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DISPARITY OF DECISIONS OF CRIMINAL ACTIONS OF CORRUPTION PERFORMED BY HEAD OF POLITICAL PARTY

Hartanto¹

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Abstract: *Corruption is a big problem and is suspected to be a contributor to the increase in poverty in Indonesia, this corruption crime does not recognize any position or background. The author sees that corruption is a legal domain that is often influenced by the political field, although what should be considered is the domain of sociology/legal sociology. The general chairman of the party, in this case, the former, who was supposed to have helped build the country when he was in power, did not seem to meet the expectations of the people, because when he was in power he actually did corruption. Corruption in the circle of political parties is very influential on public confidence in political parties that are the driving force of democracy. Political phenomena that affect the law in the form of judges' decisions / verdicts will increase the disparity of decisions. Starting from the decision related to Romy, then it is compared with the decisions of Anas U, Suryadharma A, Luthfi H I. How our law looks, really depends on the "crown" of the judge in the form of his verdict, and in Indonesia there are various views of the public on the judge's decision. The sampling of 4 political figures in this title is limited to study material. This study uses secondary data that focuses on norms, doctrines, books, or other documents, especially decisions as analysis material, then attempts to answer the question of how the disparity of decisions related to corruption made by political party leaders with a sociological perspective of law requires legal considerations that live in society. . and in Indonesia there are various views of the public on the judge's decision. The sampling of 4 political figures in this title is limited to study material. This study uses secondary data that focuses on norms, doctrines, books, or other documents, especially decisions as analysis material, then attempts to answer the question of how the disparity of decisions related to corruption made by political party leaders with a sociological perspective of law requires legal considerations that live in society. . and in Indonesia there are various views of the public on the judge's decision. The sampling of 4 political figures in this title is limited to study material. This study uses secondary data that focuses on norms, doctrines, books, or other documents, especially decisions as analysis material, then attempts to answer the question of how the disparity of decisions related to corruption made by political party leaders with a sociological perspective of law requires legal considerations that live in society.*

Keywords: *Disparity, Decision, Corruption, Party Leader, Politics*

I. INTRODUCTION

The Corruption Court in Central Jakarta No. 87/2019 in its decision stated that it was authorized to examine and prosecute, those who committed or participated in committing several separate acts, even though each of them constituted a crime to the extent of a violation, with a relationship in such a way that it should be interpreted as a continuing act, receiving a gift, namely: received a total amount of Rp. 325,000,000.00 (three hundred and twenty five million rupiah) from Br. HH, even though it is known or reasonably suspected that the gift is given in relation to (cause or effect) because he has done or not done something within the scope of his position that is not in accordance with his obligations, namely the defendant knew or should have suspected the amount of money given to him because the Defendant had intervened directly/indirectly in the process of appointing HH as Head of the Regional Office (Kanwil) of the Ministry of Religion.

East Java which is contrary to its obligations as mandated by Law of the Republic of Indonesia Number 17 of 2014 concerning the MPR, DPR RI, DPD and DPRD, Law of the Republic of Indonesia No. 28 of 1999 on State Administration that is Clean & Free from Corruption, Collusion and Nepotism, Regulation of the House of Representatives of the Republic of Indonesia Number 1 of 2014 concerning Orders, Regulation of the DPR RI No. 1 of 2015 concerning the Indonesian House of Representatives Code of Ethics. 28 of 1999 on State Administration that is Clean & Free from Corruption, Collusion and Nepotism.¹ Regarding the warning that states, "continuous actions are several actions that have a relationship in such a way" creates ambiguity even though this is regulated in article 64 of the Criminal Code, this can then be interpreted in various ways, because the connection can be seen from many possibilities, and is very dependent on with the level of understanding and independence of the Panel of Judges, while the legal principles regulate under the law that the formulation of the offense must be clear (*lex certa*); This clarity is one of the elements of the development of the principle of legality/ four basic principles: *lex scripta*, *lex certa*, *lex stricta* and *lex praevia*.² Furthermore, even this ambiguity can be tested based on Article 65 concerning the realist *concurus*; where a combination of several acts, but each is interpreted as one unanimous act and each is a crime with the same main criminal threat, then only one sentence is imposed, with the calculation of the maximum penalty being the sum of the maximum criminal penalties for each act,³ so this also requires an explanation of the offense charged and which parts were proven.

