



Problematics of Disparity in Law Enforcement of Corruption: Influence Review and Law Reformulation Ideas

Iza Rumesten¹, Muhammad Syaifuddin², Desia Rakhma Banjarani³,
Taufani Yunithia Putri⁴

¹Faculty of Law, Universitas Sriwijaya, E-mail: izarumestenunsri@yahoo.com

²Faculty of Law, Universitas Sriwijaya, E-mail: syaifuddin_unsri@yahoo.co.id

³Faculty of Law, Universitas Sriwijaya, E-mail: desiabanjarani@fh.unsri.ac.id

⁴Faculty of Law, Universitas Sriwijaya, E-mail: taufaniputri@fh.unsri.ac.id

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Corresponding Author:

Desia Rakhma Banjarani,

E-mail:

desiabanjarani@fh.unsri.ac.id

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Abstract

Various controversies when disparities occur cannot simply eliminate it, this is because disparities are something that cannot be avoided from the freedom of judges in making decisions. Therefore, in order for the disparity to be directed towards realizing justice, it is necessary to have an ideal formulation of the disparity in corruption crimes in enforcing national law based on Pancasila values. Based on this background, the authors will conduct research with the formulation of the problem, namely: What is the effect of the disparity in corruption criminal decisions on the effectiveness of national corruption criminal law enforcement? What is the idea reformulation of the disparity in corruption decisions? Normative legal research using a statutory approach is the methodology employed in this study. The findings of the study show that the disparity in corruption decisions has an influence on the effectiveness of national corruption criminal law enforcement. The disparity in corruption criminal decisions can affect the public's perspective and evaluation of justice which can be seen as a disturbing form of injustice. Therefore, it is necessary to have a new formulation in sentencing which is the basis for judges in determining sentencing based on Pancasila as the ideology of the Indonesian state. The idea formulation of the disparity in corruption crimes in enforcing national law based on Pancasila values can be grouped as follows: formation of sentence guidelines; revision of the corruption law; improving the quality of institutions and law enforcement

1. Introduction

Corruption is extra ordinary crimes because the systematic and widespread nature. That crimes not only rises financial states loses but also violate social and economic rights.¹ Since corruption is a type of illegal activity that is harmful to the state and society, the

¹ Ifrani, "TINDAK PIDANA KORUPSI SEBAGAI KEJAHATAN LUAR BIASA", *Al'Adl*, 3/2, 2017: 319-336, 321.

public's desire to see it eradicated reflects the issue with law enforcement in this nation. The government, especially law enforcement officers, has not taken genuine and significant action to implement and execute the legislation, despite hard attempts to combat corruption in both general governance and development.²

When a judge reviews and decides a case, adjudicating is a crucial step in the law enforcement process. In essence, the judge considers the facts of the case and imposes punishment in accordance with the relevant laws. Law enforcement reaches its pinnacle when a decision is made regarding what or how the law applies to a particular situation. In carrying out the roles, the judge has the task of resolving cases and his function of adjudicating can be interpreted as upholding the law and providing justice.³

Article 24 of the Republic of Indonesia's 1945 Constitution, Law No. 8 of 1981 about Criminal Procedure Law, and Law No. 48 of 2009 concerning Judicial Power or the Judiciary Law all provide the legal foundation for carrying out justice.⁴ As stipulated in Article 1 of Law Number 48 of 2009, it is stated that "Judicial Power is the power of an independent state to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution, for the sake of the implementation of the Rule of Law of the Republic of Indonesia".⁵ However, in the rule of law of Indonesia, there are no clear regulations regarding sentencing guidelines, which creates an opportunity for disparities in criminal law to emerge.⁶

The criminal disparity has grown in law enforcement certainly with inevitable consequences, namely the pros and cons for society will emerge. So, it is feared that skepticism and a priori will arise regarding the performance of law enforcement officers and people's appreciation for the law will be low.⁷ The issue of disparity often arises when Indonesia Corruption Watch or ICW monitors judge decisions or law enforcement demands. We must admit that the issue of disparity is often debated. Not a few people think that disparity is a normal thing on the grounds that each case has a different construction. However, it would be strange if two different cases were compared with similar constructions, coupled with the same charges.⁸

² Asrianto Zainal, "PENEGAKAN HUKUM TINDAK PIDANA KORUPSI OLEH KEJAKSAAN", *Al-Izzah Jurnal Hasil-Hasil Penelitian*, 11/2, 2016, 1-18, 2, DOI: <http://dx.doi.org/10.31332/ai.v11i2.452>.

³ Darmoko Yuti Witanto dan Arya Putra Negara Kutawaringin, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana*, Bandung: Alfabeta, 2013, p. 19.

⁴ Dachran Busthami, "KEKUASAAN KEHAKIMAN DALAM PERSPEKTIF NEGARA HUKUM DI INDONESIA", *Masalah-Masalah Hukum*, 46/4, 2017: 336-342, 340.

⁵ Ekky Putri Larasati, Masruchin Ruba'i, Sri Lestariningsih, "DASAR PERTIMBANGAN HAKIM TERHADAP PEMIDANAAN TINDAK PIDANA KORUPSI YANG DIPUTUS MINIMUM KHUSUS (Studi Kasus Di Pengadilan Negeri Kepanjen)", *Kumpulan Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya*, Edisi Februari (2014): 1-19, 11.

⁶ Moh. Haryono, "TINJAUAN YURIDIS PEMBUKTIAN TURUT SERTA DALAM TINDAK PIDANA PEMBUNUHAN (Studi Kasus Putusan No. 51/Pid.B/2009 /PN.PL)", *Jurnal Ilmu Hukum Legal Opinion*, 5/1, 2013: 1-9, 1.

