

Disparity in Corruption Based on Pancasila Values in Judges' Decisions

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ABSTRACT

In reality, many perpetrators of corruption are relatively given light sentences. Even recently, many cases have been acquitted by regional corruption courts. This fact has created disparities both horizontally and vertically. Based on this background, it is necessary to analyze the disparity in corruption crimes based on Pancasila values in the judge's decision. The problem that will be discussed in this research is how is the disparity of corruption crimes based on Pancasila values in the judge's decision? This research uses normative legal research. The research results show that the disparity of corruption crimes is based on Pancasila values, which are based on divinity, humanity, unity, deliberation, representation, and justice. As for the disparity in corruption, which is based on the value of justice, it is based on the 5th precept of Pancasila, namely "Social justice for all Indonesian people". The value of justice can be applied to the evidentiary process during the law enforcement process for corruption.

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1. INTRODUCTION

Basically, the disparity is the inequality of punishment for similar crimes in similar conditions or situations.¹ Criminal disparity has a profound impact because it contains constitutional considerations between individual freedom and the State's right to punish. Criminal disparity will have fatal consequences when linked to the administration of prisoner development. Convicts who have compared the punishment imposed on them with that imposed on others and then feel like victims of uncertainty or irregularity in the courts will become convicts who do not respect the law. Respect for the law is one of the results that is desired to be achieved for criminalization. From here, it will appear as a serious problem because it is an indicator and manifestation of the failure of a system to achieve equality of justice in a state of law and, at the same time, will weaken public trust in the criminal law system.² The disparity in sentencing is a significant question closely related to whether a judge's decision has fulfilled a sense of justice.

The issue of judges' freedom in deciding criminal cases they handle is a factor that also causes disparity in sentencing. In Indonesia, the principle of judicial discretionary power is fully guaranteed in Article I of Law No.

¹ Budi Suhariyanto, "PENYELESAIAN DISPARITAS PUTUSAN PEMIDANAAN TERHADAP 'KRIMINALISASI' KEBIJAKAN PEJABAT PUBLIK," *Jurnal Penelitian Hukum De Jure* 18, no. 3 (2018): 353–366.

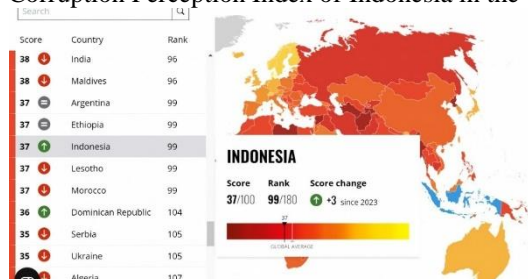
² FATHURRAHMAN, "TERHADAP TINDAK PIDANA PENIPUAN (Study Perbandingan Putusan Pengadilan Negeri Kota Magelang)" (UNIVERSITAS MUHAMMADIYAH MAGELANG, 2020).

4 of 2004 concerning Judicial Power. This article formulates that judicial power is the power of an independent state to administer justice and uphold the law based on Pancasila's implementation of the Republic of Indonesia's rule of law. Judges, as the organizers of judicial power, have the authority to examine and decide on criminal cases they handle freely from intervention by any party. However, regarding imposing financial sanctions, the judge's freedom is not unlimited. The principle of *Nulla Poena Sine Lege*, is a principle which judges can only decide on criminal sanctions based on the type and severity of sanctions following the measure determined by law.³

An example of a disparity case in a corruption case is the corruption case of prosecutor Pinangki with decision number 10/Pid.Sus-TPK/2021 with the corruption case of Angelina Sondakh with decision number 1616 K/Pid.Sus/2013. Both of them have disparities or gaps in their sentencing decisions. In essence, it reduces the detention period of the defendant in the corruption case of Pinangki. There is a fairly interesting issue based on the considerations of the high court judge at the appeal level as a reason for the reduction in the criminal sentence received by prosecutor Pinangki. One of the points in the verdict is that the judge considered that the defendant is a mother of a toddler (4 years old) who deserves to be allowed to care for and give affection to her child during his growth. The defendant, as a woman must receive attention and 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.

Different from what Angelina Sondakh experienced several years earlier. At the high court of cassation, the Supreme Court increased the sentence from 4.5 years to 12 years in prison. The panel of judges did not consider the circumstances of the defendant Angelina Sondakh, who has a toddler and is also a woman. The impact of this criminal disparity resulted from the judge's decision, which gave rise to the view that there was injustice for the defendant and the public who were monitoring this case.⁴ In reality, many perpetrators of corruption are given relatively light sentences, and recently, the regional corruption courts have acquitted many cases. With this reality, there has been a horizontal disparity between the decisions of the first-level corruption court, the appellate court's decisions, and the cassation court's decisions. In addition, there has also been a vertical disparity, namely between the decisions of the first-level corruption court and the decisions of the next-level court.⁵ Meanwhile, Indonesia has a risk of corruption cases in its public sector. This can be seen in Figure 1 below.

