

**APPLICATION OF LAW AGAINST WOMEN IN CORRUPTION CASES (Case Study of High Court Decisions
DKI Jakarta Number 10/PID. SUS-TPK/2021/PT DKI).**

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ABSTRACT

Decision Number 10/PID. SUS-TPK/2021/PT DKI of the Jakarta High Court considers both legal and non-legal factors when handing down a criminal penalty. In order for the panel of judges to assume responsibility for the panel of judges from the court of first instance in relation to the proved elements of the article, it is necessary to use juridical considerations to state agreement with them. In addition, the purpose of using non-juridical factors is to shorten the defendant's sentence. The theory of the creative process and intuition, which is part of Mackenzie's theory, provides the theoretical framework for the factors taken into account when reaching the verdict. This is due to the fact that the issues raised in mitigation are primarily concerned with the Judge's discretion in imposing a criminal charge. The principles of non-discrimination, gender equality, equality before the law, and justice are not upheld in the Jakarta High Court Decision Number 10/PID. SUS-TPK/2021/PT DKI, which upholds criminal imposition. Furthermore, the imposition of a criminal sentence solely based on the defendant's gender violates the third purpose of the Convention on the Elimination of All Forms of Discrimination Against Women, which is to ensure that women's rights are legally protected on an equal footing with men's rights. In addition, pursuant to the criminal imposition theory, which encompasses the theories of retribution, relative or purpose, and combination, the sentence in Decision Number 10/PID. SUS-TPK/2021/PT You might think of DKI as part of the objective or relative theory. Reason being, criminalization serves no purpose in meeting the absolute requirements of justice, as stated in relativity theory. Just as retaliation cannot be useful in and of itself, it can only serve to safeguard society's interests.

Keywords: Application of Law, Women, Corruption

INTRODUCTION

If Indonesia is serious about solving its crime problem, it must have fair law enforcement. Corruption is one of the many forms of criminality. A number of European languages have borrowed the Latin word "corruptus" or "corruption" from it; for example, "corruption" in English, "corruptive" in Dutch, and

"corruption" in Indonesian.¹ Corruption is described as the theft or abuse of public funds (by businesses and other entities) for private benefit or the benefit of others, according to the Great Dictionary of the Indonesian Language.² Furthermore, Kartono argues that corruption occurs when public officials abuse their positions of power for private benefit, undermining both the public interest and the state.³

Both the national and state budgets are vulnerable to corruption's destructive power. Because corruption crimes are considered unusual, regular means of law enforcement are ineffective in combating them.⁴

A woman named Pinangki Sirna Malasari was implicated in a corruption case that took place in Indonesia. In this case, Pinangki Sirna Malasari was fined 600,000,000 Rp and sentenced to 10 years in prison by the Jakarta Corruption Court at the Central Jakarta District Court.

Pinangki Sirna Malasari appealed the decision, and on June 8, 2021, the Jakarta High Court's Panel of Judges issued Decision No. 10/PID. SUS-TPK/2021/PT DKI. This decision changed the ruling from the Central Jakarta District Court's Jakarta Corruption Court, which had imposed a 4-year prison term and a 600,000,000 rupiah fine.

Siti Aminah Tardi, commissioner of KOMNAS (the National Commission for Women), urged the Supreme Court to establish standards on how judges should examine and account for mitigating factors. In light of the Defendant's individual circumstances, particularly his or her gender, this rule is crucial. Furthermore, Didik Mukrianto, a member of Commission III of the House of Representatives (DPR) of the Republic of Indonesia, expressed the opinion that "in a democratic legal country like Indonesia, equality of status before the law is regulated by our constitution". Everyone has the right to be treated fairly by the law, regardless of their gender.⁵

Some aspects of the defendant's gender identity are emphasized in the decision. As the custodian of judicial authority, Indonesia's highest court has released Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 3 of 2017 on Guidelines for Adjudicating Women's Cases Facing the Law, which addresses female offenders.

Among the factors that served as impetus for the passing of PERMA No. 3 of 2017 are:

1. The protection of citizens from all acts of discrimination is an implementation of constitutional rights as stated in the 1945 Constitution of the Republic of Indonesia
2. Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) with Law No. 12 of 2005 which affirms that all people are equal before the law and regulations, prohibits discrimination and guarantees

equal protection for all people from discrimination on any ground, including sex or gender

3. Indonesia as a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognizes the state's obligation to ensure that women have access to justice and are free from discrimination in the justice system; The purpose of the issuance of PERMA Number 3 of 2017 is for Judges to have a reference in understanding and applying gender equality and non-discrimination principles in adjudicating a case, then the Supreme Court also hopes that through this regulation, gradually the practices of discrimination based on gender and gender stereotypes in the courts can be reduced, as well as ensuring that the implementation of the court (including mediation in the court) is carried out with integrity and sensitivity Gender. Judgment in matters involving women is to be based on the following principles, as stated in PERMA No. 3 of 2017:⁶

1. Respect for human dignity and dignity;
2. Non-discrimination;
3. Gender Equality;
4. Equality before the law;
5. Keadilan;
6. Benefits;
7. Legal Certainty

It is believed that by adhering to these principles, women will be able to ensure their equal access to justice.

