perpetrator's actions, especially in the application of the type of imprisonment, but in the case of certain laws normatively stipulating certain articles regarding sentencing with minimal threats as regulated in Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption. The judge in his consideration must also pay attention to aggravating and mitigating matters as stated in Article 8 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power which states that: "In considering the severity, the judge must also pay attention to the good and evil nature of the accused".

Here it is explained that the judge must pay attention to the good and evil characteristics of the accused, in considering the punishment to be imposed and the personal circumstances of the accused need to be considered or taken into account in order to give a commensurate and fair punishment. This personal situation is obtained from information from people from the environment, neighbors, psychiatrists and so on. In addition, in imposing a sentence, the judge must explore the background of the occurrence of a criminal act by taking into account the nature and seriousness of the crime as well as the circumstances which include the acts charged with the accused, including the level of education, the personality of the accused and the environment and others, so that the judge feels confident that the decision handed down is true and fair.

2. The application of punishment for criminal acts of corruption is associated with the principle of legal certainty

One of the phenomena that has always been a public discourse in the administration of the state in Indonesia is corruption. For most countries in the world, corruption is a serious problem that threatens the sustainability of the country. This is because the factual practice of corruption is not only detrimental to state finances, but systematically has a negative impact on the democratization process of a country. (Alejandro Moreno, No. 3-4:2002) ^[4] From an economic point of view, corruption also has an impact on efficiency and justice which creates gaps in the economic distribution of society. (Susan Rose-Ackerman, 1996:190) ^[28]

An ideal judge's decision should fulfill aspects of legal certainty, in addition to the values of justice and expediency. Otherwise, this will certainly reduce public confidence in the judiciary. In addition to the issue of legal certainty, the gap in the judge's decision often creates a sense of dissatisfaction for the convict. (Purwoto Ajeng Arndita Lalitayari, Pujiyono, 2019:169) ^[23]

The Supreme Court has officially issued Supreme Court Regulation (Perma) Number 1 of 2020 concerning Guidelines for Criminalizing Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes (Tipikor). This regulation was made to avoid a glaring disparity in punishment for one corruptor with another. This regulation was signed by the chairman of the Supreme Court Syarifuddin and promulgated on July 24, 2020. This sentencing guideline regulates, among other things, the determination of the severity of the crime must take into account the category of state finances, the level of guilt of the defendant, the impact and benefits, the range of criminal penalties, aggravating circumstances. and relieve the defendant. With the presence of this Perma, it is hoped that it will reduce the criminal justice gap that has been occurring so far.

PERMA Number 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption is normatively only devoted to criminal acts of corruption contained in Article 2 and Article 3 of the Corruption Criminal Act. This is a big question considering that there are many types of corruption crimes contained in the Corruption Crime Act.

According to the two articles above, there are several inconsistencies involved in the provision of a minimum criminal penalty of Article 5 paragraph (2), Article 6 paragraph (2), and Article 12 of Law Number 20 of 2001. Although the elements of the three articles are similar, the threats have different punishments. Article 12 provides a heavier criminal threat than Article 5 paragraph (2) and Article 6 paragraph (2), so when the prosecutor makes a claim using Article 2 paragraph (1) or Article 12, the judge can choose an alternative and subsidiary charge with a higher penalty. light. There is a tendency for prosecutors to formulate indictments on a subsidiary basis, so that the elements of the primary charge must be proven first.

In the systematics of legislation, the position of PERM is under the law. Because the material is under the law, the perma should not actually exceed the limits of the law. In the Anti-Corruption Law, there is already a limit on state losses. It should be a law that only fills a legal vacuum. Regarding disparity, it must be regulated by law. *Asan extraordinary crime*, the handling of corruption cannot be done normally. The eradication of corruption

which has been carried out in the usual way has so far proved ineffective because it has encountered many obstacles. This is because the virus of corruption not only attacks the executive and legislative bodies, but also spreads to the judiciary by judges, prosecutors and the police as law enforcement institutions, therefore an extraordinary law enforcement method is needed to eradicate corruption. For this reason, an extraordinary law enforcement method is needed through the establishment of a special agency that has broad, independent and free authority from any power in the effort to eradicate corruption, whose implementation is carried out optimally, intensively, effectively, professionally and continuously.

Certainty is a certain thing (condition), the law must essentially be certain and fair. Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates in a definite and logical manner.

According to Soerjono Soekanto whether or not a law is effective is determined by 5 (five) factors, namely: the legal factor itself, the law enforcement factor (the party who makes and applies the law), the target factor or facilities that support law enforcement, the community factor, namely the environment where the law is applied or is applied, and cultural factors as a result of creative works and tastes based on human initiative in association. (Adi Nur Rohman, Palti Frederick Hasiholan Etc. 2021:97) ^[3]

This PERMA I/2020 sentencing guideline also cannot be seen as stand-alone, in other words the regulations in PERMA I/2020 must be viewed holistically and systematically with PERMA, SEMA, or the provisions of other laws and regulations relating to the imposition of criminal acts in corruption cases. For example, in this sentencing guide, it will be mentioned about the imposition of fines, therefore judges also need to pay attention to other provisions regarding fines, for example the provisions regarding imprisonment in lieu of fines that have been regulated in the Criminal Code.

