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JURIDICAL ANALYSIS OF JUDGES' CONSIDERATIONS IN IMPOSING SANCTIONS MINIMUM PENALTY IN CORRUPTION

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ABSTRACT

The imposition of a criminal under a special minimum criminal sanction in Law Number 31 juncto Law Number 20 of 2001 concerning the eradication of corruption crimes, where the imposition of a criminal under the special minimum criminal sanction in the crime of corruption is basically unjustifiable based on legal justice. The results of the study show that the judge's consideration in imposing a criminal sentence on the perpetrators of corruption crimes according to the Supreme Court Decision Number 3280 K/Pid.Sus/2024 is the existence of elements of state financial losses or the state economy as a result of the criminal acts of corruption so that the defendant was sentenced to imprisonment for 2 (two) years and 6 (six) months and a fine of Rp. 100,000,000,- (one hundred million rupiah).
Keywords: *Minimum Crime, Judge, Corruption.*

ANALISIS HUKUM TENTANG PERTIMBANGAN HAKIM DALAM MENETAPKAN SANKSI DENGAN HUKUMAN MINIMAL DALAM KASUS KORUPSI

ABSTRAK

Penerapan hukuman di bawah batas minimum pidana khusus dalam Undang-Undang Nomor 31 bersama dengan Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Korupsi, di mana penerapan hukuman di bawah batas minimum pidana khusus dalam kejahatan korupsi secara fundamental tidak dapat dibenarkan berdasarkan keadilan hukum. Hasil penelitian ini menunjukkan bahwa pertimbangan hakim dalam menjatuhkan hukuman terhadap pelaku korupsi, sesuai dengan Putusan Mahkamah Agung Nomor 3280 K/Pid.Sus/2024, mencakup unsur kerugian keuangan negara atau perekonomian negara akibat korupsi. Oleh karena itu, terdakwa dijatuhi hukuman penjara dua tahun enam bulan dan denda sebesar Rp. 100.000.000 (seratus juta rupiah).
Kata Kunci: *Hukuman Minimum, Hakim, Korupsi.*

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INTRODUCTION

The Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution which upholds Human Rights (HAM) and guarantees all the rights of citizens who are equal in the law and government with no exceptions. This is emphasized in Article 1 paragraph (2) of the 1945 Constitution which reads: "Sovereignty is in the hands of the people and is carried out according to the Constitution. The state of law has a nature in which its apparatus can only act according to and be bound by the rules predetermined by the apparatus authorized to carry out the rule.

One of the phenomenal criminal acts is corruption. This phenomenon is understandable considering that the negative impact caused by this crime can touch various areas of life. Corruption in Indonesia has become increasingly widespread and uncontrolled among the Indonesian people which will bring disaster to the life of the nation and state. The increase in cases of corruption is a very serious problem, because corruption can endanger the stability and security of the state and its society, endanger the social and economic development of society, politics, and can even damage the values of democracy and the morality of the nation because of the culture of corruption.

A social phenomenon called corruption is the reality of human behavior in social interactions that are considered deviant, and endanger society and the state. Therefore, this behavior in all forms is reproached by the public, even including by the corruptors themselves in accordance with the phrase "corruptors shout corruptors". Public denunciation of corruption according to the juridical conception is manifested in the formulation of the law as a criminal act that needs to be approached specifically, and threatened with quite severe penalties.

Corruption is one of the problems that has received a lot of attention from the public and representatives of the people in the House of Representatives today. Various efforts have been taken to overcome the problem of inter-agency corruption through the preparation of various laws and regulations. Corruption is an *extra ordinary crime* seen from its complexity and negative effects that cause great damage to the state, resulting in social disasters such as increasing poverty in the community and the destruction of the national economy. Corruption has occurred systematically, structurally, and massively.

Corruption is no longer a new problem in legal and economic issues for a country because the

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problem of corruption has existed for thousands of years, both in developed and developing countries, including in Indonesia. Corruption in the public sector that is rampant is bribery and abuse of public authority. Officials who have certain authority are referred to as public officials.

The spread of corrupt practices in Indonesia is very ironic with the many strategies that have been carried out because perpetrators of corruption usually have a strong economic and political position. To be able to expose the perpetrators of corruption crimes who have a strong economic and political position, of course, it requires various government institutions such as the BPK, BPKP, the Inspectorate, the KPK as well as by NGOs such as ICW.

Corruption is always associated with the word extraordinary crime because the consequences caused by the crime of corruption itself are so extraordinary. This is also contained in the consideration of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, that corruption crimes that have been widely occurring, not only harm state finances, but also have been a violation of the social and economic rights of the community at large, so that corruption crimes need to be classified as crimes whose eradication must be carried out externally ordinary.