Amar decision; Receive appeal requests from the Public Prosecutor at the Corruption Eradication Commission and the Defendant; Amend the decision of the Corruption Court at the Central Jakarta District Court Number 87/Pid.Sus-TKP/2019/PN.Jkt.Pst dated January 20, 2020, which was then submitted for the

¹Decision Number : 87/Pid.Sus-TPK/2019/PN.Jkt.Pst

²ICJR, Ketentuan Hukum Yang Hidup Dalam Masyarakat di RKUHP Ancam Hak Warga Negara, diakses 29 September 2022, <https://icjr.or.id/ketentuan-hukum-yang-hidup-dalam-masyarakat-di-rkuhp-ancam-hak-warga-negara/>

³Fioren Alesandro Keintjem, dkk, Konsep Perbarengan Tindak Pidana (*Concurus*) Menurut Kitab Undangundang Hukum Pidana, *Lex Crimen* Vol. X/No. 5/Apr/EK 2/2021, p.194

appeal, specifically regarding the length of the sentence imposed on the Defendant, whose order was as follows :

1. Stating the Defendant Muh. The aforementioned Romahurmuzy has been legally and convincingly proven guilty of committing “a criminal act of corruption jointly and continuously” as stated in the first alternative second indictment and the second alternative second charge by the public prosecutor;
2. Sentencing the Defendant Muh. Romahurmuzy therefore with imprisonment for 1 (one) year and a fine of Rp. 100,000,000-, (one hundred million rupiah) at once determined if the Defendant did not pay the fine, it was replaced with imprisonment for 3 (three) month;

Decision of the High Court (PT) Jakarta Number 9/PID.TPK/2020/PT DKI Dated April 20, 2020- Appeler/Public Prosecutor: Wawan Y., SH. Appellant/Defendant: M. Romahurmuzy; sentenced the defendant Much. Romahurmuzy is therefore imprisoned for 1 (one) year and a fine of Rp. 100,000,000-, (one hundred million rupiah), this of course includes the provision that if the defendant does not pay the fine, it is replaced with imprisonment for 3 (three) months. Romy was finally released after his sentence was reduced to one year in prison on appeal by the Jakarta High Court Judges. The detention period was declared over on Tuesday, April 28, 2020 because Romy had been detained since March 16, 2019 and his detention was extended for 44 days, while the cassation from the KPK has not yet received a verdict or news.⁴

When compared to the corruption case involving party leaders, Romy's decision is much lighter. The following are some examples of court decisions for several party leaders.

1. Anas U, exThe chairman of the Democratic Party, was sentenced to 14 years in prison, fined Rp. 5 billion, subsidiary of one year and four months in prison, along with being sentenced to pay replacement money of Rp. 57,592,330,580 which was deposited into the state treasury.
2. Former President of PKS, Luthfi HI by the Supreme Court was sentenced to 18 years in prison.
3. Suryadharma A, who is also the former chairman of PPP, was sentenced by the Court of Appeals to 10 years in prison and a fine of Rp. 300 million, subsidiary to three months in prison.

This phenomenon will generally be perceived by the public as unfair, because Romy's Decision on Appeal to Anas Urbaningrum, Luthfi Hasan Ishaaq, Suryadharma A raises the narrative 'compared to the corruption case involving the Party Chair, Romy's decision is much lighter'. In this narrative, we generally admit that politics often intervenes in the law, even though the law should be the commander in chief, because a state based on law has been regulated in the constitution, furthermore a state of law is a state based on law and justice for its citizens; this is interpreted as legal regulations regarding all authorities and actions

⁴Ardito Ramadhan, MA Nyatakan Romahurmuzy Tetap Ditahan Selama Kasasi, accessed 29 September 2022, <https://nasional.kompas.com/read/2020/04/29/18042671/ma-nyatakan-romahurmuzy-tetap-ditahan-selama-kasasi>

of state equipment. This will reflect justice for social relations in the lives of its citizens.⁵ Apart from being light, Romy's decision should be more severe because as a national/public figure or official, his crime is related to a religious institution, which should be a role model compared to other agencies.

The chairman of the Golkar Faction Setya N (former chairman of the DPP) received a severe sentence, he was judged to have enriched himself Rp 71 billion (± 7.3 million USD) in the project. For his actions, the Tipikor District Court sentenced him to 15 years in prison, in addition to a fine of IDR 500 million, subsidiary of three months in prison. In addition, he was required to pay a replacement money of Rp. 7.3 million US dollars.⁶ If we take a closer look at the three examples that are compared to Romy as party leader, the decisions against the other three defendants are the same background as Anas U (former Chairman of the Democratic Party), Luthfi HI (Former PKS President) and the last Suryadharma A. (former General Chairperson of PPP) we can conclude that the three defendants who ended up being convicts were party leaders (equivalent). However, hypothetically, the distinguishing phenomenon according to the author is a political phenomenon that affects law enforcement.