Judgment in cases involving women in conflict with the law must take into account not only the evidence presented at trial, but also societal norms, ratified international conventions and agreements, and other relevant factors. One crucial factor that constitutes the basis for a decision is the judge's consideration. The author contends that, in light of Regulation No. 3 of 2017 by the Supreme Court of the Republic of Indonesia (PERMA) regarding Guidelines for Adjudicating Women's Cases Facing the Law, it is imperative to understand the factors taken into account by the judge in Decision No. 10/PID. SUS-TPK/2021/PT DKI. Issue Proposal In Jakarta High Court Decision Number 10/PID. SUS-TPK/2021/PT DKI., how does the panel of judges evaluate the imposition of criminal sanctions in instances involving corruption? Based on PERMA 3 of 2017—Guidelines for Adjudicating Women's Cases Facing the Law—how is the criminal punishment applied in the DKI Jakarta High Court Decision 10/PID. SUS-TPK/2021/PT DKI? Purpose of the Studies

In light of these issues, the goals of this research are as follows: In Decision of the DKI Jakarta High Court Number 10/PID. SUS-TPK/2021/PT DKI, we want to

ascertain and examine the factors taken into account by the Panel of Judges in the imposition of criminal sanctions. The purpose of this study is to examine the criminal penalty provisions of Decision No. 10/PID. SUS-TPK/2021/PT DKI of the Jakarta High Court, as derived from PERMA No. 3 of 2017 on the Rules for the Judgment of Legal Cases Involving Women.

Theoretical Framework

Criminal Theory

Criminal theory has a direct relationship with the definition of criminal law, which explains the basis of the state's right to impose and carry out criminal offenses against people who violate prohibitions in criminal law. In the implementation of subjective criminal law, it results in the attack on the rights and interests of human personal law which are actually protected by the criminal law itself.

Criminalization is also related to the judge, because the judge after conducting an examination at the trial will ultimately give a verdict that can be in the form of a penalty to the defendant if proven guilty. When sentencing, the judge first carefully considers what benefits will be achieved from the imposition of the sentence (type and severity of the sentence), both for the defendant, as well as for the community and the state. The judge's considerations in imposing a criminal sentence are carried out so that the verdict handed down can achieve the purpose of the penalty.

The judge's decision contains a statement of his opinion on what has been considered.⁷ For the sake of maximizing and balancing research outcomes at the theoretical and practical levels, judges should base their court rulings on associated research and theory. A court's ruling can serve as a standard for attaining legal certainty in cases where the judge is also a law enforcement officer.⁸

The decisions made by judges in criminal cases are highly regarded from a theoretical, normative, and practical standpoint. As such, judges must exercise caution and strive to avoid any form of inaccuracy, whether it be formal or material, and demonstrate technical proficiency when making their decisions.⁹

A criminal conviction, criminal imposition, or complete immunity from legal action may be the outcome of the court's ruling. The court is required to impose a criminal sentence if it finds the defendant guilty of the alleged criminal offense, as stated in Article 193 Paragraph (1) of the Criminal Code.¹⁰

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An expression of the judge's view on the factors that have been taken into account is contained in the ruling.¹¹ For the sake of maximizing and balancing research outcomes at the theoretical and practical levels, judges should base their court rulings on associated research and theory. A court's ruling can serve as a standard for attaining legal certainty in cases where the judge is also a law enforcement officer.¹²

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The decision given by the court can be in the form of a criminal or criminal imposition, free or free from all lawsuits. According to Article 193 Paragraph (1) of the Criminal Code, a penalty is imposed if the court is of the opinion that the defendant is guilty of committing the criminal act charged against him, then the court imposes a criminal sentence.¹⁴

Traditionally, theories of criminal punishment or criminal theories can be divided into 2 (two) groups of theories, namely:

1. Absolute theory or retribution

This view holds that criminal behavior is inevitable and must persist as retribution for those responsible. Therefore, the very fact that a crime has taken place provides sufficient justification for it. There are four branches to

this notion of punishment:

1. Retribution is based on the absolute demands of ethca (*moraalphilosophie*).

This theory was put forward by Immanuel Kant who said that criminalization is an absolute demand of morality (ethics) against a criminal. The basis of punishment is the absolute demand of the law of decency to a criminal who has harmed others.¹⁵

2. Retaliation is welcome

This theory was put forward by Hegel who said that law is the embodiment of independence, while crime is a challenge to law and justice. In order to maintain the law which is the embodiment of freedom and justice, crime must absolutely be eliminated by providing punishment.¹⁶

3. Vengeance for the sake of beauty or satisfaction

This theory was put forward by Herbart, who said that criminal punishment is the absolute demand of the feeling of dissatisfaction of society, as a result of crime, to punish criminals, so that public dissatisfaction is balanced or the sense of beauty of society is restored.¹⁷

1. Retribution in accordance with God's teachings

This theory holds that evil is a violation of God's justice and must be abolished. Therefore, it is absolutely necessary to give suffering to criminals for the sake of preserving God's fairies of justice by means of the power given by God to the ruler of the state.¹⁸

1. Theory of relativity or theory of purpose

The goal of criminalization, in this view, is not to appease the most stringent standards of fairness. Except when used to safeguard societal interests, retaliation serves no use. Many refer to this idea as the "theory of ends" since illegal behavior has a purpose beyond merely committing a crime. According to this theory, a crime's goal is the foundation for justifying its existence. It is not because people commit crimes that punishment is enforced, but rather in order to deter them.¹⁹

2. Combined theory

The combined theory of goals and punishments is the foundation of this theory, which draws on both the theory of retribution and the theory of objectives.²⁰

The combination of the two theories teaches that punishment is to maintain the rule of law in society and improve the criminal.²¹

The judicial power is a body that is very decisive for the substance and

strength of positive legal principles because through this judicial body the law can be concretized in the form of a decision. According to Montesquieu, the power of the state must be divided into three parts, namely legislative power, executive power and judicial power:²²

One of the important state powers that plays a role in law enforcement efforts is the judiciary. This is because of the role of the judiciary in supervising the law and adjudicating if there is an act that is not in accordance with what is ordered by the law.