There are enough rational reasons to categorize corruption as an *extraordinary crime*, so its eradication needs to be carried out by *extraordinary measures* and by using extraordinary legal instruments). Corruption is a form of special crime, so the eradication of corruption is also specially regulated.

RESEARCH METHODS

This research is descriptive analysis, namely research that describes, examines, explains and analyzes laws and regulations related to the purpose of this research. The purpose of descriptive research is to accurately describe the characteristics of a particular individual, state, symptom or group, or to determine the frequency or spread of a symptom or the frequency of a particular relationship between symptoms and other symptoms in society. The main purpose of the analysis of legal materials is to find out the meaning contained by the terms used in the legal rules conceptually, as well as to know their application in legal practice and decisions.

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The type of research conducted in the preparation of this thesis uses normative legal research methods (normative juridical). Normative juridical research is legal research that refers to the legal norms contained in laws and regulations. Examining literature materials or secondary data that include the principles of legal systematics, the degree of vertical and horizontal synchronization, legal comparison, and legal history. The research uses a statutory approach *(statute aproach)* in analyzing the imposition of the minimum penalty by judges in corruption crimes.

RESULTS OF RESEARCH AND DISCUSSION

The determination of the minimum criminal penalty in the Corruption Law is also a form of serious effort from the drafters of the law for the eradication of corruption crimes that occur in Indonesia, but the spirit of the formation of the Corruption Law should be balanced with various provisions and legal rules that apply logically, especially in the formulation of special minimum criminal offenses in the Corruption Law which basically gives the impression of a coercion to show that the desire to fulfill the demands society that wants a minimum objective standard for certain crimes that are highly condemned and detrimental to society and/or the state, as well as crimes that are qualified or aggravated by their consequences (*erfolgsqualifizierte delikte*) and distrust of judges in deciding a criminal case of corruption.

The inclusion of the minimum criminal penalty in the Tipokor Law is not accompanied by a formulation of the rules or guidelines for its punishment which is a special rule outside the Criminal Code which includes a special minimum penalty in the formulation of the delicacy, in turn has the potential to cause juridical problems at the application level. At least when the judge who tries the criminal case in question is faced with the fact that there are many factors that mitigate the crime. This means that, although the formulation of the delicacy in the Corruption Law has explicitly determined the minimum criminal in particular, but with certain legal arguments, the special minimum criminal limit is still broken by the judge. In this case, at the level of implementation, there is a judge's decision that imposes a prison sentence below the minimum threat of a special minimum criminal threat, with *its own legal reasoning so that the juridical problem that arises then is the friction between legal certainty (rechtszekerheid*) on the one hand and legal justice (*gerechtigheid*) on the other.

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The imposition of a criminal or criminal sentence is the realization of criminal regulations in a law which is something abstract. In imposing a criminal verdict, the judge must fully understand whether the sentence handed down has reached the target for the purpose of the crime. The sentencing system according to positive law, the judge has the freedom to determine the severity of the crime to be imposed on the defendant between the general minimum and the special maximum, although the judge is free to consider the severity of the crime to be imposed and does not arbitrarily obey his subjective criteria. The purpose of the formation of the law using this system is to provide freedom for judges in determining the severity of the crime imposed on the defendant by considering various factors aimed at achieving justice.

Corruption cases have many factors that are used as the basis for the judge's consideration in deciding to be free if they are not proven to have committed a criminal act and there is insufficient evidence or determining the severity of the penalty that will be imposed on the perpetrator of the crime if it has been proven to have committed a criminal act.

Based on judicial power, the judge can determine how much criminal punishment is appropriate for the perpetrator of the crime of corruption based on justice, so that according to Article 50 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, it is expressly stated that all court decisions must contain the reasons and basis for the decision, also contain certain articles of the relevant laws and regulations or unwritten legal sources that are used by judges to adjudicate, and the obligation of the judge to give sufficient consideration to the decision handed down to limit the arbitrariness of the judge.

The judge's decision is the result (*output*) of the authority to adjudicate every case handled and is based on the Indictment and the facts revealed at the trial and is related to the application of a clear legal basis, including the light weight of the application of the prison sentence (the crime of deprivation of liberty), this is in accordance with the principles of criminal law, namely the principle of legality regulated in Article 1 paragraph (1) of the Criminal Code, namely the Criminal Law must be sourced from the law. This means that the punishment must be based on the law.

