



Legal analysis of Judges' decisions below the minimum limit, specifically in corruption criminal action

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Abstract

This research analyzes the juridical considerations in the Surabaya Corruption Court Decision No. 74/Pid.Sus-TPK/2019, which imposed a sentence below the special minimum in a case of corruption involving National Health Insurance (JKN) Capitation Funds. The research aims to examine the fulfillment of the principles of justice and legal certainty in said decision. Utilizing Gustav Radbruch's theory, the research finds that the judge imposed a 2-year prison sentence on KHOLIFAH, the treasurer of the community health center (puskesmas), who was proven to have unlawfully deducted incentive allowance (Jaspel) funds amounting to Rp 59.6 million. The judge's considerations were based on a contextual systemic analysis, such as hierarchical bureaucratic structure, divided moral responsibility, and motives for institutional operational interests. A Radbruchian analysis reveals that this decision entails a reevaluation of legal value priorities, where substantive justice and social utility are prioritized over formal legal certainty. The judge is considered to have applied the principle of proportionality and captured the spirit of the Corruption Eradication Law. It is concluded that the decision, although normatively deviant, has fulfilled the principles of justice and legal certainty within a substantive and contextual framework.

Keywords: Decision, special minimum, corruption, jkn capitation, principle of justice, principle of legal certainty

Introduction

Conceptually, corruption is defined as dishonest or illegal conduct by those in positions of authority for personal or another's benefit, which can harm state finances or the economy (Putri, 2021) ^[10]. In Indonesia, this definition has been explicitly formulated into 30 forms of corruption offenses grouped into seven main categories, such as state financial loss, bribery, and embezzlement, as regulated in Law No. 31 of 1999, joined by Law No. 20 of 2001 (KPPU). Although eradication efforts through regulations and specialized institutions have intensified, corruption scandals continue to recur in increasingly sophisticated forms.

Various theories attempt to explain the causes of corruption. The GONE theory (Greed, Opportunity, Need, Exposure) and the Willingness and Opportunity theory highlight the combination of internal factors, such as greed or need, with external factors, including systemic weaknesses and low supervision. Corruption is also characterized by its nature of involving more than one person, being conducted secretly, containing elements of fraud and betrayal of trust, and violating norms of responsibility in state life (KPK, 2022).

Given its extraordinary nature (extraordinary crime), handling corruption offenses requires an extraordinary approach (extraordinary measures). However, the reality of law enforcement often indicates otherwise. Many corruption defendants are acquitted or sentenced to punishments disproportionate to their actions, including judgments below the extraordinary minimum threat mandated by law. This deviation is deemed detrimental to the state, hinders development, and potentially erodes the public's sense of justice and trust in the law (Adji, 2009).

Within the context of a rule-of-law state based on Pancasila, law enforcement and sentencing justice require serious attention and consideration. Judges possess independent authority to administer justice and uphold the law,

considering juridical, philosophical, and sociological elements. Although Supreme Court Circular Letters emphasize the determination to eradicate corruption by enforcing written legal rules, the absence of clear sentencing guidelines in special laws often creates application problems, especially when judges are faced with numerous mitigating factors.

Judicial practice shows several judicial decisions in corruption cases that breach the special minimum rule. Examples include Supreme Court Decision No. 1660 K/Pid.Sus/2009, Supreme Court Decision No. 382 K/Pid/2009, Poso District Court Decision, and the focus of this research, namely the Surabaya District Court Decision No. 74/Pid.Sus-TPK/2019/PN.Sby. In the latter decision, the defendant, KHOLIFAH, was found to have violated Article 12, letter e, of the Corruption Law and sentenced to 2 years' imprisonment and a fine of Rp 100 million, which is below the extraordinary minimum threat.

Based on this background, this research aims to examine in depth the judge's considerations in rendering a judgment below the special minimum in the corruption case involving the misuse of National Health Insurance Capitation Funds. Therefore, the analytical focus will be directed at whether the Judge in Deciding Below the Special Minimum in the Corruption Case Number: 74/Pid.Sus-TPK/2019 Has Fulfilled the Principles of Justice and Legal Certainty.

Methods

The research entitled Juridical Analysis of Judges' Decisions Below the Special Minimum in Corruption Crimes Involving Misuse of National Health Insurance Capitation Funds (A Study of Surabaya Corruption Court Decision No: 74/Pid.Sus-TPK/2019) constitutes normative legal research. Soerjono Soekanto states that library legal research is typically referred to as juridical or normative legal research, which involves legal research conducted on law that is not directly related to human behavior (Soekanto, 2017).

