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## **Equitable Law Enforcement Against Law Enforcement Officers in Criminal Acts of Corruption**

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### **Abstract**

The pattern of eradicating corruption by punishing perpetrators with severe criminal sanctions and even up to the death penalty must be upheld to prevent acts of corruption. However, in practice, the criminal sanctions given by court judges to perpetrators are still light, even when the perpetrators are law enforcement officials such as the Prosecutor General's Office. The problem is how to consider the judges of the DKI Jakarta High Court Number 10/Pid.Sus-TPK/2021/PT.Dki and the Decision of the Central Jakarta District Court Number 11/Pid.B/TPK/2008/PN. Jkt.Pst in imposing criminal sanctions by Prosecutor Pinangki and Prosecutor Urip Tri Gunawan? The research method used is normative juridical research using secondary data. The results of the study stated that the consideration of the DKI Jakarta High Court Judge Number 10/Pid.Sus-TPK/2021/PT.Dki and the Decision of the Central Jakarta District Court Number 11/Pid.B/TPK/2008/ PN.Jkt.Pst in imposing criminal sanctions that were carried out by Prosecutor Pinangki and Prosecutor Urip Tri Gunawan was based on mitigating and aggravating matters which led to disparities. This is caused by structural factors, substance factors, and cultural factors.

**Keywords:** Corruption, Justice, Law Enforcement

## INTRODUCTION

Eradicating criminal acts of corruption is closely related to law enforcement carried out by law enforcement officials. Efforts to enforce criminal law in understanding the legal system as stated by Lawrence M. Friedman include the operation of the components of "legislative regulations/substance (legal substance), law enforcement apparatus/structure (legal structure) and legal culture/culture (legal culture)."<sup>1</sup>

In enforcing the law against criminal acts of corruption, the participation of the community is also needed apart from the role of law enforcement officers. This shows that in law enforcement efforts the participation of all parties is needed so that law enforcement can run effectively. Laws that grow and develop in a particular area are the result of a process of community interaction. This law is intended to regulate people's lives in order to achieve peace and tranquility.<sup>2</sup>

Corruption in Indonesia, as in several other countries, is widely correlated with abuse of power by political power holders. The nature of power is basically ambitious to increase influence, expand its reach and grip over the people who often do not have significant control over the ever-creeping movements of power. In a modern state, people's control over power can take the form of political, social or juridical control, with various forms of legitimate application.<sup>3</sup>

The centralized power of the New Order regime shows the existence of a systemic relationship between political power holders and economic power holders. The existence of an illegal relationship between wild political power and greedy economic power has caused an economic crisis and a very serious collapse in state finances which is felt to this day.<sup>4</sup>

The authorities will create differentiating boundaries by creating political stigmas, imposing persona non-grata, or throwing them into prison using perverted judicial engineering. In other words, corrupt rulers usually play with their power by making people or groups they dislike because they are critical, have different opinions or are considered opposing, put in a position of feeling guilty, ashamed, isolated, intimidated, terrorized or persuaded (embraced). Corrupt political power has implications for human rights violations and the emergence of ABS (As long as you are happy) attitudes and hypocritical behavior.<sup>5</sup>

Based on this, the pattern of eradicating corruption is to punish perpetrators with severe criminal sanctions and even the death penalty as specified in Article 2 paragraph (2) of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning The eradication of criminal acts of corruption must be enforced to prevent acts of corruption.<sup>6</sup> However, in practice, criminal sanctions decided by court judges against perpetrators are still light, even when the perpetrators are law enforcement officers such as the Attorney General's Office.

The Attorney General's Office is one of three law enforcement agencies which, according to Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Attorney General's Office, can handle corruption cases, starting from inquiry, investigation, pre-prosecution, indictment, prosecution, up to execution. court ruling. Based on this, the Attorney General's Office has a very complete law enforcement role when compared to the Police. Therefore, if all of these authorities are exercised effectively and professionally, the

<sup>1</sup> Eddy Rifai, *Law Enforcement of Corruption Crimes* (Bandar Lampung: Justice Publisher, 2014), p. 13.

<sup>2</sup> Indah Sri Utari, *Schools and Theories in Criminology* (Yogyakarta: Thafa Media, 2012), p. 62.

<sup>3</sup> Artidjo Alkostar, *Political Corruption in Modern Countries* (Yogyakarta: FH UII Press, 2015), p. 95.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, p. 96.

<sup>6</sup> "Factors that make people reluctant to eradicate corruption include doubts about whether an act is corrupt or not, or a pessimistic attitude that it is difficult for the law to prove and sanction perpetrators of corruption, concerns about threats from perpetrators, or a lower position in an organization. ." Jeremy Pope, *Strategy for Eradicating Corruption* (Abridged Edition) (Jakarta: TI Indonesia, 2003), p. 6.

Prosecutor's Office can become a law enforcement apparatus that is highly trusted by the public. However, public perception of the Prosecutor's Office has long tended to be negative.

This fact was demonstrated through an opinion poll conducted by Charta Politica in July 2020, which stated that there was a downward trend in the level of public trust in the Adhyaksa Corps. The trend of decreasing trust is caused by the Attorney General's performance which has not been optimal in eradicating corruption. Likewise, the scandal of prosecutors being involved in corruption cases is one of the many factors in the low level of public trust in the Prosecutor's Office. Therefore, The final determinant in eradicating criminal acts of corruption is the judge.<sup>7</sup>

Judges in handing down court decisions must be guided by the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, that judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society. In handing down a case, the judge has the authority to decide based on his beliefs, and in general, judges differ in handing down criminal decisions in the same case. This is called disparity.

There are differences in sentencing or disparities in punishment. Basically it is a natural thing, because it can be said, almost no things are really the same. Disparity in punishment becomes a problem when the range of differences in sentences imposed between similar cases is so large that it gives rise to injustice and can raise suspicions in society.<sup>8</sup> and also raises perceptions in society about the lack of seriousness of law enforcement officials in supporting government programs to eradicate corruption in Indonesia. This happened in the case of Prosecutor Pinangki's involvement in the case of indications of Pinangki bribery by Djoko Tjandra which was handled by the Attorney General's Office with the bribery case committed by Artalyta Suryani to prosecutor Urip Tri Gunawan.

