
The Implementation of Criminal Procedures to Perpetrators of Corruption Crimes Based on The Regulations of The Supreme Court of The Republic of Indonesia No. 1 of 2020

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ABSTRACT

The Jambi Corruption Crime Court (Tipikor) in handing down crimes is more dominant in applying Article 3 compared to Article 2 against perpetrators who cause harm to state finances and handing down decisions in the light category, namely an average of 1 year and 11 months. Regarding this issue, the aim of the research is to carry out an analysis of the judge's decision in relation to the implementation of Supreme Court Regulation (PERMA) No. 1 of 2020 concerning Sentencing Guidelines for Article 2 and Article 3 of the Corruption Law. By conducting a study of the Jambi Corruption Court's decision, the judge's decision will be evaluated in the light, medium and heavy categories, so that a clear picture of the judge's rationale in implementing PERMA No.1 of 2020 is obtained. The type of research is normative juridical, namely examining materials law, both primary, secondary and tertiary legal materials. The approach is to use a statutory approach and a case approach by analyzing cases related to the legal issues discussed. From the results of the research on the Jambi District Court's decision 1) The decision handed down by the Judge regarding the implementation of PERMA Number 1 of 2020 has not been used as a guideline in handing down the decision. This can be assessed from the verdict handed down by the judge. The length of the prison sentence imposed is not in accordance with the categories as formulated, namely the categories of state losses are the most severe, heavy, medium, light and lightest, where in each category there is a classification, namely the range of prison sentences imposed is adjusted to that category. 2) The aim of punishment in corruption cases is to recover state losses, but in the imposition of a substitute sentence imposed by the judge the aim of the sentence has not been realized, because in PERMA there is no regulation regarding guidelines for imposing additional punishment as replacement money.

1. INTRODUCTION

The issue of corruption in Indonesia is still a serious problem. This is inseparable from data obtained from the 2020 Corruption Perception Index (IPK), Indonesia is in 102nd position out of 180 countries. When compared to 2019, Indonesia is in 85th place with a score of 40. Even though there has been a decrease of 3 (three) points in the GPA, Indonesia is still considered not optimal in eradicating corruption, (Suyatmiko, 2021). Corruption requires

serious handling, because corruption is an act that causes danger on a wide scale and the number of cases continues to increase. The high number of corruption has an effect on increasing the number of state losses. Indonesia experienced losses throughout 2019 amounting to IDR 18,100,000,000,000.-. This proves that the system is not working optimally and needs improvements, (Imenteri, at al., 2020).

Therefore, the Government needs to use various methods in its law enforcement process, such as handling it carefully and thoroughly by taking into account its juridical and empirical rules, (Hartati, 2009). So that a decision will be obtained that has the value of justice, the realization of legal certainty, and the benefits for the nation and state. Law enforcement is carried out through court decisions in terms of sentencing the perpetrator, based on data from the Jambi District Court in 2019, where the decision was handed down before the Supreme Court Regulation (PERMA) No.1 of 2020. The decision was handed down by the Corruption Crime Judge (TIPIKOR) Jambi, decisions in imposing criminal penalties are more dominant in applying Article 3 compared to Article 2 of the Corruption Law. Corruption perpetrators are mostly sentenced to light sentences, namely an average of 1 year 11 months, (Anshar, 2018). This can be seen from the page of the Directory of Supreme Court Decisions and the Case Tracking Information System (SIPP). Several decisions were handed down against perpetrators of corruption before the existence of PERMA No.1 of 2020, based on the following table:

