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Judges' Interpretation of the Special Minimum Penalties in Act Number 31 of 1999 and Act Number 20 of 2001 Regarding the Eradication of Criminal Acts of Corruption

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Abstract:

The issue of corruption remains an enduring subject of discourse within various societies, including Indonesia. This circumstance led to the enactment of Act Number 31 of 1999, which addresses the eradication of corruption. This legislation underwent modifications through Act Number 20 of 2001. Among the introduced alterations was the incorporation of a designated minimum sentence within the framework of the offense. This measure was aimed at establishing a dissuasive influence on potential corruption perpetrators. However, the implementation of the specified minimum penalties, as outlined in the Eradication of Criminal Acts of Corruption Act, has exhibited instances of violation. Judges, evaluating certain criteria, have opted to deviate from these stipulated minimum penalties. These criteria encompass factors such as the role and position held by the accused individuals involved in the corrupt activities.

Keywords: Judge's interpretation, special minimum sentence, corruption crime

1. Introduction

People, in general and throughout history, have been stating that corruption is everywhere in this world. Taufik Abdullah (1999:9) posited that just as prostitution is often termed "the oldest profession," corruption and collusion share a similar historical root, being intertwined with the establishment of power. Robert Klitgaard emphasized that corruption remains a paramount concern in developing nations, gaining heightened scrutiny as the century draws to a close (Nur M. Kasim, 2012:1). This statement at least illustrates how corruption is a virus that has eaten away at the entire country, including Indonesia.

In the face of this deeply concerning reality, the Indonesian Government has demonstrated unwavering commitment to counteracting and preventing corrupt activities. This commitment is reflected in a comprehensive and tangible approach during the enforcement of legislation. The government's resolute endeavors in corruption eradication are exemplified through the enactment of Act Number 31 of 1999 pertaining to the Eradication of Corruption Crimes, subsequently refined by Act Number 20 of 2001, which introduces amendments to Act Number 31 of 1991 related to the Eradication of Criminal Acts of Corruption (Act Number 31/1999 in conjunction with Act Number 20/2001).

A noteworthy aspect of the formulation of Act Number 31/1999 combined with Act Number 20/2001 is the incorporation of special minimum sentence provisions within the delineation of offenses. This diverges from the structure of criminal provisions in the Criminal Code, where the focus is on determining maximum sanctions. In Act Number 31/1999, combined with Act Number 20/2001, the stipulations for special minimum sentences are encompassed in several articles: Article 2 paragraph (1), Article 3, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, Article 12, Article 12 B, Article 21, Article 22, and Article 23.

The establishment of minimum sentences in Act Number 31/1999 alongside Act Number 20/2001 reflects the government's committed anti-corruption stance in Indonesia. However, the absence of accompanying sentencing guidelines within this legislation may lead to juridical complications during implementation, at least when the judge who tries the criminal case in question is faced with the fact that there are many mitigating factors for the crime. While Act Number 31/1999, combined with Act Number 20/2001, explicitly prescribes minimum sentences for specific offenses, judicial decisions can still bypass these special limits due to specific legal interpretations. At the implementation level, there is a judge's decision that imposes a prison sentence below the minimum specific sentence, with their respective legal arguments. Ultimately, a legal predicament emerges from the tension between legal certainties and the concept of justice on the other.

This circumstance prompted the author to scrutinize the judicial interpretation of the special minimum sentence regulations in Act Number 31/1999 alongside Act Number 20/2001, addressing the eradication of corruption offenses.

2. Research Methods

The primary aim of a study is to seek solutions to posed issues (Butarbutar, 2018: 122). This research endeavors to analyze judicial interpretations of the special minimum penalty regulations within Act Number 31 of 1999 in conjunction with Act Number 20 of 2001, addressing the eradication of corruption offenses. The employed research approach is normative legal research, involving an examination of literature or secondary data (Soerjono Soekanto & Sri Mamuji, 2013: 13), commonly referred to as doctrinal research. In this context, legal provisions are perceived either as recorded in statutes and regulations (legal content in texts) or as standards and norms guiding appropriate human conduct (Amiruddin and H Zainal Asikin, 2006: 118). According to Peter Mahmud Marzuki, normative legal research facilitates the identification of legislative rules, legal principles, and legal doctrines to address pertinent legal queries (2007: 35).

