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IMPLEMENTATION OF DISPARITIES IN THE INDONESIAN JUSTICE SYSTEM

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Abstract

Sentencing disparity, namely the imposition of different sentences for the same or comparable offences without a justifiable reason, remains a persistent problem that erodes the sense of justice in the Indonesian criminal justice system. This article analyses the normative basis, causes, manifestations and control of sentencing disparity, particularly following the entry into force of the new Criminal Code (Law No. 1 of 2023) and the new Criminal Procedure Code (Law No. 20 of 2025) on 2 January 2026. Using normative legal research with statutory, conceptual and case approaches, the study finds that disparity stems from constitutionally protected judicial independence, wide statutory sentencing ranges, the long absence of uniform sentencing guidelines, uneven prosecutorial practice, and limited consistency and transparency of judgments. Not all disparity is objectionable; the problem lies in unwarranted disparity. Control mechanisms now include the sentencing guidelines in Articles 53 and 54 of the National Criminal Code, Supreme Court Regulation No. 1 of 2020, the Supreme Court chamber system and ethical oversight, but their effectiveness depends on judicial compliance, the quality of judicial reasoning and the handling of the transition between legal regimes. The article recommends cross-offence sentencing guidelines, a comparative judgment information system, and a duty to explain departures from guidelines.

Keywords:sentencing disparity; judicial independence; sentencing guidelines; National Criminal Code; criminal justice system.

1. Introduction

Indonesia is a country of law that guarantees the equal position of every citizen in the law and the right to fair legal certainty and equal treatment before the law.[1] The constitutional guarantee is tested most clearly when the judge sentences a crime. It is at that stage that the formulation of norms in the law turns into concrete suffering for the defendant, and at that stage the public also assesses whether the law works fairly. In Radbruch's frame of mind, a good verdict must balance justice, legal certainty, and utility; the three are not always in line, but they must not negate each other.[2]

[1]Article 27 paragraph (1) and Article 28D paragraph (1) of the Constitution of the Republic of Indonesia of 1945.

[2]Gustav Radbruch, "Five Minutes of Legal Philosophy (1945)," ed. Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies* 26, no. 1 (2006): 13–15; see also Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya Bakti, 2000).

The problem arises when similar cases are decided with vastly different sentences. This phenomenon is known as *disparity of sentencing*, which is the application of unequal sentences to the same crime or to crimes whose dangerous nature is comparable, without a clear justification.[3] This article limits the definition of disparity to criminal disparities in criminal justice, not to inequality of access to legal services in general. This kind of disparity raises a fundamental question for society and convicts: why are two people who commit the same act treated differently?

Structurally, Indonesia's criminal law system has for decades provided ample room for such differences. The colonial legacy Criminal Code only stipulates the maximum threat, while laws outside the Criminal Code often formulate a wide range of threats. Article 2 paragraph (1) of the Law on the Eradication of Corruption, for example, threatens imprisonment ranging from four years to life, while Article 3 threatens one to twenty years.[4] On the other hand, judges are guaranteed their independence in examining and deciding cases, and are not absolutely bound by previous decisions as in the *common law* tradition. This combination of wide discretion and lack of guidelines is what makes the disparity of symptoms recurrent. The Supreme Court itself responded to this issue when it issued Supreme Court Regulation (Perma) Number 1 of 2020 concerning Criminal Guidelines Article 2 and Article 3 of the Law on the Eradication of Corruption Crimes, which is intended to avoid disparities in cases that have a similar character.[5]

The landscape has changed since January 2, 2026, when Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code) and Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHAP) came into force.[6] The National Criminal Code for the first time contains explicit penal goals and guidelines, and the Supreme Court has issued Supreme Court Circular Letter (SEMA) Number 1 of 2026 regarding the guidelines for the implementation of the two laws. [7] However, the transition period presents a new risk of disparity: cases whose criminal acts occurred before January 2, 2026 can still be tried according to the old provisions if it is more favorable to the defendant, while cases after that are subject to the

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[3]Muladi and Barda Nawawi Arief, *Criminal Theories and Policies* (Bandung: Alumni, 2010); Harkristuti Harkrisnowo, "Reconstruction of the Concept of Criminality: A Lawsuit against the Legislation and Criminal Process in Indonesia," Inauguration Speech of Permanent Professor at the Faculty of Law, University of Indonesia, March 8, 2003.