Based on background above, The author is interested in analyzing and studying this article in depth and formulating the problem, namely how the judge of the DKI Jakarta High Court Number 10/Pid.Sus-TPK/2021/PT.Dki and the Decision of the Central Jakarta District Court Number 11/Pid.B/TPK/2008/PN.Jkt.Pst in the imposition of criminal sanctions carried out by Prosecutor Pinangki and Prosecutor Urip Tri Gunawan.

The purpose of writing this article is to find out the judge's considerations in deciding to impose sanctions on convicts and the extent to which the legal process carried out in cases of criminal acts of corruption is in accordance with the court decisions that have been given.

## RESEARCH METHODS

This research is included in the form of normative juridical research, namely research that provides an understanding of the norm problems experienced by dogmatic legal science in its activities of describing legal norms, formulating legal norms (forming statutory regulations), and enforcing legal norms (judicial practice).<sup>9</sup> The author uses a statutory approach and a case approach. In this legislative approach, the author studies the ontological basis for the birth of laws, the philosophical basis of laws and the legal ratio of statutory provisions.<sup>10</sup> The next approach is with Decision Number 10/Pid.Sus-TPK/2021/PT.Dki and Decision of the Central Jakarta District Court Number 11/Pid.B/TPK/2008/PN.Jkt.Pst.

<sup>7</sup> Public Accountability Review, "Questioning the Integrity of the Attorney General's Office in the Case of Djoko Tjandra and Prosecutor Pinangki," Antikorup.org, 2020, <https://antikourkan.org/id/article/menyoal-integritas-kejaksaan-agung-dalam-perkara-djoko-tjandra-dan-jaksa-pinangki> accessed 15 November 2022.

<sup>8</sup> Tama S. Langkun et al., Study of Disparity in Sentencing Decisions in Corruption Crime Cases (Jakarta: Indonesia Corruption Watch, 2014), p. 9-10.

<sup>9</sup> I. Made Pasek Diantha, Normative Legal Research Methodology in Justifying Legal Theory (Jakarta: Prenada Media Group, 2016), p. 84.

<sup>10</sup> Peter Mahmud Marzuki, Legal Research (Jakarta: Kencana Prenadamedia Group, 2016), p. 142.

The data analysis used is a qualitative analysis approach with the aim of providing an in-depth understanding of a problem regarding law enforcement is fair to law enforcement officers in criminal acts of corruption.

The data source used is a secondary data source for the type of legal material used in this research, namely:

1. Primary legal materials, such as the 1945 Constitution, the Criminal Code, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, Decisions High Court Number 10/Pid.Sus-TPK/2021/PT.Dki and District Court Decision Number 11/Pid.B/TPK/2008/PN.Jkt.Pst,;
2. Secondary Legal Materials, such as materials in the form of books, daily/magazines and scientific papers; And
3. Tertiary Legal Materials, such as legal dictionaries, encyclopedias and bibliographies.

## RESULTS AND DISCUSSION

### A. State law

Sunaryati Hartono, equates the meaning of the term "State of Law" with the rule of law, as seen in his writing:

"... In order to create a rule of law that brings justice to all the people concerned, enforcement of the rule of law must be in a material sense."<sup>11</sup>

Along with the emergence of the idea of democracy, the idea of the rule of law was also formed from an attitude of resistance (antithesis) to absolute government. Movements and thoughts started by several thought experts at that time, which among others gave birth to the Reformation, Renaissance, Natural Law, Aufklärung,<sup>12</sup> the bourgeoisie and the monarchomachen.

Immanuel Kant (1724-1804) through his book *Metaphysische Anfangsgrunde der Rechtlehre* put forward the concept of a liberal legal state.<sup>13</sup> He added that state power should be kept as far away from society as possible. The state is only tasked with being the guarantor of community involvement and security, while the administration of the economy and society is left to the community itself based on *laissez faire*, *laissez passer* free competition.<sup>14</sup> In connection with this concept, Sudargo Gautama stated: "The state only has a passive duty, namely to only act, if the human rights of its people are in danger or public order and public security are threatened."<sup>15</sup>

In the natural setting of the liberal legal state, Friederich Julius Stahl in his book *Philosophie des Rechts* arranges the main elements of a formal legal state as follows:

1. Confession and protection of human rights;
2. For To protect these human rights, state administration must be based on the *trias politica* theory;
3. Government carry out their duties based on the law (*wetmatigheid van bestuur*);

<sup>11</sup> Sunaryati Hartono, *What is the Rule of Law* (Bandung: Alumni, 1976), p. 35.

<sup>12</sup> Rukmana Amawinata, "Regulation and Limits on the Implementation of Freedom of Association and Assembly in Article 26 of the 1945 Constitution" (Padjadjaran University, 1986), p. 78.

<sup>13</sup> Harold H Titus, *Living Issues in Philosophy*, ed. by HM Rasyid (Jakarta: Bulan Bintang, 1984), p. 151.

<sup>14</sup> Mohammad Tahir Azhary, *The State of Law, A Study of Its Principles from the Point of View of Islamic Law, Its Implementation in the Medina Period and the Present* (Jakarta: Bulan Bintang, 1992), p. 66.

<sup>15</sup> Sudargo Gautama, *Understanding the Rule of Law* (Bandung: Alumni, 1983), p. 13.

4. If the government carries out its duties based on the law it still violates human rights (government interference in a person's private life), then there is an administrative court that will resolve it.<sup>16</sup>
5. Stahl's ideas are aimed at maintaining human rights, for this reason the administration of government must be based on law (*wetmatigheid van bestuur*). So that state power is not in one hand, it must be divided according to the *trias politica* theory. Furthermore, if the government violates someone's human rights, there must be an administrative court that will resolve it.

## B. Law enforcement

According to Lawrence M. Friedman, the concept of law consists of coercion and societal acceptance.<sup>17</sup> In the process of law enforcement, it is necessary to understand that legal rules are coercive, in the sense that they are coercive in terms of the presence of the law as an instrument for ordering and developing society. Coercion also means that society must accept and know the presence of law in order to regulate itself, because law is a system of rules and procedures to protect, regulate and engineer society.<sup>18</sup>

According to Friedman, the legal system in law enforcement is divided into 3 (three) elements, namely structure, substance and legal culture elements. The main problem with law enforcement actually lies in the factors that might influence it. These factors have a neutral meaning, so their positive or negative impact lies in the content of these factors. These factors are as follows:<sup>19</sup>

1. The legal factor itself.
2. Law enforcement factors, namely the parties who form and implement the law.
3. Facilities or facilities factors that support law enforcement.
4. Community factors, namely the environment in which the law applies or is applied.
5. Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life.

