

Sentencing under Articles 2 and 3 of the Anti-Corruption Law about Supreme Court Regulation No. 1 of 2020 and Legal Certainty

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ABSTRACT

This study aims to analyze the urgency of amending Supreme Court Regulation No. 1 of 2020 concerning the Sentencing Guidelines for Articles 2 and 3 of the Anti-Corruption Law (Perma 1/2020). The research applies a normative juridical approach, utilizing statutory, case, and comparative legal methods. Perma 1/2020 emerged as a responsive measure to address the issue of unwarranted disparity in corruption convictions. However, its application has yet to be consistently adhered to by judges when adjudicating corruption offences, especially those regulated under Articles 2 and 3 of the Anti-Corruption Law. Therefore, stronger legal reinforcement is required to ensure that Perma 1/2020 can be implemented consistently across all verdicts in corruption cases.

Keywords: Disparity, Corruption, Sentencing Guidelines

INTRODUCTION

Law Number 31 of 1999 on the Eradication of Corruption, as amended by Law Number 20 of 2001 (the Anti-Corruption Law), stipulates 30 types of corrupt practices, grouped into seven main categories. One of the most significant categories in its implementation is corruption offences that result in state financial losses, specifically regulated under Articles 2 and 3 of the Anti-Corruption Law. According to research conducted by Indonesia Corruption Watch (ICW) between 2019 and 2023, the most common category of corruption offences was those resulting in state financial losses, followed by bribery and extortion (Diky Anandya, 2024). In terms of quantity, cases involving state financial losses far exceed the other two categories.

Each year, corruption offences that result in substantial financial losses for the state cause significant damage and have highly complex systemic impacts. In law enforcement practice, Public Prosecutors frequently utilize Articles 2 and 3 of the Anti-Corruption Law to indict perpetrators. Nevertheless, in the process of sentencing by judges, significant variations often arise even though the offences and the amount of state losses caused are nearly identical. Such inconsistencies, which lack legal justification and sound consideration, are known as unwarranted disparity—a phenomenon that raises serious concerns within the judicial system (Nimerodi Gulo & Ade Kurniawan, 2018).

In practice, significant differences in verdicts for similar cases often occur despite comparable elements of the offence and nearly identical financial impacts on the state. Such disparity is permissible only if it rests upon valid legal reasons and rational arguments. However, when differences in verdicts lack a clear legal basis and contravene the principles of justice, they fall into the category of unwarranted disparity, thereby undermining the essence of criminal law.

The phenomenon of unwarranted disparity in the sentencing of corruption cases has been extensively discussed in a study conducted by the Indonesian Judicial Monitoring Society (MaPPI FHUI) in 2017. An examination of 587 *judex facti* decisions across different regions involving a total of 689 convicts, revealed that approximately 66% of these decisions reflected inconsistencies in sentencing (Akbari & Saputro, 2017). This was observed despite significant similarity across the cases in terms of

characteristics and financial impact, as evidenced by the notable differences in the sentences imposed (MaPPI FHUI, 2018).

In response to this issue, the Supreme Court issued Supreme Court Regulation Number 1 of 2020 on Sentencing Guidelines for Articles 2 and 3 of the Anti-Corruption Law (Perma 1/2020). This regulation was designed to uphold the principles of legal certainty and proportionality in sentencing, aligning with the ideals of justice as set forth in the Pancasila and the 1945 Constitution, while preserving judicial independence. The regulation aims to serve as a normative reference point, providing clearer direction for sentencing practices and ensuring greater consistency.

However, in reality, the implementation of Perma 1/2020 has yet to be applied consistently in every corruption case. This is largely due to the constitutional guarantee of judicial independence as stated in the Judicial Power Law, allowing judges to impose sentences based on their personal convictions. Although this principle is vital for safeguarding the independence of the judiciary, its application has, in certain instances, led to a lack of adherence to sentencing guidelines such as Perma 1/2020, thereby creating a potential for unwarranted disparity.

The inconsistency in applying Perma 1/2020 within the judicial process not only obscures legal clarity for defendants but also damages the image of the judicial institutions in the eyes of the public. When society witnesses disparate verdicts for nearly identical cases, the credibility of the legal system itself is called into question. Such a situation may foster perceptions that justice is not administered objectively, thereby undermining public trust in the judicial institutions (Irfan Ardiansyah, 2017).