[4]Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001, Article 2 paragraph (1) and Article 3.

[5]"Supreme Court Spokesperson: Perma Guidelines for Corruptor Verdicts to Make the Punishment More Proportionate," *detikNews*, https://news.detik.com/berita/d-5117989/jubir-ma-perma-panduan-vonis-koruptor-agar-hukuman-lebih-proporsional (accessed November 9, 2026).

[6]"The National Police and the Attorney General Ready to Implement the New Criminal Code and Criminal Procedure Starting Today," *investortrust.id*, January 2, 2026, https://investortrust.id/national/90182/polri-dan-kejagung-siap-laksanakan-kuhp-dan-kuhap-baru-mulai-hari-ini (accessed November 9, 2026).

[7]"KMA Asks Judges to Understand the Humanist Paradigm of the New Criminal Code," *Marinews Supreme Court of the Republic* of Indonesia, https://marinews.mahkamahagung.go.id/berita/kma-minta-hakim-pahami-paradigma-humanis-kuhp-kuhap-baru-0blf (accessed November 9, 2026).

National Criminal Code.[8] Articles 2 and 3 of the Anti-Corruption Law are now reformulated in Articles 603 and 604 of the National Criminal Code, so that the status of Perma Number 1 of 2020 is a subject of debate.[9]

Based on this background, this article examines the application and control of criminal disparities in the Indonesian criminal justice system during the reform of the national criminal law. Previous studies have discussed the causes and impacts of criminal disparities;[10] the contribution of this article lies in the placement of these problems in the context of the transition to the National Criminal Code and the new Criminal Code, as well as in the mapping of their control instruments in an integrated manner.

Problem Formulation Based on the description above, the problems studied in this article are formulated as follows:

1. What is the normative and conceptual basis of criminal disparities in the Indonesian criminal justice system?
2. What are the factors that cause criminal disparities and how does it form in judicial practice?
3. What are the efforts to control criminal disparities within the framework of the National Criminal Code and the Supreme Court's policies, and what are the challenges?

2.3 Research Objectives and Benefits

This study aims to explain the normative and conceptual basis of criminal disparity; identify the causative factors and forms of disparity in practice; and analyze control instruments and their challenges within the framework of the National Criminal Code and Supreme Court policies. Theoretically, this study is expected to enrich the discussion on the balance between judges' independence and criminal consistency. In practice, the results can be considered by the Supreme Court, the Prosecutor's Office, lawmakers, and legal practitioners when formulating consistent penal policies.

2. Theoretical Framework

Disparity cannot be understood apart from the theory of punishment. The absolute or retributive theory views crime as a commensurate retribution for wrongdoing, so it logically demands equal treatment for equal acts. Relative theory or objective theory views crime as a means of prevention and improvement, which opens up space for the individualization of crime according to the needs of the perpetrator's coaching. The combined theory, which in Indonesia was developed

[8]Law Number 1 of 2023 concerning the Criminal Code, Article 3 paragraph (1).

[9]"The Status of Perma 1/2020 after the National Criminal Code Takes Effect," *Marinews Supreme Court of the Republic* of Indonesia, https://marinews.mahkamahagung.go.id/artikel/status-perma-1-2020-setelah-kuhp-nasional-berlaku-0JZ (accessed November 9, 2026).

[10]For example, Nimerodi Gulo and Ade Kurniawan Muharram, "Disparity in Criminal Imposition," *Journal of Legal Issues* 47, no. 3 (2018).

through the idea of integrative punishment, seeks to combine the two.[11] It is this difference in philosophical orientation among judges that, as discussed in the results section, is one of the sources of disparity.

The second concept is the distinction between *justified and* unwarranted *disparity*. The literature on sentencing asserts that equality does not mean mechanical uniformity: offenders with different levels of guilt and personal circumstances deserve to be punished differently, while differences that cannot be explained by legally relevant factors are injustice.[12] The experience of a number of countries, including the United States and the United Kingdom, shows that sentencing guidelines were developed to narrow the second type of disparity without necessitating the discretion of judges.[13]

The third concept is the relationship between independence and judicial accountability. Independence of judicial power is a prerequisite for the rule of law, but it is not freedom without accountability: judges are bound by the law, are obliged to give due consideration, and are ethically responsible.[14] This tension between independence and consistency is at the heart of the problem of disparity.