## C. Justice

According to Agus Santoso, justice is basically a relative concept, everyone is not the same, fair according to one person is not necessarily fair for another, when someone confirms that he is carrying out justice, this must of course be relevant to public order on a scale. justice is recognized. The scales of justice vary greatly from one place to another, each scale is defined and completely determined by society according to the public order of that society.<sup>20</sup>

This is in accordance with Plato's opinion, that individual perfection is only possible in the context of a state under the control of moral teachers, wise leaders, bestari partners, namely the aristocrats. According to Popper, Plato's model is a kingdom of the wisest and god-like.<sup>21</sup>

Law in Plato's theory is an instrument for bringing justice in situations of injustice. In a timocratic system, injustice appears in the form of the leaders' ambition to pursue luxury, honor and wealth for themselves. In an oligarchy, the situation of injustice takes the form of monopoly control of resources from greedy rich people. In democracy, injustice appears in the form of leadership from uneducated people (not aristocrats), and the tendency to emphasize the

<sup>16</sup> Padmo Wahjono, *Legal Development in Indonesia* (Jakarta: Ind-Hill-Co, 1989), p. 151.

<sup>17</sup> Lawrence M. Friedman, *Legal Theory* (New York: Columbia University Press, 1967), p. 14.

<sup>18</sup> Sri Rahayu Oktoberina, *Points of Thought in Law* (Bandung: Refika Aditama, 2008), p. 26.

<sup>19</sup> *Ibid.*

<sup>20</sup> M. Agus Santoso, *Law, Morals & Justice A Study of Legal Philosophy* (Jakarta: Kencana, 2014), p. 85.

<sup>21</sup> Bernard L. Tanya, *Legal Theory, Human Order Strategy Across Space and Generations* (Yogyakarta: Genta Publishing, 2010), p. 40.

personal interests of representatives in representative institutions. Meanwhile, in tyranny, injustice emerges in the form of arbitrariness.

According to Aristotle, justice is created from the ethical social heart of every citizen and ruler. Law is only used as a tool to guard justice. Law is very necessary to bind every citizen so that justice is achieved, so that justice itself must be seen from various meanings, namely:

1. Distributive justice. Justice that gives each person a quota or share according to their services. He cannot demand that each person get the same share because each person's services are not the same, so it is not equality but proportionality.
2. Commutative justice. Justice by giving each person the same amount without remembering individual merits is emphasized that everyone must receive equality.

Corrective justice: is justice that builds equality, meaning that every person's actions must be assessed in proportion to their actions.<sup>22</sup>

#### D. Corruption Crime

Perceptions regarding criminal acts of corruption are not completely the same, because the interpretation of the meaning of criminal acts of corruption is often related to the interests of members or groups in society. This is reinforced by the opinion of the Chairman of the Muhammadiyah Central Leadership Anti-Corruption Working Team, Abdul Munir Mulkhan, who said that there is a gray area regarding the definition of corruption which is often perceived as an obstacle in the field to efforts to eradicate corruption. Regarding this gray area, further interpretation should be carried out to confirm whether an action is considered corruption or not.<sup>23</sup>

Furthermore, according to Mulkhan, the operational definition of corruption needs to be explained because of the demands of conditions in the field. "Corruption criteria in the field can be referenced to political decisions. Apart from that, people are worried that if they suspect someone of corruption, it will be considered ill-judged or slanderous, or even worried that they will be seen as not trusting God because God can provide sustenance for his servants from any way, including through corruption. This affects law enforcement officials in handling criminal acts of corruption because the public does not yet understand the actions taken against individuals who commit criminal acts of corruption. Therefore, it is necessary to explain the meaning of corruption in general (universal) and the meaning of corruption according to positive law."<sup>24</sup>

The definition of corruption in the General Indonesian Dictionary is defined as fraudulent, bribable and immoral acts. According to the Big Indonesian Dictionary, corruption is the misappropriation or embezzlement of state or company money and so on for personal or other people's interests.<sup>25</sup> International definition of corruption based on the Black Law Dictionary:

"An act carried out with the intention of obtaining some benefit that is contrary to official duties and other truths. "An official act or thing or someone's belief in which someone violates the law and is full of mistakes, uses a number of benefits for himself or another person which is contrary to his duties and other truths."<sup>26</sup>

The term corruption is actually very broad, following the development of increasingly complex social life and increasingly sophisticated technology, thus influencing thought patterns, values, aspirations and societal structures where forms of crime that previously

<sup>22</sup> *Ibid.*

<sup>23</sup> Surachmin, *Corruption Strategies and Techniques: Knowing to Prevent* (Jakarta: Sinar Grafa, 2011), p. 12.

<sup>24</sup> *Ibid.*

<sup>25</sup> Evi Hartanti, *Crime of Corruption Second Edition* (Jakarta: Sinar Graphic, 2007), p. 53.

<sup>26</sup> *Ibid.*

occurred traditionally develop into unconventional crimes that are increasingly difficult to deal with, followed by existing legal norms.<sup>27</sup>

### E. Cases of Corruption Crimes Committed by Law Enforcement Officials

Corruption crimes in Indonesia have entered the acute area or can be said to be at a very low point. Corruption is not only carried out collectively, but is carried out systemically by the parties with the hope of enriching themselves and others. Rampant acts of corruption are a form of resistance to the law carried out by some communities or a small number of certain members of society who take refuge behind power or authority for personal interests by harming state finances.<sup>28</sup>

Following is a list of law enforcement officers who have been caught in criminal acts of corruption:

#### 1. Prosecutor Pinangki

Pinangki Sirna Malasari is the Head of Monitoring and Evaluation Subdivision II at the Deputy Attorney General's Planning Bureau for Development of the Attorney General's Office. The Pinangki case started with a viral photo on social media with Djoko Tjandra and Anita Kolopaking who are Djoko Tjandra's lawyers.