The relevant judicial authority is autonomous, separate from the authority of other state institutions, according to Montesquieu, who was cited by Poentang Moerad.²³ Justice, human rights, and the integrity of the law depend on judges being able to carry out their duties in an impartial and effective manner, which is only possible when the judiciary is free from political interference.

Research Methods

In this study, the research methods used by the author are as follows:

1. Types and Nature of Research

Empirical legal research, which is a kind of field research that relies on primary data collected from community members through interviews, observations, and document-based reports, is employed to address the issues discussed in this research.

This research is descriptive, namely research that aims to describe a matter in a certain area and to provide the most accurate data possible about the circumstances that are the object of research so that it can strengthen the hypothesis and can help strengthen the old theory or also make a new theory in the juridical analysis of the imposition of crimes In corruption cases involving women (based on the DKI Jakarta High Court's Decision 10/PID. SUS-TPK/2021/PT DKI).

2. Data Types & Data Sources

Basically, the data to be collected in this study is divided into two, namely:

1. Primary Data: data obtained directly from respondents using data collection tools without intermediaries from other parties, where the data is collected and processed by themselves, and this data is obtained from the results of interviews and literature studies.

2. Secondary Data: data obtained by researchers indirectly from the source.

Primary legal materials consist of binding documents such as constitutional amendments and trademark laws, while secondary legal materials provide explanations and analysis, such as legal literature and

journals. Tertiary legal materials provide additional guidance, such as dictionaries and legal reference materials ²⁴ (Mustomi et al., 2024).

DISCUSSION

Consideration by the panel of judges for the application of criminal penalties in corruption cases in the Jakarta High Court Decision Number 10/PID. SUS-TPK/2021/PT DKI.

The verdict of the appellate court with the Defendant representing Dr. Pinangki Sirna Malasari, S.H., M.H. is recorded in DKI Jakarta High Court Number 10/PID. SUS- TPK/2021/PT DKI. Due to the appellate nature of the decision, the following is a summary of the factors considered by the judges who presided over the first instance trial: Decision of the Corruption Court at the Central Jakarta District Court Number 38/PID. SUS-TPK/2021/PN Jkt.Pst:

1. Consideration of Article Elements

The consideration of the elements of the article that will be described is the article of the proven allegation. The proven charges are:

1. The first subsidair indictment violates Part 11 of the Anti-Corruption Crimes Act of 1999, as revised by Law 20 of 2001, includes the following provisions:²⁵
 1. Those who work for the government or hold administrative positions within the state
 2. Taking gifts or promises
 3. Knowing or having reasonable suspicion that the gift or promise was given due to the power or authority associated with their position, or what the giver believed to be related to their position;
4. The second indictment violates Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering with the following elements:²⁶
 - 1) Setiap orang;
 1. Place, transfer, transfer, spend, pay, grant, entrust, bring abroad, change form, exchange for currency or securities or other acts of wealth that he knows or should suspect is the result of a criminal act as intended in Article 2 paragraph (1);
 2. With the aim of hiding or disguising the origin of wealth
1. The third the following factors constitute a violation of the following articles of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as revised by Law Number 20 of 2001: subsidair indictment:²⁷
 1. All individuals

2. Attempts, aids, or malicious conspiracies to provide presents or promises to public workers
3. Anyone considering the power or authority associated with their position or the position itself while making a gift or promise.

Based on the legal facts that exist at the trial associated with the considerations outlined by the Panel of Judges in the elements, all the elements of the indictment that have been described have been fulfilled in the Defendant's actions;

1. Consideration of the defense memorandum of the Defendant's Legal Counsel;

The defendant's legal counsel in his memorandum of defense conveyed several things which are basically as follows:²⁸

1. The defendant did not receive money from Witness Joko Soegiarto Tjandra
2. Witness Joko Soegiarto Tjandra knew that the defendant did not have authority related to the case;
3. The defendant did not commit the crime of money laundering;
4. There has never been a malicious consensus between the defendant, the case of Andi Irfan Jaya and Joko Soegiarto Tjandra, who were asked to provide financial support to individuals associated with the Attorney General's Office and the Supreme Court.
5. In addition, the group of judges has presented the following observations with respect to the defense memorandum:
 1. Regarding the defendant, there was no receipt of money from the witness Joko Soegiarto Tjandra.²⁹

That even though the witness Andi Irfan Jaya and the defendant denied receiving money from the witness Joko Soegiarto Tjandra, but based on additional evidence in the form of WhatsApp application chat communication between the witness Dr. Anita Dewi Anggraeni Kolopaking, SH., MH. and the defendant, at numbers 999 to 1005 and at numbers 1031 to 1043 in the Minutes of the Digital Evidence Examination Evidence Number: 276-VII-2020-SIBER, number V. analysis of examination results, letter b, pages 40 and 42, which was confirmed by the witness Dr. Anita Dewi Anggraeni Kolopaking, SH., MH. and the defendant, it is proven that the defendant has received money in the amount of USD500,000.00 (five hundred thousand United States dollars) from the witness Joko Soegiarto Tjandra, and immediately after receiving USD500,000 from the witness Joko Soegiarto Tjandra, the defendant asked the witness Dr. Anita Dewi Anggraeni Kolopaking, SH., MH. came to her apartment in Dharmawangsa Essence at around 21.00 WIB to

receive USD50,000 (fifty thousand United States dollars) which was part of the witness Dr. Anita Dewi Anggraeni Kolopaking, SH., MH. related to *lawyer fees*;