Tabel 1. Jambi Tipikor Court Decision before PERMA No.1 of 2020

No.	Decision Cas Number	Corruption Accused	Decision
1	1/Pid.Sus-TPK/2019/PN Jmb	Poltak Hendra, S	1 year
2	2/Pid.Sus-TPK/2019/PN Jmb	Isnedi, S. Kom., M. M	1 Year 2 Months
3	3/Pid.Sus-TPK/2019/PN Jmb	David Yuliadi	1 Year 2 Months
4	4/Pid.Sus-TPK/2019/PN Jmb	Dedi Irawan	1 Year 2 Months
5	5/Pid.Sus-TPK/2019/PN Jmb	Gerry Farilan	3 Year 6 Months
6	6/Pid.Sus-TPK/2019/PN Jmb	Indro Marvianto	1 Year 2 Months
7	7/Pid.Sus-TPK/2019/PN Jmb	Panji Pradana	1 Year 2 Months
8	8/Pid.Sus-TPK/2019/PN Jmb	Musdar	2 Years 10 Months
9	9/Pid.Sus-TPK/2019/PN Jmb	Sumono, S. Pd. I., M. Si	2 Years
10	10/Pid.Sus-TPK/2019/PN Jmb	Drs. Syahrial Rahman	2 Years
11	11/Pid.Sus-TPK/2019/PN Jmb	Nurikwan, S. E	2 Years 6 Months
12	14/Pid.Sus-TPK/2019/PN Jmb	Ibnu Ziady	1 Years
13	15/Pid.Sus-TPK/2019/PN Jmb	Ito Mukhtar	1 Years 2 Months
14	17/Pid.Sus-TPK/2019/PN Jmb	Irfan Rakhmadani, S. STP., M. Si	3 Years 4 Months
15	18/Pid.Sus-TPK/2019/PN Jmb	Farida	2 Years
16	19/Pid.Sus-TPK/2019/PN Jmb	Toni Candra, S. E	1 Year 4 Months
17	20/Pid.Sus-TPK/2019/PN Jmb	Firdaus, S. T	1 Year 6 Months
18	21/Pid.Sus-TPK/2019/PN Jmb	Wadio Asmoro	1 Year
19	22/Pid.Sus-TPK/2019/PN Jmb	Efrin Irpan, S. T	1 Year
20	24/Pid.Sus-TPK/2019/PN Jmb	Hj. Ratna Juwita, S. Si., Apt	1 Year 4 Months
21	25/Pid.Sus-TPK/2019/PN Jmb	H. Rizaldi	1 Year 2 Months

22	32/Pid.Sus-TPK/2019/PN Jmb	Eko Dian Iing Solihin	1 Year 6 Months
23	33/Pid.Sus-TPK/2019/PN Jmb	Dasman, A. Md	2 Years
24	38/Pid.Sus-TPK/2019/PN Jmb	Bambang Heri Jasmani	1 Year
25	39/Pid.Sus-TPK/2019/PN Jmb	Sargawi	1 Year
26	40/Pid.Sus-TPK/2019/PN Jmb	Gita Warsa	1 Year 6 Months
27	42/Pid.Sus-TPK/2019/PN Jmb	Sasmiroswita, S Pd	1 Year
28	43/Pid.Sus-TPK/2019/PN Jmb	M. Syafri	1 Year 6 Months
30	45/Pid.Sus-TPK/2019/PN Jmb	Cahyo Heri Prasetyo	1 Year 6 Months
31	1/Pid.Sus-TPK/2020/PN Jmb	Aswar Muda, S. E	1 Year 2 Months
32	4/Pid.Sus-TPK/2020/PN Jmb	Dodo Suherman, S. Pd	3 Years
34	5/Pid.Sus-TPK/2020/PN Jmb	Ir. N. Hero Putra	1 Year
35	18/Pid.Sus-TPK/2020/PN Jmb	Muhammad, S. Sos	2 Years
36	19/Pid.Sus-TPK/2020/PN Jmb	Irwansyah, S. Pt., M. Ap	1 Year 6 Months
37	28/Pid.Sus-TPK/2020/PN Jmb	Sulyadi W	1 Year 2 Months
38	29/Pid.Sus-TPK/2020/PN Jmb	Zulkani	1 Year
39	30/Pid.Sus-TPK/2020/PN Jmb	Fauzi	1 Year 4 Months