The Indonesian Anti-Corruption Society (MAKI) reported these findings to the Prosecutor's Commission. They suspect that the photo was taken in 2019 in Kuala Lumpur to smooth out plans for a judicial review (PK) application submitted by Djoko Tjandra. The Attorney General's Office (Kejagung) then carried out an internal investigation of officials who were suspected of being related to the defendant in the Bank Bali transfer of collection rights (cessie) case. Pinangki was proven to have violated discipline and was temporarily dismissed from his position on July 30 2020.

Pinangki's status then rose to become a suspect in criminal acts of bribery, money laundering and criminal conspiracy in the case of convict Djoko Tjandra. He was then arrested by a team of investigators from the Jampidsus Investigation Directorate at the Attorney General's Office on August 11 2020. After going through a number of trial processes, the Panel of Judges at the Corruption Court decided that Pinangki was proven guilty and sentenced him to prison for 10 years and IDR 600 million, higher than the public prosecutor's demand.

Pinangki then filed an appeal to the DKI Jakarta High Court. The panel of judges granted the appeal and reduced Pinangki's sentence to 4 years in prison and a fine of IDR 600 million. The judge assessed that Pinangki had admitted guilt, regretted his actions, was willing to be fired, and had a toddler. Because of this decision, many parties urged the public prosecutor (JPU) to file an appeal at the Supreme Court level. However, the prosecutor considered that the decision was in accordance with their demands. After two years in prison, Pinangki was released on parole on September 6 2022. Pinangki received remission several times, for example remission for Eid al-Fitr 2022 for one month and 3 months remission for the 77th anniversary of the Republic of Indonesia.

#### 2. AKBP Raden Brotoseno

Raden Brotoseno still held the rank of Adjunct Police Commissioner (AKBP) before his police career ended after being dishonorably fired at the National Police Code of Ethics Commission for Review (KKEP PK) hearing on July 8 2022. Brotoseno is a former prisoner. In November 2016, he was charged with accepting gifts or promises in the process of investigating the alleged criminal act of rice paddy printing corruption

<sup>27</sup> Amin Rais, *Addressing Corruption, Collusion and Nepotism in Indonesia* (Yogyakarta: Aditya Media, 1999), p. 15.

<sup>28</sup> Ismail Prabowo, *Fighting Corruption Using a Sociological Approach* (Surabaya: Dharmawangsa Media Press, 1998), p. 26.

in the Ketapang area, West Kalimantan. At that time, he served as Head of Unit III Subdit III of the Corruption Crime Directorate (Dittipikor) of the National Police's Criminal Investigation Agency (Bareskrim). After going through a series of trials, on June 14 2017 Brotoseno was sentenced to 5 years in prison by the panel of judges at the Jakarta Corruption Court.

AKBP Raden Brotoseno is also required to pay a fine of IDR 300 million subsidiary to 3 months in prison. The sentence was lower than the demands of the prosecutor who asked that Brotoseno be sentenced to 7 years in prison with a fine of IDR 300 million subsidiary to 6 months in prison. Based on the indictment, Brotoseno received IDR 1.9 billion in a case investigating the alleged criminal act of corruption in rice field printing in the Ketapang area.

AKBPRaden Brotoseno also received 5 business class Batik Air plane tickets worth IDR 10 million at his own request. Brotoseno was charged together with Dittipikor Bareskrim Polri investigator Dedy Setiawan Yunus, and two private parties, namely Harris Arthur Hedar and Lexi Mailowa Budiman. AKBP Raden Brotoseno received money from Harris as an advocate for the Jawa Pos Group to handle the postponement of the summons for examination of Dahlan Iskan who was due to be investigated in the alleged criminal act of corruption in rice field printing in the Ketapang area.

Sentenced to 5 years in prison in 2017, Brotoseno received parole from the Ministry of Law and Human Rights (Kemenkumham) and breathed fresh air on February 15 2020. Sadly, even though he was a former corruption convict, the National Police did not immediately fire Brotoseno. Indonesia Corruption Watch (ICW) found that Brotoseno had returned to work as an Intermediate investigator for the Dittipidsiber Bareskrim Polri.

The National Police stated that Brotoseno had undergone a code of ethics and professional trial regarding the case against him, but was not sentenced to dismissal. At that time, the Head of the Professional and Security Division (Propam) of the National Police, Inspector General Ferdy Sambo, said that Brotoseno was not fired because he was considered to have performed well while he was a member of the National Police, although the details of the achievements in question were not stated.

### 3. Judge Itong Isnaeni Hidayat

Itong Isnaeni Hidayat was a judge at the Surabaya District Court when he was arrested by the KPK on January 19 2022 along with several other people. The Corruption Eradication Committee (KPK) suspects that the suspects were involved in a conspiracy to handle the case regarding the dissolution of PT. Soyu Giri Primedika. In the construction of the case, it was explained that Hendro was appointed as PT's lawyer. Soyu Giri Primedika contacted Hamdan, the substitute clerk for the Surabaya District Court, to offer money if the judge at the trial decided to dissolve his client's company.

The goal is to ensure that PT assets. Soyu Giri Primedika worth IDR 50 billion can be shared. To carry out this desire, the KPK suspects that Hendro and PT. Soyu Giri Primedika has prepared funds worth IDR 1.3 billion. The funds will be allocated to bribe judges from the courts of first instance to the Supreme Court (MA). Itong, as judge at first instance, allegedly agreed to the offer. Then Hendro intended to give Itong a down payment of IDR 140 million through Hamdan. When the money was handed over, the KPK arrested both of them and continued to arrest Itong.<sup>29</sup>

<sup>29</sup> Lia Hartika, Indri Dithisari, and Syarifah Lisa Andriati, "The Urgency of Carrying Out Additional Criminal Execution Money by the Executing Attorney in Corruption Crime Cases," *Binamulia Hukum* 11, no. 2 (2022): p. 128, <https://doi.org/10.37893/jbh.v11i2.709>.



At the press conference announcing the suspect by the Corruption Eradication Commission, Itong became furious and exclaimed, "This is all nonsense!" but he was still sick. The public prosecutor demanded that he be sentenced to 7 years in prison and a fine of IDR 390 million. Failure to pay will result in imprisonment for one year.