Consequently, concrete measures are required to strengthen the enforceability and binding nature of Perma 1/2020 within the judicial process. One approach is to elevate the status of this regulation to a higher legal instrument, such as a statute or a government regulation. By doing so, the guidelines will carry binding legal force and must be adhered to by judges when imposing sentences in corruption cases, thereby ensuring a fair, consistent, and accountable legal system.

METHOD

This study applies the normative legal research method, also known as doctrinal legal research, which is primarily aimed at examining legal norms as guiding principles for behavior within society (Effendi, 2020; Marzuki, 2005; Soekanto & Mamudji, 2003; Hutchinson, 2017; McConville & Chui, 2007). The approach emphasizes the identification, interpretation, and systematization of legal rules, doctrines, and principles that govern the enforcement and application of laws within a particular legal system. According to Effendi (2020), normative legal research allows researchers to critically analyze statutory regulations, court decisions, and legal theories, ensuring a comprehensive understanding of the relevant legal issues (Marzuki, 2005; Soekanto & Mamudji, 2003; Hutchinson, 2017). In this context, the legal materials used comprise legislative regulations, judicial decisions, general legal principles, and doctrinal literature, which collectively serve as the foundation for analyzing the legal phenomenon under investigation (McConville & Chui, 2007; Effendi, 2020).

To achieve an in-depth and structured analysis, this study employs three methodological approaches: the statutory approach, the case approach, and the comparative legal approach (Marzuki, 2005; Soekanto & Mamudji, 2003; Hutchinson, 2017; McConville & Chui, 2007; Effendi, 2020). The statutory approach aims to assess the structure, content, and normative implications of the relevant legislation, focusing

on Articles 2 and 3 of the Anti-Corruption Law. Meanwhile, the case approach analyzes judicial decisions related to these articles, allowing for the identification of inconsistencies and patterns in sentencing practice (Hutchinson, 2017; McConville & Chui, 2007). The comparative approach provides a critical examination of legal practices across different jurisdictions, highlighting best practices and lessons learned, which can be used to refine the application of Perma 1/2020 to achieve legal certainty and proportionality in corruption case sentencing (Effendi, 2020; Marzuki, 2005; Soekanto & Mamudji, 2003).

RESULTS AND DISCUSSION

1. Analysis of the Ratio Legis of Supreme Court Regulation No. 1 of 2020 Concerning Sentencing Guidelines for Corruption Offenses

a. Philosophical Foundation of the Enactment of Supreme Court Regulation No. 1 of 2020 on Sentencing Guidelines for Corruption Offenses

The philosophical foundation serves as the principal basis for formulating legal regulations, highlighting the importance of aligning with the ideal of law, the legal consciousness of society, and the worldview rooted in the spiritual and philosophical values of the Indonesian nation (Sri Wahyuni, 2022). In the context of legislative drafting, this means that the spiritual essence and national identity must be internalized into legal norms, ensuring that every legal provision reflects the principles of Pancasila as the foundation of the state and as the source of all legal norms in Indonesia. Similarly, conformity with the 1945 Constitution of the Republic of Indonesia (UUD 1945) is an absolute requirement, ensuring that the resulting legislation embodies the moral and philosophical values upon which the nation is built.

In the realm of combating corruption, every legislative provision must be aimed at fostering a just and ideal life for the state and its citizens, as mandated in the Preamble of the 1945 Constitution. This is further emphasized in the preamble of the Anti-Corruption Law, which declares that corruption not only causes financial loss to the state, but also violates the economic and social rights of the people and must be addressed through a fair and effective legal approach.

Article 24(1) of the 1945 Constitution stipulates that judicial power rests with the Supreme Court and the Constitutional Court as independent institutions responsible for administering a judiciary that upholds the rule of law and justice. This provision serves as a strong philosophical foundation for the issuance of Perma 1/2020. As the highest judicial body, the Supreme Court has both a moral and constitutional obligation to ensure that sentencing in corruption cases is conducted in a fair, proportionate, and consistent manner that upholds the essence of substantive justice.