⁷ Budi Suhariyanto, "PENYELESAIAN DISPARITAS PUTUSAN PEMIDANAAN TERHADAP "KRIMINALISASI" KEBIJAKAN PEJABAT PUBLIK", *Jurnal Penelitian Hukum DE JURE*, 18/3, 2018: 353 - 366, 355.

⁸ Kurnia Ramadhana, "Menyoal Kinerja KPK: Antara Harapan dan Pencapaian", *Jurnal Anti Korupsi INTEGRITAS*, 5 /2, 2019: 151-163, 158, DOI: <https://doi.org/10.32697/integritas.v5i2.486>.

Disparity in criminal decisions is considered a disturbing issue in the criminal justice system, and influences the public's perspective and assessment of justice, because it can be seen as a form of injustice. However, disparity is something that cannot be avoided from the judge's freedom in giving decisions. The disparity in sentences imposed by the panel of judges is often unreasonable, especially when one case is carried out together but the decisions are different.⁹

On one side, disparities decision are a way for judges to use their discretion when making choices, but on the other hand, the convict and even society at large are unhappy when they receive varied penalties or criminal disparities. In addition, there is societal envy and a bad opinion of the judiciary, which shows up as a lack of interest in law enforcement. The criminal justice system is failing because the public's trust in the judiciary is eroding, which leads to a situation where people no longer believe or view the judiciary as a place where justice is served. This circumstance undoubtedly leads to discrepancies in court rulings and goes against the notion of the rule of law that our nation has established.¹⁰

However, there must be differences in penalty. It means something typical because, although being charged with the identical articles of statutory rules, the facts of the trial in one case are unquestionably distinct and have distinctive characteristics from those in another. However, if the judge issues a sentence without taking into account all relevant factors or fails to comprehend the phrasing of the article being charged, it can be classified as a disparity decision, leading to injustice and suspicion in the community.¹¹

Even though there are various problems related to disparities in criminal law enforcement in Indonesia, the implementation of these disparities cannot simply be eliminated.¹² There are various efforts that can be made in the form of efforts to minimize criminal disparities that occur in society.¹³ Basically, the law enforcement assessment index in Indonesia at the international level has increased in the 2015-2022 period with a score of 0.57. This is as shown in Figure 1 below:¹⁴

Figure 1: International Index of Law Enforcement in Indonesia

⁹ Imron Safii, "Urgensi Pengadilan Tindak Pidana Korupsi Dalam Mewujudkan Peradilan Yang Bersih dan Berwibawa", *Pandecta*, 9/1, 2014: 76-91, 83.

¹⁰ Amrun, "FAKTOR-FAKTOR PENYEBAB TIMBULNYA DISPARITAS PEMIDANAAN", *MENARA Ilmu*, 12/79, 2018:1-14, 3.

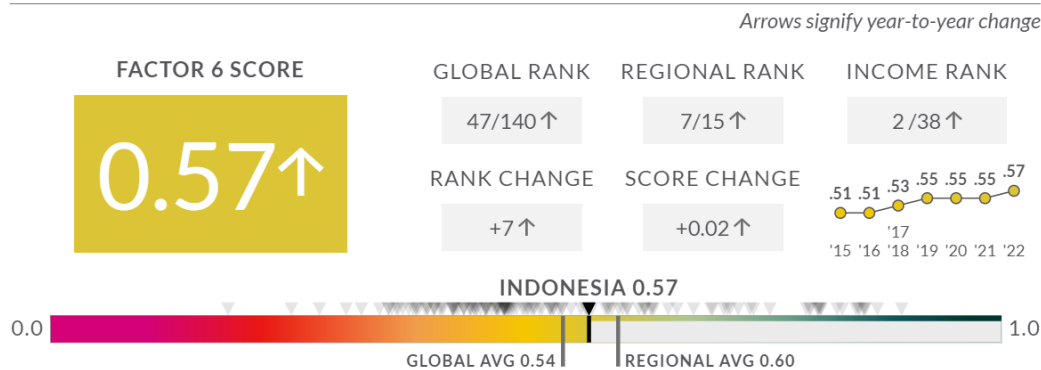
¹¹ Hans Poliman & Ade Adhari, "Disparitas Penjatuhan Pidana Tambahan Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang Dan Jasa (Studi kasus putusan PN Mamuju Nomor: 3/ Pid-SusTPK/2021/PN. Mam. dan putusan PN Bandung Nomor: 55/ Pid-Sus-TPK/2021/PN. Bdg)", *Jurnal Hukum Adigama*, 4/2, (2021): 3606-3625, 3608.

¹² Bertin, "ANALISIS DISPARITAS PIDANA DALAM KASUS PEMERKOSAAN", *Jurnal Katalogis*, 4/11, (2016): 67-78, 72.

¹³ Nicolas Hany, "Disparitas Pidana Dalam Putusan Pengadilan Tindak Pidana Korupsi Semarang", *Jurnal Ilmu Hukum Universitas Atmajaya*, 2015: 1-18, 9.

¹⁴ <https://worldjusticeproject.org/rule-of-law-index/country/2022/Indonesia/Regulatory%20Enforcement/>, accessed on 5 May 2023.