The verdict reading session on Tuesday (25/10/2022) determined a sentence of 5 years in prison for Itong. The panel of judges assessed that Itong was proven legally and convincingly guilty of corruption. His status as a law enforcer made Itong's sentence heavier. Itong shook his head and admitted that he didn't expect it because according to him, he had never received anything from Hamdan. Itong also filed an appeal.

4. Supreme Court Justice Sudrajad Dimiyati

Sudrajad Dimiyati was the Supreme Judge when he was caught in the KPK's sting operation (OTT) in Semarang, Central Java and Jakarta on 21-22 September 2022. Apart from him, in that case, the KPK named 10 suspects in whom Sudrajad was suspected of receiving bribes. Corruption Eradication Committee Chairman Firli Bahuri said that Sudrajad's bribery allegations began when a civil and criminal lawsuit related to the activities of the Intidana Savings and Loans Cooperative was initiated at the Semarang District Court (PN).

In that case, Intidana gave power of attorney to two lawyers, Yosep Parera and Eko Suparno. However, they were not satisfied with the decision of the Semarang District Court and the local High Court so they decided to appeal to the Supreme Court. Intidana Savings and Loans Cooperative debtors Heryanto Tanaka and Ivan Dwi Kusuma Sujanto filed an appeal to the Supreme Court, even though this cooperative still gave its power of attorney to Eko and Yosep.

The two lawyers then allegedly met and communicated with several Supreme Court clerk employees who were thought to be able to act as intermediaries with Sudrajad, who would later be expected to be able to condition the decision according to Yosep Parera and Eko Suparno's wishes.

According to Firli, the party who was willing to help Yosep and Suparno was Desi Yustria by providing 202,000 Singapore dollars or around Rp. 2.2 billion. Desi then invited the Supreme Court Substitute Judicial Judge/Registrar Elly Tri Pangestu and civil servants at the Supreme Court Registrar's Office, Muhajir Habibie. Desi then distributed the money to a number of parties involved in this case. Desi is said to have received IDR 250 million, Muhajir Habibie IDR 850 million, and Elly IDR 100 million. The Corruption Eradication Commission (KPK) suspects that Desi, Muhajir and Elly have become long-arms for Sudrajad Dimiyati and several parties at the Supreme Court in order to receive bribes from people who are litigating at the Supreme Court.

Sudrajad is said to have received around IDR 800 million through Elly. Yosep and Eko hope that the bribe they have paid will make the Supreme Court Judges grant the cassation decision declaring the Intidana savings and loan cooperative bankrupt. However, during the sting operation (OTT), the Corruption Eradication Commission (KPK) secured 205,000 Singapore dollars and IDR 50 million.

5. Supreme Court Justice Gazalba Saleh

The Corruption Eradication Committee (KPK) detained Supreme Court Judge Gazalba Saleh as a suspect in alleged bribery in the criminal case of the Intidana Savings and Loans Cooperative at the Supreme Court (MA). This detention was carried out after investigators questioned Gazalba for several hours at the KPK's Red and White Building, Kuningan Jakarta, Thursday (8/12/2022). He was detained for 20 days at the KPK Pomdam Jaya Detention Center (Rutan), South Jakarta, exactly 10 days after the KPK announced Gazalba as a suspect on November 28 2022. In this case, Gazalba

Saleh and his subordinates were promised IDR 2.2 billion. The bribe was given through a civil servant at the Supreme Court Registrar's Office named Desi Yustria so that the Supreme Court won the cassation lawsuit filed by Intidana Debtor, Heryanto Tanaka.

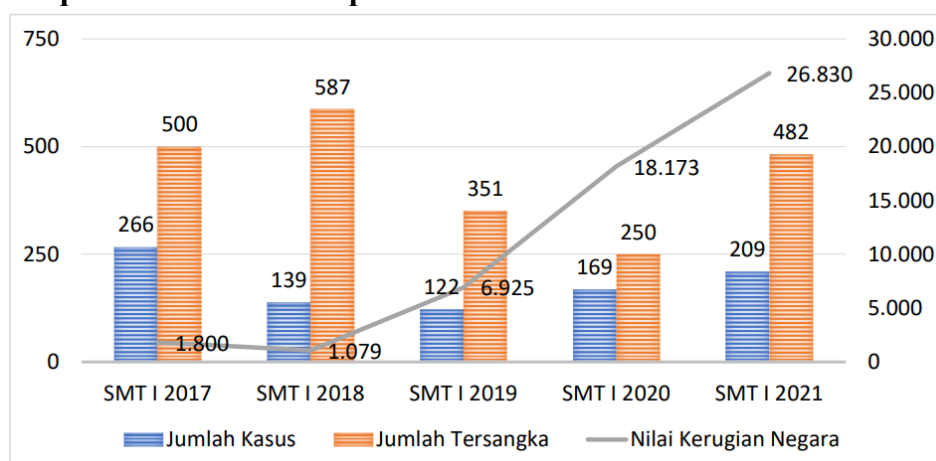
Gazalba is suspected of receiving a bribe of 202,000 Singapore dollars in connection with the processing of the Intidana Savings and Loans Cooperative criminal case at the Supreme Court. Apart from Gazalba, the KPK has also named Prasetyo Nugroho, Redhy Novarisza, as well as Nurmanto Akmal and Desy Yustria, who are civil servants at the Supreme Court, as suspects who received bribes. This case is a development of the bribery case of Supreme Court Justice Sudrajad Dimiyati. He is known to handle civil cases involving the Intidana Savings and Loans Cooperative's cassation lawsuit. Meanwhile, Gazalba handled the cassation lawsuit in the Intidana criminal case.

Corruption is a serious problem that requires extraordinary efforts to eradicate it. This crime can disrupt the country's economy, hamper programs to improve the welfare of citizens, and even disrupt the fulfillment of human rights and access to basic needs of citizens.