Moreover, the consideration stated in Letter A of Perma 1/2020 clearly reflects its philosophical foundation. It affirms that every imposition of a criminal sentence must be based on the principles of legal certainty and proportionality, in order to realize justice in line with the noble values of Pancasila and the 1945 Constitution. As such, the imposition of penalties must be conducted with utmost care, achieving a balance between the degree of guilt and the penalty rendered, so that every court decision reflects a sense of justice consistent with the nation's core values and constitutional ideals.

b. Sociological Foundation of the Enactment of Supreme Court Regulation No. 1 of 2020 on Sentencing Guidelines for Corruption Offenses

The sociological foundation is an essential consideration in the formulation of any legislation, as it reflects the reality that the legislative process must account for society's actual needs and demands for a legal system that can respond effectively to

pressing issues. This consideration emerges from observations of social dynamics and is closely tied to the role of the law as both an instrument of social control and a means of reconstructing social values, with the aim of shaping behavior aligned with desired social transformations (Satjipto Rahardjo, 2006). In this regard, the sociological basis is vital to ensure that any regulation is embraced and operates effectively within society, without relying excessively on state enforcement (Erina Pane, 2019).

The formulation of Perma 1/2020 was not only motivated by normative requirements within the Supreme Court itself, but also emerged as a direct response to the growing public concern about inconsistencies in corruption sentencing. The phenomenon of unwarranted disparity in court decisions became a significant catalyst for the establishment of an authoritative, equitable, and accountable sentencing guideline. In this context, Perma 1/2020 holds crucial sociological significance as a concrete answer to society's demand for legal certainty and justice, delivered in a transparent and trustworthy manner.

To further support this point, in 2017, the Supreme Court received the results of a study conducted by the Indonesian Judicial Monitoring Society of the University of Indonesia's Faculty of Law (MaPPI FHUI), which examined 587 *judex factie* decisions across different regions in Indonesia, involving a total of 689 convicted individuals (MaPPI FHUI, 2018). The findings revealed that approximately 66% of the decisions reflected inconsistencies in sentencing despite similar case characteristics. In light of this, the Supreme Court responded proactively by issuing Perma 1/2020 as a concrete measure of internal reform aimed at ensuring a fair, uniform, and responsive sentencing framework that meets the public's legitimate demands for accountability and justice.

c. Juridical Foundation of the Enactment of Supreme Court Regulation No. 1 of 2020 on Sentencing Guidelines for Corruption Offenses

The juridical foundation plays a pivotal role in the formulation of any legislation, ensuring that every legal provision is established to respond effectively to evolving legal challenges. This process involves the re-examination of existing provisions, an assessment of their effectiveness in practice, and their subsequent revision or revocation if they have become obsolete or irrelevant. The primary goal is to guarantee legal certainty and ensure that justice is administered equitably across society. The juridical foundation also serves as a measure of the legitimacy of any regulation, as it must be enacted by an institution possessing valid legal authority, thereby reinforcing its binding force (Hestu Cipto, 2008).

The status of a Supreme Court Regulation (Perma) within the national legal system is clearly acknowledged in Articles 8(1) and (2) of Law Number 12 of 2011 on the Formation of Regulations, which assert that the existence of a Perma is recognized and binding, as long as its enactment is based upon a higher legal provision. In this context, the Perma constitutes a legitimate form of regulation issued by the Supreme Court as an institution granted constitutional authority to regulate the technical aspects of judicial proceedings. Although a Perma is not explicitly enumerated within the hierarchical structure set forth in Article 7(1) of the aforementioned law, it is nonetheless binding and authoritative due to its formal legitimacy rooted in a higher legal norm.

Article 79 of Law Number 14 of 1985 on the Supreme Court, as amended by Law Number 3 of 2009, provides additional legitimacy for the Supreme Court to issue regulations. This provision stipulates that the Supreme Court is authorized to

promulgate any regulations it deems necessary to ensure the effective administration of justice, especially when certain legal aspects have not been expressly addressed in statutory law (Law No. 14 of 1985, Art. 79). As such, Perma 1/2020 is a vital instrument for strengthening judicial performance, ensuring effectiveness, accountability, and legal order in the prosecution and adjudication of corruption cases.

2. Analysis of Unwarranted Disparity in Sentencing Decisions Under Articles 2 and 3 of the Anti-Corruption Law

This section aims to reinforce the argument that numerous court decisions have failed to adhere to the Supreme Court Regulation No. 1 of 2020. It analyzes three court decisions in corruption cases, including one case decided under Article 2 of the Anti-Corruption Law and two others decided under Article 3. The purpose of this analysis is to identify instances of sentencing disparity that lack valid and rational legal justification—or what is commonly termed as *unwarranted disparity*—and to underscore the fact that Perma 1/2020 has not been used as a guiding reference in judicial reasoning when imposing penalties.