II. DISCUSSION

The 1945 Constitution of the Republic of Indonesia has been declared, understood, and recognized as the highest legal basis in Indonesia;⁷ but the legal system. The head of the Judicial Commission's remarks in the book "Disparity of Judges' Decisions" stated "Suffering and distrust of judges' decisions are not only triggered by unfair processes and decisions, but also because of disparities between one or more cases that are relatively the same; both process disparities, legal interpretation disparities, treatment disparities, and final decision disparities"⁸ The disparity that occurs in the judge's decision, at this time has been minimized with the issuance of Supreme Court Regulation No. 1 of 2020 concerning Guidelines for Criminalization; however, this Perma is not applied positivistically to a decision that has been widely reported, namely Pinangki SM because the Perma only stipulates Articles 2 and 3 of Law no. 20 of 2001.

Sociology of Law and Personal Judge

From a historical perspective, the term sociology of law was used by an Italian for the first time, named Anzilotti in 1882. The developmental perspective of the sociology of law emerged from the thoughts of experts. Sociology of law in the position of a branch of science (stand alone), namely social science, is a science that studies human life with others, namely social life or social life, in short, legal sociology studies society, especially the legal phenomena of society; Furthermore, it

⁵Abdul Aziz hakim, *Negara Hukum dan Demokrasi*, (Yogyakarta : Pustaka Pelajar, 2011), p. 8

⁶Ina Maharani, <https://makassar.tribunnews.com/2020/01/22/romahurmuziy-vonis-2-thn-bandingkan-suryadharma-ali-anas-urbaningrum-setya-novanto-luthfi-hasan?page=3>, diakses 20 Juni 2021, accessed 20 June 2021

⁷Hartanto, "Sanksi Pidana Terhadap Pelanggar Protokol Kesehatan Di Masa Pandemi Covid-19", *Literasi Hukum*, Untidar, Vol 5, No 2, 2021, p. 99

⁸KY, "Dsparitas Putusan Hakim-Identifikasi dan Implementasi", *Sekjen KY dan Jawa Pos*, (Jakarta) 2014, p. iii

can be studied from two angles, namely the structural angle of society and the dynamics of society. The structural aspect is also called the social structure, namely social rules, social institutions and social groups and social layers.

Sociology of law has difficulty in viewing the legal system which contains rules (normative) which are considered static (rigid regulations).⁹ Furthermore, the sociology of law associated with the personal judge is a study that is not limited to norms/normative about regulations as positive law guidelines/rules of a judge, but also related to the social contract that exists in the heart of each judge that he is part of the community or legal community that has obligations. upholding the values (consensus) that live and develop in society. To facilitate the phenomenon of sociology of law in the hearts of judges, we can look at several decisions that include the dissenting opinions of member judges.

Sociology of law associated with judges, is first: it can be obtained the abilities for understanding the law in its social context. Second: skills in understanding the concepts of the sociology of law can also provide the ability to conduct an analysis of the effectiveness of law in society, both as a means of controlling relations between communities (social) and a means of changing society (social engineering) in order to achieve certain conditions. Fourth: Sociology of law also provides the possibility/opportunity and ability to evaluate the effectiveness of law in society.¹⁰ As is the case for law enforcers or law enforcement, sociology plays a very important role, for example today there are many differences (disparities) in judge's decisions. In Indonesia, the decision or verdict is left entirely by the judge. Indonesia can be classified into two types of judges:

- a. The judge who receives, examines, and decides on a case, he first asks again his conscience or listens to the decision of his conscience then continues to explore the articles (laws and regulations) to support the decision; Judges who can be included in this qualification include Bismar Siregar, Adi Andoyo Soetjipto and many others, for example ad hoc judge Binsar PPS; especially the two judges are just examples because their decisions are considered controversial but adhere to their conscience.
- b. A judge who when deciding first is influenced/consulted with the desire of the "stomach" and then looks for articles in the legislation to give legal quality to his decision based on the influence of his stomach without first asking his conscience. A judge like this is a judge who sells his decision¹¹

Unless with at least 2 valid pieces of evidence he is convinced that a criminal act has actually occurred and that the accused is guilty of committing it." Here the word judge's conviction becomes an important element that must be independent/ impartial and based on the facts of the trial, then can be called a determinant of whether or not a crime has occurred. Further on Law no. 48/2009 Judicial Power in article 6 (1) No one can be brought before a court, unless the law provides