Source: Directory of Supreme Court Decisions and SIPP of Jambi District Court

The verdict handed down by the judge is based on the indictment of the Public Prosecutor and the sentence handed down generally refers to the subsidiary charges, namely primary Article 2 and subsidiary Article 3. The sentence handed down by the judge is in the form of imprisonment for an average of 1 year and 9 months by applying Article 3 in subsidiary indictment. As for the formulation of Article 3, "a person with the aim of benefiting himself or another person or a corporation, abuses his authority, uses the means given to him in the form of opportunities or means because of his position or position which causes financial losses to the state or the state's economy, is sentenced to life imprisonment or imprisonment. the minimum is 1 (one) year and the maximum is 20 (twenty) and/or the fine is at least IDR 50,000,000.00 and the maximum is IDR. 1,000,000.-. In terms of applying decisions to perpetrators who cause harm to state finances, there are sentencing guidelines as formulated in PERMA Number 1 of 2020 concerning Sentencing Guidelines Article 2 and Article 3 of the PTPK Law. The aim of promulgating this Regulation is to create legal certainty and balance in punishment and achieve justice and to avoid disparities in decisions that have the same character. (Philosophical, sociological and juridical considerations PERMA Number 1 of 2020).

The PERMA formulation states that in terms of imposing a crime on a perpetrator, whether the sentence is heavier or lighter, the judge must consider the parameters, namely:

1. Nominal loss;
 2. The level of error, its impact, and its benefits;
 3. The period of application of the penalty;
 4. Aggravating and mitigating conditions;
 5. Application of sanctions;
 6. Other regulations related to the application of criminal penalties.
- (Article 5 PERMA No.1 of 2020)

These parameters are realized in the form of a matrix by determining the period of time for criminal imposition by qualifying it based on the value of the loss, error, impact and profit by applying the categories, namely high, medium and low. The presence of PERMA can provide a solution to the problem of criminal punishment for perpetrators who harm state finances so that they can recover state losses. Even though there is a PERMA which can be used as a reference in imposing criminal penalties, in its implementation it is difficult to implement as stated by Binsar R. Gultom, that in terms of giving a criminal sentence, the application of sanctions, or the sentence to the perpetrator depends on the judge, (Gultom, 2018). This is inseparable from the provisions on the freedom of judges in handing down their decisions as formulated in Article 1 number 1 of Law Number 48 of 2009 concerning Judicial Power, which is then reinforced in Article 3 Paragraph (2) that: "Anyone is prohibited from interfering in the judicial process outside judicial power, except as provided for in the 1945 Constitution".

In implementing his criminal sentence, the judge is also given freedom and is not bound or bound by the severity or lightness of the demands of the Public Prosecutor (JPU). The judge is given the freedom to impose a sentence on the perpetrator, the sentence can be made heavier or lighter than what is charged by considering the legal facts and the fulfillment of the elements of the article used in the indictment, as well as mitigating and aggravating factors for the defendant. Furthermore, there are no concrete regulations that formulate the rules that judges are required to comply with in fulfilling the special minimum criminal threat contained in the corruption regulations, and the standardization of sentences handed down by judges to perpetrators has not yet been regulated, so it is considered not to provide a sense of justice, legal certainty and benefit. Based on the data obtained, the judge in handing down a decision against the perpetrator after the PERMA no. The year 2020 can be seen in the following table.