This is shown, among other things, by the 2020 Indonesian Corruption Perception Index (IPK), which fell 3 points from 40 to 37 out of a total score of 100, and is ranked 102nd out of 180 countries.<sup>30</sup> In the first semester of 2021, ICW found 209 corruption cases handled by law enforcement. The total number of suspects named was 482 people with various professional backgrounds.<sup>31</sup>

The amount of state losses recovered by law enforcers was around IDR 26,830,943,298,338 (IDR 26.8 trillion), bribes around IDR 96,073,700,000 (IDR 96 billion), and illegal levies around IDR 2,552,420,000 (IDR 2.5 billion). On average, every month there are 35 corruption cases with 80 suspects named by law enforcement. So, on average each law enforcement institution investigates 12 corruption cases with 27 suspects per month. Of the 209 corruption cases handled by law enforcement, 17 cases or around 8.5% of them were case developments. Apart from that, there were only 4 cases of corruption using the Hand Catch Operation (OTT) method or around 1.9%. The remaining 188 cases are newly investigated cases in the period January – June 2021. The following is a table of trends in prosecution of corruption cases in semester I for 5 years:

**Graph 1. Trend of Corruption Case Actions in Semester I for 5 Years**



Source: The Corruption Perceptions Index

<sup>30</sup> Transparency International, "Corruption Perception Index 2020," Transparency.org, 2022, <https://www.transparency.org/en/cpi/2020/index/nzl#> accessed February 17, 2023.

<sup>31</sup> Diky Anandya, Lalola Easter, and Kurnia Ramadhana, Results of Monitoring Trends in Prosecuting Corruption Cases in Semester I 2021 (Jakarta: Indonesia Corruption Watch, 2021), p. 5.

Judging from the graph above, from the first semester of 2017 to the first semester of 2021, prosecution of corruption cases carried out by law enforcement tends to fluctuate, both in terms of the number of cases handled and named suspect. Meanwhile, the value of state losses caused by corruption is increasing. This at least indicates that the budget management carried out by the government every year still needs to be improved in terms of supervision to prevent corruption.

#### **F. High Court Judge's Consideration Number 10/Pid.Sus-TPK/2021/PT.Dki and District Court Decision Number 11/Pid.B/TPK/2008/PN.Jkt.Pst in Imposing Criminal Sanctions**

Corruption is said to be a perfect crime because the perpetrators are considered to be people who are already in good economic conditions, people who are financially prosperous, so it is unreasonable if there are still parties who continue to commit corruption solely to enrich himself. The perpetrator should carry out his responsibilities as a public official, serve the community and provide adequate facilities for the community in such a way as to divert the budget to be used for the perpetrator's personal interests. The method used is organized in such a way that it is difficult to disentangle and find the main perpetrator. This becomes increasingly difficult to do if political interests and forces also play a role in covering up the phenomenon of corruption in Indonesian government.<sup>32</sup>

Based on the data that the author obtained, in 2022, the Corruption Eradication Commission said there would be an increase in prosecution of corruption cases. This data shows that there is an increasing trend in corruption cases when compared to 2021, as stated by the Deputy Chairman of the Corruption Eradication Committee, Alexander Marwata, on Tuesday 27 December 2022 in his year-end performance presentation. Deputy Chairman of the Corruption Eradication Committee, Alexander Marwata, said that the Corruption Eradication Committee (KPK) has named 149 suspects this year. Apart from naming suspects, Alex also said that the KPK will handle more cases in 2022 than in 2021, namely that the KPK has carried out 113 investigations and 120 investigations into corruption cases.<sup>33</sup>

Based on this data, corruption crimes in Indonesia increase every year, even though the threat of punishment provided by law is very severe. This is because the criminal sanctions given by the court judge to the perpetrator are still light, even when the perpetrator is a law enforcement officer such as the Attorney General's Office, as happened in the case of Prosecutor Pinangki's involvement in the case of indications of Pinangki bribery by Djoko Tjandra which was handled by the Attorney General's Office.

Pinangki Sirna Malasari is a prosecutor who is suspected of receiving gratuities amounting to IDR 7.4 billion or around 500 thousand US dollars from Djoko Chandra. His meeting with Djoko Chandra was suspected because Prosecutor Pinangki had left the country without permission nine times in 2019. Prosecutor Pinangki was named a suspect in a corruption case involving receiving gratuities, and was charged under Article 5 paragraph (2) of the Corruption Law.<sup>34</sup>

It is suspected that the giving of gratuities to Prosecutor Pinangki was related to a legal fatwa to benefit Djoko Chandra. However, further investigation found that the gratuity money was a down payment on a larger amount that would be promised.<sup>35</sup>

This case started with Prosecutor Pinangki's meeting with Djoko Chandra in September 2019 where Prosecutor Pinangki was asked to arrange a fatwa to acquit Djoko Chandra in the

<sup>32</sup> Indonesia, High Court Decision Number 10/Pid.Sus-TPK/2021/PT.Dki.

<sup>33</sup> Mirror -saleh accessed January 17 2023.

<sup>34</sup> Indonesia, Law Number 20 of 2001 Law Number 13 of 2016 concerning Patents (LN No. 134 of 2001, TLN No. 4150).

<sup>35</sup> Indonesia, State Court Decision Number 11/Pid.B/TPK/2008/PN.Jkt.Pst.

Bank Bali collection rights case. Prosecutors Pinangki and Djoko Chandra agreed on a gratuity of 10 million dollars for processing the fatwa, and 500 thousand dollars as a down payment. Prosecutors Pinangki and Anita Kolopaking then immediately took care of the production of the fatwa. Anita Kolopaking assisted Prosecutor Pinangki in exchange for 50 thousand dollars. Prosecutor Pinangki handles administration at the prosecutor's office, while Anita Kolopaking handles fatwas at the Supreme Court.

For this case, the public prosecutor asked the panel to sentence him to imprisonment for 4 years, a fine of IDR 500 million subsidiary 6 month confinement. However, on February 8 2021 in Decision Number 38/Pid.Sus-TPK/2021/PN.Jkt.Pst, the Judge of the Corruption Crime Court at the Central Jakarta District Court sentenced Pinangki Sirna Malasari, a functional prosecutor at the Indonesian Attorney General's Office, to be criminally punished. 10 years in prison, a fine of IDR 600 million subsidiary 6 months in prison. He was deemed guilty of committing three criminal acts of corruption, accepting bribes, money laundering and criminal conspiracy.<sup>36</sup>

The judge's consideration in handing down the demands of the Public Prosecutor was higher than the demands put forward by the Public Prosecutor too low, while the defendant's decision is considered fair and does not conflict with society's sense of justice. There were at least 6 weighing considerations for the panel of judges before deciding on this matter. First, he is a law enforcement officer with the position of prosecutor. Second, his actions in helping Joko Tjandra avoid the implementation of the PK involved a Bank Bali cessie case amounting to IDR 94 billion which at that time had not yet been served. Third, Pinangki as the Defendant denied and covered up the involvement of other parties involved.