This research relies on secondary data derived from library resources for analysis, encompassing primary, secondary, and tertiary legal materials. Among the primary legal sources are the Acts on the Eradication of Criminal Acts of Corruption, Judicial Power, and other pertinent legislations. Secondary legal materials are sourced from literature, legal texts, and scholarly journals addressing the research problems, while tertiary legal sources consist of materials obtained through internet searches or websites, serving to address and resolve the research inquiries.

This research employs document analysis, commonly known as collecting legal materials from relevant acts and regulations addressing the research problems. Additionally, legal material is gathered through the literature review involving books and scholarly works pertinent to the research. A descriptive approach was adopted for processing and analysis.

3. Results and Discussion

3.1. Theoretical Review of Judge's Decision below the Special Minimum Limit

The autonomy of judges in case rulings is established upon the constitutional independence of the judiciary, as outlined in the 1945 Constitution of Indonesia and operationalized through Act Number 48 of 2009 on Judicial Power (Act Number 48/2009). In examining and deciding on a criminal case before him, the judge has the freedom to make a legal discovery and make an assessment. All decisions of a judge are left to the views and beliefs of the judge to determine whether the defendant is guilty or not. In this case, the judge is required to make legal discoveries if an event occurs that has not been regulated in Act or legislation, or even though it has been regulated but the Act does not regulate it clearly and completely, because a judge is not allowed to reject a case on the grounds that there is no law that regulates it as regulated in Article 10 paragraph (1) of Act Number 48/2009. Therefore, judges are mandated to scrutinize and rule on cases by deriving legal findings, even employing implicit legal principles when essential (Article 5, paragraph 1 of Act Number 48/2009).

In alignment with this perspective, while the law normatively prescribes minimum penalties for both imprisonment and fines, practical instances reveal some judges who exceed these established minimum thresholds due to reasons related to societal and moral justice. These considerations, grounded in principles of social and moral justice, extend beyond mere philosophical grounds, prompting deviations from formal provisions of special minimum penalties. This embodies the role of judges as independent agents, unshackled in interpreting legal norms. Judges cease to be mere conduits of the law; instead, they actively contribute to shaping legal content and tailoring it to meet legal imperatives (Sudikno Mertokusumo & A. Pitlo, 1993:7).

In essence, all cases require a legal discovery method so that legal rules can be applied appropriately to the incident so that the desired legal decision can be realized, namely one that contains aspects of justice, legal certainty, and expediency (Bambang Sutiyoso, 2006: 28). If legal certainty and justice cannot be reconciled, judges may take a stance to prioritize justice over legal certainty.

As for the judge himself, in essence, in carrying out his task of discovering Act, the judge must be free, both from the influence of the litigants, as well as other parties such as superiors, executives, legislators, and so on. The most important thing in legal discovery is how to find Acts for concrete events. Moreover, the judge's duty extends beyond mere conviction; it encompasses rendering the most equitable judgment. This entails imposing a penalty commensurate with the offense's gravity if the defendant is conclusively proven guilty under the law (Achmad Ali, 2009: 481).

In Indonesia, the discovery of heteronomous law is adopted, in which judges are bound by law. However, legal discovery also has a strong element of autonomy because judges often have to explain or complete laws according to their own views. Basically, by interpreting a statutory provision, including the law on the eradication of criminal acts of corruption at the practice level or concrete events, judges can interpret according to language. This method of interpretation is called grammatical interpretation, which is a way of interpreting the simplest explanation to find out the meaning of statutory provisions by deciphering them according to language, wording or content. Interpretation in this context extends beyond mere "legal reading."

Then, the judge can carry out a teleological or sociological interpretation (if the meaning of the law is determined based on societal goals). With this teleological interpretation, laws that are still valid but no longer appropriate are applied to events, relationships, needs and interests of the present, regardless of whether all of these were known at the time the law was promulgated or not.

Systematic interpretation can also be carried out by judges in handling a legal case, namely interpreting the law as part of the entire statutory system and how to relate it to other laws. This arises as laws are invariably interconnected, with no legal provision existing in isolation from the overarching legislation.

A judge can engage in historical interpretation by investigating the law's historical evolution. This is termed historical interpretation. Additionally, a judge can adopt a forward-looking perspective involving anticipatory legal discovery. This approach elucidates legal provisions based on laws yet to be formulated.

The aforementioned interpretive methods are evident in various decisions scrutinized within this research, particularly in judges' sentencing determinations that surpass formally established minimum penalties, notably under the Corruption Crime Act.