Table 2. Jambi Tipikor Court Decision After PERMA No.1 of 2020

No.	Decision Cas Number	Corruption Accused	Decision
1	8/Pid.Sus-TPK/2020/PN Jmb	Fathuri Rahman	2 Years 6 Months
2	1/Pid.Sus-TPK/2021/PN Jmb	Suli Handoko	1 Years 6 Months
3	2/Pid.Sus-TPK/2021/PN Jmb	Akmal Zen	1 Years 7 Months
4	3/Pid.Sus-TPK/2021/PN Jmb	Iskandar, Amkl	1 Years 6 Months
5	4/Pid.Sus-TPK/2021/PN Jmb	Achiruddin	1 Years 6 Months
6	5/Pid.Sus-TPK/2021/PN Jmb	Hasanuddin, S. Pd	4 Years
7	6/Pid.Sus-TPK/2021/PN Jmb	Firdaus	3 Years
8	8/Pid.Sus-TPK/2021/PN Jmb	Lusi Afrianti, S. E	2 Years 6 Months
9	10/Pid.Sus-TPK/2021/PN Jmb	Pamesangi	1 Years
10	13/Pid.Sus-TPK/2021/PN Jmb	M. H. Thamrin, S. E	1 Years
11	14/Pid.Sus-TPK/2021/PN Jmb	Husen	1 Years 10 Months
12	15/Pid.Sus-TPK/2021/PN Jmb	Hj. Nurmina, S. Pd	1 Years 2 Months
Average			1 Years 11 Months

Source: Directory of Supreme Court Decisions and SIPP of Jambi District Court

The table illustrates that the decisions handed down after PERMANo.1 of 2020 against perpetrators who caused inflict a financial of Indonesia were in the light category, because the average sentence was 1 year 11 months, with a range of decisions between 1-4 years and the application of the Articles imposed is generally Article 3 UUTPK. Based on this, it raises a question, has the sentence given by the judge to the defendant been guided by PERMA No. 1 of 2020 or not and has the aim of the sentence been achieved with this PERMA? This is what will be studied in this research. Therefore, it is important to examine this research, to get a clear picture regarding the application of Article 3 of the Corruption Law in relation to PERMA Number 1 of 2020 in the study of the Jambi Corruption Court Decision, so that a form of decision is obtained that meets the objectives of punishment.

2. Method

The research is a normative juridical research which is a system for explaining legal regulations, their legal basis and legal principles, namely by examining primary and secondary legal materials, (Bahder Johan Nasution, 2008) with legal issues in the form of vague norms using an approach conceptual approach, statutory approach, statute approach, namely by examining the regulations and legal system that are related to the legal issue being discussed; as well as the case approach (Peter Mahmud Marzuki, 2019). Primary legal material comes from statutory regulations, secondary legal material comes from textbooks, scientific articles and analysis of court decisions related to the subject matter. (H. Zainudin Ali, 2014). Tertiary legal materials are sources that can provide direction and can explain primary and secondary legal materials.

3. RESULTS AND DISCUSSION

a. The Implementation of PERMA Number 1 of 2020 concerning Sentencing Guidelines

It is very important to enforce the law against criminal acts, including criminal acts of corruption. One way is to impose a sentence through a judge's decision on the perpetrator who fulfills the elements of the indictment charged by the Public Prosecutor. The decision applied to the perpetrator is a process in criminal justice where the panel of judges has an important role in making a decision on the case they are handling. (Hamzah, 2016). The court's decision will prove whether the defendant was proven to have committed a criminal act or not, and how long the sentence or sentence was imposed. In handing down decisions to perpetrators of criminal acts, appropriate sentencing guidelines cannot be separated. Sentencing guidelines are basic rules, principles, guidelines or directions for determining decisions in imposing criminal sanctions on perpetrators. (Barda Nawawi Arief, 1996). Barda Nawawi's explanation of the sentencing guidelines stated that "the term sentencing guidelines is an essential term to study, considering that it has different meanings. In principle, sentencing guidelines are closely related to the objectives or sentencing rules for imposing or imposing sentences which are used as guidelines by judges (judicial/applicative guidelines). The term sentence pattern is often also called "legislative guidelines" or "formative guidelines", (Abdurrachman, et al., 2021).

According to Seodarto (Syarifuddin, 2021), the regulation of sentencing guidelines states that "Indonesian legislation does not yet provide concrete sentencing guidelines. In fact, judges have the freedom to impose criminal sanctions, making it possible for them to make decisions with very high differences, this will give rise to feelings of dissatisfaction among the public. "Therefore, it is really necessary to have criminal sentencing guidelines both within the Criminal Code and outside the Criminal Code, because this will reduce these differences, although they cannot be eliminated completely". The important thing in sentencing is that it is objective in relation to the condition of the perpetrator. With the existence of sentencing guidelines, the sentence imposed by the judge will be felt to be appropriate and it will be easier to understand why the sentence was imposed that way. The existence of criminal guidelines in the imposition of crimes conveyed by Sudarto is in line with Muladi's view, that "is to provide limits, (Syarifuddin, 2021).