3. Research Methods

3.1 Types and Research Approaches

This research is a normative (doctrinal) legal research that views law as a system of norms, namely principles, rules, laws and regulations, decisions, and doctrines.[15] The approaches used include a statute *approach* to examine provisions on judicial power, penalties, and penal guidelines; a *conceptual approach* to clarify the concepts of disparity, discretion, and penal guidelines; and a *case approach* to understand the pattern of judgments. [16] The case approach is carried out in a limited manner, i.e. by examining the pattern of decisions as published in the literature and official publications of the Supreme Court, rather than through systematic sampling of decisions. This limitation needs to be noted because findings on practice should be read as a pattern description, not as a statistical measure of disparity.

3.2 Legal Ingredients

Primary legal materials consist of the 1945 Constitution; Law Number 1 of 2023 concerning the Criminal Code; Law Number 20 of 2025 concerning the Criminal Code; Law Number 1 of 2026 concerning Criminal Adjustment; Law Number 8 of

[11]Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*; Sudarto, *Criminal Law and Law* (Bandung: Alumni, 1986).

[12]Andrew Ashworth, *Sentencing and Criminal Justice*, ed. ke-6 (Cambridge: Cambridge University Press, 2015).

[13]Michael Tonry, *Sentencing Matters* (New York: Oxford University Press, 1996); Ashworth, *Sentencing and Criminal Justice*.

[14]Oemar Seno Adji, *Law of Criminal Judges* (Jakarta: Erlangga, 1984); Ahmad Rifai, *Legal Discovery by Judges in the Perspective of Progressive Law* (Jakarta: Sinar Grafika, 2010).

[15]Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: Rajawali Pers, 2015).

[16] Peter Mahmud Marzuki, *Legal Research*, ed. rev. (Jakarta: Kencana, 2017).

1981 concerning the Criminal Code as long as it is still relevant for transitional cases; Law Number 48 of 2009 concerning Judicial Power; Relevant Special Criminal Acts Law; and Regulations and Circulars of the Supreme Court. Secondary legal materials include textbooks, journal articles, professors' inauguration speeches, and official articles on the Supreme Court channel. Tertiary legal materials are in the form of legal dictionaries and encyclopedias. Considering that the National Criminal Code and the Criminal Procedure Code have only come into effect since early 2026 so that the academic literature that reviews them is still limited, this study also utilizes news and publications of state institutions as a source of information on the latest developments, which are treated as supporting data and not as a theoretical basis.

3.3 Material Collection and Analysis Techniques

The collection of materials was carried out through literature studies and online searches on the official websites of state institutions, with a deadline for scrutinizing regulations until November 9, 2026. The analysis was carried out qualitatively by descriptive-analytical and prescriptive methods: legal materials were inventoried, classified, and interpreted grammatically systematically, systematically, and teleologically, then conclusions were drawn deductively to answer the formulation of the problem and formulate recommendations.

4. Results

4.1 Normative and Conceptual Basis of Criminal Disparities

The results of the review of laws and regulations show that the disparity in punishment is rooted in the design and construction of judicial power. Article 24 paragraph (1) of the 1945 Constitution states that judicial power is an independent power, and Law Number 48 of 2009 concerning Judicial Power prohibits all forms of interference by external parties in judicial affairs.[17] Within that framework, judges are given the task of exploring, following, and understanding the legal values and sense of justice that live in society, and are obliged to pay attention to the good and evil nature of the defendant in considering the severity of the crime.[18] Thus, the law itself recognizes that criminal determination is a space for assessment, not a calculation operation.

At the same time, the law sets limits for such discretion. The decision must contain the reasons and basis for the decision as well as the articles of laws and regulations invitation is the basis for the judgment, and must contain legal considerations based on proper and correct legal reasons and foundations.[19] This obligation to give reasons is the main entry point for disparity control, because

[17]1945 Constitution, Article 24 paragraph (1); Law Number 48 of 2009 concerning Judicial Power, Article 3 paragraph (2).

[18]Law Number 48 of 2009, Article 5 paragraph (1) and Article 8 paragraph (2).

[19]Law Number 48 of 2009, Article 50 paragraph (1) and Article 53 paragraph (2).

differences in decisions that are rationally described in the consideration are easier to test than differences that are not given a reason.