3.2. Basic Considerations of Judges in Decisions on Corruption Cases

The judge's decision, an outcome of their trial authority, emerges from the indictment, trial-revealed facts, and clear legal foundations, including the gravity of imprisonment. Sentencing severity aligns with the offender's motivation and outcomes, notably in prison sentences. Nevertheless, when certain Acts mandate minimal threat penalties (as in Act Number 31/1999 to Act Number 20/2001), judges confront divergent judicial practices. Some adhere to the letter of the law, driven by legal interest, while others interpret it to impose sentences below the minimum threat limit, emphasizing social justice.

From a formal juridical stance, two key aspects must be weighed by the judge prior to their verdict, as stipulated in the Criminal Procedure Code:

- Fact-based evaluation (if the defendant indeed committed the alleged act) and
- Legal evaluation (whether the defendant's actions constitute a crime and the defendant is culpable).

These considerations are encapsulated in the decision, encompassing both juridical and non-juridical factors, along with aggravating and mitigating circumstances.

Juridical considerations are rooted in trial-revealed elements and legally prescribed factors for incorporation in the decision. These encompass:

- The indictment and the Public Prosecutor's criminal charges,
- Legally admissible evidence as defined in Article 184 of the Criminal Procedure Code (witness testimonies, expert opinions, correspondences, accused's statements),
- Evidence pertinent to corruption offenses outlined in the Corruption Eradication Act.

Non-juridical considerations are equally grounded in trial-unveiled factors, encompassing the repercussions of the defendant's actions and the role or standing of the accused.

Concerning aggravating and mitigating aspects of the defendant's criminal conduct, both facets must be incorporated in every judge-issued sentencing decision, as mandated by Article 197, paragraph (1) of the Criminal Procedure Code. This provision stipulates the inclusion of aggravating and mitigating circumstances in the sentencing decision. Aggravating circumstances, as outlined in the Criminal Code, involve:

- Position of an official (*ambtelijke hoedanigheid*),
- Recidive (repeat)/ever been sentenced to a crime and
- Combined (*samenloop*)

Conversely, mitigating factors, as per the Criminal Code, comprise:

- Trial (*Poging*),
- Assist (*medepplichtigheid*), and
- Immature (*minderjarigheid*)

J.E. Sahetapy (2009: 108) emphasizes that the gravity of a judge's sentence is intricately tied to the evaluation framework designated for specific crimes. Typically, the extent of a crime's severity correlates with the defendant's conduct during the trial; apart from that, the measure is also influenced by other things, such as whether it complicates the course of the trial and so on. Several aspects often neglected include the actualities of societal existence, the defendant's life trajectory, the character, structure, and methodology of their offenses, and the magnitude of societal values at stake.

Based on J. E. Sahetapy's opinion above, it can be seen that determining the severity of a sentence that can be imposed by a judge against a perpetrator of a crime is closely related to the attitude of the defendant during the trial process. For example, during a trial, the defendant complicates the trial by making convoluted statements and sometimes admits his actions. As a result, the judge can impose a harsh sentence on the defendant.

3.3. Judge's Interpretation of Minimum Sentence Provisions and Considerations in Sentences below the Specific Minimum Limit

In the case of Payakumbuh District Court Judge's decision for corruption with Case Number Supreme Court Decision Number: 1573K / Pid.Sus / 2011, the Court of First Instance's Panel of Judges sentenced the defendant Edi Ahmad to 5 (five) months in prison for corruption involving natural disaster aid funds in West Sumatra.

The defendant faced prosecution due to proven guilt in the crime of "Corruption, Forgery of Documents," per Article 9 of Act Number 31/1999 in conjunction with Act Number 20/2001. This offense carries a minimum prison term of 1 (one) year and a maximum of 5 (five) years, along with a minimum fine of Rp. 50,000,000 (fifty million rupiah) and a maximum of Rp. 250,000,000 (two hundred and fifty million rupiah). Consequently, the Public Prosecutor sought a sentence of 1 (one) year and 3 (three) months imprisonment, plus a Rp. 50,000,000 fine, alternatively 2 (two) months in prison. This case underscores the requisite imposition of a minimum sentence as per Article 9 of Act Number 31/1999 in conjunction with Act Number 20/2001.

The Court of First Instance's decision, falling below the Corruption Crime Act's minimum limit, was guided by the Act's core values:

- Act as the value of justice,

- Act as the value of benefits and
- Act as the value of legal certainty

The Defendant's actions were governed by the Act on the Eradication of Criminal Acts of Corruption, thereby impacting legal certainty.

