

## DISPARITY OF PUNISHMENT AT THE COURT OF THE CRIME OF CORRUPTION

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### ABSTRACT

Research on the judge's ruling against the disparity of offender criminal acts of corruption as well as the factors that influence the occurrence of the judge's verdict, the disparity was held in the Court of a criminal offence, Corruption in the courts, the courts of Makassar Tipikor Tipikor Bandung, with this type of problem identification research perskriptif-shaped, with the descriptive nature of the use of legal normative approach. Primary data obtained through interviews with as many as 15 judges and prosecutors as well as 75 academics 3 advocates determination technique done with a sample of secondary data and sampling purposiv acquired through the study of librarianship is analyzed then qualitatively.

The research results showed that determination of the disparity, mistakes and condemnation to the perpetrator of the criminal offence of corruption in the courts, the courts of Makassar Tipikor Ti [ikor Jakarta and Bandung Tipikor Court as well as in the great Mahkamah occurs because positive Indonesia corruption criminal law that gives broad freedom to determine fault and criminal type (strafsoort) both weighs criminal ringannya or (strafmaat) to the perpetrator of the criminal offence of corruption all not under the minimum standard of judgment and memlampauai the maximum punishment standards defined in legislation the eradication of criminal acts of corruption.

Factors that cause the occurrence of an error or judgment determining the disparity to the perpetrator of the criminal offence of corruption in the courts, the courts of Makassar Tipikor Ti [ikor Jakarta and Bandung Tipikor Court as well as in legal substance Agungadalah Mahkamah factor, which gives freedom to the judge in deciding guilt and punishment inflicted to the defendant, politics and power, because the perpetrator of the criminal offence of corruption involves many officials or former officials of the regional social stratification, which is strong in the Association community city of Makassar, which puts an official or former official as a person who has a high degree of social stratification, and the judge in the determination of fault to the defendant, as well as the reasons pemberatan and relaxation of his judgement very subjective judgment by the Tribunal judges.

*Keywords: Disparities, corruption, and a Verdicts*

### INTRODUCTION

Disparity of punishment download so the main issues in the criminal justice system, especially closely related to the question of whether a judge's verdict already meet the sense of Justice. The question of the disparity will be emerging against the cases into the spotlight of public or the value of the loss is great. The society argues that the disparity of punishment is a form of injustice done to judge the seekers of Justice.

This brought criminal disparity problem in law enforcement in Indonesia. On the one hand a different punishment/disparity is a form of criminal judges in meting out the verdict, but on the other hand a different punishment/disparity of this crime brought discontent to the convicted person even society in General. Emerging social jealousy and also a negative view by the public on the institution of the judiciary, which is then manifested in the form of indifference on law enforcement in the community.

The longer any public confidence declining in the judiciary, so that there was a condition where the judiciary is no longer trusted or considered home equity for them or in other words, failure of the criminal justice system. Vigilantism has become something better and more fulfilling sense of justice rather than litigate them in court. This situation necessarily gives rise to inconsistencies the verdict of the judiciary and also contrary to the concept of the rule of law are embraced by our country, where the Government organized by law and supported by the existence of judicial institutions, namely the judiciary to enforce the law, if the community no longer believes in the rule of law in Indonesia. Thus the concept of equality before the law that became one of the State law still needs to be questioned is related to the existing reality, where the disparity seemed so real in criminal law enforcement.

Disparity of punishment can be so as many factors, such as race, gender, social status, political views etc. can be the things that influence the judges in meting out criminal sanctions. In many countries, the issue of discrimination can be a factor in the occurrence of disparity. The difference between those who are fair skinned will get different treatment with me colored skinned maker in the process of criminal justice including the verdict being dropped.

Corruption is seen as a cause of prolonged economic crisis experienced by Indonesia until now, which is very tercelah, cursed and hated by the international community. Corruption is one of the major problems being the spotlight and became a national concern, and the concern of the international world. Whereas corrupt practices by way of penyelewangan budget, inflating (marked up) budget, or by bribery, all of this will have an impact on people's kesejahteraan.

When the Court began to form in the area Tipikor, one at a controversial verdict the accused corruption matters was freed by judge Tipikor. For example, the Court freed a number of Bandung Tipikor head areas such as Subang Eep Hidayat Regent and Deputy Mayor of Bogor Ahmad Ru'yat and Mayor of Bekasi off Mochtar Muhammad.