Figure 1. Corruption Perception Index of Indonesia in the World



Sources: <https://www.kpk.go.id/ruang-informasi/berita/skor-ipk-2024-meningkat-kpk-dorong-penguatan-pemberantasan-korupsi>

Based on Figure 1 above, it shows that Indonesia's Corruption Perception Index (CPI) in 2024 has a score of 37/100 with Indonesia ranked 99th out of 180 countries.⁶ This shows that the corruption risk value in the Indonesian public sector is still low compared to other countries in the world. So that extra law enforcement efforts are needed to overcome corruption in Indonesia based on Pancasila values. Based on this background, it is necessary to have a disparity in corruption crimes based on Pancasila values in judges' decisions. The problem

³ Eva Achjani, "PROPORSIONALITAS PENJATUHAN PIDANA Eva Achjani," *Jurnal Hukum dan Pembangunan* 41, no. 2 (2011): 298–315.

⁴ Angraini Putri et al., "Disparitas Putusan Hakim Pada Kasus Tindak Pidana Korupsi Putusan Mahkamah Agung Nomor 10/Pid.Sus- Tpk/2021/Pt Dki," *Jurnal IKAMAKUM* 1, no. 02 (2021): 243–261.

⁵ Melani, "DISPARITAS PUTUSAN TERKAIT PENAFSIRAN PASAL 2 DAN 3 UU PEMBERANTASAN TINDAK PIDANA KORUPSI Kajian Terhadap 13 Putusan Pengadilan Tipikor Bandung Tahun 2011-2012," *Jurnal Yudisial* 7, no. 2 (2014): 103–116.

⁶ "Skor IPK 2024 Meningkat, KPK Dorong Penguatan Pemberantasan Korupsi," accessed February 17, 2025, <https://www.kpk.go.id/ruang-informasi/berita/skor-ipk-2024-meningkat-kpk-dorong-penguatan-pemberantasan-korupsi>.

that will be discussed in this study is how the disparity in corruption crimes is based on Pancasila values in judges' decisions. This study uses normative legal research with a statutory approach.

2. FINDINGS AND DISCUSSIONS

2.1 Disparity in Judges' Decisions in Corruption Crimes

The disparity of sentencing referred to here is the application of different punishments to the same crime (the same offense), or to crimes whose dangerous nature can be compared (offense comparable seriousness) without being accompanied by valid considerations/reasoning (*valid reason*).⁷ It is not only interpreted as a difference in the severity of the punishment imposed on the accused in a similar case, but it also includes differences in release or exemption from punishment without being based on the same legal definition. The confusion of definition or unclear formulation of a legal understanding can give rise to multiple interpretations, thus causing differences in the treatment of offenders whose crimes are comparable.⁸

The sentencing disparity in criminal cases occurs naturally because almost no cases are identical. In Indonesia, the disparity in sentencing related to corruption cases is not new.⁹ Perhaps the disparity in punishment in corruption cases is one of the factors that prompted Law No. 3 of 1971 concerning the Eradication of Criminal Acts of Corruption to be replaced by Law No. 31 of 1999. One of the changes in Law 31 of 1999 was the formulation of the threat of punishment. In Law 31 of 1999, the threat of special minimum punishment began to be regulated again.¹⁰ The basis for judges' considerations in deciding corruption cases that cause disparities in decisions include:¹¹

- a. Legal considerations or legal substance. Many laws do not reflect their effectiveness at all because their substance is too symbolic without instrumental goals.
- b. Consideration of the *modus operandi*. Understanding the *modus operandi* can help correct criminal acts of corruption.
- c. Consideration of the benefits of the law. The legal awareness of society and the administration of the state must be continuously built and developed through education, counseling, role models, and proper law enforcement to foster an understanding of respecting and obeying the law, which will grow into a society with a legal culture.