⁹Mastur, Peranan Dan Manfaat Sosiologi Hukum Bagi Aparat Penegak Hukum, Vol 4, No 1, 2010, Jurnal Ilmiah Ilmu Hukum QISTI, p. 3

¹⁰*Ibid*

¹¹Mastur, *Op Cit.*, p. 10-11

otherwise. Paragraph (2) No one can be sentenced to a crime, except if the court, because of the legal evidence according to the law, is convinced that a person who has criminal responsibility (deeds) has been guilty of the act he is accused of.

The birth of a judge's belief in practice is usually closely related to the struggle with all the wisdom and wisdom of the judge, against various processes of proving a case in a series of trials, although the interpretive activities of judges and their decisions on a case are not only determined by the evidentiary process. This is because in our legal system the process of proof becomes the central point of examining criminal cases in court proceedings, where the trial process (trial) of criminal cases is said to aim to seek material truth, namely the truth as revealed at trial.¹²In this study, there is absolutely no room to look at the background of the accused, whether he is the general chairman of the party, former general chairman, or other political figures. If the difference in the decisions in this paper occurs because the process of proving and searching for material truths is not running properly.

Sociology of Law in Judgment

Along with the changes and developments of an increasingly complex society, it requires legal studies that are not only normative, but also empirical or sociological. For critical legal scholars, legal positivism and legal-formal legal understanding are considered unable to explain various actual and factual problems that arise from the rapid process of change and community dynamics.¹³Against the distinction between the three decisions in this paper, it can be considered that the presence of state law does not give birth to legal justice, on the contrary it creates injustice or at least legal uncertainty. The consequences of the type of sentencing decision in the criminal justice process, including the criminal justice case in corruption cases, also always give birth to the weight of the crime and the type of crime. Often public opinion causes turmoil that is initiated by influencers in this case community/public figures, it will cause social changes in an area, also have an impact on changes in the legal system or regulations in certain areas.¹⁴

Judges in convicting criminals, of course, are based on various considerations gradually: statutory provisions, human values, the principle of expediency, effectiveness in carrying out sentences and changes in behavior that have a deterrent effect; this deterrent effect for the accused when he is released later and for the general public; without considering these aspects comprehensively, it will lead to legal uncertainty and injustice in giving punishment. This seems to be the cause of many unequal application of criminal convictions against the same offense in practice in court. And this is according to M.Cheang in Muladi, stating what is

¹²Jajang Cardidi, "The Hermeneutical Study of the Meaning of Judges' Beliefs and Their Role in Criminal Decisions" E-Journal Graduate Unpar Part B: Legal Science, Vol. 1, No. 2 (2014), hlm. 20

¹³Umar Sholahudin, "Hukum dan Keadilan Masyarakat (Analisis Sosiologi Hukum terhadap Kasus Hukum Masyarakat Miskin Asyani" di Kabupaten Situbondo), Dimensi Jurnal Sosiologi Vol. 9 No.1 Juni 2016, p. 39

¹⁴Nanang Nurcahyo, Influencer's Effect On Sociolegal And Economic Development In A Developing Country, Especially In Indonesia, Volume 3 No. 2, November 2021, Progressive Law Review, Faculty of Law, Universitas Bandar Lampung Progressive Law Review, p. 146

meant by the term disparity of judge's decision or known as criminal disparity (disparity of sentencing).¹⁵

The criminal disparity in the Corruption Court's decision seems unavoidable both in the form of the type and quality of the offense, the weight of the crime and also the type of crime. Criminal disparities in addition to having an impact on the world of criminal justice will also have an impact on individual perpetrators of criminal acts as well as social impacts. Criminal disparity does not only occur in the same criminal act, but also in the quality (seriousness) of a criminal act, and also from judges' decisions, both by one panel of judges and by different judges for the same case.¹⁶

The series of law enforcement processes from investigation, prosecution, to trial in court must comply with the logic/reason of the laws and regulations (legal reasoning); although in accordance with the legislation or the rules alone is not enough, because often court decisions that are in accordance with the rules of the law do not succeed in realizing a sense of justice and do not even reach the truth which is a logical truth (natural human reasoning). Legal rationality in this position is actually contrary to rationality at the level of reason even though it has been arranged in the construction of legal norms which are the basis for court decisions.¹⁷ If it is associated with progressive law, progressive law provides justice not only what is stated by written laws and regulations but also what is needed / felt by the community (law in action). The formation of laws and regulations must provide not only decency and justice but also legal certainty and legal benefits. Satjipto Rahardjo realized that the abolition of the principle of balance between justice and certainty was due to the too rigid paradigm of 'legal autonomy' in Indonesia. The formulation and formation of laws philosophically must be in line with the basic needs/justice of the community, and progressive law strengthens the basic needs of the community. Progressive law is claimed to provide substantive justice, as well as welfare for the community.¹⁸