On the verdict of the free Adam Muhammad, for the first time with the verdict of the KPK was defeated in the trials in court Tipikor. Previously, all matters of corruption filed KPK to court Tipikor can be ensured 100 per cent convicted guilty. In penelitian ICW, less than two years is already 40 corruption lawsuit defendants acquitted by a court in the region. Tipikor To the 40 defendants convicted of corruption or the freelance free consists of 14 persons in court Tipikor Samarinda, a Court in Semarang Tipikor, 21 people in court Tipikor Surabaya, and four people on the Court Tipikor Bandung.

By looking at the above very kendisi handicap in the realm of the judiciary in Indonesia, so that became an issue in this study is there is a trend in law enforcement "corruption eradication efforts have yet to demonstrate the good conditions where the institution of the judiciary that was

supposed to be the last bastion of (the last fortress/resort) to obtain justice is often not able to deliver the coveted by the justice society,. As the cause of occurrence of Disparity of punishment On the Court ruling the crime of corruption

## **Method Research**

This research was carried out, the Court of Bandung TIPIKOR Tipikor Court in Makassar and the chosen Court TIPIKOR Bandung emanating from another district in Provensi, West Java, Makassar city as a venue for regional and City Tipikor makassar came from other districts in South Sulawesi as well as the provensi of West Sulawesi.

This research is research that is descriptive, with the form of a research perskriptif, and using normative approaches and the sociology of law, seen in terms of the goal of the research is the research problem identification i.e. research which aims to identify the problem-masalahuntuk look at the Disparity of punishment against perpetrators of crimes of corruption in the Court of the crime of corruption.

Engineering data collection done by interview (interview), as well as the writer did some research libraries (library research). A study conducted by way of researching the existing library materials of relevance to writing and the title of the Dissertation.

Types of data used in this research is the primary data and secondary data. Primary data is data that is directly obtained from the respondents, while the secondary data is data acquired from books, print, internet, documents, rulings of court criminal acts of corruption and related legislation.

The population in this research include law enforcement officers (judges, prosecutors) and the legal experts (Academics). While the sample in this study set with sampling purposive technique i.e. by way of setting the number of samples criteria set by the researchers before, so the number is limited. As for the sample of the study consisted of 11 Judges, prosecutors 7 people, 2 person legal counsel and Law Experts 5 people.

## **Theory Framework**

### **a. Understanding Corruption**

In terms of semantics, "corruption" is derived from the United Kingdom, that is corrupt, which is derived from the combination of two words in latin, namely com meaning together and rumpere which means broken or broken. The term "corruption" can also be expressed as an act of dishonest or abuses committed due to an allotment. In practice, corruption, better known as receiving the money had anything to do with the title without any record of his administration.

According to Victor d. Situmorang, corruption can generally be described as the Act with the intent to enrich themselves or others or an agency, which directly or indirectly detrimental to the finances of the State or an agency or financial areas that receive State financial assistance, which was committed with abuse of Office/authority to him.

Then the meaning of the word corruption according to the great Indonesian Language Dictionaries in the Laden Marpaung contains the notion of corruption as a misappropriation or embezzlement of State money or company and others for personal profit or others.

M. Chalmers menuraikan the meaning of corruption in various fields, namely regarding the issue of bribery, related to manipulation in economics and related areas of common interests.

While Theodore m. Smith that overall, corruption in Indonesia appear more often as a matter of politics rather than economic problems. He touched on the legitimacy of the Government in the (legitimacy), the eyes of the younger generation, educated elite and a clerk in general reduce corruption on the Government support of a group of elites in provincial and district.

Based on the conditions above, then it can be inferred that the criminal offence of corruption is the formulation-formulation of all acts that are prohibited in law number 3 of 1971, which was later refined by law Number 31 of 1999 subsequently amended by Act No. 20 of 2001 about the eradication of criminal acts of Corruption.

### **b. Disparity of Criminal**

Criminal disparity (disparity of sentencing) is a universal problem that occurs almost throughout the country, including in Indonesia. Of course the criminal repercussions on disparity to the onset of the controversy in a society considered criminal decisions issued by the court party, so that the community and the convicted person who feels victimized "judicial caprise" would not believe in the law.