With regard to the old Criminal Code, the results of the study show that Indonesia's penal system for decades has not been equipped with guidelines that guide judges to determine the criminal measure within the range of threats. Judges are equipped with maximum threats, while aggravating and mitigating matters are usually formulated by the panel itself in the decision. As a result, between the two threat boundary points there is a very wide space filled by the assessment of each panel.

Conceptually, this study found that the term disparity is often used loosely as if every difference in the decision is an injustice. In fact, the principle of equality demands the same treatment of the same thing and different treatment of different things. Table 1 summarizes the distinguishing criteria derived from the theoretical framework and the provisions of the legislation above.

Table 1. Justifiable and unjustifiable disparities

Aspects	Justifiable	Unwarranted
Basis of difference	Differences in roles, levels of errors, consequences of actions, and personal circumstances of the perpetrators	Differences stemming from legally irrelevant factors, such as personal preference or external pressures
Consideration of the verdict	Differences are rationally outlined and testable	The difference is not explained, or the explanation is not coherent with the facts of the case
Nature of matter	The facts and the level of danger of the act are materially different	Facts and level of danger of comparable acts
Examples of factors	Recovery of losses, forgiveness of victims, age, and role as the main perpetrator or helper	Differences in court territory, assembly composition, or ability to pay defenders unrelated to the act
Legal consequences	In line with the principle of equality before the law	Contrary to Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution

Source: author's analysis based on primary and secondary legal materials.

4.2 Factors Causing Criminal Disparities

The results of the analysis identified five groups of interrelated factors. First, normative factors. The formulation of criminal threats in the form of a wide range is the most direct source. Article 2 paragraph (1) and Article 3 of the Corruption Law, as mentioned, provide a range that stretches from one year to a lifetime. The wider the range, the greater the room for difference between decisions, especially if it is not accompanied by criteria that determine in which part of that range a case should be placed.

Second, judicial factors. Judges bring their own educational backgrounds, experiences, and criminal philosophies. Retributive-oriented judges will weigh the

seriousness of the acts, while coaching-oriented judges weigh the circumstances of the perpetrators and the opportunities for improvement. In the panel's decision, compromise between members also forms the final measure. In addition, Indonesia adheres to a *civil law tradition* that does not recognize the doctrine *of stare decisis*, so previous decisions, including Supreme Court decisions, are essentially persuasive and do not automatically bind other judges.[20]

Third, procedural and prosecution factors. Disparities are not only born in the courtroom. The selection of articles in the indictment, the form of indictment (single, alternative, subsidiary, or cumulative), and the magnitude of criminal charges determine the limits of the judge's room to move. Differences in prosecution practices between prosecutors or between prosecutorial agencies produce variations from the beginning, which are then carried over into the verdict. Efforts to develop guidelines for prosecutions in corruption cases show that this problem is recognized among law enforcers themselves.[21]

Fourth, extrajudicial factors. The literature also mentions factors outside the norm, including the pressure of public opinion and the news, the socio-economic background of the defendants, the quality of the defense, and at the most worrying point, corrupt practices in the judiciary.[22] These factors are difficult to measure and are almost never listed in the consideration of the verdict, but they are precisely among the most unjustifiable disparities.

Fifth, information and institutional factors. Judges generally do not have easy and systematic access to comparative decision data that can be used as a reference for criminal measures for similar cases. The Supreme Court Decisions Directory does contain online decisions, but the search is basically document-based, not based on criminal parameters such as the type of offense, the value of losses, the role of the perpetrator, and the crime imposed, so it has not automatically become a tool to determine the criminal amount.

4.3 Forms of Disparity in Practice

Muladi and Barda Nawawi Arief classified criminal disparity into four forms, namely disparity in the same criminal act, disparity in criminal acts whose nature is comparable, criminal disparity imposed by one panel of judges, and criminal disparity imposed by different panel of judges for the same crime.[23] This classification is useful as a reading tool for the patterns seen in the following groups of cases.

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[20]Sudikno Mertokusumo, *Penemuan Hukum: Sebuah Pengantar* (Yogyakarta: Liberty, 2007); Rifai, *Penemuan Hukum oleh Hakim*.

[21]"Supreme Court Issues Guidelines for Criminalizing Corruptors, KPK Hopes There Will Be No More Disparities in Case Termination," *Bisnis.com*, https://kabar24.bisnis.com/read/20200802/16/1273905/ma-terbitkan-pedoman-pemidanaan-koruptor-kpk-berharap-tak-ada-lagi-disparitas-pemutusan-perkara (accessed November 9, 2026).