The fourth consideration is that his actions do not support government programs in efforts to eradicate Corruption, Collusion and Nepotism. Fifth consideration, Pinangki is complicated and does not admit his mistake, and sixth consideration is that Pinangki enjoys the proceeds of the crime he committed. While mitigating considerations exist, he behaves politely, is the breadwinner of the family and has never been punished.

On verdict Accordingly, Prosecutor Pinangki filed an appeal to the DKI Jakarta High Court, and on June 14 2021, Chairman of the Council Muhammad Yusuf, SH, MH granted the appeal submitted by former Pinangki prosecutor Sirna Malasari, by cutting the sentence from the previous 10 years to 4 years in prison. cases of accepting bribes, evil conspiracy and money laundering.

The consideration of the Chairman of the Council, Muhammad Yusuf, SH, MH, who granted the appeal was because Prosecutor Pinangki was A mother of a child who is still a toddler (4 years old) deserves to be given the opportunity to care for and give love to her child as he grows. Apart from that, Attorney Pinangki as a woman must receive attention, protection and be treated fairly. A different thing happened in the corruption case involving Prosecutor Urip Tri Gunawan.

In that case, Urip Tri Gunawan was tasked with supervising the special team formed by the Attorney General's Office to handle BLBI cases. A total of 35 prosecutors were appointed as team members to handle three BLBI cases, namely Bank Central Asia, BDNI and Bank Bali. Urip was not part of the appointed team, but he was a supervisor in resolving the Sjamsul Nursalim case in granting BLBI to BDNI.<sup>37</sup>

<sup>36</sup> In this case, Pinangki was proven to have committed three charges, namely the first charge, subsidiary to Article 11 of Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning Eradication of Corruption Crimes; Article 3 Law no. 8 of 2010 concerning Prevention of Money Laundering Crimes and the third subsidiary indictment of Article 15 jo. Article 13 Law no. 31 of 1999 as amended by Law no. 20 of 2001 concerning the Eradication of Corruption Crimes.

<sup>37</sup> J Danang Widoyoko, "Reproduction of Corruption: Case Study of Corruption Attorney Urip Tri Gunawan," *Legal Issues* 42, no. 1 (2013): p. 16-17, <https://doi.org/10.14710/mmh.42.1.2013.13-22>.

Artalyta initially asked for help from Urip Tri Gunawan to meet with Muhamad Salim, Director of Investigation at the Attorney General's Jampidsus in connection with an invitation to Sjamsul Nursalim. The invitation was to examine Sjamsul Nursalim regarding BLBI. With the help of Urip Tri Gunawan and Ojoko Widodo, Head of the East Jakarta District Prosecutor's Office, Artalyta managed to meet M. Salim and Kemas Yahya Rahman, Deputy Attorney General for Special Crimes.

Artalyta's closeness apparently had a specific purpose, namely to stop the BLBI case with suspect Sjamsul Nursalim. On Sunday, March 2 2008, Artalyta handed over USD 660,000 in a white mineral water cardboard box. The money was 6600 USD 100 notes. The money was taken by UNP at Artalyta's house in Jl. Hang Lekir Block WG9, South Jakarta.

Moments after receiving the bribe, Urip was then arrested by 15 officers from the Corruption Eradication Commission (KPK) in his Kijang car with the money. The bribe money was given after the Prosecutor's Office issued SP3 in the Sjamsul Nursalim case. After arresting Urip Tri Gunawan, the KPK then detained Artalyta and his personal bodyguard, Agus Heriyanto. Agus is an active TNI member and did not report to his superiors when he was Artalyta's personal bodyguard.<sup>38</sup>

Based on this case, the Panel of Judges at the Central Jakarta District Court, based on Decision Number 11/PID.B/TPK/2008/PN.JKT.Pst, sentenced the Defendant Urip Tri Gunawan to 20 (twenty) years in prison, and a fine of IDR 500,000,000.00 (five hundred million rupiah) with the provision that if the fine is not paid, it will be replaced by 1 (one) year in prison.

The consideration of the Panel of Judges was that the Defendant, as a State administrator or law enforcement officer at the Indonesian Attorney General's Office, did not support the government's program to accelerate the eradication of criminal acts of corruption. The defendant, as a state administrator or law enforcement officer at the Indonesian Attorney General's Office, has damaged the image or credibility of the Indonesian Attorney General's Office and law enforcement in general.

Another consideration is that the Defendant has committed acts of discrimination in law enforcement, especially in the investigation of the BLBI II PT case. BDNI belongs to Sjamsul Nursalim. The Defendant has committed more than one criminal act of corruption (concurrent/concurrent), and the Defendant has never admitted his actions and has been complicated at trial.

Based on the 2 (two) cases above, it can be seen that there are Differences in punishment for the same crime are called disparities. This is because judges have freedom in giving decisions, even in the same case. However, differences that do not have the same philosophical basis, criteria and measurements can be an abuse of power.

The author is of the opinion that the disparity in cases of criminal acts of corruption is caused by the following factors:

1. Structural Elements (Structure)

Aspects of structural elements (structure) by Friedman are formulated as follows:<sup>39</sup>

“The structure of the legal system consists of elements of this kind; the number and size of courts; their jurisdiction (i.e., what types of cases they hear, and how and why), and the mode of appeal from one court to another. Structure also means how the legislature is organized, how many members sit on the Federal Trade Commission, what a president can do or not do (legally), what procedures police departments follow, and so on.”

<sup>38</sup> *Ibid.*

<sup>39</sup> Lawrence M. Friedman, "Legal Theory," in Haidir Rachman, Defendant's Recognition of Guilt in the Criminal Justice System (Bekasi: Intellectual Writer, 2021), p. 62.