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Sources: <https://worldjusticeproject.org/rule-of-law-index/country/2022/Indonesia/Regulatory%20Enforcement/>

Based on Figure 1, Indonesia tends to enhance the score in law enforcement according to the World Justice Project. This index score shows that Indonesia has the ability to improve law enforcement system every year, including law enforcement for corruption. This score is also Indonesia's initial capital to improve law enforcement index ranking from around the world, where Indonesia currently ranks 64th out of 140 countries in the world. This is as shown in Figure 2 below:¹⁵

Figure 2: Ranking of Indonesian Law Enforcement Worldwide



Sources: <https://worldjusticeproject.org/rule-of-law-index/country/2022/Indonesia/>
If criminal corruption are allowed to continue and law enforcement does not change as it is now, it will be slow and delayed, discrimination, the process and judiciary will be full of political games. This can result in the destruction of state finances due to corruption, the loss of the authority of state leaders, increasing unemployment, the law no longer has any meaning, and the destruction of the foundations of social and state life.¹⁶ These various impacts show that the controversy related to disparities has led judges to become the main actors. So it is necessary to have an ideal formulation regarding disparities in corruption crimes in national law enforcement.

Based on this background, the problem in the research is how does disparity in corruption decisions affect the effectiveness of national corruption criminal law enforcement? What is the ideal reformulation of disparities in corruption decisions in national law enforcement? Thus, the purpose of this research is to analyze the effectiveness of corruption criminal law enforcement in national criminal law

¹⁵ <https://worldjusticeproject.org/rule-of-law-index/country/2022/Indonesia/>, accessed on 5 May 2023.

¹⁶ Yenni Wiranti1, Ridwan Arifin, "Tantangan dan Permasalahan Penegakan Hukum Tindak Pidana Korupsi di Indonesia", *Kosmik Hukum*, 20/1, 2020, pp: 45-55, 54.

enforcement. In addition, another purpose of the research is to find an ideal formulation for the disparity of corruption criminal law in national law enforcement.

This research is different from previous research conducted by other legal academics. Such as research conducted by Mita Nurasiah, Beniharmoni Harefa, Riki Perdana Raya Waruwu, entitled "Disparitas Pidana Terhadap Justice Collaborator Dalam Tindak Pidana Korupsi".¹⁷ That research focuses on the disparity of justice collaborator decisions in corruption crimes. While in this research not only focuses on disparity, but also discusses legal issues that cause disparity in corruption decisions. Then from these problems, researchers will provide ideas or concepts in the form of law enforcement reformulation.

2. Research Method

The normative legal technique, which employs a case and statute approach, is the methodology employed in this study. Using library study techniques, the data collection method for this research will involve gathering various statutory provisions, documentation, journal literature, papers, articles, and internet resources pertaining to issues under the purview of criminal law.¹⁸

3. Result and Discussion

3.1 The Influence of Disparity in Corruption Decisions on the Effectiveness of National Law Enforcement

The effectiveness of implementing a legal rule cannot be separated from law enforcement. According to Soekanto, the issue of legal effectiveness is closely related to the efforts made so that the law truly lives in society, namely that it applies philosophically, juridically and sociologically. Wolf Middensorf suggests that the overall effectiveness of criminal justice depends on three interrelated factors, namely the existence of good laws, fast and certain implementation, and appropriate and uniform punishment.¹⁹

Presidential Instruction No. 5 of 2004 regarding the acceleration of eradicating corruption is one of the measures taken by the government to combat corruption in the various regions. The 2010-2014 Medium Term Development Plan, as outlined in Government Regulation No. 5 of 2010, aims to enhance good governance through seven (seven) eradication-related strategies. It is an endeavor to eliminate widespread and more potent corruption. Presidential Directive No. 9 of 2011 on Corruption Prevention and Eradication Action Plans identifies six (six) strategies, including those pertaining to

¹⁷ Mita Nurasiah, Beniharmoni Harefa, Riki Perdana Raya Waruwu, "Disparitas Pidana Terhadap Justice Collaborator Dalam Tindak Pidana Korupsi", *Jurnal Esensi Hukum*, 4/1, 88-98, <https://doi.org/10.35586/esh.v4i1.155>

¹⁸ Abdi Mirzaqon T, Budi Purwoko, "Studi Kepustakaan Mengenai Landasan Teori dan Praktik Konseling Expressive Writing", *Jurnal BK UNESA*, 8/1, 2018, 4.

¹⁹ M. Syamsudin, *Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progresif*, (Jakarta: Kencana Prenada Media Group, 2012), pp. 95-98.

international collaboration, prevention, harmonizing laws and regulations, preserving assets resulting from corruption, and reporting. These several tools demonstrate the government's dedication to fighting corruption.²⁰

Nevertheless, one of the key issues Indonesia is currently dealing with is corruption. Despite the fact that efforts to eradicate corruption have accelerated in the past decade, there are no compelling indications that corruption will not recur.²¹ This is because corruption is a deeply rooted culture in Indonesia and Indonesia's climate for corruption tends to be high.²² As can be seen from Figure 3 below:

Figure 3: Corruption Index for World Countries



Sources: <https://www.transparency.org/en/cpi/2022/index/idn>

From Figure 3, it can be seen that Indonesia's corruption index scores 34 out of 100 and ranks 110th out of 180 countries. This score has decreased from 2021 and caused Indonesia's ranking to decrease from 96 to 110. This ranking shows that the corruption index in Indonesia has increased quite significantly from 2021. In fact, Indonesia's score is lower than various African countries such as Tanzania, Ethiopia and other countries. Southeast Asia such as Vietnam, Thailand and Sri Lanka.

There are still a number of barriers to eliminating corruption, despite the numerous attempts that have been made in this direction. The Corruption Eradication Commission

²⁰ Samuel Mangapul Tampubolon, "PERAN PEMERINTAH DALAM UPAYA PEMBERANTASAN KORUPSI KAITANNYA DENGAN UNDANG-UNDANG NO. 32 TAHUN 2004", *Lex et Societatis*, 2/6, 2014: 138-146, 144.