The application of the severity of the sentence imposed is certainly adjusted to what is the motivation and consequences of the perpetrator's actions, especially in the application of the

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type of prison sentence, but in the event that certain laws have normatively regulated certain articles about criminalization with minimal threats as stipulated in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. Judges are faced with judicial practice where there are those who actually apply the rule of law as it is for the sake of the law and there are also some judges who apply/interpret the written law by giving a criminal verdict (*Straft Macht*) lower than the minimum threat limit for the sake of public justice.

Formally, there are 2 (two) things that must be considered by the judge before making his decision, the provisions regarding these two things are as stipulated in the Criminal Procedure Code (KUHAP), where the decision-making structure is, First, consideration of the facts (whether the defendant really committed the act accused of him). Then the second is the consideration of the law (whether the defendant's actions constitute a criminal act and the defendant is guilty, so that a criminal verdict can be sent.

Basically, the judge in making decisions, including decisions against the perpetrators of corruption crimes, the judge can use several things that are the basis for his consideration, and then the basis for these considerations is included in the decision which includes, considerations that are juridical and considerations that are non-juridical and incriminating matters and mitigating matters.

The minimum criminal sanction is the lowest limit of the punishment that can be imposed by a judge, and can be in the form of a general minimum penalty regulated in the Criminal Code, or a special minimum penalty contained in a law outside the Criminal Code, such as Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. Specific minimum sentences aim to equalize judges' decisions and avoid disparities in sentences, but often raise issues of justice because they do not allow judges to consider mitigating factors for defendants in certain cases.

The purpose of the application of a special minimum penalty in a special criminal regulation is in order to reduce the disparity *of sentencing* and to show the severity of the criminal act committed and what is meant by criminal disparity is the application of different penalties to the same criminal act or to criminal acts whose dangerous nature can be compared without a clear justification. The application of a special minimum penalty is sometimes considered inconsistent with justice for the defendant, especially if there are mitigating factors that the

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judge cannot consider due to rigid minimum rules.

The specific minimum criminal sanction is not recognized in the Criminal Code. The Criminal Code only recognizes the general minimum criminal sanction, which is for 1 (one) day and applies to all criminal acts, both in the form of crimes and violations. According to Mahrus Ali, theoretically the discussion of criminal justice includes three things, namely the type of criminal (*strafsoort*), the length of criminal sanctions (*strafmaat*), and the rules for criminal implementation (*strafmodus*). The special minimum penalty is included in the category of length of criminal sanctions related to the minimum criminal sanction in each criminal act formulated in certain articles. Criminal laws and regulations outside the Criminal Code have been regulated by many articles that regulate provisions regarding minimum criminal sanctions, not only contained in the Law on the Eradication of Corruption, but there are also other laws that contain criminal sanctions.

The enactment of this special minimum criminal sanction in the realm of criminal law is certainly inseparable from the principle *of lex specialis derogate legi generalis* which means that special laws override general laws. The purpose of determining a special minimum criminal sanction in the law on the eradication of corruption as written by the law and legislation department of the Republic of Indonesia in the history book of the Establishment of Law Number 31 of 1999 concerning the Eradication of Corruption regarding the policy direction of the government, in this case is the legislative institution as a lawmaker that contains the threat of the special minimum criminal sanction with the aim that the prosecutors The public prosecutor does not have broad discretion in determining his demands, this is also in line with the judges so that the imposition of the crime can limit the arbitrariness of the judge.

CONCLUSION

The legal regulation of corruption in Indonesia is regulated in several laws, especially Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which has been amended by Law Number 20 of 2001. In addition, there is also Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) which regulates special institutions for the eradication of corruption. Perpetrators of corruption crimes can be subject

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to life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years, as well as fines that vary in amount depending on the type and level of damage caused.

The imposition of a minimum penalty on the perpetrator of corruption is basically not justified based on the principle of legal justice (*legal juctice*), because basically legal justice is oriented to the principle of legality itself as a benchmark in imposing the crime but in some cases, the judge can impose a sentence under a special minimum threat by considering various factors juridical and non-juridical matters, as well as incriminating and mitigating matters.

The judge's consideration in imposing a criminal sentence on the perpetrator of the crime of corruption according to the Supreme Court Decision Number 3280 K/Pid.Sus/2024 is that there is an element of financial loss to the state or the state economy as a result of the criminal act of corruption so that the defendant is sentenced to imprisonment for 2 (two) years and 6 (six) months and a fine of Rp. 100,000,000 (one hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a criminal penalty confinement for 2 (two) months. This minimum criminal verdict has no deterrent effect, the punishment imposed on the defendant should be the most severe criminal so that there is a deterrent effect.

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