Referring to the formulation above, the courts and their organizations and the DPR are structural elements of the legal system. The DPR institution as a structural element, equipment and members of the DPR are structural aspects of the legal system.<sup>40</sup> The judicial legal system in Indonesia applies the principle of disparity, namely there is Differences in punishment for the same crime are called disparities.<sup>41</sup>

The opposite of disparity is the concept of parity, which means equality of values. In the context of punishment, parity is the equality of punishment for crimes with similar conditions. Based on this, disparity means that there are differences in punishment for crimes with similar conditions or in other words, there are unequal criminal sanctions for the same criminal act.

According to Muladi and Arief, stated:<sup>42</sup>

"Disparity criminal justice (disparity of sentencing) is the application of unequal sentences to the same crime (same offence) or to criminal acts whose dangerous nature is comparable (offences of comparable seriousness) without a clear justification."

The character of judges who are free and impartial is a universal requirement in a justice system. The administration of the justice system in Indonesia is carried out by judicial institutions, namely by means of examinations at court hearings led by judges. In administering criminal law, judges are active in asking questions and providing opportunities for defendants who may be represented by legal advisors to question witnesses, as well as public prosecutors with the aim of obtaining material truth. A judge will determine the future fate of the defendant through his decision because in essence it is the judge who exercises the legal power of the judiciary for the sake of carrying out the proper function of the judiciary.<sup>43</sup>

The judge's freedom to decide a case is an absolute thing that the judge has. This is regulated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, namely that judges have the task of adjudicating cases with the dimension of upholding justice and the law. In the provisions of Article 2 paragraph (4), Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, it is determined that, "Judicial justice is carried out based on the Almighty God." The consequence of this provision is that judges, in adjudicating and deciding a case, other than based on statutory regulations, must also be in accordance with their beliefs.

As is known, judges have constitutional freedom in imposing sentences as long as they move within the maximum and minimum limits set by law. This condition is one of the reasons why disparity issues always fail to be discussed at the policy-making level. The judge's independence in deciding a case seems to make disparities a "legitimate injustice" because they are included in the judge's independence. This means that there is injustice and it is real and it is felt, it is difficult to correct because it is within the authoritative authority of a judge.

## 2. Element Substance (Substance)

Explanation Friedman regarding the legal substance is as follows:

"What is meant by this are the actual rules, norms and behavioral patterns of people in the system. This is, first of all, 'the law' in the popular sense of the term - the fact

<sup>40</sup> *Ibid.*

<sup>41</sup> Bambang Waluyo, *Crime and Punishment* (Jakarta: Sinar Grafa, 2014), p. 5.

<sup>42</sup> *Ibid.*, p. 8.

<sup>43</sup> Nanda Agung Dewantara, *The Problem of Judges' Freedom in Handling Criminal Cases* (Jakarta: Aksara Persada, 2006), p. 25.

that the speed limit is fifty-five miles per hour, thieves can be sent to prison, that 'by law' the pickle maker has to list the ingredients on the jar label .”<sup>44</sup>

Based on This, Friedman said, is that what is meant by legal substance are existing regulations, norms and rules regarding human behavior, or what people usually know as "law" is the substance of law. The author believes that There is a weakness in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.<sup>45</sup>

This is because there is a limit to the phrase "certain circumstances" regulated in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which is limited only to times when the country is in a state of danger. in accordance with applicable law, when a national natural disaster occurs, as a repetition of criminal acts of corruption, or when the country is in a state of economic and monetary crisis.

The existence of restrictions in the phrase "certain circumstances" means that when law enforcement officers commit criminal acts of corruption, those law enforcement officers who should be at the forefront of law enforcement actually become one of the main perpetrators in criminal acts of corruption, and the punishment applied to these perpetrators equal or even lower than perpetrators who are not law enforcement officers.

### 3. Element Legal Culture (Legal Culture)

Friedman defines it as attitudes and society towards law and system law, about beliefs, values, ideas and expectations of society regarding the law.<sup>46</sup>

In his writing Friedman formulates it as follows:

“Means are people's attitudes toward the law and the legal system—their beliefs, values, ideas, and hopes, in other words, part of the general culture that concerns the legal system.”<sup>47</sup>

Based on this, the obstacles in legal culture originate from negative habits that have developed in society, including the existence of a 'reticent' and tolerant attitude among government officials which can hinder the handling of criminal acts of corruption; lack of openness by agency leaders, so that they often appear tolerant and protective of perpetrators of corruption, executive, legislative and judicial interference in handling criminal acts of corruption, low commitment to dealing with corruption firmly and completely, as well as the permissive attitude (indifferent) of the majority of society towards eradication efforts corruption.<sup>48</sup>

Based on the factors above, it is necessary to make efforts law enforcement fair towards law enforcement officers in future criminal acts of corruption which the author describes in the discussion of the second problem formulation.

## CONCLUSION

Based on the discussion above, it can be concluded that the considerations of the DKI Jakarta High Court Judge Number 10/Pid.Sus-TPK/2021/PT.Dki and the Decision of the

<sup>44</sup> *Ibid.*

<sup>45</sup> Indonesia, Law Number 20 of 2001 Law Number 13 of 2016 concerning Patents (LN No. 134 of 2001, TLN No. 4150).

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Salma Napisa and Hafizh Yustio, "Corruption in Indonesia (Causes, Dangers, Obstacles and Eradication Efforts, and Regulations) Literature Review on Educational Management and Social Sciences," *Journal of Educational Management and Social Sciences* 2, no. 2 (2021): p. 252-253, <https://doi.org/10.38035/jmpis.v2i2.595>.

Central Jakarta District Court Number 11/Pid.B/TPK/2008/PN.Jkt. Pst in the imposition of criminal sanctions carried out by Prosecutor Pinangki and Prosecutor Urip Tri Gunawan is based on mitigating and aggravating factors which cause disparities to occur. This is caused by structural factors, namely the freedom of judges in handing down decisions as regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia jo. Article 5 paragraph (1) Law Number 48 of 2009 concerning Judicial Power.

Regarding the substance factor, namely the weakness in Article 2 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes regarding the limitation of the phrase "certain circumstances" which are limited to only when the state is in a state of danger in accordance with applicable law, when a national natural disaster occurs, as a repetition of criminal acts of corruption, or when the country is in a state of economic and monetary crisis. Cultural factors, namely negative habits that have developed in society, including the existence of a "reticent and tolerant attitude" among government officials which can hinder the handling of criminal acts of corruption.

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