²¹ Bettina Yahya, Budi Suhariyanto, Muh. Ridha Hakim, *Urgensi Dan Mekanisme Pengembalian Aset Hasil Tindak Pidana Korupsi*, Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2017, hlm. 55.

²² Wawan Suyatmiko, Alvin Nicola, *Inisiatif Penguatan Lembaga Antikorupsi Indonesia: Komisi Pemberantasan Korupsi 2015-2019*, Jakarta: Transparency International, (2019), p. 6.

frequently conducts hand-catching operations (OTT), and despite the tough demands and rulings made by law enforcement, corruption continues to occur. One of the explanations why corruption persists in Indonesia is that there are a number of barriers to its eradication, which fall into the following categories:²³

- a. Structural barriers, or impediments stemming from state and government administrative procedures that hinder the proper handling of corruption.
- b. Cultural barriers are those that stem from bad behaviors that proliferate in a community. This group includes the following: government officials continue to have a "reticent" and tolerant attitude that can make it more difficult to deal with criminal acts of corruption.
- c. Essential Barriers: These are barriers that arise from the absence of statutory restrictions or other supporting tools, which hinder the proper management of corruption.
- d. Management Barriers: These are barriers that arise from disregarding or failing to use good management principles (strong dedication executed in a fair, transparent, and accountable manner), which prevent corruption from being effectively handled.

With these various obstacles, it can be said that law enforcement for corruption has not been effective. Although various efforts have been made to eradicate corruption, the number of cases of corruption is increasing from year to year.²⁴ According to Shant, law enforcement is an effort to make the ideas of justice, legal certainty and social benefits a reality.²⁵ One aspect that influences the effectiveness of law enforcement on corruption is the disparity in corruption decisions. From the description regarding obstacles to eradicating corruption above, this disparity in decisions is included in the structural obstacles. Different punishments or criminal inequalities in corruption are a way for judges to exercise their discretion when making decisions, but they also cause discontent for the convicted person and even for society at large.²⁶

In Indonesia, disparities in punishment related to punishment in corruption cases are nothing new. Several cases of joint corruption that have been revealed not deterred other perpetrators of corruption from deceiving government officials in particular. Disparity in corruption has occurred in Decision Number 48/Pid.sus- TPK/2016/PN Smg, Decision Number 78/Pid.sus-TPK/2016/PN Smg (Splitting Cases) and Decision Number 5/Pid.sus-TPK/2016/PN Smg, Decision Number 77/Pid.sus- TPK/2016/PN Smg (Splitting Cases).²⁷

²³ Diliya Mariam Rinjani, "EFEKTIVITAS PENEGAKAN HUKUM TERHADAP TINDAK PIDANA KORUPSI SECARA MASSAL ANGGOTA LEGISLATIF DAERA", *Wacana Paramarta: Jurnal Ilmu Hukum*, 19/2, 2020: 69-77, 75, DOI: <https://doi.org/10.32816/paramarta.v19i2.87>.

²⁴ Abdul Muttalib, "EFEKTIVITAS PENEGAKAN HUKUM TERHADAP PENYIDKAN TINDAK PIDANA KORUPSI OLEH KEPOLISIAN DAERAH SULAWESI SELATAN", *Al-Hikam*, 1/1, 2017: 45-64, 54.

²⁵ Hasaziduhu Moho, "PENEGAKAN HUKUM DI INDONESIA MENURUT ASPEK KEPASTIAN HUKUM, KEADILAN DAN KEMANFAATAN", *Jurnal Warta*, 59/1, 2019, 6.

²⁶ Yusep Mulyana, "DISPARITAS PUTUSAN PENGADILAN MENGENAI PERKARA KORUPSI BIAYA PEMUNGUTAN PAJAK BUMI DAN BANGUNAN DIHUBUNGKAN DENGAN PRAKTEK PENEGAKAN HUKUM", *JURNAL LITIGASI (e-Journal)*, 22/1, 2021: 90-110, hlm. 97, DOI: <http://dx.doi.org/10.23969/litigasi.v22i1.3658.103>.

²⁷ Ajeng Arindita Lalitasari, Pujiyono, Purwoto, "DISPARITAS PIDANA PUTUSAN HAKIM DALAM KASUS KORUPSI YANG DILAKUKAN SECARA BERSAMA-SAMA DI PENGADILAN NEGERI TINDAK PIDANA KORUPSI SEMARANG", *Diponegoro Law Journal*, 8/3, 2019: 1690-1702, 1692.

There are different sentences for perpetrators who commit the same crime, namely in the Semarang District Court Decision Number 48/Pid.sus-TPK/2016/PN Smg, Decision Number 78/Pid.sus-TPK/2016/PNSmg (Splitting Case) imposes a criminal 1 Year 4 Months against the perpetrator and Decision Number 5/Pid.sus-TPK/2016/PN Smg, Decision Number 77/Pid.sus-TPK/2016/PN Smg (Splitting case) imposes a sentence of 1 Year and 1 Year respectively 3 months. From the data above, if we look at the aspect of the period/length of sentence given by the Judge in the two cases above, by looking at the results of the corruption decision/state losses, Decision Number 48/Pid.sus-TPK/2016/PN Smg and Decision Number 78/Pid. sus/2016/PN Smg (Splitting case) is Rp. 163,584,000. Meanwhile, Decision Number 5/Pid.sus-TPK/2016/PN Smg and Decision Number 77/Pid.sus-TPK/2016/PN Smg with state losses of IDR. 573,000,000, this is a criminal disparity, because the treatment of perpetrators who have the same characteristics/typology.²⁸