That the Panel of Judges believes that the material of the conversation between the defendant and the witness Dr. Anita Dewi Anggraini Kolopaking, SH., MH. which was justified by the witness Dr. Anita Dewi Anggraeni Kolopaking, SH., MH. and the defendant, both related to how much money the defendant received from the witness Joko Soegiarto Tjandra, in this case amounting to USD500,000.00, the provision of USD50,000.00 from the defendant to the witness Dr. Anita Dewi Anggraini Kolopaking, SH., where and when the USD50,000.00 money was given and other matters related to the giving of the USD500,000.00 to the defendant because the testimony of the defendant and the witness Andi Irfan Jaya during the evidence of *the a quo* case often denied his actions and covered up the actual events. Therefore, the panel of judges set aside the testimony of the defendant and witness Andi Irfan Jaya at the trial which contradicted the testimony of the witness Dr. Anita Dewi Anggraeni Kolopaking, SH., MH. related to the giving of money from the witness Joko Soegiarto Tjandra to the defendant;

Based on these considerations, the defense memorandum of the defendant's legal counsel stating that the defendant did not receive money from the witness Joko Soegiarto Tjandra, is an erroneous opinion and not based on the facts of the trial, and therefore must be declared unacceptable.

1. Regarding the witness Joko Soegiarto Tjandra knowing that the defendant does not have authority related to the case;³⁰

That it is true that the witness Joko Soegiarto Tjandra at the trial explained that the witness Joko Soegiarto Tjandra never considered the defendant capable or would seek that the witness Joko Soegiarto Tjandra could not be executed by the Attorney General's Office, but it is sufficient that with the willingness of the witness Joko Soegiarto Tjandra to give money to the defendant, amounting to USD500,000.00 (five hundred United States Dollars), proves that in the mind of witness Joko Soegiarto Tjandra, the defendant was able to resolve the legal case of witness Joko Soegiarto Tjandra, in this case returning to Indonesia without serving his sentence. Although the order to execute the witness Joko Soegiarto Tjandra as evidence in the form of a Warrant for the Implementation of the Court Decision (P-48) was only issued on May 20,

2020 and the testimony of the witness Syarif Sulaiman Nadi, SH. as the Head of the Sub-Directorate of TPK & TPPU of the Directorate of Extraordinary Legal Remedies for Execution and Examination at the Deputy Attorney General for Special Crimes of the Attorney General of the Republic of Indonesia who stated that it is impossible to make an arrest if the convict is abroad, but it does not mean that the meeting between the witness Joko Sugiharto Tjandra and the defendant and witness Dr. Anita Dewi Anggraini Kolopaking, SH., MH. has nothing to do with the giving of money from the witness Joko Sugiharto Tjandra to the defendant as a *lawyer's fee*, and the witness Andi Irfan Jaya as a media consultant, because based on the chat between the defendant and the witness Dr. Anita Dewi Anggraini Kolopaking, SH., MH. shows the opposite.

Based on these considerations, the legal counsel's defense memorandum stating that the meeting between the defendant and the witness Joko Sugiharto Tjandra in November 2019 had nothing to do with the Cessie Bank Bali case against the witness Joko Sugiharto Tjandra, is an erroneous opinion and is not based on the facts of the trial and therefore must be declared unacceptable.

1. About the defendant did not commit the crime of money laundering.³¹

In the trial, the defendant admitted that there were expenses made after the defendant's meeting with witness Joko Soegiarto Tjandra, but the defendant said that expenses such as credit card payments, car purchases, apartment rent payments and medical expenses (*home care*) as well as house expenses came from money given by the defendant's late husband, Djoko Budiharjo, who during his life gave a lot of money to the defendant. not from the witness Joko Soegiarto Tjandra. The defendant also compared the expenses of the nine-month period before knowing the witness Joko Soegiarto Tjandra with the same period after knowing the witness Joko Soegiarto Tjandra where the difference was not significant.

Then regarding this matter, the Panel of Judges is of the opinion to prove whether the expenses made by the defendant do indeed come from the property (money) of the defendant's deceased husband or from other sources, in this case from the witness Joko Soegiarto Tjandra, it is not enough to make a comparison of the expenses of the nine months before and after getting to know the witness Joko Soegiarto Tjandra, but must be able to prove how much money the defendant's deceased husband actually gives, either rupiah currency or other

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According to Dr. Yenti Ganarsih, S.H., M.H., an expert witness in the a quo case, the Defendant knew or should have suspected that his actions such as placing, transferring, spending, granting, depositing, altering form, and exchanging currency were the consequence of a criminal act, specifically active anti-trafficking, as described in Article 2 paragraph (1) of Law Number 8 of 2010. According to the first indictment of the subsidiary mentioned earlier, the criminal act in question is a corruption offense under Article 11 of the Anti-Corruption Law, as mentioned in Article 2 paragraph (1) of this case.

Given these factors, the defense memorandum drafted by the defendant's attorneys denying their client's involvement in money laundering is inadmissible since it is based on an invalid opinion.