The existence of the formulation of sentencing guidelines will provide limits to the judge regarding the punishment he or she applies, in accordance with the actions and attitudes of the perpetrator and can also help the judge understand the meaning of the decision handed down and this will be realized in the sentence he or she imposes, because the sentencing guidelines contain a "philosophy." coaching" namely that the main priority is a balance between the sentence imposed and the behavior of the convict, (Mulyadi, 2020).

Sentencing guidelines are very important in determining the sentence imposed by the judge on the perpetrator. Judges as administrators of judicial power, judges have the task of carrying out examinations and deciding on criminal cases which they handle independently without being influenced by anyone. However, in applying criminal sanctions, the judge's freedom requires a limit, as stated by Sudarto in Kif Aminanto that "guidelines in imposing criminal penalties will make it easier for judges to impose criminal sanctions on the perpetrator, after it is proven that the perpetrator committed the act as charged by the Public Prosecutor, (Aminanto, 2017). Disparity in Judges' Decisions in Corruption Crimes, Jember Katamedia, Jember). Guidelines for sentencing contain objective matters relating to the condition of the perpetrator, so that by considering these matters the sentence is more reasonable and can be understood regarding the sentence given by the judge. Sudarto's opinion was also confirmed by Muladi, because the problem is not the absolute elimination of differences, but the differences must be logical." (Aminanto, 2017).

Based on this, the provisions on the sentencing guidelines should have been in place before the sentence was imposed, or in the sense that the sentencing guidelines are specific rules in the criminal system, while the criminal system is the entirety of the material criminal law rules or norms for implementing and carrying out the punishment. Therefore, to avoid illogical differences in imposing sentences for criminal acts of corruption, the Supreme Court issued PERMA No. 1/2020 concerning Sentencing Guidelines Article 2 and Article 3 of the PTPK Law with the aim of

preventing and overcoming the emergence of differences in criminal sentences in various court decisions in corruption cases. Prior to the existence of this Perma, in terms of imposing criminal penalties, there were no limits or provisions for imposing criminal penalties on perpetrators. The PERMA is a new step in the sentencing guidelines, at least directly or indirectly having an influence on 2 (two) things, namely, first, related to the interpretation in the formulation of Article 2 and Article 3, namely with the provision of criteria and categories of loss as follows. standard of punishment. second, the important criteria for sentencing guidelines for judges in applying their sentences against perpetrators. The issuance of PERMA No.1/2020 will have a positive impact on the punishment of perpetrators and of course a sense of justice will be fulfilled.

PERMA Number 1 of 2020 is the basic idea in granting or imposing a criminal sentence by considering the proportionality of the sentence while still upholding legal certainty. Furthermore, this PERMA is also an effort to benchmark and provide convenience for judges, especially in law enforcement in terms of determining the severity of punishment, based on concrete considerations of state losses, the level of error, the impact, benefits and length of sentence, as well as mitigating factors. and increase the severity of the punishment. In other words, the aim is to avoid differences in criminal imposition problems resulting from court decisions, especially in Articles 2 and 3. Furthermore, the PERMA I/2020 Guidelines are also used as a guide for judges in determining the amount or severity of the main punishment in Article 2 and Article 3 cases. The judge who hears the case must consider the stages as formulated in the provisions of Article 5 paragraph (1). Furthermore, Article 5 paragraph (3) also regulates the obligation for the judge to explain the facts revealed at trial and explain what he considered in his decision. The judge's arrangement of stages in determining the severity of a criminal sentence starts from the first stage, namely determining the category of loss to the state economy or state finances based on Article 2 and Article 3 which consists of four categories, namely the most serious category for corruption of more than one hundred billion, the serious category for corruption of more than twenty-five billion to one hundred billion, the medium category is for corruption of more than one billion to twenty-five billion, and the light category is for corruption of more than two hundred million to one billion. Furthermore, specifically in Article 3 of the Corruption Law, there is the addition of the lightest category, namely for corruption cases up to two hundred million. Then, after the judge determines the appropriate category for the corruption case being tried, the judge in stage II must determine the level of error, the impact, and the benefits of the defendant's actions. Based on the interpretation of the error level, the impact and benefits are divided into three aspects, namely high, medium and low. The regulation of categories of high fault, high impact and high defendant profits is clearly regulated in Article 8 letters a, b and c of Perma No. 1 of 2020.