[22]See, among others, Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*; Harkrisnowo, "Reconstruction of the Concept of Criminality."

[23]Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*.

Corruption cases are the areas that are highlighted the most. The wide range of threats in Article 2 and Article 3, plus differences in assessments of state losses, the role of the defendant, and the return of losses, result in far-flung verdicts for seemingly comparable cases. This is the background of the birth of Perma Number 1 of 2020, which directs judges to weigh in order the categories of state financial losses, the level of errors, impacts, and profits, the range of crimes, and the aggravating and mitigating circumstances before imposing a penalty.[24] However, a review published on the official channel of the Supreme Court reported that there are still 41.32 percent of decisions that do not make the Perma the main reference in assessing punishment. [25] These findings suggest that the presence of guidelines does not necessarily eliminate disparities; what determines is their use in practice.

In narcotics cases, disparities are seen in the choice between imprisonment and rehabilitation for abusers. The Narcotics Act requires addicts to undergo rehabilitation and authorizes judges to order rehabilitation,[26] but the assessment of a person's status as a user or dealer is highly dependent on the construction of the indictment and evidence, so that defendants with similar circumstances can take a different path of verdict.

In cases of minor value, such as petty theft, a difference arises between the panel that considers the restorative settlement or conditional sentence to be adequate and the panel that still chooses the prison sentence. The Supreme Court has tried to standardize the limits of minor cases through Perma Number 2 of 2012 and, later, issued Perma Number 1 of 2024 as a guideline for adjudicating criminal cases based on restorative justice.[27] The Perma is considered to uniform views on the applicability of the restorative justice approach during the judicial process.[28]

Disparities also appear between levels of justice and between charges and verdicts. The criminal measures in district court, high court, and Supreme Court rulings on the same case can be different. The change is often seen as a correction, but for the convicted and the public it can also create a perception of uncertainty. The difference between charges and verdicts that are not adequately explained in consideration reinforces the impression that the criminal measure is determined in a less measurable way.

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[24]"Guidelines for Judges in Imposing Crimes in Corruption Cases," *Hukumonline*, https://www.hukumonline.com/klinik/a/pedoman-hakim-dalam-menjatuhkan-pidana-pada-perkara-tipikor-lt5f47a5c603186/ (accessed November 9, 2026).

[25]"The Status of Perma 1/2020 after the National Criminal Code Takes Effect."

[26]Law Number 35 of 2009 concerning Narcotics, Article 54 and Article 103.

[27]Supreme Court Regulation Number 2 of 2012 concerning Adjustment of Limits on Misdemeanor Crimes and the Number of Fines in the Criminal Code; Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, https://peraturan.bpk.go.id/Details/285553/perma-no-1-tahun-2024 (accessed November 9, 2026).

[28]"Perma Restorative Justice: A Moderate Path in the Midst of a Legal Vacuum," *Dandapala*, https://dandapala.com/article/detail/perma-restorative-justice-jalan-moderat-di-tengah-kekosongan-hukum (accessed November 9, 2026).

4.4 The Impact of Disparity on the Judiciary

The impact of unjustifiable disparities can be read in three layers. First, at the level of principle, it weakens the principle of equality before the law guaranteed by Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution. Second, at the institutional level, it erodes public trust in the courts and opens up space for the suspicion that verdicts are determined by factors outside the law. Third, at the level of coaching, convicts who compare their crimes with those of others who commit similar acts tend to feel that they are being treated unfairly, and that feeling can hinder the goals of coaching and social reintegration.[29] In the context of the National Criminal Code which places correctional and balance restoration as the goals of punishment, this third impact is becoming increasingly relevant.

4.5 Disparity Control Instruments

National Criminal Code. The most important breakthrough is the inclusion of penal goals and guidelines. Article 51 formulates the purpose of punishment, namely preventing the commission of criminal acts, socializing convicts, resolving conflicts caused by criminal acts, and fostering a sense of remorse and acquitting the guilt of convicts, while Article 52 emphasizes that punishment is not intended to degrade human dignity. [30] Article 53 requires judges to uphold law and justice by prioritizing justice in the event of a conflict with legal certainty, and Article 54 paragraph (1) contains eleven things that must be considered, including the form of the offense, motives and goals, inner attitudes, how to do the act, attitudes and actions after the act, personal circumstances, criminal influence on the future of the perpetrator, influence on the victim, forgiveness, and public views.[31] This list is uniform *in what* must be considered so as to narrow the disparities born from differences in the framework of consideration. However, the list does not specify *how severe* each factor is, so disparities in measures are still possible.