Basically, several factors influence judges' decisions in corruption cases, thus giving rise to disparities in criminal decisions, including:¹²

- a. Law Factors. The various provisions in the Corruption Law are not without shortcomings. Duplication of provisions on corruption crimes and formulation of criminal penalties are two issues that support the emergence of disparities in sentencing and inconsistent decisions in corruption crimes. To illustrate the problems above, it is necessary to show a portrait of the provisions on corruption in Indonesia, especially the provisions in the Corruption Law. The following discussion illustrates a small part of the problems in the Corruption Law that are considered to have a major influence on the emergence of disparities in sentencing and inconsistent decisions.
- b. Internal factors or judges' beliefs in interpretation. Personality factors influence this belief in the judge, such as religion, education, values and morality, and the mentality of the judge. It can be said that, in general, disparities in criminal decisions, especially in corruption crimes, are influenced by the judge's mindset and the value system adopted by the judge. Regarding the mindset of judges, there are two tendencies of the mindset of judges in handling corruption cases, namely the first mindset of judges with a positivistic character and the second mindset of judges with a non-positivistic character. The mindset of judges with the first character places great emphasis on formal measures of the text of the rules (rule-centric) in exploring

⁷ Tama S Langkun, *Studi Atas Disparitas Pemidanaan Perkara Tindak Pidana Korupsi* (Jakarta: ICW, 2014).

⁸ Zarof Ricar, *Disparitas Pemidanaan Pembalakan Liar Dan Pengaruhnya Terhadap Penegakan Hukum Di Indonesia* (Bandung: Alumni, 2012).

⁹ Purwoto Ajeng Arindita Lalitasari, Pujiyono, "Disparitas Pidana Putusan Hakim Dalam Kasus Korupsi Isparitas Pidana Putusan Hakim Dalam Kasus Korupsi Yang Dilakukan Secara Bersama-Sama Di Pengadilan Yang Dilakukan Secara Bersama-Sama Di Pengadilan Negeri Tindak Pidana Korupsi Semarang Negeri Tindak Pi," *Diponegoro Law Journal* 8, no. 3 (2019): 1690–1702.

¹⁰ T. S. Langkun et al., *Disparitas Putusan Pemidanaan Perkara Tindak Pidana Korupsi*, 2014.

¹¹ Ida Bagus Agung Dwi Adwitya Ida Bagus Surya Darmajaya I Gusti Ngurah Parwata, "DISPARITAS PUTUSAN SANKSI PIDANA TINDAK PIDANA KORUPSI (Studi Kasus Putusan Pengadilan Negeri Gianyar Dan Denpasar)," *Kertha Wicara* 5, no. 2 (2015): 1–6.

¹² Irfan Ardiansyah, "PENGARUH DISPARITAS PENJATUHAN PIDANA TERHADAP PENANGGULANGAN TINDAK PIDANA KORUPSI DI INDONESIA," *AKTUALITA* 1, no. 1 (2018): 173–186.

legal truth. In contrast, the mindset of the second character elaborates the text of the legal rules with a socio-legal context in exploring legal truth.

- c. Political and social factors. In addition, the judge's beliefs are also influenced by the social environment. This social environment includes political, economic, and other factors. It is complicated for a judge to completely close himself off from the influence of these factors.
- d. The next factor that causes disparity in criminal decisions is the absence of sentencing guidelines that judges can consider in making their decisions, especially in corruption cases. Until now, legislation in Indonesia does not have a national sentencing system that includes sentencing patterns and sentencing guidelines. The pattern of punishment, namely the reference/guideline for lawmakers in making/drafting laws and regulations containing criminal sanctions. The term pattern of punishment is often called legislative or formulating guidelines. Meanwhile, the guidelines for punishment are guidelines for imposing/implementing criminal penalties for judges (judicial guidelines/applicative guidelines). Judging from its function, this pattern of punishment should have existed before criminal legislation was made, even before the National Criminal Code was made.

2.2 Disparity in Corruption Crimes Based on Pancasila Values in Judges' Decisions

Pancasila is the basis and ideology of the Indonesian nation that upholds the principles of national life. Pancasila is contained in the Preamble to the 1945 Constitution and is described in depth in its articles. This means that the values in Pancasila regulate national and state life in education, law, politics, economics, arts and culture, and society.¹³ The meanings and values contained in each precept are as follows:¹⁴

- a. Divinity (Religiosity). Religious values are related to the individual's relationship with something considered to have sacred, holy, great, and noble power. From this basis, it is also a must for Indonesian citizens to be in a society that believes in God and is religious, whatever their religion and beliefs.
- b. Humanity (Morality). Just and civilized humanity is the formation of an awareness of order as the basis of life because every human being has the potential to become a perfect human being, namely a civilized human being.
- c. Unity of Indonesia (Nationality). Unity is a combination consisting of several parts. The presence of Indonesia and its people on this earth is not to dispute. The Indonesian nation is present to realize affection for all ethnic groups from Sabang to Merauke.
- d. Deliberation and Representation. As social beings, humans need to live side by side with others. This interaction usually includes agreement and mutual respect based on common goals and interests.
- e. Social Justice. The value of justice is a value that upholds norms based on impartiality, balance, and equality towards something. Realizing social justice for all Indonesian people is the ideal of the state and nation.