This research will be conducted using two types of approaches: the Legislative Approach (statute approach) and the Case Approach (case approach), namely: the Legislative Approach (statute approach), conducted by examining the Laws and regulations pertinent to the legal issue being researched. This is because the focus of the research will be on the various legal rules that are the central theme (Librahim, 207). Case Approach (case approach), the reasoning or rationale used by the judge to reach a decision, so that it can be used as an argument in solving the legal problem examined by the researcher in the Judicial Decision No: 74/Pid.Sus-TPK/2019/PN.Sby. The primary study in this approach is Ratio Decidendi, also known as Motivering, which refers to the judge's considerations that led to the decision (Marzuki, 2006).

1. Theories of Justice and Legal Certainty

1.1. Theory of Justice

Law plays a central role in maintaining social order and creating a balance of societal rights and obligations, not only as a social control tool but also as a means of realizing justice and legal certainty. Gustav Radbruch asserts that three legal values must be essential elements of the legal approach: justice (philosophical), legal certainty (juridical), and social utility (sociological). All three are necessary to achieve order, so the purpose of law is to realize justice, certainty, and utility. Radbruch defines law as the complex of general precepts for the coexistence of human beings (Radbruch, 1050).

The principle of justice, according to Radbruch, is absolute, formal, and universal, namely, fair treatment, impartiality, and granting each party's rights proportionately. It aligns with Aristotle, who distinguished between distributive justice (the proportional distribution of rights between individuals and the state) and commutative justice (justice in exchange within horizontal relationships among citizens). The principle of utility demands that the law provide benefits for all parties in need, both those harmed and not. Meanwhile, the principle of legal certainty aims to create order through clear, consistent rules and decisions, free from subjectivity.

However, in practice, conflicts often arise between these three legal objectives, for instance, when rigid legal certainty disregards the sense of justice. Addressing this, Radbruch established a priority scale: justice is prioritized, followed by utility, and finally, legal certainty. The reason is that justice and utility are on one side, opposing legal certainty. Justice demands generalization (equal treatment), while utility requires individualization (benefits enjoyed individually) (Suhardin, 2006).

1.2. Theory of Legal Certainty

Legal certainty is the principle that states the law must be clear to its subjects so that they can adjust their actions, and the state does not act arbitrarily. It is a primary element of the rule of law (Claes *et al.*, 2009). Normatively, legal certainty refers to statutes enacted and promulgated with clarity, regulating logically to avoid multiple interpretations and conflicts. Various experts provide definitions: Utrecht views it as (1) the existence of general rules so individuals know permissible/impermissible acts, and (2) a guarantee of security from government arbitrariness (Buitelaar & Sorel, 2010). Gustav Radbruch links it to four matters: positive law in statutory form, based on facts, facts formulated

clearly, and positive law not easily changed (Leawoods, 2000).

Jan M. Otto stipulates requirements for realistic legal certainty: (1) legal rules are transparent, consistent, and easily accessible; (2) government agencies consistently apply them; (3) citizens agree and adjust their behavior; (4) judges are independent and consistent; (5) court decisions are enforceable. This certainty is achieved if the substance of law meets societal needs (Otto, 2012). Sudikno Mertokusumo states that legal certainty is the guarantee of law implementation according to its wording, so the public is confident that the law can be enforced. He emphasizes that law (general, binding, and equalizing) and justice (subjective, individualistic) are two distinct concepts (Mertokusumo, 2006). Nur Hasan Ismail adds internal norm requirements: conceptual clarity, clarity of hierarchy, and consistency among regulations (Ismail, 2025).

The purpose of legal certainty is to realize justice, enable everyone to anticipate consequences of their actions, and enforce equality before the law without discrimination (Hamdani *et al.*, 2023). Gustav Radbruch himself asserts legal certainty as one of the purposes of law (Leawood, 2000). Therefore, Radbruch's theories of justice and legal certainty are used as analytical tools in this research, because their principles regarding certainty and equality in justice align with sentencing objectives.

Result and Discussion

1. Research Findings Regarding the Judge in Deciding Below the Special Minimum in the Corruption Case Number: 74/Pid.Sus-TPK/2019/PN. Sby Has Fulfilled the Principles of Justice and Legal Certainty.