1. There never intended to knowingly conspire with Andi Irfan Jaya, Joko Soegiarto Tjandra, or the defendant to bribe Attorney General's Office or Supreme Court officials with money.³²

Regarding this matter, the Panel is of the opinion that as proven in the proof of the above elements, the Defendant has fulfilled the elements of having made a malicious conspiracy together with the

witness Andi Irfan Jaya, the witness Anita Anggraini Kolopaking and the witness Joko Soegiarto Tjandra so that the witness Joko Soegiarto Tjandra can enter (re)Indonesia without serving his criminal sentence. For this reason, the witness Joko Sugiharto Tjandra will ten million US dollars, which will be distributed to personnel in the office of the attorney general and the supreme court. According to Law Number 31 of 1999 regarding the Eradication of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, the elements in question are the presence of two or more individuals who have the same intention to commit a criminal act. If there is a corrupt consensus in the Corruption Law, the principle of cogitationis poenam nemo petitur (that no one can be punished for what he thinks) will not apply because Article 15 of this Law is also a formal offense, meaning that it is sufficient to formulate the act, not the result of the act. This signifies that the offense is complete even though the act has not been carried out yet.³³

Furthermore, the defendant had the same intention to commit a malicious conspiracy during the meeting on November 25, 2019 when the defendant together with the witness Andi Irfan Jaya, the witness Dr. Anita Dewi Anggraini Kolopaking, SH., MH. and the witness Joko Soegiarto Tjandra at his office in Kuala Lumpur, Malaysia because in the meeting it was discussed (discussed) about the plan to handle the legal case of the witness Joko Soegiarto Tjandra without serving his criminal sentence if the witness Joko Soegiarto Tjandra returned to Indonesia, including discussions about financing. At that time the evil consensus had *voltoid*. Everything that has been discussed and discussed together between the witness Joko Soegiarto Tjandra, the defendant, the witness Dr. Anita Dewi Anggraini Kolopaking, SH., MH. and witness Andi Irfan Jaya then did not happen because the witness Joko Soegiarto Tjandra did not agree to the defendant's request, did not change the completion of the malicious agreement.

Based on these considerations, the defense memorandum of the defendant's legal counsel stating that the defendant is not proven to have committed a malicious conspiracy is an erroneous opinion, has no legal basis and is therefore declared unacceptable.

1. Consideration of criminal liability

Based on the evidence presented during the trial, the judges of the Corruption Crimes Court at the Central Jakarta District Court Number 38/PID. SUS-TPK/2021/PN Jkt.Pst have concluded that the defendant must face the

consequences of his acts and that there are no valid defenses or explanations that could absolve him of criminal responsibility.³⁴

Furthermore, because the defendant is able to take responsibility, the defendant must be found guilty of the crime he committed and therefore must be sentenced.

1. Other considerations related to criminal imposition

The principle in imposing a criminal sentence must be proportional to the weight of the defendant's guilt. The punishment imposed must not reflect arbitrariness without looking at the function and meaning of the crime itself. Also, the punishment imposed must consider the benefits and damage to the Defendant's self (soul and body);

In addition, the nature of the crime must reflect the purpose of coaching and teaching the defendant, which in turn allows the defendant to reflect on what he has done. From there, it is hoped that a sense of deterrence will arise in the defendant, which in turn can prevent others from making similar mistakes.

According to Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, judges have a responsibility to consider both the good and evil aspects of the defendant when determining the severity of a crime, in addition to exploring, following, and understanding societal legal values and justice. Consequently, the following are the aggravating and mitigating factors that the Tribunal has considered in relation to the Defendant;

1. Aggravating circumstances;³⁵
 1. The defendant is a Law Enforcement Officer (APH) with the position of Prosecutor;
 2. The defendant's actions helped the witness Joko Soegiarto avoid the implementation of the Review Decision No. 12 dated June 11, 2009 in the Bank Bali case of Rp904,000,000,000.00 (nine hundred and four billion rupiah) which at that time had not been served;
 3. The defendant is used to managing cases by cooperating with the witness Dr. Anita Dewi Anggraeni Kolopaking, SH., especially those related to the institution of the Attorney General's Office and the Supreme Court;
 4. The defendant denies his actions and conceals the involvement of other parties involved in the *a quo* case;
 5. The defendant's actions do not support the government in the context of implementing a clean and free country from Corruption, Collusion and Nepotism;

6. The defendant was convoluted in giving information and did not admit his guilt;
7. The defendant has enjoyed the results of his criminal acts.
8. Extenuating circumstances.³⁶
 1. The defendant behaved politely at the trial;
 2. The defendant is the backbone of the family, has a dependent child who is still a child, aged 4 (four) years;
 3. The defendant has never been convicted.
 4. Considerations related to the status of evidence
 - 1) Considerations related to case costs

Judgment Number 38/PID. SUS-TPK/2021/PN Jkt.Pst imposes a criminal penalty due to the fact that the elements of the article charged against the Defendant have been demonstrated juridically, as can be seen from the statement of these factors. Moreover, the Panel of Judges has determined that the Defendant cannot be absolved of criminal liability by citing any valid reasons or excuses. Consequently, the Defendant's actions must be evaluated in order to determine an appropriate sentence.

The judges then took into account the Defendant's aggravating and mitigating circumstances. The fact that the Defendant is also a police officer in his capacity as a prosecutor is one of the aggravating factors.

The application of criminal penalties in the Jakarta High Court Decision Number 10/PID. SUS-TPK/2021/PT DKI reviewed from PERMA Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law?