Sociology of law as reflected in the judge's decision, is expected to prioritize the benefits of law for the community, both the defendant and the general public, although this must be limited to achieving justice, and the authors argue that this takes precedence/urgency in achieving substantive justice; Then always keep in mind that the judge's decision in the future can become jurisprudence. Law 48/2009 concerning judicial power states the obligation of judges to explore, follow, and understand legal values and a sense of justice that live in society. Therefore, the judge's efforts against the occurrence of criminal disparity in corruption by

¹⁵Muladi dan Barda N. A, *Teori-teori dan kebijakan pidana*, Cetakan Ke-4 (Bandung:2010), p. 54

¹⁶Mukhils dan Nanang Farid Syam, dkk "Studi Disparitas Putusan Tindak Pidana Korupsi, Direktorat Pembinaan Jaringan Kerja Antar Komisi dan Instansi, Komisi Pemberantasan Korupsi , Jakarta (2018), p.593

¹⁷W. Riawan Tjandra, "Mengukur Rasa Keadilan Putusan Kasus Baiq Nuril" Kompas (Jakarta, 17 Juli 2019), p.6

¹⁸Vivi Ariyanti, "Equity sebagai Dasar Pertimbangan Putusan Hakim dalam Menyelesaikan Perkara Pidana Perempuan", *Pengaruh Media Massa Terhadap Putusan Hakim Dalam Perkara Tindak Pidana Korupsi " Refleksi Hukum*, Volume 5 Nomor 1, Oktober 2020, p. 65

preventing a sense of injustice from the decisions of other defendants, the judge has an obligation that not only decides the crime, but the judge in deciding the crime must always remember three conditions. First, the principle of legal certainty, secondly the principle of justice, and thirdly the principle of expediency. Judges have an obligation as law enforcers who provide education to state institutions (government, defendants, the community with the results of the judge's considerations before the trial in accordance with applicable law,

On the other hand, the author reminds that the role of mass media by reporting cases related to corruption cases involving state officials and political elites in the State of Indonesia can form or lead public opinion in society, more broadly there is also opinion on corruption cases in Indonesia in general. This can affect the process in the realm of law enforcement for corruption.¹⁹ Specifically for the author's assessment, the media in Indonesia often affects the public's sense of justice, even though the mass media in Indonesia are often directly/indirectly affiliated with political parties/politicians themselves.

I. CONCLUSION

The benefits and uses of the sociology of law are understanding the law in a social context, conducting an analysis of the effectiveness of the law in a sense of community justice. The occurrence of criminal disparities against criminal acts in this case related to corruption can be caused by several factors, namely juridical factors and empirical factors. From the juridical factor, it is caused by the existence of freedom of power and independence of the judiciary in the 1945 Constitution and the Law on Judicial Power (one of the impacts of the trias politica teaching). In addition, it is contained in the contents of the Act.

Eradication of Corruption Crimes is a problem of disparity, because the Criminal Code only regulates maximum threats and minimum threats in imposing criminal decisions against defendants. From an empirical point of view, the consideration of the defendant's condition (social circumstances) that there are aggravating and mitigating factors in the evidence at the trial also affects the judge's considerations, so that a criminal disparity appears, and this will be more visible when we use the perspective of the sociology of law in relation to the view/sense of community justice. A decision is the "face of the judge" and more than that, that is the face of the law in front of the community, considering that the law will be useful if it fulfills the sense of community justice, disappointment because of the reduced sense of community justice, will potentially further distance the realization of legal culture in this country. Eastern culture as in our country so far is still very concerned about the sociology of law compared to legal dogmatics.

¹⁹Alfiyan Mardiansyah, "Pengaruh Media Massa Terhadap Putusan Hakim Dalam Perkara Tindak Pidana Korupsi", *Jurnal Legislasi Indonesia*, Vol 12, No 1 (2015), p.11

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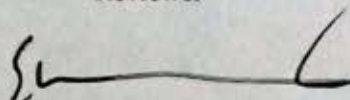
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