Case in Decision No: 74/Pid.Sus-TPK/2019/PN.Sby

The defendant, Kholifah, as Operational Treasurer and JKN Capitation Fund Treasurer of Karangploso Community Health Center (Puskesmas), Malang Regency, together with Dr. Sony Muclishon, as Head of the Puskesmas, were charged with committing corruption. From January to August 2018, at Karangploso Puskesmas, within the jurisdiction of the Kepanjen District Court, they jointly, with the intent to benefit themselves or others, unlawfully or by abusing their authority, compelled employees to accept payment with deductions from the incentive allowance (Jaspel) funds.

Karangploso Puskesmas, as a First-Level Health Facility (FKTP), received income from BPJS Capitation and Non-Capitation Funds, part of which was allocated for Jaspel to support its 57 employees. The procedure was that, after the funds were received, KHOLIFAH would calculate the allocation (70% Jaspel, 30% Facility Fee) and disburse the Jaspel amount to each employee's account. However, with the approval and complete knowledge of Dr. Sony Muchlison, KHOLIFAH made deductions against the Jaspel funds that should have been received in full by the employees.

The deduction modus was systematic. The employees' ATMs were made collectively and held by KHOLIFAH to facilitate withdrawals. Each month, KHOLIFAH withdrew a sum of money from several representative ATMs (e.g., Rp 500,000 per employee, with differing amounts based on employment grade). This withdrawn money was then deducted again when it was to be distributed in cash to employees every three months, before the remainder was

distributed. The total deductions during the January-August 2018 period reached Rp 59,603,915.

The funds from these deductions were used for various purposes outside regulations, namely: paying salaries of non-civil servant honorary doctors, paying wages for 16 interns/volunteers, and a monthly contribution to the Health Office amounting to 1/14 of the monthly Capitation receipt after tax. Part of the funds was also allocated to Dr. Sony Muchlison (e.g., Rp 10 million for "aggregation management reward"), and some was retained as a balance by KHOLIFAH. Regarding the total deduction amount of Rp 59,603,915, Defendant KHOLIFAH was declared unable to account for its use.

This action drew objections from several employees who felt that their rights had been diminished. For his actions, KHOLIFAH was arrested by the East Java Police's Illegal Levies Eradication Team (Saber Pungli) on September 27, 2018, and from the arrest, cash evidence amounting to Rp 75,620,000 was secured. All deductions and Jaspel fund management actions were conducted without being based on prevailing laws and regulations.

Based on the case position described above by the researcher, the findings of this research indicate that the judge's consideration of imposing a sentence below the special minimum for KHOLIFAH constitutes a progressive legal breakthrough, courageously prioritizing substantive justice over formal legal certainty. The judge did not merely examine the legal-formal aspect of the state loss amount, but delved into the actual root of the problem within the health bureaucracy system at the puskesmas level. The fact that Jaspel fund deductions occurred systematically since 2017 indicates this was a structural policy, not merely the individual initiative of the defendant as treasurer. Thus, this judgment reflects a comprehensive understanding of the context of white-collar crime, which often involves systemic networks, where lower-level actors are merely cogs in a larger corruption machine.

The judge critically considered the aspect of moral responsibility in this case. Although the defendant could be legally sentenced, morally, his responsibility was shared with his superiors and a system that allowed this practice to persist—the key testimony of Dr. SONY MUCHLISON, as the direct superior who gave the deduction order (although in a separate file), proved that the defendant was in a subordinate position, with difficulty refusing a superior's order. The judge understood the ethical dilemma faced by lower-level employees in a hierarchical bureaucratic structure, where defiance of a superior could result in other structural sanctions. This understanding formed the basis for the judge's consideration not to apply the special minimum sentence rigidly.

Concerning evidence, it shows the judge was highly critical in assessing the "unlawful" element of the defendant's actions. The fact that several employees, such as GIARTI CANDRASASI, stated "Jaspel receipt was done monthly Rp. 500,000, and every 3 months with the approval of the Head of Puskesmas" (Page 35) indicates a kind of "informal legitimacy" in the practice. Although not in accordance with written regulations, a collective decision-making mechanism involving institutional leadership was established. The judge observed that in Indonesian bureaucratic practice, discrepancies often occur between the law on paper and the law in implementation, thus demanding strict compliance from executive-level

employees with written regulations without considering bureaucratic reality could create injustice.

The judge considered that the use of criminal law should be a last resort, after other efforts are deemed inadequate. In the context of this case, the fact that the defendant was a civil servant with a good record for 29 years without disciplinary violations showed that administrative sanctions could actually be a proportional option. The judge understood that ensnaring someone with the Corruption Law would bring permanent social consequences, including dishonorable dismissal and stigma as a corruptor, the impact of which is far greater than the benefit achieved.