As for the notion of criminal disparity (disparity of sentencing) is the application of a criminal is not the same against the same criminal act (the same offence) or the nature of the criminal acts against dangerous can be compared (offence of comparable seriousness) without a clear justificatory.

Is the disparity of criminal (disparity of sentencing) in this not only includes the application of a criminal who is not the same for the same criminal offence without a clear justification basis, but also to the nature of the criminal acts dangerous can be compared (offence of comparable seriousness). The same criminal act is sometimes not only shows the "legal category" criminal acts but may also be in other forms such as in a judgment against those who do alongside a (co-defendants), but are convicted of different there are obvious reasons.

### **c. Law Enforcement**

Law enforcement can be said either in a criminal justice system work objectively and impartially, and may consider carefully which values alive and thriving in the community. Law enforcement must use a systems approach which has a reciprocal relationship between the developments of the multi-dimensional nature of the crime with the criminal policy has been implemented by law enforcement officers.

Evaluation of the development of crime has resulted in three dimensions, namely dimensions (poverty), greed and power. The crime that comes down to the dimension of the will produce conventional crimes such as theft, assault, and others. Crimes that boils down to greed dimensions will result in the form of a crime called "corporate crime" or "white collar crime". While the crimes that boils down to a dimension of power will produce evil deeds in the form of

corruption or abuse of power or position in all aspects of the work of the Government or a governmental crime.

#### **d. Stage-stage of the event in the integrated criminal justice system**

Criminal cases are matters pertaining to crimes or offences committed by citizens against the soul, body or property, so that the State shall be obliged to drop the sanctions for those who commit crimes or offences in order to maintain public order. In criminal cases committed by police, prosecutors and the courts. The police force is the earliest parties do handling against the perpetrators of crime or offence, if there is a crime the police investigation and obligatory do further investigation, State Attorney take over party matters in order to conduct the prosecution of the perpetrators of the crime in the face of the Court. To clarify the authority of the respective apparatus in the criminal justice system, presented the following stages-phases in the criminal justice system:

1. Investigation
2. Investigation
3. The prosecution
4. An Examination Of The Court
5. The Verdict
6. The Implementation Of The Ruling Of The
7. Advance court level
8. Cassation
9. Review

#### **e. The behavior of law enforcement officials**

Wasingatu Zakiyah et al (2002) says that law enforcement (law enforcement) in Indonesia can be likened to enforcing thread moist. A wide range of issues especially corruption makes law enforcement just empty slogans and speeches. The reality on the ground shows the law is no longer justice, but the law is synonymous with money. Law and justice can be purchased that ultimately the courts will look not like an auctioneer, a win depending the number of deals. As a result, the law becomes expensive goods in the country. The principle of Justice is fast, lightweight and simple cost is hard to find in court. That happened quite the contrary, justice requires the cost of an expensive, long and rambling, justice and legal certainty can no longer provided by the judiciary. The radical proposal has ever leveled by Daniel s. Lev to fire all over judges and prosecutors and replacing them with new ones worth considering.

According to Wasingatu Zakiyah there are at least four causes of behavior, namely law enforcement corruption;

1. Welfare/low salary but his high life style
2. The existence of the mutual distrust between law enforcement itself
3. Due to a pattern of corruption that occurred during the new order
4. The absence of a professional standard for the advocate

## **RESULTS AND DISCUSSION**

### **A.How is the disparity of punishment On the Court ruling the crime of corruption**

Criminal disparity is common in litigation around the world, including in Indonesia. It is caused by the system of positive law that gives broad freedom to the judge to decide the punishment meted out to the convicted person.

Legally the judge have the independence to determine a criminal dijatuhkan as in article 1 of ACT No. 4 of 2004 Concerning the powers of the Judiciary, in addition to that in the Criminal Code specifies a minimum and maximum weighing about imprisonment and confinement that can be dropped. In article 12 of the Criminal Code specified that imprisonment for a minimum of one day and a maximum of fifteen years and in certain circumstances can be twenty years, and in article 18 of the Criminal Code specified that criminal confinement of at least one day and a maximum of one year. So legally the judge not to blame if there is a disparity in dropping criminal, as long as it doesn't exceed the maximum criminal every article weighs in the legislation.