The Judging Panel contends that employing a distinct minimum system holds dual aspects: ensuring legal certainty and mitigating sentencing disparities. However, the utilization of legal principles can also perpetuate instances of injustice. To redress the perceived injustice associated with relatively minor instances of corruption, legislators introduced Article 12A within Act Number 20/2001. This provision exempts acts of corruption involving sums under IDR 5,000,000 from the punitive measures outlined in Articles 5 to 12. Perpetrators involved in such cases may face a maximum of 3 years imprisonment and a fine of up to IDR 50,000,000, distinct from the penalties stipulated in Article 9 of Act Number 31/1999 alongside Act Number 20/2001. Article 12A functions as a specific exception and offers an alternative framework for penalizing lower-value corruption offenses, thus addressing concerns about fairness within the ambit of the law.

In the other segment of their deliberations, the Panel of Judges articulated their considerations regarding the Expert Witness from the State Audit Board (BPKP) presented by the Public Prosecutor (JPU) during the trial. It was noted that the Expert Witness, in his testimony, failed to definitively establish any financial detriment to the State in the case involving the Defendant. Simultaneously, examining the trial's factual aspects indicated that the Defendant did not derive any tangible financial gains from the alleged actions for which he was charged. Consequently, the Panel of Judges posited that the application of a specialized minimal sentencing system, as stipulated in Article 9 of Act Number 31/1999 in conjunction with Act Number 20/2001, would be unjust in the Defendant's case. Hence, the Panel of Judges opined that Article 12 A of Act Number 20/2001 could be aptly invoked for determining the Defendant's incarceration terms. It should be emphasized that the criminal threat, as delineated in Article 12 A and Article 9 of Act Number 31/1999 in conjunction with Act Number 20/2001, embodies a cumulative nature. In essence, this entails that alongside imprisonment, monetary fines are also applicable as penalties in accordance with the law. Against this, the Panel is of the opinion that the imposition of fines on the defendant is too heavy because it is not commensurate with the actions committed, where there was plenty of evidence during the trial that the defendant had taken material advantage. Thus, the defendant does not need to be fined.

The Panel of Judges' perspective underscores the importance of a sentencing approach for the Defendant that transcends purely juridical considerations and embraces the broader spectrum of justice values inherent in criminal justice. It is essential that the punishment meted out to the Defendant encompasses moral, social, and legal justice aspects, demonstrating the Panel of Judges' commitment to their responsibility towards society, the State, and the Nation. This approach is underpinned by a deep-rooted belief in One Almighty God.

In this instance, the judge employed a teleological-sociological interpretation grounded in legal facts and real-world observations. The defendant's actions were deemed commonplace, corroborated by witnesses who attested to prevailing customs where news events are typically anticipated ahead of goods' arrival rather than beforehand. This situation is possible because the new government financial system will disburse funds after there is a report on work progress or work completion. Nonetheless, the Panel posits that the characterization of an action as ordinary does not constitute an absolute truth. In essence, the Defendant's actions fundamentally contravened statutory provisions. The Panel of Judges thus emphasized that the punitive measures imposed on the Defendant should be guided by the objectives of punishment, which extend beyond mere retribution. These objectives encompass deterrence, prevention, and suppression, with an additional educational, constructive, and motivational dimension aimed at dissuading the defendant from reoffending or engaging in recurrent criminal activities.

The Panel of Judges asserts that the duration of the Defendant's detention in this case has been substantial enough to serve as a deterrent and promote contemplation of a transformative path. Consequently, the Panel contends that affording the Defendant the opportunity for rehabilitation into a more constructive individual is warranted. Furthermore, according to the Panel, the impending prison sentence aligns with principles of fairness, adequacy, logical justification, humanity, proportionality, and commensurability with the extent of his culpability.

Hence, considering the aforementioned deliberations, the first-level court's Panel of Judges concludes that the minimum sentencing provisions stipulated in Act Number 31/1999 in conjunction with Act Number 20/2001 are not applicable in this instance. Consequently, the defendant is sentenced to a term of 5 (five) months' imprisonment.

The Payakumbuh District Court's multifarious arguments and assessments were contested by the Padang High Court. In its ruling, the Padang High Court concurred with the First Instance Judge's deliberations, asserting that the Defendant's culpability, as stipulated in the Subsidiary Indictment, had been firmly established within the bounds of the law. Consequently, the High Court adopted and integrated the First Instance Judge's reasoning as the basis for its decision in this case. This is at the appeal level, except regarding the length of sentence handed down to the Defendant, which needs to be improved.