Furthermore, crucially, the judge considered the aspect of restorative justice in his decision. The defendant's admission, stating that "has suffered greatly from being shunned by office colleagues and being ostracized" (Page 8), shows that socially, the defendant has already received sufficiently heavy non-formal sanctions. The judge recognized that sentencing is not merely for retribution, but must also restore damaged conditions. In this context, sentencing below the special minimum was deemed sufficient to provide a deterrent effect, without permanently destroying the Defendant's and his family's future.

This judgment also reveals that the judge performed a contextual interpretation of the law regarding the special minimum sentence provision. The researcher opines that the judge understood that the spirit of the special minimum sentence in the Corruption Law is to ensnare major corruptors (koruptor kelas kakap) who systemically harm state finances. In this case, the fact that the deducted funds were used for "salaries of honorary doctors and intern workers" (Page 14) suggests that the motive was not to enrich oneself massively, but to circumvent an imperfect payroll system at the puskesmas. Although still legally wrong, the judge differentiated the gradation of fault between corruption for personal interest and corruption to cover systemic shortcomings.

More in-depth analysis reveals that the judge considered the aspect of distributive justice in sentencing, as evidenced by witness data indicating that "deductions were made proportionally according to grade," suggesting no discrimination in the deduction pattern. Even the defendant himself had his funds deducted, which indicates this was a policy applied collectively. The judge saw that in distributive justice, the burden of responsibility should also be divided proportionally according to the level of authority and benefit received. Therefore, it would be unjust if only the treasurer, as the technical executor, bore a heavy criminal burden.

Notably, the judge considered the aspect of social utility in his decision. Sentencing a puskesmas treasurer to a long prison term would cause a ripple effect on public health services in that region. The consideration that the defendant was "an employee who understands the system and has contributed for a long time" became a consideration that the benefit of maintaining the continuity of public health services is more important than merely fulfilling a minimum sentence number. The judge performed a broader utility calculation, not solely fixated on legalistic aspects.

In assessing the element of "state financial loss," the judge was highly critical in this case. The fact that the deducted funds did not entirely go into the defendant's personal pocket, but were used for puskesmas operational needs, indicates that macro-economically, the funds still circulated

for public interest, albeit in an improper manner. The judge distinguished between absolute state loss and administrative loss. This distinction is crucial in determining the proportionality of sentencing.

Furthermore, this judgment has met the standards of both procedural and substantive justice. The judge did not arbitrarily reduce the sentence but went through a comprehensive trial process by presenting 23 witnesses plus 1 additional witness and analyzing 52 items of evidence. The depth of examination, encompassing administrative aspects, technical, and financial management, and fund distribution patterns, reveals that the consideration to impose a sentence below the special minimum was based on in-depth factual analysis, not merely the judge's subjective policy. Thus, the principle of legal certainty is still fulfilled through consistency in the reasoning method.

2. Analytical Findings Regarding the Judge in Deciding Below the Special Minimum in the Corruption Case Number: 74/Pid.Sus-TPK/2019/PN. Sby Has Fulfilled the Principles of Justice and Legal Certainty.

Analysis of this judgment from the perspective of Gustav Radbruch's theory indicates that the judge made a breakthrough in reconstructing the relationship between justice and legal certainty. According to Radbruch, unjust law (unjust law) is not worthy of absolute application. In the context of this case, the rigid application of the special minimum sentence of 4 years would cause substantive injustice, considering the factual complexity and social context underlying the defendant's actions. Through his decision, the judge demonstrated that criminal law enforcement must not be confined to blind legalism, but must be able to capture the spirit of justice that exists in society.

Using Radbruch's theoretical lens, the researcher can analyze that the judge in this case applied what is known in legal philosophy as "the nature of the thing" (*die Natur der Sache*). The fact that the defendant made fund deductions "upon the order and with the full knowledge of the Head of Puskesmas" (Page 14) shows that, substantively, the primary authority and responsibility lay at the leadership level. The judge understood that, in bureaucratic reality, a treasurer does not have complete autonomy in financial management without the approval of their superior. Therefore, sentencing a treasurer with the same heavy punishment as the superior who gave the order would contradict natural justice principles.

This judgment embodies the implementation of what Radbruch termed the "legal idea" (*Rechtsidee*), emphasizing the balance between legal certainty, utility, and justice. The judge's consideration that "an imperfect system more caused the Defendant's actions than individual malicious intent" reflects the search for that balance. The judge did not ignore legal certainty entirely, but moderated it by considering aspects of utility (the impact of sentencing on family and society) and justice (the proportionality between fault and punishment).