The PERMA I/2020 guidelines are used as a reference for judges in determining the amount or severity of the main crime in Article 2 and Article 3 of the Corruption Eradication Law. In imposing a crime, the judge adjudicating Article 2 and Article 3 of the Law on the Eradication of Criminal Acts of Corruption must consider the following stages: 1) Determine the category of state financial loss or the state economy; 2) Determine the error rate, impact, and profit; 3) Choose the range of criminal penalties; 4) Considering aggravating and mitigating circumstances; 5) Imposing a sentence, and 6) Considering other provisions relating to the imposition of a criminal offense.

The above stages are considered by the judge in sequence, accompanied by a description of the facts of the trial in the form of a narrative that is described in the legal considerations in the decision. (Matheus Nathanael Siagian, Nanda Oktaviani *et al.* 2021:46) [15] This PERMA I/2020 sentencing guideline is applied or used after the judge determines the proven criminal act article, and provides a statement regarding the fulfillment of all elements in the formulation of the crime and the defendant legally and convincingly guilty of committing a crime (there is criminal liability). This PERMA I/2020 sentencing guideline contains regulations on how judges impose penalties (penalties or *straftoemeting*) against Article 2 and Article 3 cases of the Law on Corruption Eradication. Therefore, this sentencing guideline will not touch the scope of the judge's jurisdiction in declaring proven or unproven (article elements) of a criminal act (the presence or absence of criminal liability). Likewise, this sentencing guideline will also not provide regulations regarding the implementation or execution of criminal decisions. In the Indonesian constitutional structure, the Supreme Court is one of the state institutions that holds judicial power as mandated by Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The Supreme Court is mandated with the duties and authority to adjudicate at the level of classification, examine statutory regulations under the law against laws and regulations. law, as well as other powers granted by law. Despite its position as a judicial organ whose main function is to adjudicate and oversee the function of legislation (judicial review), the fact is, the Supreme Court regularly issues its own legal products in the form of Supreme Court regulations (PERMA).

The juridical legitimacy for the Supreme Court's authority to issue PERMA, among others, is contained in the provisions of Article 79 of Law Number 14 of 1985 concerning the Supreme Court jo. Law Number 5 of 2004 in conjunction with Law Number 3 of 2009 (UU MA) which states that "The Supreme Court can further regulate matters needed for the smooth administration of justice if there are matters that have not been sufficiently regulated in this law." Reflecting on the formulation of the article, there is a delegation of laws to the Supreme Court which allows this institution to carry out other regulatory functions (*regelend*). In addition, Law No. 12 of 2011 jo. Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation, also explains that one type of legislation is a regulation set by the Supreme Court. This is quite a dilemma from the point of view of constitutional law, because based on the doctrine of administrative law, the delegation of regulatory authority (*delegatie van wetgeving*) is commonly given to the government as a public legal instrument to regulate the administration of government. (Aminuddin Ilmar, 2014:153) [5] Such a delegation to the judiciary will cause pros and cons, because judicial power, apart from being not identical with the legislative function (*regeling*), is also not tasked with carrying out the function of administering government (*bestuur*).

In general, this PERMA contains guidelines or standards for imposing criminal penalties by judges on corruption offenses regulated in Articles 2 and 3 of Law 31 of 1999 jo. UU no. 20 of 2001. The standardization is divided into categories of heavy and light losses to the state as well as the extent of the mistakes, impacts, and benefits obtained by the perpetrators.

Regulations on the severity of the crime will be considered by the judge and attached in a written appendix containing the order of categories of state financial losses, error rate, impact, benefits, range of criminal penalties, aggravating and mitigating circumstances, and criminal penalties (Article 5 PERMA Number 1 Year 2020). Aspects of state financial losses are classified into the heaviest, heavy, medium, light and lightest

categories based on a certain nominal (Article 6). Categorization also applies to the elements of the degree of error, impact, and profit (category, high, medium, and low). Meanwhile, in the high error aspect, the defendant will be qualified based on his role including: significant role, advocate, using advanced technology in the modus operandi, and carried out in a disaster situation or economic crisis on a national scale. (Orin Gusta Andini, 2021:140).

In this point of view, the position of PERMA Number 1 of 2020 is precisely as a form of institutional protection or external support for the independence of judges. In fact, the disparity in sentencing occurs due to many factors, including the absence of sentencing guidelines (*strafstoematingsleiddrad*) in the Criminal Code which is the reason for the many disparities in punishment that occur without rational reasons. In addition, the strong character of civil law means that there is no obligation for judges to be bound by previous judges' decisions (jurisprudence) or as stated in the principle of *stare decisis et quieta non movere*. Thus, even in similar cases, judges have free will to make decisions based on their authority. Based on this, the establishment of PERMA Number 1 of 2020 has a strategic position and role as an effective solution in minimizing the occurrence of criminal disparities in eradicating corruption. At least, even if there is a disparity in sentencing, the gap is not too far away, and the judge has a juridical footing in imposing sentences.