The High Court's decision to amend the ruling of the initial-level Panel of Judges at the Payakumbuh District Court is grounded in the imperative that penalties with prescribed minimum limits must remain inviolable, regardless of extenuating circumstances or considerations pertaining to the fundamental tenets of justice, utility, and legal certainty, as articulated by the first-tier Judge in their verdict. Should a Judge dispense a sentence falling below the statutory minimum threshold, it amounts to a transgression of legal norms, ultimately engendering a climate of legal ambiguity perpetuated by the Judge's own actions.

Additionally, the Judge presiding over the Appellate Panel has expounded on the rationale underpinning the establishment of minimum penalties in cases of corruption, emphasizing its primary objective of serving as a deterrent for the accused individual and as a general disincentive for others contemplating similar transgressions. Within this context, the verdict rendered by the Payakumbuh District Court on September 6, 2010, bearing reference number 65/Pid.B/2010/PN.PYK warrants correction and merits recognition as equitable. This ruling, which affirms the Defendant's legal and substantiated culpability in the commission of a corrupt act, sentences the Defendant to one year of imprisonment and a fine amounting to IDR 50,000,000 (fifty million rupiah). It is noteworthy that failure to remit the fine will result in a commensurate three-month imprisonment term. Importantly, the judgment rendered by the appellate panel aligns harmoniously with the requisite formal sentencing provisions as enshrined in Article 9 of Act Number 31/1999, in conjunction with Act Number 20/2001.

The verdict rendered by the Appellate Panel received further reinforcement from the Cassation Panel, notwithstanding a dissenting view expressed by a member of the latter panel. This dissenting opinion contended that the judgment against the defendant lacked alignment with principles of justice and conscience. This viewpoint was grounded in the assertion that, during the trial, there was an absence of substantiated evidence demonstrating any financial detriment to the State or the defendant's acquisition of material gains resulting from the alleged transgressions. Under these circumstances, the defendant's case is better known as the legal principle "*in dubio pro reo*," meaning that in the event of a doubtful situation, favorable circumstances must be treated for the defendant. Hence, considering principles of justice and invoking Article 9 in conjunction with Article 12A of Act Number 20/2001, it is suggested that the Defendant's penalty align with the judgment rendered by the District Court (*Judex Facti*). Therefore, the cassation request from the Prosecutor/Public Prosecutor must be rejected on the grounds that Article 12A of Act Number 20/2001 does not recognize a minimum penalties limit but only stipulates a maximum sentence limit, which is 3 years in prison, while regarding fines it also only stipulates a maximum threat of IDR 50,000,000.00.

The presented case elucidates significant disparities in judicial interpretation among the judges across different tiers of the legal hierarchy, including those at the initial court, the appellate court, and the cassation court. These variations pertain to the application of special minimum penalty provisions delineated in Act Number 31/1999 and UU Number 20/2001 when delivering sentences in corruption cases linked to the allocation of natural disaster relief funds in West Sumatra.

The divergence in interpretative perspectives arises from the varying viewpoints held by the different panels of judges in their comprehension of the specific minimum penalty provisions as delineated in Act Number 31/1999 in conjunction with Act Number 20/2001 within the context of the case. The initial-tier Panel of Judges demonstrates a propensity for employing a sociological interpretative approach when assessing the case, in contrast to the appellate and cassation court panels, which exhibit a greater inclination towards a grammatical interpretative methodology. It is worth noting that among the members of the dissenting panel, one member leans towards adopting a sociological interpretation, thereby aligning with the stance taken by the initial-tier Panel of Judges in their understanding and interpretation of the case.

4. Conclusion

Persisting disparities in judicial interpretation are evident in the application of specific minimum penalty provisions for corruption offenders. The perspective of panels of judges adjudicating cases in accordance with the requisites and special minimum penalty provisions established by Act Number 31/1999, in conjunction with Act Number 20/2001, reflects a more formal legal interpretation. In essence, if the defendant's actions are formally proven to constitute corrupt acts, the imposed sentence must strictly adhere to statutory provisions, irrespective of the extent of financial loss to the state or the presence of self-enrichment elements. This approach typifies the rationale articulated by appellate and cassation court panels in the case delineated in the preceding exposition.

Conversely, the initial-tier and dissenting cassation court panels, in this case, place greater emphasis on material unlawful considerations, adopting a teleological or sociological interpretative framework. Their perspective, while divergent from the formal legal interpretation, centers on the broader societal implications and objectives of the law, accounting for the overarching teleological goals and socio-legal dynamics associated with corruption cases.

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