Based on the results of the research it appears that the development of case handling criminal acts of corruption in the Court of the crime of corruption of Makassar in 2011 to 2014 there are as many as 111 things of the criminal offence of corruption handled the matter of 111 there are as many things that convicted guilty with imprisonment respectively 10 (ten) years and one thing was sentenced to seven years in prison.

The question of interest and became the focus of study and analysis the author is of 111 cases handled by courts of criminal acts of Corruption of Makassar there are 9 (nine) cases an award free or not guilty.

Based on the description above, it appears that the disparity occurred, punishment, because each defendant according to the public prosecutor's indictment is the perpetrator who has contribution and role in the realization of criminal acts of corruption.

While in 2011 the number of criminal acts of corruption matters handled in the Makassar District Court there were as many as 33 of 33 cases, the matter there are as many as 1 the culprit in sentencing each of 10 years and a verdicts on the two respective 3 years in prison and a one-year prison sentenced matters while the 27 things at an average verdict of one year in prison, while the rest as much as 2 things of all is the culprit in a verdict of not guilty.

Then in 2012 the number of criminal acts of corruption matters dealt with by the Courts as much as Makassar Tipikor 29 of 29 cases, the matter of which a guilty verdict on 1 with 3 years in prison and a verdicts while five things in the verdict of 2 years in prison, while the rest as much as 2 things convicted not guilty.

Of particular interest is the handling of the matter by 2013 the number of cases dealt with in the Court of the crime of corruption of Makassar as many as 20 cases, while seven are free or not guilty while the other matter only disconnected one (1) year.

Then in 2014 the number of criminal acts of corruption matters dealt with by the Court of a criminal offence of corruption cases, as many as 10 Makassar from the case there has been no independent or not guilty then one (1) matters including the verdict of guilty by verdict of 7 years in prison and while the 5 (five) of case there has been no court ruling.

**An Example Of The Ruling Of The Judge Of The Court Judgment On The Disparity Of The Occurrence Of The Crime Of Corruption**

<b>No</b>	<b>No. The Verdict</b>	<b>THE NAME OF THE CONVICTED PERSON</b>	<b>THE LOSS OF STATE</b>	<b>The DEMANDS of the</b>	<b>The VERDICT</b>
1	20/Pid.Sus/2012/P N. MKS	Drs. H. MUH. ANWAR BEDDU	8.867.500.00 0(Eight Billion Eight hundred and sixty thousand five hundred thousand	Article 2 paragraph (1) sub and LAW number 31 of 1999	Prison and fines Rp a two-year sentence. 500.000.000,-(five hundred million)
2	60/PID.SUS.KOR/ 2012/PT.MKS	Drs. H. MUH. ANWAR BEDDU	8.867.500.00 0(Eight Billion Eight hundred and sixty thousand five hundred thousand	Article 2 paragraph (1) sub and LAW number 31 of 1999	Sentencing 15 months imprisonment and a fine of Rp 50,000,000., (fifty million rupiah) .
3	a.55/Pid.Sus/TPK/ 2011/PN.Bdg	HJ.YANI WIDIYANI BE, S.SOS	10.850.000.0 000(Ten Billion eight hundred fifty million	Article 2 paragraph (1) sub and LAW number 31 of 1999	The penalty of 1 (one) years in prison and a fine of Rp 50,000,000 (fifty million rupiah)
	b.55/Pid.Sus/TPK/ 2011/PN.Bdg	Drs. SUTRIONO BAE. MM Als. DEDE SUTRIONO	0.850.000.00 00(Ten Billion eight hundred fifty million	Article 2 paragraph (1) sub and LAW number 31 of 1999	There Is No Sentence
4	76/Pid.Sus/TPK/2 011/PN.Bdg	IVAN CH LITHA	89.250.000.0 000(Eighty- nine Billion two hundred	Article 2 paragraph (1) sub and LAW	9-year Prison sentence and a fine of Rp.