In the first case, Decision No. 7/Pid.Sus-TPK/2023/PN Bjm, the court ruled that the defendant was proven guilty beyond a reasonable doubt of committing corruption that caused state financial losses totaling IDR 666,000,000.00. The court, relying upon Article 3 of the Anti-Corruption Law, sentenced the defendant to four years of imprisonment and a fine of IDR 200,000,000.00. However, in accordance with the annex to Perma 1/2020, this amount of loss falls into the “moderate” category, which should be punished with a prison sentence ranging between eight and ten years and a fine of IDR 400,000,000.00–650,000,000.00. This clearly demonstrates a significant discrepancy between the court’s decision and the sentencing standards established in Perma 1/2020.

In the second case, Decision No. 15/Pid.Sus-TPK/2023/PN Pdg, the court ruled that the defendant caused state financial losses of IDR 7,309,607,291.63 and was sentenced to one year of imprisonment and a fine of IDR 50,000,000.00, based on Article 2 of the Anti-Corruption Law. Meanwhile, in the third case, Decision No. 16/Pid.Sus-TPK/2023/PN Pbr, the defendant was found guilty of causing state losses of IDR 4,296,945,000.00 and was sentenced to three years and six months of imprisonment and a fine of IDR 50,000,000.00, also based on Article 2. In both cases, the amounts of state loss fall within the “moderate” category defined in Perma 1/2020, which stipulates a minimum prison term of six years and a fine of at least IDR 300,000,000.00.

These cases clearly reveal inconsistencies in the application of sentencing guidelines and strongly suggest instances of unwarranted disparity. According to the annex of Perma 1/2020, state losses falling within the “moderate” range of IDR 1,000,000,000.00–25,000,000,000.00 must be punished with a prison term of at least six years and a fine of at least IDR 300,000,000.00. Yet, in reality, the prison and fine sentences handed down in the second and third cases were far below the minimum thresholds established by the Perma.

Based on the examination of these three decisions, it can be concluded that Perma 1/2020 was not used as a point of reference by the judges when crafting their rulings, despite its status as a normative instrument issued by the Supreme Court. The failure to adhere to this guideline creates legal uncertainty and provides an expansive space for judicial subjectivity. When discrepancies arise that bear no rational or legal justification, especially in cases with comparable characteristics and impacts, this practice must be viewed as a form of unwarranted disparity.

Through an in-depth review of these three decisions, it becomes evident that the judges made no reference to or consideration of Perma 1/2020 in their legal reasoning. This is highly problematic, as the Perma constitutes a binding normative instrument issued by the Supreme Court for the technical guidance of the judiciary. The absence of compliance with these guidelines leads to legal uncertainty and allows for greater judicial subjectivity, creating a situation where penalties no longer reliably reflect the nature and severity of the offense committed. When disparity occurs without a sound and rational basis, it undermines the core tenets of justice and consistency upon which the criminal justice system depends.

3. The Urgency of Amending Supreme Court Regulation No. 1 of 2020 Concerning Sentencing Guidelines for Corruption Offenses

The enactment of Perma No. 1 of 2020 is grounded upon three fundamental dimensions: philosophical, sociological, and juridical. Philosophically, the regulation finds its roots in the noble values of Pancasila and the 1945 Constitution, which emphasize social justice and legal certainty as central tenets of the judicial process. Sociologically, it emerged as a response to widespread public concern about sentencing inconsistencies in corruption cases, which had severely impacted trust in the legal system. Meanwhile, from a juridical standpoint, the establishment of this regulation is legitimized by the constitutional and statutory powers granted to the Supreme Court under Article 79 of the Law on the Supreme Court and Article 8 of the Law on the Formation of Legislation (Law No. 12 of 2011). Although it is not equal in hierarchy to a statute, Perma 1/2020 serves as a binding technical instrument within the judicial framework.

Nevertheless, the implementation of Perma 1/2020 has revealed significant inconsistencies across corruption cases. In decisions No. 7/Pid.Sus-TPK/2023/PN Bjm, No. 15/Pid.Sus-TPK/2023/PN Pdg, and No. 16/Pid.Sus-TPK/2023/PN Pbr, the sentences rendered failed to adhere to the prescribed ranges, despite the state losses being clearly classified within the "moderate" range. This results in instances of unwarranted disparity, where penalties bear no rational or juridical justification. Such inconsistencies do not merely create legal uncertainty for the defendants but also diminish the quality of justice and undermine the credibility of the judicial institution. The Perma was intended to serve as a quantitative and qualitative benchmark for sentencing, making its sidelining by judges a serious threat to the rule of law.