Furthermore, guidelines regarding the range of criminal impositions can be seen in the attachment to PERMA Number 1 of 2020, more precisely in Stage III (Article 12) which states that: "Judges in imposing sentences can rely on the range between:

1. Categories of State Financial or State Economic Losses (Attachment Stage I); and Error Rate, Impact, and Benefits (Appendix Phase II)".

The sentence range matrix as mentioned above is as follows:

1. The heaviest category, more than 1,000,000,000 rupiah:
 - a. High, 16-20 years/life imprisonment and a fine of 800,000,000- 1,000,000,000.
 - b. Medium, 13-16 years in prison and a fine of 650,000,000,- 800,000,000,-; And
 - c. Low, 10-13 years in prison and a fine of 500,000,000 - 650,000,000,-
2. Heavy category, more than 25,000,000,000,- up to 100,000,000,- rupiah:
 - a. High, 13-16 years in prison and a fine of 600,000,000 - 800,000,000,-
 - b. Medium, prison 10-13 years and a fine of 500,000,000 - 650,000,000,- and
 - c. Low, 8-10 years in prison and a fine of 400,000,000 - 500,000,000,-
3. Medium category, more than 1,000,000,000 - 25,000,000,000,-
 - a. High, 10-13 years in prison and a fine of 500,000,000 - 650,000,000,-
 - b. Medium, prison 8-10 years and a fine of 400,000,000 - 500,000,000,- and
 - c. Low, 6-8 years in prison and a fine of 300,000,000 - 400,000,000,-
4. Light category, more than 200,000,000 rupiah - 1,000,000,000,-
 - a. High, 8-10 years in prison and a fine of 400,000,000 rupiah - 500,000,000,-
 - b. Medium, prison 6-8 years and a fine of 300,000,000 - 400,000,000,- and
 - c. Low, 4-6 years in prison and a fine of 200,000,000- 300,000,000,-
5. Lightest category, up to two hundred million rupiah:
 - a. High, 3-4 years in prison and a fine of 150,000,000 - 200,000,000,-
 - b. Medium, 2-3 years in prison and a fine of 100,000,000 - 150,000,000,-; And
 - c. Low, 1-2 years in prison and a fine of 50,000,000 - 100,000,000,-

Before the birth of PERMA, if the elements of Article 2 or Article 3 were fulfilled and proven, then the consideration given by the judge was only related to the aggravating and mitigating circumstances, then the sentence was imposed, but after the birth of PERMA, judges in judging and handing down decisions were required to consider the role of the defendant, what his role was. determines whether or not corruption occurs. In this case, it is hoped that the judge will be guided by PERMA in imposing sentences, because PERMA regulates specific and detailed matters to prevent and minimize differences in punishment.

Furthermore, to find out whether the PERMA was used as a guide by the Jambi Corruption Court Judge in deciding corruption cases, an inventory of 39 decisions on corruption crimes in 2019-2020 and these decisions were handed down before the birth of the PERMA and 12 decisions in 2020-2021 after the birth of the PERMA were tried and decided at the Jambi Corruption Court using Article 3 UUPTPK. Of the 51 decisions, 5 decisions were taken randomly as samples to find out the basis for implementing PERMA Number 1 of 2020. The 5 (five) decisions that will be reviewed are as follows:

5/Pid.Sus-TPK/2019/PN Jmb with defendant Gery Farilan

Defendant Gerry Farilan has caused state financial losses amounting to Rp. 2,488,690,310.39, legally fulfilling the elements as stated in the subsidiary indictment of Article 3 of the PTPK Law with a prison sentence of 3 years and 6 months, a fine of Rp. 50,000,000.00, as well as additional criminal compensation. Rp. 2,488,690,310.39.