Romli Atmasasmita highlighted the provisions of PERMA Number 1 of 2020 which should not be regulated through PERMA, but included on the agenda for the revision of the Anti-Corruption Law. This results in potential regulatory overlap. This opinion is quite logical, considering that PERMA only plays a role in filling legal voids on materials that have not been regulated in the Supreme Court law. However, it does not mean that there are no limitations on what materials may be regulated in PERMA. If you look at the provisions of Article 79, the scope of the PERMA regulation is only limited to the administration of justice related to procedural law. Thus, the legislators have indirectly provided signs so that the PERMA material does not take material that should be the material of the law.

From the perspective of legislation theory, the content of PERMA Number 1 of 2020 can indeed be seen as not in line with the theory of the hierarchy of norms as proposed by Kelsen and Hans Nawiaski. Essentially, the theory of hierarchy of norms idealizes that legal regulations are arranged in stages and systematically from the highest to the lowest, where lower rules must be sourced and must not conflict with higher rules. (<https://doi.org/10.24815/kanun.v13i1.6233>)

On the other hand, PERMA Number 1 of 2020 can also be seen as a breakthrough in legal reform of the Anti-Corruption Law, this refers to the function of PERMA Number 1 of 2020 as a guideline punishment for judges who fill the legal vacuum in the Anti-Corruption Law. In fact, legal reform by the Supreme Court has often occurred and is quite effective in perfecting procedural law and the judicial system in Indonesia, for example in the case of reforming civil procedural law which is mostly filled by the jurisprudence of the Supreme Court, the doctrine of the supreme judges as outlined in the Circular Letter of the Supreme Court. (SEMA), and the formation of PERMA. (Mohammad Kamil Ardiansyah, 2020:384)

In terms of formulating and stipulating laws that have been and will be implemented, legal politics hand over legislative authority to state administrators, but by still paying attention to the values that exist in society, in order to achieve the country's aspired goals. aspire. (Padmo Wahjono, 1986:160) ^[21].

In the context of criminal law politics, Mark Ancel interprets it as an art with a practical aim so that positive legal regulations are formulated better and can provide guidance to legislators, courts that apply the law, and to executors of court decisions. (Dhoni Martien, 2017:10) ^[10].

In the context of sentencing the perpetrators of corruption, the disparity that occurs is not entirely caused by subjective factors of judges, but rather contributes to the formulation of incomplete legislation. Specific minimum criminal threats in Article 2 paragraph (1) and Article 3 of the Anti-Corruption Law, for example, are considered to be a source of criminal differences in many corruption cases. With the formulation of the offense that is not too much different, the Anti-Corruption Law stipulates a minimum sentence of 4 years in prison and a minimum fine of Rp. 200 million against violators of Article 2 paragraph (1), but only a minimum sentence of 1 year in prison and a minimum fine of Rp. 50 million for perpetrators who violate Article 3. This causes law enforcers, including judges, to mix up the application and interpretation of the formulations of the two articles and formulate logic to 'match' the consideration of the decision with a higher criminal threat even though the legal facts are in process. The evidence points to Article 3 of the Corruption Eradication Law which has a specific minimum penalty which is lower than Article 2 paragraph (1) of the same law.

With the upper (maximum) and lower (minimum) limits as well as categorization in setting sanctions, not only makes it easier for judges to decide cases, but can minimize disparities that occur. For this reason, the initiative and courage of the Supreme Court in responding quickly to legal needs and creating legal certainty in the punishment of corruption should be appreciated. However, this does not mean that PERMA can automatically create complete legal certainty. A number of critical notes show that PERMA's legal politics in creating legal certainty still looks half-hearted. One of the reasons is the limited scope of PERMA Number 1 of 2020 which only covers the types of corruption in Article 2 and Article 3 of the Corruption Eradication Law.

Conclusion

The basis of the judge's consideration in imposing a sentence on the defendant in the corruption case article 3 of Law number 20 of 2001 in conjunction with Law number 31 of 1999, namely the basis of the judge's juridical considerations, namely the judge's consideration from a legal point of view, based on the evidence provided by the judge. There is. In addition to juridical considerations, judges also use non-juridical considerations, namely considerations that are seen from non-legal aspects, namely in considering the severity of corruption. The judge is also obliged to pay attention to the good and evil characteristics of the accused and his personal circumstances

in considering the sentence imposed. In addition, Law Number 48 of 2009 concerning Judicial Power is relevant to be used as a reference by judges as the basis for judges' considerations in making decisions. The application of PERMA Number 1 of 2020 concerning Guidelines for the Criminalization of Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes is normatively only devoted to corruption crimes contained in Article 2 and Article 3 of the Corruption Crime Act, because in general Article 2 and Article 3 is a criminal act of corruption that is very common in Indonesia. Therefore, the application of this regulation is only applied to articles 2 and 3 of the corruption law number 20 of 2001 concerning the Eradication of Corruption Crimes.

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