The National Criminal Code also expands the choice of the main crime with the crime of supervision and the crime of social work,[32] and Article 54 paragraph (2) allows judges not to impose a crime or action by taking into account the severity of the act, the personal circumstances of the perpetrator, or the circumstances after the act. This study notes the double side of this expansion: the variety of criminal choices increases the humanity of the verdict, but at the same time adds a branching point that can be taken differently by different assemblies. Without guidelines for the selection of criminal types, the expanded discretion has the potential to give birth to a new form of disparity. Similarly, the obligation to

[29]Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*.

[30]Law Number 1 of 2023, Article 51 and Article 52.

[31]Law Number 1 of 2023, Article 53 and Article 54 paragraph (1).

[32]Law Number 1 of 2023, Article 65 paragraph (1).

prioritize justice in Article 53 requires discipline of reasoning so that it is not used as a general excuse to deviate from the provisions immeasurably.

Perma Number 1 of 2020. This Perma is the most concrete disparity control instrument before the National Criminal Code came into effect. It divides state financial losses into tiered categories, from more than Rp100 billion to up to Rp200 million, and combines them with the level of error, impact, and profit to determine the criminal range in a matrix; for Article 2 with losses above Rp100 billion, for example, the available range is imprisonment of 16 to 20 years or life.[33] A spokesperson for the Supreme Court emphasized that this guideline is intended to help judges "without losing their independence."[34] This pattern is in line with the idea of *guided discretion*: judges still weigh and decide, but within a measurable and testable framework.

Since Articles 2 and 3 of the Corruption Law were reformulated in Articles 603 and 604 of the National Criminal Code, the analysis in the Supreme Court's channel has mapped several perspectives on the status of the Perma: it loses the object of regulation, it still applies to transitional cases, or its substance remains relevant through Article 54 of the National Criminal Code.[35] This study argues that for transitional cases that are still being tried based on the old provisions, the guidelines should still be considered valid, while for cases subject to the National Criminal Code, the need for guidelines remains. The absence of guidelines in the reformulated offenses risks giving birth to new disparities, so the certainty regarding the status of the guidelines needs to be explicitly affirmed by the Supreme Court.

Chamber system and circulars. The Supreme Court implemented the chamber system and issued the legal formulation of the results of the chamber plenary meeting as a guideline for the implementation of duties for the court through SEMA Number 7 of 2012,[36] and now issues SEMA Number 1 of 2026 as a guideline for the implementation of the National Criminal Code and the Criminal Code.[37] This mechanism maintains the unity of the application of the law, but the chamber formulation generally talks about the interpretation of norms, not the criminal measures for each offense, so its contribution to narrowing the criminal disparity is indirect.

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[33]"The (New) Road to Criminalize Corruptors," *detikNews*, https://news.detik.com/kolom/d-5128350/jalan-baru-memidana-koruptor (accessed November 9, 2026).

[34]"Supreme Court Issues Guidelines for Judges to Punish Corruptors, Here's the Content," *Hukumonline*, https://www.hukumonline.com/berita/a/ma-terbitkan-peraturan-pedoman-hakim-menghukum-koruptor--ini-isinya-lt5f276dc2b69d6/ (accessed November 9, 2026).

[35]"The Status of Perma 1/2020 after the National Criminal Code Takes Effect."

[36]Supreme Court Circular Letter Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court.

[37]"KMA Asks Judges to Understand the Humanist Paradigm of the New Criminal Code."

Ethical supervision and openness. The Judicial Commission is authorized to maintain and uphold the honor, dignity, and behavior of judges,[38] with the Code of Ethics and the Code of Conduct for Judges as a joint reference with the Supreme Court.[39] The object of this supervision is behavior, not the substance of the decision, so that disparities that are not accompanied by ethical violations are not reached by it. Therefore, the openness of decisions and considerations, as well as examination by academics and the public, is a complementary means of control.

4.6 Mapping of Factors, Instruments, and Control Gaps

Based on all of the above findings, Table 2 maps the factors causing the disparity, the instruments that have been available, and the remaining gaps and the direction of their strengthening.