Then in 2018, disparities in punishment for corruption occurred in decision no. 125/Pid. Sus-TPK/2018/PN.Bdg and decision no. 126/Pid.SusTPK/2018/PN.Bdg. The first defendant was sentenced to 3 (three) years in prison and the second defendant was sentenced to 4 (years) years, 6 (six) months in prison so that the decision is an indication of the disparity in sentencing in the judge's decision. As a result, the first defendant who was proven to have caused state financial losses of the same amount, namely IDR 1,808,500,000 (one billion eight hundred eight million five hundred thousand rupiah), was only sentenced to 3 years in prison. Meanwhile, the second defendant was actually sentenced to 4 (years), 6 (six) months.²⁹

Disparities in corruption crimes also occur in different years with the same conditions. This disparity is quite a concern for the public because the defendant is a public figure. The case is the corruption of the Pinangki prosecutor with decision number 10/Pid.Sus-TPK/2021 with the Angelina Sondakh corruption crime case with decision number 1616 K/Pid.Sus/2013. Both of them have disparities or gaps in their sentencing decisions which essentially reduce the prison term of the defendant for the Pinangki corruption crime. Because there are quite interesting issues regarding the basis of the high court judge's consideration at the appeal level as the reason for the mitigation of the criminal decision received by the Pinangki prosecutor. One of the points in his decision, the judge considered; that the defendant is a mother with toddler (4 years old) and deserves to be given the opportunity to care for and give love to her child as he grows. And the defendant as a woman must receive attention, protection and be treated fairly. This succeeded in reducing Pinangki's sentence at the first instance district court, which was previously sentenced to 10 years in prison to 4 years.³⁰

Different from what Angelina Sondakh experienced several years earlier. At the high court at cassation level, the Supreme Court actually increased the sentence from 4.5 years to 12 years in prison. The panel of judges did not at all consider the situation of the defendant Angelina Sondakh, who also has a toddler and also a woman. The impact of

²⁸ *Ibid.*, p. 1696.

²⁹ Zul Azmi, "Disparitas Pemidanaan Pada Perkara Tindak Pidana Korupsi (Studi Kasus Putusan Nomor 125/Pid.Sus. TPK/2018/PN.Bdg. dengan Putusan Perkara Nomor 126/Pid.Sus.-TPK/2018/PN.Bdg.)", *Jurnal Hukum Media Justitia Nusantara*, 10/1, 2020: 144-156, 155.

³⁰ Angraini Putri, Fauzan Muzakki, Muhammad Qadar Ramadhan, Siti Rachma, *Op.Cit.*, p. 244.

this criminal disparity is the result of the judge's decision which creates a view of injustice for the defendant and the community who are monitoring this case.³¹

Disparity in criminal judge decisions is a problem that has long been the focus of attention among academics, observers and legal practitioners. Disparity in decisions is considered a disturbing issue in the integrated criminal justice system, and the practice of disparity is not only found in Indonesia. It is universal and found in many countries. Disparity in decisions may also influence the way society views and evaluates the judiciary. Disparity can be seen as a disturbing form of injustice.³²

3.2 Formulation of Disparity in Corruption in National Law Enforcement

Satjipto Rahardjo said that law enforcement is not only to obtain legal certainty but also to bring social benefits and justice.³³ Law enforcement against corruption cannot be carried out half-heartedly. Using existing legal products in total is a must in efforts to eradicate corruption.³⁴ In other countries, this disparity is often used as a benchmark for judges in giving criminal sentences to perpetrators of criminal acts. The power exercised by judges is so strong that abuse of power occurs which ultimately leads to injustice. Sentencing guidelines according to standards are a way to improve the independence of judges so that the sentences handed down are well maintained. Sentencing directives formulated in other countries that are regulated based on legislation that applies as an example in the United States serve as a model for other countries that follow. The country of Canada applies the punishment model as a parameter in imposing sentences, as has the country of New Zealand since 2002 using this method.³⁵

With regulations based on Pancasila values, feelings of fairness and injustice can be minimized. This is because Pancasila as the basis of the state covers and provides a clear picture of these regulations which apply to all without any discriminatory treatment for anyone. For this reason, Pancasila provides direction regarding law that must create a better state of the country based on the values of divinity, humanity, unity, democracy and justice.³⁶ The ideal formulation for disparities in corruption crimes in national law enforcement based on Pancasila values can be grouped as follows:

1) Establishment of Sentencing Guidelines

The creation of sentencing guidelines is the best option for minimizing differences in punishment decisions in corruption cases. It can serve as a guide or a signpost for courts to apply criminal penalties, redefining judges' ethical conduct and mental processes in accordance with progressive law. In order to offer fair law and make efforts to decide

³¹ *Ibid.*

³² I Putu Rasmadi Arsha Putra, "DISPARITAS DAN RENDAHNYA VONIS PERKARA KORUPSI DIPENGADILAN TINDAK PIDANA KORUPSI", accessed on <http://erepo.unud.ac.id/id/eprint/16916/1/e04662ad6a57f4faabd3865c63ed8145.pdf>, p. 2.

³³ Luthvi Febryka Nola, "UPAYA PELINDUNGAN HUKUM SECARA TERPADU BAGI TENAGA KERJA INDONESIA (TKI)", *Negara Hukum*, 7/1, 2016, 39.

³⁴ Baumi Syaibatul Hamdi, *Op.Cit.*, p. 261.

³⁵ Yusep Mulyana, *Op.Cit.*, p. 103.