From the viewpoint of legal certainty, as advocated by Gustav Radbruch, the exclusion of Perma 1/2020 constitutes a direct contravention of one of the fundamental principles of the legal system. Radbruch asserted that enforceable and binding legal norms are vital to ensure the stability of the rule of law as a foundation for achieving justice (Lusiana Margareth & Fenty Puluhulawa, 2020). When a duly enacted legal norm is ignored, its authority is weakened, and its role in sustaining the legal order is diminished. An ideal legal system, Radbruch argued, must remain stable, predictable, and capable of providing equal protection for all. In this regard, the inconsistent application of Perma 1/2020 contradicts the very essence of legal certainty and threatens the legitimacy and integrity of the judicial process.

Similarly, Van Apeldoorn emphasized that legal certainty requires clearly defined, authoritative rules, serving as the foundation upon which society can assess whether the law is administered properly. Without such clarity, judicial decisions become unpredictable and susceptible to arbitrary application. In the context of corruption proceedings, when the binding sentencing standards set forth by Perma 1/2020 are neglected, the direction and nature of verdicts become ambiguous and

difficult to anticipate. This ultimately erodes public trust in the legal system and damages the perceived legitimacy of the judiciary.

From a social perspective, inconsistency in corruption case sentencing has profound implications for the public's perception of the justice system (Purwoto Ajeng, 2019). When penalties fail to align with the gravity of the offense and its resulting damages, society often perceives the legal system as unfair, inequitable, and selectively enforced. This perception can diminish the effectiveness of law enforcement and foster apathy towards legal proceedings. Moreover, unwarranted disparities in sentencing undermine the deterrent effect of punishment. To this end, ensuring consistency in the application of Perma 1/2020 is vital for preserving the credibility and legitimacy of the national legal system.

In addressing the implementation shortcomings of Perma 1/2020, it is necessary to pursue a formal reconfiguration that strengthens its binding status within the legal framework. One viable option is to elevate the regulation to the status of a Government Regulation, thereby making it binding upon all judicial authorities and ensuring its consistent application across corruption cases. In doing so, this reformulation must be harmonized with the provisions of the 2023 Penal Code (KUHP 2023), allowing the sentencing regime for corruption offenses to evolve in line with contemporary legal standards and the demands of justice (Erwanti, 2024). Such an approach will further solidify the principles of legal certainty, equity, and accountability within the Indonesian criminal justice system.

CONCLUSION

Based on the analysis presented throughout this study, several conclusions can be drawn. Philosophically, Supreme Court Regulation No. 1 of 2020 is rooted in the fundamental values of Pancasila and the 1945 Constitution, which emphasize the significance of justice and legal certainty as core tenets of the state. From a sociological standpoint, the regulation emerged as a direct response to widespread public concern over the inconsistency and disparity observed in sentencing decisions for corruption cases. Meanwhile, from a juridical perspective, this regulation is a legitimate legal instrument issued by the Supreme Court, grounded in its constitutional authority as stipulated in Article 79 of the Law on the Supreme Court and Article 8 of the Law on the Formation of Legislation.

The examination of three selected court decisions in corruption cases further highlights the persistence of inconsistency in applying the sentencing guidelines established by Supreme Court Regulation No. 1 of 2020. These inconsistencies, which lack adequate legal justification, clearly fall within the category of unwarranted disparity. The failure to utilize the regulation as a reference allows for broad judicial subjectivity, undermining the fundamental principle of legal certainty that is vital for ensuring justice within the judicial system.

In light of this, it is evident that a shift from the current form of the regulation to a Government Regulation would be a crucial step toward reinforcing its legitimacy and binding force, thereby making its application mandatory for judges in all relevant cases. Moreover, such a reformulation must be expansive enough to encompass the provisions of the 2023 Penal Code, including Articles 603 and 604, ensuring that it remains relevant, comprehensive, and adaptable to evolving legal and social dynamics. By strengthening its normative status and expanding its scope, the sentencing guideline will be better positioned to guarantee consistency, transparency, and accountability in the enforcement and adjudication of corruption offenses.

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