Table 2. Mapping of causative factors, control instruments, and gaps

Causative factors	Available instruments	Gaps and direction of reinforcement
Wide threat range	Perma 1/2020 (Articles 2 and 3 of the Corruption Law); Article 54 of the National Criminal Code	The guidelines do not cover all offenses; the status of Perma 1/2020 post-National Criminal Code needs to be affirmed
Differences in philosophy and judge's judgment	Articles 51 to 54 of the National Criminal Code; chamber system; training of judges	The weight of each factor has not been set; need for measurement guidance and case-based training
Diverse prosecution practices	Guidelines for internal demands of the prosecutor's office and the KPK	There is a need for a combination of criminal guidelines and guidelines
Extrajuridical and integrity factors	Code of Ethics and Code of Conduct for Judges; supervision of the Supreme Court and the Supreme Court	Ethical supervision does not reach substance; it requires openness of consideration and examination

[38]Law Number 22 of 2004 concerning the Judicial Commission as amended by Law Number 18 of 2011, Article 13 letter b.

[39]Joint Regulation of the Chief Justice of the Supreme Court and the Chairman of the Judicial Commission Number 047/KMA/SKB/IV/2009 and Number 02/SKB/P.KY/IV/2009 concerning the Code of Ethics and Code of Conduct for Judges.

Causative factors	Available instruments	Gaps and direction of reinforcement
Limitations of comparative data	Supreme Court Decisions Directory	It is necessary to have a criminal information system that can be traced according to the offense, loss, role, and criminal
Transition of the old Criminal Code to the National Criminal Code	Article 3 paragraph (1) of the National Criminal Code; SEMA 1/2026	It is necessary to affirm the transition guidelines and monitor the decision during the transition period

Source: author's analysis.

From the mapping, it appears that the control of disparities cannot rely on one instrument. Sentencing guidelines narrow the space for difference, comparative data make differences visible, and the obligation to give reasons makes differences testable. All three need to work together. This study proposes the principle of *comply or explain* in punishment: judges who impose crimes outside the range of guidelines or far from prosecution are required to explicitly outline the reasons for their deviations in the consideration of the verdict. This principle does not reduce the independence of judges because deviations are still possible, but place the burden of reasoning on the deviant party. In that way, justifiable disparities remain protected, while irjustifiable disparities become apparent.

5. Conclusion

Based on the results of the research, three conclusions can be drawn as an answer to the formulation of the problem.

1. Disparity in sentencing is rooted in the independence of judicial power and the discretion of judges guaranteed by the constitution and the law. Therefore, not all differences in verdicts are unfair. What must be controlled is irreparable disparity, namely criminal differences in comparable cases without rational distinguishing grounds and without explanation in the consideration of verdicts.
2. Disparities stem from normative factors (wide threat range and lack of guidelines), judicial factors (differences in criminal philosophy and persuasive nature of previous decisions), procedural and prosecution factors, extrajudicial factors, and limited information on comparative decisions. This pattern can be seen, among others, in corruption, narcotics, and small-value cases, as well as between levels of justice.

1. Controlling disparities is now supported by the goals and guidelines of criminalization in Articles 51 to 54 of the National Criminal Code, Perma Number 1 of 2020, the chamber system and the Supreme Court's circular, as well as ethical supervision. Its effectiveness still depends on the compliance of judges in using the guidelines, as shown by the fact that there are still decisions that do not refer to the guidelines, and on the clarity of the transitional period between the old Criminal Code and the National Criminal Code.

5.1 Suggestions

1. The Supreme Court is advised to affirm the status of Perma Number 1 of 2020 during the transition period, prepare guidelines for cross-offense criminalization that are in line with Articles 53 and 54 of the National Criminal Code, and apply the principle *of comply or explain* for decisions that deviate from the guidelines.
2. The Supreme Court together with stakeholders are advised to build a criminal information system that allows judges to trace the appeal decision according to the parameters of the offense, the value of the loss, the role of the perpetrator, and the crime imposed.
3. The prosecutor's office and the prosecution are advised to align the prosecution guidelines with the criminal guidelines so that variations do not form from the prosecution stage.

1. Researchers are then advised to conduct an empirical study with a systematic sample of verdicts, including cases adjudicated after January 2, 2026, to measure the magnitude of disparity and the effectiveness of the guidelines quantitatively.
2.

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