			and fifty million	number 31 of 1999	1,000,000,000 (one billion rupiah)
5	77 /Pid.Sus / TPK /2011 /PN.Bdg	ANDHY GUNAWAN bin HARTONO	Do not accept corruption money directly	Article 2 paragraph (1) sub and LAW number 31 of 1999	A four-year Prison sentence and a fine of RP. 200 million,-(two hundred million dollars)
6	73/Pid.Sus/TPK/2011/PN.Bdg	SANTUN NAINGGOLAN	11.000.000.000. (Eleven Billion)	Article 2 paragraph (1) of the ACT and subsection number 31 of 1999	8 year Prison sentence and a fine of Rp. 1,000,000,000 (one billion rupiah)
7	75/Pid.Sus/TPK/2011/PN.Bdg	ITMAN HARRY BASUKI	1.400.000.000 (One comma four billion)	Article 2 paragraph (1) of the ACT and subsection number 31 of 1999	Sentence 6 years in prison and a fine of USD 300,000,000 (three hundred million dollars)
8	74/Pid.Sus/TPK/2011/PN.Bdg	RICHARD LATIEF	200.000.000	Article 2 paragraph (1) of the ACT and subsection number 31 of 1999	Sentence 6 years in prison and a fine of Rp. 400.000.000, – (four hundred million dollars)
9	72/Pid.Sus/TPK/2011/PN.Bdg	TEUKU ZULHAM SJUIB	Do not accept corruption money directly	Article 2 paragraph (1) of article 18 paragraph 76 (1) 1999	4 Penalty years in prison and a fine of Rp. RP 200 (two hundred million dollars)

The source of the courts and tribunals of Makassar Tipikor Bandung

From the table above clearly has happened disparity of punishment of nine verdict, where the same case but on a different verdict.

### **Factors that Affect the occurrence of Disparity of punishment At the Court of the crime of corruption**

The occurrence of disparity of punishment as the authors describe in the previous discussion is one of the problems faced by law enforcement in Indonesia amid the demands of law enforcement will hopefully manifest the Justice of the law. Many court rulings that are being debated in the community, because the community assess that, courts no longer serve as the carriages to seek justice for the seekers of Justice, but if justice own cars have been unable to deliver justice as expected by the community, then the community will certainly do an excessive reaction in judging the Court ruling, there are bubbling up the disappointment with doing rallies , and sebagainya, even to the judges in the hunting Act in the proceedings as well as the presence of the public prosecutor which shoe thrown by the defendant, because the disappointment of the defendant who had given some money to the Prosecutor but the defendant demanded the Prosecutor remain with heavy demands. Based on the description in points B above that there is disparity of punishment in the case of the ruling of the Number 60/Pid. Sus/TPK/2012/PN. MKS, defendant Beddu, Drs. Muh. Anwar 55/Pid. Sus/TPK/2011/PN. Bdg on behalf of the accused 1. Hj. Yani Widiyani BE. S, Sos and 2. Drs. Sutriyono BAE. MM A.k.a. Dede Sutriyono, ruling Number 76/Pid. Sus/TPK/2011/PN. Bdg on behalf of defendant Ivan CH Litha, ruling Number 77/Pid. Sus/TPK/2011/PN. Bdg on behalf of defendant Andy Gunawan, ruling Number 73/Pid. Sus/TPK/2011/PN. Bdg on behalf of the defendant's Nainggola Team, ruling Number 75/Pid. Sus/TPK/2011/PN. Bdg on behalf of defendant Harry Ithman Basuki, ruling Number 74/Pid. Sus/TPK/2011/PN. Bdg on behalf of the defendant Richarrd Latief Number 72/Pid. Sus/TPK/2011/PN. Bdg, ruling on behalf of defendant Teuku Zulham. From 9 (nine) the Verdict is influenced by several factors namely regulatory factor/the substance of the law, political/social power, culture, and the reason pemberatan and lighten the punishment. For more details then the author will outline the factors that affect the occurrence of disparity of punishment mentioned above, i.e.:

- |                               |                           |
|-------------------------------|---------------------------|
| 1. Regulatory/Legal Substance | 4. The Reason The         |
| 2. Politics/Power             | Determination Of Errors   |
| 3. Social Stratification      | 5. Independence Of Judges |
|                               | 6. The Loss Of State      |

### **Efforts to Overcome the consequences caused the Criminal Court's verdict on the disparity of the crime of corruption**

Regarding the first, then therein contained the following efforts :