From Radbruch's theoretical perspective, the researcher can analyze that the judge conducted a proportionality test on the application of the Corruption Law in this case. The fact that "part of the funds was used for Puskesmas operational interests" (Page 14) became a consideration that, materially, the level of state loss was not as great as it appeared

formally. Therefore, law, through the interpretation of a law enforcer (judge), must be able to distinguish between violations that are *malum in se* (evil in themselves) and *malum prohibitum* (prohibited due to regulation). In this context, the judge viewed the defendant's actions as closer to the second category, so an overly heavy sentencing would be disproportionate.

This judgment reflects what Radbruch's theory terms "tolerance for small injustices to avoid greater injustice." The consideration that "heavy sentencing of the Defendant would cause greater injustice to the family dependent on him" shows the judge performed a broader justice calculation. In Radbruch's philosophy, law must not become a tool that creates new unnecessary suffering, especially when the violation committed does not cause massive social damage.

Applying Radbruch's theory, the researcher suggests that the judge in this case distinguished between the "letter of the law" and the "spirit of the law." The fact that "deductions were conducted openly and known by many parties" (Page 14) indicates that the spirit of the Corruption Law to eradicate hidden and maliciously intended corruption practices was not fully met in this case. Radbruch emphasizes that legal interpretation must be able to capture the spirit of the law, rather than merely adhering to its literal text. In this context, the judge observed that the spirit of the Corruption Law is to eradicate predatory corruption, rather than practices that circumvent the system for the sake of institutional operational interests.

It also shows that this judgment constitutes a rejection of what Radbruch termed "extreme legal positivism," which absolutely separates law from morality. The judge's consideration, which considered "the moral aspect of the Defendant as an employee with a previously good performance record," shows that criminal law must not be applied mechanically without considering individual moral context. Radbruch argues that true law must contain an element of morality, and sentencing that ignores an individual's moral track record is unjust.

From the perspective of Radbruch's theory on "conflict of values", the judge in this case was faced with a conflict between the value of legal certainty and the value of substantive justice. The choice to decide below the special minimum indicates that the judge prioritized substantive justice over legal certainty when faced with a conflict. Radbruch argues that in such situations, a judge has a moral obligation to choose justice, because law without justice is force without legitimacy.

Furthermore, the researcher reveals that this judgment aligns with what is known in the development of Radbruch's theory as "the principle of proportionality in the Radbruch formula". The consideration that "the Defendant's actions did not cause pure state financial loss" because funds were still used for public institutional interests became the basis for applying the proportionality principle. The judge observed that, although the defendant formally violated the law, materially, its negative impact was not as significant as assumed in the special minimum sentence provision.

Finally, this analysis demonstrates that the judgment has fulfilled what Radbruch termed "the inner morality of law," which requires that law be applied considering internal moral aspects, such as justice, propriety, and utility. The judge's comprehensive consideration, encompassing both juridical and non-juridical aspects, demonstrates an effort to

achieve justice that is not only legal but also legitimate. Within Radbruch's framework, decisions such as this can build trust in the legal system, as society sees that the law can adapt to the complexity of social reality without sacrificing the basic principles of justice.

Conclusion

The judge who imposed a sentence below the special minimum (2 years imprisonment and a fine of Rp 100 million) has fulfilled the principle of justice, but not entirely fulfilled the principle of legal certainty. The non-fulfillment of the legal certainty principle is evident in the judgment, which does not conform to the law's mandates, as the judge imposed a sentence exceeding the special minimum threshold. However, it must be remembered that the judge is obliged to explore, follow, and understand the legal values and sense of justice prevalent in society, as regulated in Article 5, paragraph (1), of Law Number 48 of 2009 concerning Judicial Power. This is also in line with the shift in our law towards a more progressive approach, meaning that a Judge's decision must not be rigid in interpreting the law creatively for the sake of social justice, because a judge is not a mere mouthpiece of the law. Thus, the judge's considerations regarding the bureaucratic context, the defendant's motive not being entirely for personal interest, and the use of funds for puskesmas operations. This judgment reflects a rejection of the rigid application of law (extreme legal positivism) and prioritizes the principle of proportionality and restorative justice. Therefore, although deviating from the minimum threat, the judgment still has a strong and just basis for consideration. In this context, the judgment is viewed as still fulfilling the principle of legal certainty because it was conducted through a lawful trial process, based on substantial evidence, and in accordance with realistic law.

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