2/Pid.Sus-TPK/2020/PN Jmb with defendant Masril, S. T

The defendant Masril, S.T has caused state financial losses amounting to IDR 2,652,093,273.00, was declared to legally fulfill the elements as stated in the subsidiary indictment of Article 3 of the PTPK Law with a prison sentence of 4 (four) years, a fine of IDR 50,000,000.00, and additional penalty is Rp. 10,000,000.00 in compensation.

8/Pid.Sus-TPK/2020/PN Jmb with the defendant Fathuri Rahman

Corruption case number 8/Pid.Sus-TPK/2020/PN Jmb with the defendant Fathurii Rahman legally caused state financial losses amounting to Rp. 875,875,000.00, as in the primary indictment Article 3 of the PTPK Law with a prison sentence of 2 years and 6 months, a fine of Rp. 50,000,000.00, as well as additional criminal compensation of Rp. 228,860,692.00.

6/Pid.Sus-TPK/2021/PN Jmb with defendant Firdaus

Decision number 6/Pid.Sus-TPK/2021/PN Jmb with defendant Firdaus was proven to have caused state financial losses amounting to IDR 644,539,114.71. was legally declared to have committed corruption as stated in the subsidiary indictment Article 3 of the PTPK Law with a prison sentence of 3 (three) years, a fine of Rp. 50,000,000.00 and an additional criminal penalty of Rp. 136,881,862.40.

13/Pid.Sus-TPK/2021/PN Jmb with defendant M. H. Thamrin, S. E

Decision number 13/Pid.Sus-TPK/2021/PN Jmb with the defendant M. H. Thamrin, S. E. has been proven to have caused state financial losses amounting to IDR 518,925,268.82, proven to have committed corruption as in the subsidiary indictment, Article 3 of the PTPK Law was sentenced to 1 year in prison, the fine is IDR 50,000,000.00. as well as additional criminal compensation of IDR 268,462,634.41,-

Based on the decision data, it can be concluded that before PERMA Number 1 of 2020 was ratified, regarding decision number 5/Pid.Sus-TPK/2019/PN Jmb with the defendant Gerry Farilann which had caused state financial losses amounting to IDR 2,488,690,310, 39 was sentenced to prison for 3 years and 6 months, and Decision number 2/Pid.Sus-TPK/2020/PN Jmb with the defendant Masril, S. imprisonment for 4 years.

These two decisions, when linked to Perma no. 1 of 2020 is included in the category of moderate state losses, namely losses of IDR 1,000,000,000.00 to IDR 25,000,000,000.00 with a threat of imprisonment of 8-10 years for the medium category. However, it turns out that the 2 (two) decisions This was decided very lightly through the lightest state loss category. This is considered normal because at

the time the decision was handed down there was no PERMA Number 1 of 2020, so judges in deciding corruption cases only considered aggravating and mitigating factors.

Regarding decision number 8/Pid.Sus-TPK/2020/PN Jmb with the defendant Faathuri Rahman being proven to have caused state financial losses amounting to IDR 875,875,000.00,- sentenced to imprisonment for 2 (two) years 6 (six) months, Next is the decision number 6/Pid.Sus-TPK/2021/PN Jmb with defendant Firdaus proven to have caused state financial losses amounting to Rp. 644,539,114.71,- which was sentenced to imprisonment for 3 (three) years, and Decision number 13/Pid.Sus-TPK/2021/PN Jmb with defendants M. H. Thamrin, S.E. causing state financial losses amounting to Rp. 518,925,268.82,- which is punishable by imprisonment for 1 (one) year.