³⁶ Wendy Anugrah Octavian, "URGENSI MEMAHAMI DAN MENGIMPLEMENTASIKAN NILAINILAI PANCASILA DALAM KEHIDUPAN SEHARI-HARI SEBAGAI SEBUAH BANGSA", *Jurnal Bhinneka Tunggal Ika*, 5/2, 2018: 123-128, 126.

cases devoid of tendencies, judges must be unbiased, consider all parties equally, and refrain from discriminating in order to reach a fair verdict.³⁷

These sentencing guidelines must be formed based on the values of Pancasila which fulfill a sense of justice by regulating in detail whether the criminal act was carried out with a plan or not. These details must be able to produce punishment that is proportional and easy to understand by the perpetrator, victim and the public. Establishment of sentencing guidelines in the National Criminal Code which explains the details of the sentencing guidelines taking into account matters:³⁸

- a) The perpetrator's fault.
- b) The reason and intent behind a crime.
- c) The way of criminal occurs.
- d) The mindset of the offender.
- e) Life history and socio-economic conditions of the perpetrator.
- f) The maker's disposition and behavior following an unlawful act.
- g) The impact of crime on the future of the perpetrator.
- h) How the general public perceives the offender's illicit actions.
- i) The impact of non-crime on victims and their families.

To avoid the emergence of very striking disparities in punishment, especially for offenses which are deemed to be very detrimental or dangerous to society in general and offenses which are aggravated because of their consequences, the sentence imposed needs to be balanced with a special minimum sentence which functions as the lowest standard of punishment for judges. The need for this special minimum sentence is an answer to the public's dissatisfaction with the prison sentence that has been imposed in judicial practice.³⁹

Determining the ranking of the seriousness of criminal acts, through a parameter prepared based on valid research, studies and analysis. In determining these parameters, it is impossible to arrange them based on legal discipline alone, but is also closely related to the values and norms that exist in society. The aim is to serve as a guide for law makers (legislative) in drafting legislation that contains criminal sanctions.⁴⁰

The aim and guidelines for sentencing are expected to be a form of the judge's responsibility for the appropriate punishment imposed on the defendant, not to reduce the judge's freedom. The guidelines and objectives of punishment are to maintain balance with the interests that must be protected in criminal law and maintain the balance of the three interests that must be protected, namely the interests of the state, the perpetrator of the crime, and the victim.⁴¹

Disparities in sentencing in Indonesia are frequently linked to the criminal justice system's rules, the independence of judges, and the evaluation of the defendant's

³⁷ Irfan Ardiansyah, "Pengaruh Disparitas Pemidanaan Terhadap Penanggulangan Tindak Pidana Korupsi di Indonesia", *Jurnal Hukum Respublica*, 17/1, 2017: 76-101, 98.

³⁸ Fauzul Aliwarman, "Disparitas Pemidanaan Narkoba Dalam Tinjauan Hukum Islam dan Hukum Positif Indonesia (Studi Pemidanaan Terhadap Kasus Narkoba di PN. Tangerang)", *Jurnal Liga Hukum*, 1/ 1, 2010: 7-8.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Irfan Ardiansyah, *Op.Cit.*, p. 95.

condition. Therefore, it is necessary to develop and improve sentencing guidelines since they are seen to be able to lessen the subjectivity of criminal law. Judges use sentencing guidelines as a guidance when determining appropriate penalties.⁴²

2) Indonesia Corruption Law Revision

There is a need for a revision of the Law Number 20 of 2001 concerning the Eradication of Corruption or Corruption Law because, as explained previously, the emergence of disparities is often based on Article 2 and Article 3. The provisions in these two articles have quite a long time gap, namely between the minimum and maximum criminal sanctions for those convicted of corruption. So the revision of the Corruption Law that is needed is to formulate clear guidelines for criminal sanctions for perpetrators of corruption, both regarding the nominal amount of corruption and the position of those convicted of corruption. By regulating this, it will certainly provide clear boundaries for judges in making decisions.⁴³

As previously stated, there are a number of issues with Supreme Court Regulation Number 1 of 2020 regarding Sentencing Guidelines. One could argue that the Indonesian legal system's Supreme Court Regulation Number 1 of 2020 lacks a robust enough hierarchy. Therefore, this Supreme Court regulation is insufficiently successful in addressing corruption inequities. In order to give Supreme Court Regulation Number 1 of 2020 unambiguous legality, it is hoped that the government.⁴⁴

3) Improving the Quality of Institutions and Law Enforcement

To combat corruption, which is becoming more prevalent in society, law enforcement officers must coordinate and cooperate with one another in order to prevent and eliminate corruption as much as feasible. Stated differently, organizations and law enforcement agencies have a significant role in creating laws that aim to eradicate corruption.⁴⁵

This includes when disparities occur involving various institutions and law enforcers. So that to minimize disparities it is necessary to improve the quality of institutions and law enforcers for corruption. This quality improvement can take the form of being selective in recruiting professional and reliable judge candidates who are equipped with continuous training. This is because judges have great authority in the occurrence of disparities. Apart from improving the quality of judges, it is also necessary to increase the role of the appellate courts. The severity of the crime generally cannot be used as a basis for overturning a District Court decision, but there are exceptions if the severity of the sentence is not based on clear reasons, the Court of Appeal can implement a uniformization approach to punishment.⁴⁶

⁴² Nicolas Hany, *Disparitas Pidana Dalam Putusan Pengadilan Tindak Pidana Korupsi*, Semarang: Diss. UAJY, (2015), p. 7.

⁴³ Isakh Benyamin Manubulu, "KONSEP INKRAHNYA PUTUSAN PENGADILAN : PROBLEMATIKA DAN UPAYA MEMINIMALKAN DISPARITAS DALAM PROSES PENGAMBILAN KEPUTUSAN TINDAK PIDANA KORUPSI (TIPIKOR) DI INDONESIA", *Geoscience*, Juni 2020: 1-20, 16, DOI:10.13140/RG.2.2.23712.61446.