An integral aspect of the judicial procedure is the judgement delivered by the judge. When making a decision in a criminal case, the judge should give careful thought to a number of factors, including the article's elements, the defendant's criminal liability, the defense memorandum, aggravating and mitigating circumstances, and the law.

The woman defendant, Dr. Pinangki Sirna Malasari, S.H., M.H., was sentenced to 4 years in prison and fined 600,000,000 rupiah by the Panel of Judges in Decision Number 10/PID. SUS-TPK/2021/PT DKI. Failure to pay the fine will result in a 6-month prison term instead. In order to reduce the severity of the defendant's punishment, Decision No. 10/PID. SUS-TPK/2021/PT DKI took the following factors into account:

1. It is reasonable to expect the defendant, as a mother of a 4-year-old toddler, to be given the chance to care for and love her child as he grows up
2. The defendant, being a woman, deserves attention, protection, and fair treatment

3. The defendant pleaded guilty, expressed regret for his actions, and announced that he had been fired from his position as a prosecutor. The conduct of the Defendant cannot be separated from those of other persons who share responsibility, thus the degree of guilt influences this decision;
4. As the representative of the state and government, the Prosecutor / Public Prosecutor is believed by the people to have reflected their sense of justice through the criminal charges.

In light of the foregoing, the Panel of Judges in the Central Jakarta District Court Number 38/Pid.Sus-TPK/2020/PN Jkt.Pst. reduced the Defendant's sentence from its original length of six years. The defendant faces a maximum of ten years in jail and a fine of 600,000,000 rupiah; failure to pay the fine will result in an additional six months of imprisonment.

In Decision No. 10/PID. SUS- TPK/2021/PT DKI, the imposition of the penalty falls under the theory of relative or objectives, which is part of the theory of criminal imposition that also includes the theory of retribution and the theory of purpose and combination. Reason being, criminalization serves no purpose in meeting the absolute requirements of justice, as stated in relativity theory. Just as retaliation cannot be useful in and of itself, it can only serve to safeguard society's interests.³⁷

Furthermore, this consideration merits review based on PERMA Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Before the Law, since the author states that the defendant's status as a woman necessitates analysis in accordance with Supreme Court Regulation Number 3 of 2017. Judging legal matters involving women is based on the following principles, as stated in Article 2 of PERMA Number 3 of 2017:

1. Dignity and respect for all people
2. Inclusion of all people
3. Parity between the sexes
4. Justice for everyone
5. Equity
6. Advantages
7. Security under the law

The explanation of these principles is not contained in PERMA Number 3 of 2017, so explanations from several theories, legislation and also expert opinions regarding the following principles will be described:

1. Respect for human dignity and dignity;
When and where the protection of human dignity and dignity is always prioritized above all other needs, the state will always guarantee and protect all rights and dignity owned by human beings in their entirety without

reduction, according to Article 28 and Article 28J of the Constitution of the Republic of Indonesia in 1945.³⁸

1. Non-discrimination

Article 2 paragraph (1) of the International Covenant on Civil and Political Rights states that "Each State Party to this Covenant undertakes to respect and guarantee the rights recognized in this Covenant for persons who are in its territory and submit to its jurisdiction, without distinction of any kind such as race, color, sex, language, religion, political opinion or other opinions, national or social origin, ownership, descent, or other status." This means that Indonesia, as a ratifying state, is committed to protecting the rights outlined in the Covenant for all individuals who are within its jurisdiction, regardless of their gender, race, color, sexual orientation, national or social status, ownership, or any other status.³⁹

2. Gender Equality

Article 1 number 4 of PERMA Number 3 of 2017 defines gender equality as the assurance that men and women have equal access to human rights and opportunities so that they can fully participate in and make meaningful contributions to all aspects of society.⁴⁰

3. Equality Before the Law

All people are equal in the eyes of the law and have the right to equal protection from the law, free from discrimination, according to Article 7 of the Universal Declaration of Human Rights. That all citizens are equal before the law and are bound to uphold it without exception is also stated in the Indonesian constitution, specifically Article 27, paragraph (1) of the Republic of Indonesia Constitution of 1945.

1. Keadilan

Gustav Radbruch argued that justice should be a primary objective of law. The developer's own moral compass and code of conduct must inform the process of creating a system of legal justice. Fairness, as seen by Satjipto Rahardjo, is a constant and unwavering readiness to grant each person what is rightfully theirs.⁴¹

1. Benefits

During the adjudication process, utility serves a legitimate purpose. If following the letter of the law improves people's lives and the world at large, then we have good legislation. Because of this, environmental rules and regulations can be enforced by law enforcement by putting people first and giving the environment and other factors their full attention. Utilitarianism is a school of social philosophy that holds that "every citizen craves happiness,

and law is one of the tools" for achieving that objective, and that the purpose of law is to maximize the well-being of its citizens. The primary objective of law, according to utilitarians, should be the promotion of usefulness. The question of whether a law may bring happiness to humans or not is central to the concept of benefit, which is independent of questions of fairness or otherwise.⁴²

1. Legal Certainty

1. Normative Legal Certainty is when a regulation is made and promulgated precisely because it regulates it definitively and logicallyKeadilan

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1. Legal Certainty

Normative For a regulation to be promulgated with legal certainty, it must be logically and definitely regulated.