Judges must be able to reflect every text of the article related to the facts of the incident found in the trial into a judge's decision that contains the values of Pancasila and the basic constitutional values in the 1945 Constitution. So, every judge's decision radiates considerations of high philosophical values, concretely marked by the character of a Godly, humane decision that maintains unity, is full of wonders, and is socially just for all Indonesian people. Philosophy must help the judge's mind formulate considerations in his decision so that the judge's decision contains the values of philosophical justice.¹⁵

The disparity of criminal penalties for corruption is based on Pancasila values and the value of justice. Justice, in addition to being the goal of law, is also the spirit of every decision, so justice lies in the spirit of every decision "For the sake of Justice based on God Almighty". Therefore, there is a disparity in criminal penalties in corruption cases, where criminal disparity can occur in unequal punishment for those who commit a crime together, such as in a corruption case with the same legal characteristics, but the verdicts handed down are

¹³ Nur Khosiah, Nur Khosiah Stai, and Muhammadiyah Probolinggo, "IMPLEMENTASI NILAI-NILAI PANCASILA PESERTA DIDIK DI MADRASAH IBTIDAIYAH MAMBAIL FALAH TONGAS-PROBOLINGGO," *Jurnal Studi Keislaman* 6, no. 1 (2020), accessed May 24, 2022, <https://doi.org/10.20885/tarbawi.vol8.iss2.art2>. Yohana R. U. Sianturi and Dinie Anggraenie Dewi, "Penerapan Nilai Nilai Pancasila Dalam Kehidupan Sehari Hari Dan Sebagai Pendidikan Karakter," *Jurnal Kewarganegaraan* 5, no. 1 (2021): 222–231.

¹⁴ Sianturi and Dewi, "Penerapan Nilai Nilai Pancasila Dalam Kehidupan Sehari Hari Dan Sebagai Pendidikan Karakter."

¹⁵ Pinangki Sirna Malasari, Rodrigo F Elias, and Altje A Musa, "ANALISIS TERJADINYA DISPARITAS PUTUSAN ANTARA PN DAN PT ATAS TERPIDANA PINANGKI SIRNA MALASARI (Nomor Perkara: 10/PID.SUS-TPK/2021/PT DKI)," *LEX PRIVATUM* 10, no. 2 (2021): 124–125.

different. This is where the disparity in punishment has a deep impact because it contains a constitutional balance between individual freedom and the state's right to punish.¹⁶

Proving disparity is based on valid evidence and other evidence. Proof at least has the value of the crime and the mistakes made by the perpetrator of the crime, so there must be a standard application in proving to convince the punishment that is considered to be unfair. In general, evidence, especially witness statements, is important in resolving criminal cases. Because this settlement is based on witness statements in addition to proving other evidence. The value of criminal case evidence, especially witness statements, should show several aspects related to the witness status, which means that witness statements are legally valid.¹⁷ So, in this case, the evidentiary value must be following the values of Pancasila, namely the value of justice.

3. CONCLUSIONS

Based on the background description above, it can be concluded that the disparity in judges' decisions in corruption cases in Indonesia is not new. The basis for judges' considerations in deciding corruption cases that cause disparity in decisions are legal considerations, *modus operandi*, and considerations of benefit. Several factors influence judges' decisions in corruption cases, resulting in disparity in criminal decisions, including: Factors in the law itself; Internal factors or judges' beliefs in interpretation; Political factors and social factors; and the absence of sentencing guidelines. The disparity in corruption crimes is based on Pancasila values, which are based on the values of divinity, humanity, unity, deliberation, representation, and justice. The disparity in corruption crimes based on the value of justice is based on the 5th principle of Pancasila, namely "Social justice for all Indonesian people". The value of justice can be applied to the process of proof while enforcing the law on corruption crimes.

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¹⁶ Riskanawati, Oheo Kaimuddin Haris, and Handrawan, "Disparitas Tindak Pidana Korupsi (Pada Putusan Nomor 14 / PID . SUS / TPK / 2016 / PN . KDI Dan," *Halu Oleo Legal Research* 1, no. 1 (2019): 36–44.

¹⁷ Yusep Mulyana, "DISPARITAS PUTUSAN PENGADILAN MENGENAI PERKARA KORUPSI BIAYA PEMUNGUTAN PAJAK BUMI DAN BANGUNAN DIHUBUNGKAN DENGAN PRAKTEK PENEGAKAN HUKUM," *JURNAL LITIGASI* 22, no. 1 (2021): 90–110.

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