1. Creating a criminal granting guidelines (statutory guidelines for sentencing), which gives the possibility for the judge to take into account the entire faced off on the events, i.e. with a heavy ringannya delik and the way it's done, with delik than on the maker, age, level of his intelligence, and circumstances as well as the atmosphere of the time criminal deeds were done,
2. Enhancing the role of the Court of appeal, cassation or extraordinary remedy
3. Beside that, things that are not as important in creating a suremasi law, that all persons in the same position in law, should not be happening abusive powers and authorities

possessed by law enforcement officers, who are not tainted by criminal courts especially in the disparity of the crime of corruption so as to minimize the occurrence of pembedaan disparity on the Court of the crime of corruption

4. through a strict selection of the acceptance and practice of education of judges, the judges, the fact that the selection of judges acceptance tinged with corruption, Collusion and Nepotism which someone is very difficult so the judge otherwise bribe at the time of selection, likewise also by collusion at the time of acceptance of the selection of judges which is very difficult to pass if not relatives and his family, so that the verdict of a judge is very hard to be fair. So there was a great disparity of punishment.

## CONCLUSION

Shove off from the formulation of the problem, the results of research and discussion, it can be summed up as follows:

1. Determination of the error and the disparity of punishment to the perpetrators of criminal acts of corruption in the courts, the High Court Tipikor Makassar Makassar Court Tipikor Bandung, nor from positive Indonesia corruption criminal law that gives broad freedom to determine fault and criminal type (strafsoort) both weighs criminal ringannya or (strafmaat) to the perpetrator of the criminal offence of corruption all not under the minimum standard of judgment and the maximum punishment standards defined in legislation the eradication of criminal acts of corruption.
2. Factors that cause the occurrence of an error or judgment determining the disparity to the perpetrator of the criminal offence of corruption in the courts, the High Court Tipikor Makassar Makassar Court nor Tipikor Bandung is the factor of legal substance, which gave freedom to the judge in deciding guilt and punishment inflicted to the defendant, politics and power, because the perpetrator of the criminal offence of corruption involve many officials, employers or former officials of the region, social stratification is strong in the Association community , which puts a officials or former officials as people who have a high degree of social stratification, and the judge in the determination of fault to the defendant, as well as the reasons and relaxation of his judgment very subjective judgment by the Tribunal judges.
3. the occurrence of disparity of punishment starts from the law itself which in article 12 paragraph 2 of the Criminal Code which States that certain time prison for most of the short one (1) day and the longest fifteen years in a row, the next about the confinement of article 18 paragraph 1 (a) of the Criminal Code States that the confinement of at least 1 (one) day and the longest one (1) year, so the overthrow the criminal into the freedom of the judge in conducting the overthrow of criminal.

## RECOMMENDATIONS

Conclusion based on the above, the authors then ask advice as the solution as follows :

1. Need for restrictions on the freedom of judges in the determination of guilt and punishment to the defendant's criminal act of corruption, so that it is not easy disalagunakan the judge

through the overthrow of the ruling of the light and even free to the defendant's criminal acts of corruption, as well as the need for special testing or eksaminasi the verdict of the District Court in Makassar Number 60/PID. SUS/2013/PT. MKS,55/Pid. Sus/TPK/2011/PN. BDG,77/Pid. Sus/TPK/2011/PN. BDG,73/Pid. Sus/TPK/2011/PN. Bdg, because it appears the existence of very real judges errors in the verdict.

2. Need for consideration of a more benevolent and objective Judge of high court judges, especially in Makassar, bandung Corruption criminal act the judge in assessing the reasons pemberatan and lighten the punishment, so as not to disparities occur the punishment too flashy, and it's high time Makassar, High Court judge justice of criminal acts of Corruption of bandung in the overthrow of the judgment to the defendant based on the legal considerations that are more objective, not based on a consideration of non law more dominant , such as political/power and social stratification.
3. The need for immediate repisi the draft PENAL CODE in 1982 with the presence of the Commissioner judge could monitor and meriksa each level stage of regulatory system level of punishment ranging from investigations and police investigation, and the investigation conducted by the Prosecutor with the existence of sufficient evidence against the suspects to assignment on p. 21 then continued with the implementation of the Court ruling.

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