One of the two parts of legal certainty, according to Van Apeldoorn, is the issue of how laws are formed (bepaalbaarheid) in specific cases. This means that those who are looking for justice are interested in researching the relevant laws before launching a complaint. The second point is that when the law is clear, people are safe. This safeguards the parties from the potential arbitrary decisions made by the judge. Having one's desires met in accordance with the letter of the law and knowing that one will face consequences for breaking the law are two definitions of legal certainty. Where there is a lack of assurance regarding the application of the law, the

principle of *jus incertum ibi jus nullum* (the absence of law in an uncertain situation) holds true. In this article, Jan Michiel Otto lays out the general parameters within which the possibility of absolute legal certainty is limited:⁴⁵

1. The rules of law are publicized and acknowledged, and they are clear, uniform, and easy to obtain.
2. The governing body or government always follows the law and is obedient to it;
3. Individuals make behavioral adjustments in accordance with the regulations;
4. The rule of law is consistently applied by independent and impartial courts or judges when they decide legal disputes, and;
 - a. The judicial decision is carried out concretely;

Judges hearing matters involving women in court must be familiar with and able to apply these principles, according to Article 3 paragraph (1) of PERMA Number 3 of 2017. Regarding the Defendant, the Panel of Judges in Decision Number 10/PID. SUS-TPK/2021/PT DKI took into account the fact that a woman deserves respect, safety, and equality.

As indicated before, there is a conflict between the values of non-discrimination, gender equality, equality before the law, and justice when it comes to adjudicating women's situations involving the law. Law enforcement must act impartially and without bias toward any person or group in order to uphold the values of non-discrimination, gender equality, equality before the law, and justice.

In addition, PERMA Number 3 of 2017 is based in part on Law Number 7 of 1984, which deals with the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. Part I of Article 2 lays out the policy's goals for ending prejudice, which are these:⁴⁶

1. To include the idea of gender equality into their national constitutions or other relevant laws, if not already there, and to guarantee its actual implementation by legislation and other suitable channels;
2. Enact suitable legislation, rules, and regulations (including penalties as needed) to outlaw any kind of discrimination against women;
3. We must ensure that women's rights are legally protected on par with men's and work through competent national courts and other government bodies to effectively protect women from discrimination
4. We must refrain from discriminating against women and make sure that state agencies and officials do the same.
5. Establish rules that address the issue of discrimination against women by individuals, groups, or businesses;
6. Establish rules that address the issue of

discrimination against women by amending or abolishing laws, regulations, customs, or practices;

6. do away with any gender bias in criminal law at the national level;

The decision to criminally punish the defendant in Number 10/PID. SUS-TPK/2021/PT DKI disregards the third objective of the Convention on the Elimination of All Forms of Discrimination Against Women, which is to guarantee that women are effectively protected from discrimination through competent national courts and other government agencies, and to uphold the legal protection of women's rights on an equal basis with men's rights. This is due to the fact that the Defendant's gender distinction in the consideration could be seen as a way to discriminate against men, despite the fact that the Convention on the Elimination of All Forms of Discrimination Against Women mandates equal legal protection for men and women.

The judge does have discretion, sometimes called "the freedom of the judge," when deciding on a case. Judges' independence should not be understood as absolute liberty based on an inflated sense of self-importance, according to Yahya Harahap, who argued that the following factors make judicial independence relative:⁴⁷

1. The idea of statute law must be upheld while using laws that are derived from the proper and accurate rules to resolve the matter under examination;
2. Applying a reasonable interpretation approach to correctly understand the law or, failing that, putting justice first when legislature fails to adequately safeguard the public interest;
3. Unrestricted access to the law, including the ability to investigate and discover its principles, bases, and theories via jurisprudence, economic, moral, religious, propriety, and customary values; unwritten legal norms; and legal concepts.

When reviewing, deciding, and adjudicating a matter, judges should exercise their discretion in a way that is consistent with the law's intent. If you want to discover why a judge made a certain ruling, you need look at the factors that went into that decision.

Conclusion

1. in deciding on a criminal punishment in Decision Number 10/PID. SUS-TPK/2021/PT DKI of the Jakarta High Court, the judges took both legal and non-legal factors into account. In order for the panel of judges to assume responsibility for the panel of judges from the court of first instance in relation to the proved elements of the article, it is necessary to use juridical

considerations to state agreement with them. In addition, the purpose of using non-judicial factors is to shorten the defendant's sentence. The theory of the creative process and intuition, which is part of Mackenzie's theory, provides the theoretical framework for the factors taken into account when reaching the verdict. This is due to the fact that the issues raised in mitigation are primarily concerned with the Judge's discretion in imposing a criminal charge.

2. the principles of non-discrimination, gender equality, equality before the law, and justice are not upheld in the criminal imposition decision of the Jakarta High Court Number 10/PID. SUS-TPK/2021/PT DKI, as stated in Supreme Court Regulation Number 3 of 2017 regarding Guidelines for Adjudicating Women's Cases Facing the Law. Furthermore, the imposition of a criminal sentence solely based on the defendant's gender violates the third purpose of the Convention on the Elimination of All Forms of Discrimination Against Women, which is to ensure that women's rights are legally protected on an equal footing with men's rights. In addition, pursuant to the criminal imposition theory, which encompasses the theories of retribution, relative or purpose, and combination, the sentence in Decision Number 10/PID. SUS-TPK/2021/PT You might think of DKI as part of the objective or relative theory. Reason being, criminalization serves no purpose in meeting the absolute requirements of justice, as stated in relativity theory. Just as retaliation cannot be useful in and of itself, it can only serve to safeguard society's interests.

Suggestion

As a body with the authority to decide cases, the Supreme Court ought to establish rules for how the Defendant's aggravating and mitigating circumstances should be considered. If the judge wants to know what factors cannot be utilized to reduce or lighten a sentence in the future, this guideline can help.