⁴⁴ Azwad Rachmat Hambali, Rizki Ramadani, Hardianto Djanggih, *Loc.Cit.*

⁴⁵ Husin Wattimena, *Loc.Cit.*

⁴⁶ Fauzul Aliwarman, *Loc.Cit.*

4. Conclusions

Disparities in corruption decisions have an influence on the effectiveness of national criminal law enforcement. A judge's discretion in rendering rulings can be seen in the effects of varying sentencing or criminal inequities in corruption. However, varying penalties or discrepancies in criminal records also cause discontent among the convicted and even the general public. Disparity in decisions is considered a troubling issue in the integrated criminal justice system. Disparity in decisions can influence the way society views and evaluates the judiciary and can be seen as a disturbing form of injustice. The ideal formulation of disparities in corruption national law enforcement is based on Pancasila values because corruption have betrayed all the values contained in Pancasila. In this way, it is hoped that policy makers and designers of legislative regulations in formulating norms for legislative regulations will not deviate from Pancasila. The ideal formulation for disparities in corruption crimes in national law enforcement based on Pancasila values can be grouped as follows: Establishment of Sentencing Guidelines; Revision of the Corruption Law; Improving the Quality of Institutions and Law Enforcement.

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References

- Abdi Mirzaqon T, Budi Purwoko, "STUDI KEPUSTAKAAN MENGENAI LANDASAN TEORI DAN PRAKTIK KONSELING EXPRESSIVE WRITING", *Jurnal BK UNESA*, 8/1, 2018.
- Abdul Muttalib, "EFEKTIVITAS PENEGAKAN HUKUM TERHADAP PENYIDKAN TINDAK PIDANA KORUPSI OLEH KEPOLISIAN DAERAH SULAWESI SELATAN", *Al-Hikam*, 1/1, 2017: 45-64, 54.
- Ajeng Arindita Lalitasari, Pujiyono, Purwoto, "DISPARITAS PIDANA PUTUSAN HAKIM DALAM KASUS KORUPSI YANG DILAKUKAN SECARA BERSAMA-SAMA DI PENGADILAN NEGERI TINDAK PIDANA KORUPSI SEMARANG", *Diponegoro Law Journal*, 8/3, 2019: 1690-1702, 1692.
- Amrun, "FAKTOR-FAKTOR PENYEBAB TIMBULNYA DISPARITAS PEMIDANAAN", *MENARA Ilmu*, 12/79, 2018:1-14, 3.
- Asrianto Zainal, "PENEGAKAN HUKUM TINDAK PIDANA KORUPSI OLEH KEJAKSAAN", *Al-Izzah Jurnal Hasil-Hasil Penelitian*, 11/2, 2016, 1-18, 2, DOI: <http://dx.doi.org/10.31332/ai.v11i2.452>.
- Bertin, "ANALISIS DISPARITAS PIDANA DALAM KASUS PEMERKOSAAN", *Jurnal Katalogis*, 4/11, (2016): 67-78, 72.

Bettina Yahya, Budi Suhariyanto, Muh. Ridha Hakim, *Urgensi Dan Mekanisme Pengembalian Aset Hasil Tindak Pidana Korupsi*, Jakarta: Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2017.

Budi Suhariyanto, "PENYELESAIAN DISPARITAS PUTUSAN PEMIDANAAN TERHADAP "KRIMINALISASI" KEBIJAKAN PEJABAT PUBLIK", *Jurnal Penelitian Hukum DE JURE*, 18/3, 2018: 353 - 366, 355.

Dachran Busthami, "KEKUASAAN KEHAKIMAN DALAM PERSPEKTIF NEGARA HUKUM DI INDONESIA", *Masalah-Masalah Hukum*, 46/4, 2017: 336-342, 340.

Darmoko Yuti Witanto dan Arya Putra Negara Kutawaringin, *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif Dalam Perkara-Perkara Pidana*, Bandung: Alfabeta, 2013, hlm. 19.

Ekky Putri Larasati, Masruchin Ruba'i, Sri Lestariningsih, "DASAR PERTIMBANGAN HAKIM TERHADAP PEMIDANAAN TINDAK PIDANA KORUPSI YANG DIPUTUS MINIMUM KHUSUS (Studi Kasus Di Pengadilan Negeri Kepanjen)", *Kumpulan Jurnal Mahasiswa Fakultas Hukum Universitas Brawijaya*, Edisi Februari (2014): 1-19, 11.

Hans Poliman & Ade Adhari, "Disparitas Penjatuhan Pidana Tambahan Dalam Perkara Tindak Pidana Korupsi Pengadaan Barang Dan Jasa (Studi kasus putusan PN Mamuju Nomor: 3/ Pid-SusTPK/2021/PN. Mam. dan putusan PN Bandung Nomor: 55/ Pid-Sus-TPK/2021/PN. Bdg)", *Jurnal Hukum Adigama*, 4/2, (2021): 3606-3625, 3608.

Hasaziduhu Moho, "PENEGAKAN HUKUM DI INDONESIA MENURUT ASPEK KEPASTIAN HUKUM, KEADILAN DAN KEMANFAATAN", *Jurnal Warta*, 59/1, 2019, 6.

<https://worldjusticeproject.org/rule-of-law-index/country/2022/Indonesia/Regulatory%20Enforcement/>, accessed on 5 May 2023.

<https://worldjusticeproject.org/rule-of-law-index/country/2022/Indonesia/>, accessed on 5 May 2023.

I Putu Rasmadi Arsha Putra, "DISPARITAS DAN RENDAHNYA VONIS PERKARA KORUPSI DIPENGADILAN TINDAK PIDANA KORUPSI", *Makalah*, accessed on <http://erepo.unud.ac.id/id/eprint/16916/1/e04662ad6a57f4faabd3865c63ed8145.pdf>.