The Supreme Court must ensure that all judges are educated on Supreme Court Regulation 3 of 2017, which outlines the procedures to follow when deciding cases involving women and their legal issues. Judges must constantly adhere to established norms when reviewing, adjudicating, and ruling on cases involving women confronting the legal system.

BIBLIOGRAPHY

Andi Hamzah, *Delik-Delik Tersebar di Luar KUHP*, Jakarta: Pradnya Paramita, 1982.

<https://kbbi.web.id/korupsi> diakses tanggal 8 Mei 2024

Kartini Kartono, *Patologi Sosial*, Jakarta: Raja Grafindo Persada, 2003,

- Basrief Arief, *Korupsi dan Upaya Penegakan Hukum (Kapita Selekta)*, Jakarta: Adika Remaja Indonesia, 2006,
<https://news.detik.com/berita/d-5606034/legislator-pd-tak-habis-pikir-perempuan-jadi-alasan-vonis-pinangki-disunat> diakses tanggal 8 Mei 2024
- Kelompok Kerja Perempuan dan Anak Mahkamah Agung RIMasyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia (MaPPI FHUI), *Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum*, Mahkamah Agung Republik Indonesia bekerja sama dengan Australia Indonesia Partnership for Justice 2, 2018,
Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum” Berita Negara Republik Indonesia Tahun 2017 Nomor 1084, Pasal 2.
- Ani Triwati, Access to Justice as Legal Protection for Women in Conflict with the Law in the Criminal Justice System, *Humani Journal* Vol.9, 2019 Andi Hamzah, *Indonesian Criminal Procedure Law, Revised Edition*, Jakarta: CV. Sapta Artha Jaya, 1996
- M. Nurdin, “Legal Study of the Determination of Sanctions Below the Minimum Sanctions in Narcotics Abuse”, *Samudera Keadilan Law Journal*, Volume 13, Number 2 July-December 2018.
- Lilik Mulyadi, *Anthology of Criminal Law Perspectives, Theoretical and Practical*, Bandung: PT. Alumni, 2008, p. 143. Law Number 8 of 1981 concerning the Criminal Procedure Code” State Gazette of the Republic of Indonesia 1981 Number 76 and Supplement to the State Gazette of the Republic of Indonesia Number 3209, Article 193 Paragraph (1)
- Nanda Agung Dewantara, *The Problem of Judicial Independence in a Criminal Case*, Jakarta: Aksara Persada Indonesia, 1987
- Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kejahatan Pidana*, Bandung: Alumni, 1992,
- S.R. Sianturi, *Asas-Asas Hukum Pidana Di Indonesia dan Penerapannya*, Jakarta: Alumni Ahaem-Petehaem, 1986,
- Leden Marpaung, *Asas-Teori, Praktik Hukum Pidana*, Cetakan ke-2, Jakarta: Sinar Grafika, 2005,
- Bambang Sutiyoso dan Sri Hastuti Puspitasari, *Aspek-Aspek Perkembangan Kekuasaan Kehakiman di Indonesia*. Yogyakarta: UII Press, 2005,
- Poentang Moerad, *Pembentukan Hukum Melalui Putusan Pengadilan Dalam Perkara Pidana*. Cetakan ke-1, Bandung: PT Alumni, 2005,
- Mustomi, *Otom dkk, Metode Penelitian Kuantitatif dan Kualitatif*. PT. Media Penerbit Indonesia. Cet. Pertama Medan: 2024
- Putusan Pengadilan Negeri Jakarta Pusat Nomor 38/Pid.Sus-TPK/2020/PN Jkt.Pst
- Suroto, *Harkat dan Martabat Manusia Dalam Pandangan Kenegaraan Pancasila dan UUD NRI Tahun 1945*, *Jurnal Pembaharuan Hukum* Volume II Nomor 3, September – Desember 2015,

- Undang – Undang Nomor 12 Tahun 2005 Tentang Pengesahan International Covenant On Civil And Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik), *Lembaran Negara Republik Indonesia Tahun 2005 Nomor 119, Tambahan Lembaran Negara Republik Indonesia Nomor 4558, Terjemahan International Covenant on Civil and Political Right, 2005, Pasal 2 ayat 1.*
- Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum, *Berita Negara Republik Indonesia Tahun 2017 Nomor 1084, Pasal 1 angka 4.*
- Satjipto Rahardjo, *Ilmu Hukum*, PT Citra Aditya Bakti, Bandung, 1996
- Suwardi Sagama, *Analisis Konsep Keadilan, Kepastian Hukum, dan Kemanfaatan Dalam Pengelolaan Lingkungan*, *Jurnal Mazahib Vol.XV No.1*, 2016.
- Hyronimus Rhiti, *Filsafat Hukum; Edisi lengkap (Dari Klasik sampai Postmoderenisme)*, Universitas Atma Jaya Yogyakarta, Yogyakarta, 2011,
- Muh. Erwin, *Filsafat Hukum Refleksi Kritis Terhadap Hukum*, Rajawali Press, Jakarta, 2011,
- CST Kansil, *Kamus Istilah Hukum*, Gramedia Pustaka, Jakarta, 2009,
- Shidarta, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berpikir*, PT. Revika Aditama, Bandung, 2006,
- Suseno, Franz Magnis, *Etika Politik: Prinsip-Prinsip Moral Dasar Kenegaraan Modern*. Jakarta. Gramedia.1988.