Ifrani, "TINDAK PIDANA KORUPSI SEBAGAI KEJAHATAN LUAR BIASA", *Al'Adl*, 3/2, 2017: 319-336, 321.

Imron Safii, "Urgensi Pengadilan Tindak Pidana Korupsi Dalam Mewujudkan Peradilan Yang Bersih dan Berwibawa", *Pandecta*, 9/1, 2014: 76-91, 83.

- Irfan Ardiansyah, "Pengaruh Disparitas Pemidanaan Terhadap Penanggulangan Tindak Pidana Korupsi di Indonesia", *Jurnal Hukum Respublica*, 17/1, 2017: 76-101, 98.
- Isakh Benyamin Manubulu, "KONSEP INKRAHNYA PUTUSAN PENGADILAN : PROBLEMATIKA DAN UPAYA MEMINIMALKAN DISPARITAS DALAM PROSES PENGAMBILAN KEPUTUSAN TINDAK PIDANA KORUPSI (TIPIKOR) DI INDONESIA", *Geoscience*, Juni 2020: 1-20, 16, DOI:10.13140/RG.2.2.23712.61446.
- Kurnia Ramadhana, "Menyoal Kinerja KPK: Antara Harapan dan Pencapaian", *Jurnal Anti Korupsi INTEGRITAS*, 5 /2, 2019: 151-163, 158, DOI: <https://doi.org/10.32697/integritas.v5i2.486>.
- Luthvi Febryka Nola, "UPAYA PELINDUNGAN HUKUM SECARA TERPADU BAGI TENAGA KERJA INDONESIA (TKI)", *Negara Hukum*, 7/1, 2016, 39.
- Mariam Rinjani, "EFEKTIVITAS PENEGAKAN HUKUM TERHADAP TINDAK PIDANA KORUPSI SECARA MASSAL ANGGOTA LEGISLATIF DAERA", *Wacana Paramarta: Jurnal Ilmu Hukum*, 19/2, 2020: 69-77, 75, DOI: <https://doi.org/10.32816/paramarta.v19i2.87>.
- Mita Nurasih, Beniharmoni Harefa, Riki Perdana Raya Waruwu, "Disparitas Pidana Terhadap Justice Collaborator Dalam Tindak Pidana Korupsi", *Jurnal Esensi Hukum*, 4/1, 88-98, <https://doi.org/10.35586/esh.v4i1.155>
- Moh. Haryono, "TINJAUAN YURIDIS PEMBUKTIAN TURUT SERTA DALAM TINDAK PIDANA PEMBUNUHAN (Studi Kasus Putusan No. 51/Pid.B/2009 /PN.PL)", *Jurnal Ilmu Hukum Legal Opinion*, 5/1, 2013: 1-9.
- Nicolas Hany, "Disparitas Pidana Dalam Putusan Pengadilan Tindak Pidana Korupsi Semarang", *Jurnal Ilmu Hukum Universitas Atmajaya*, 2015: 1-18.
- Nicolas Hany, *Disparitas Pidana Dalam Putusan Pengadilan Tindak Pidana Korupsi*, Semarang: Diss. UAJY, (2015).
- Samuel Mangapul Tampubolon, "PERAN PEMERINTAH DALAM UPAYA PEMBERANTASAN KORUPSI KAITANNYA DENGAN UNDANG-UNDANG NO. 32 TAHUN 2004", *Lex et Societatis*, 2/6, 2014: 138-146, 144.
- Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2014, hlm. 192-193.
- Wawan Suyatmiko, Alvin Nicola, *Inisiatif Penguatan Lembaga Antikorupsi Indonesia: Komisi Pemberantasan Korupsi 2015-2019*, Jakarta: Transparency International, (2019).
- Wendy Anugrah Octavian, "URGENSI MEMAHAMI DAN MENGIMPLEMENTASIKAN NILAINILAI PANCASILA DALAM KEHIDUPAN SEHARI-HARI SEBAGAI SEBUAH BANGSA", *Jurnal Bhinneka Tunggal Ika*, 5/2, 2018: 123-128, 126.
- Yenni Wiranti, Ridwan Arifin, "Tantangan dan Permasalahan Penegakan Hukum Tindak Pidana Korupsi di Indonesia", *Kosmik Hukum*, 20/1, 2020, pp: 45-55, 54.

Yusep Mulyana, "DISPARITAS PUTUSAN PENGADILAN MENGENAI PERKARA KORUPSI BIAYA PEMUNGUTAN PAJAK BUMI DAN BANGUNAN DIHUBUNGKAN DENGAN PRAKTEK PENEGAKAN HUKUM", *JURNAL LITIGASI (e-Journal)*, 22/1, 2021: 90-110, hlm. 97, DOI: <http://dx.doi.org/10.23969/litigasi.v22i1.3658> 103.

Zul Azmi, "Disparitas Pemidanaan Pada Perkara Tindak Pidana Korupsi (Studi Kasus Putusan Nomor 125/Pid.Sus. TPK/2018/PN.Bdg. dengan Putusan Perkara Nomor 126/Pid.Sus.-TPK/2018/PN.Bdg.)", *Jurnal Hukum Media Justitia Nusantara*, 10/1, 2020: 144-156, 155.

Laws and Regulations

Republic of Indonesia's 1945 Constitution.

Law No. 8 of 1981 about Criminal Procedure Law.

Law No. 48 of 2009 concerning Judicial Power.

Presidential Instruction No. 5 of 2004 Regarding the Acceleration of Eradicating Corruption.

Law Number 20 of 2001 concerning the Eradication of Corruption.