The three (3) decisions mentioned above fall into the category of light state loss in PERMA Number 1 of 2020, namely more than IDR 200,000,000.00,- up to IDR 1,000,000,000.00,- which should be punished by imprisonment. 4-6 years for the light category. However, it turns out that the 3 (three) decisions were decided very lightly through the lightest state loss category, namely 2 (two) years 6 months, 3 years and 1 (one) year. In fact, for the light category the sentence is between 4-6 years, which means that in this case PERMA Number 1 of 2020 has not been guided by the judge.

Based on several sentences handed down by judges, even though there is PERMA Number 1 of 2020, the Panel of Judges at the Jambi Corruption Court in handing down their sentences to perpetrators who violate Articles 2 and 3 of the Corruption Law is still not used as a guideline, where the prison sentence imposed by the time limit does not adjust with the category of state loss which includes the most severe, heavy, medium, light and lightest categories, even though there is already a classification, namely the range of imprisonment is adjusted to this.

b. The Purpose of Punishment for Corruption Crimes after the Birth of PERMA Number 1 of 2020 concerning Sentencing Guidelines.

The imposition of criminal sanctions against perpetrators is a process in imposing sanctions given by judges, namely the imposition of criminal sanctions on perpetrators who are tried and sentenced at the Jambi Corruption Court which was decided in 2019-2021. Furthermore, to find out whether the issuance of PERMA Number 1 of 2020 can realize the goal of punishment in corruption cases, namely the return of state losses. Based on data from the Jambi Corruption Court, there were 39 decisions regarding criminal acts of corruption in 2019-2020 before the existence of PERMA Number 1 of 2020 and 12 decisions in 2020-2021 after the existence of PERMA Number 1 of 2020 which were tried and decided at the Jambi Corruption Court by applying Article 3 of the TPPK Law. . As with the decision above, 5 decisions were taken randomly as samples in relation to the purpose of punishment in corruption cases. The verdict is:

Decision No. 5/Pid.Sus-TPK/2019/PN Jmb with defendant Gerry Farilan

In this decision the defendant Gerry Farilan caused state losses amounting to IDR 2,488,690,310.39 and an additional penalty of compensation amounting to IDR 2,488,690,310.39, so the decision handed down by the judge has accommodated the state

losses by imposing additional penalties whose nominal value is the same as the state losses committed by the perpetrator, means that state losses can be returned 100% to the state. So that the goal, namely the return of state losses, can be achieved in this decision.

Decision No. 2/Pid.Sus-TPK/2020/PN Jmb with defendant Masril, S. T

In this decision, the defendant Masril, S.T has caused losses to state finances amounting to IDR 2,652,093,273.00 and was imposed an additional penalty of compensation amounting to IDR 10,000,000.00. The corruption law is to restore state financial losses because the amount is only Rp. 10,000,000,- but in this decision the penalty is quite high compared to other decisions.

Decision No. 8/Pid.Sus-TPK/2020/PN Jmb with the defendant Fathuri Rahman

In this decision, the defendant Fathuri Rahman, who had caused losses to state finances amounting to Rp. 875,875,000.00 and was given compensation amounting to Rp. 228,860,692.00,-, it can be seen that in this decision, state losses can only be returned 26% to the state. So the aim of the sentence, namely the return of state losses, has not been realized in the decision.

Decision No. 6/Pid.Sus-TPK/2021/PN Jmb with defendant Firdaus

In this decision, the defendant Firdaus, who has caused state financial losses amounting to Rp. 644,539,114.71 and an additional penalty of compensation amounting to Rp. 136,881,862.40,- can be seen that in this decision, state losses can only be returned by 21% to the state. So the aim of punishment in corruption cases, namely returning state losses, was not achieved in this decision.

Decision No. 13/Pid.Sus-TPK/2021/PN Jmb with defendant M. H. Thamrin, S. E

In this decision, the defendant M. H. Thamrin, S. E., who had caused losses to state finances amounting to IDR 518,925,268.82 and was given an additional penalty of compensation amounting to IDR 268,462,634.41. In this decision, state losses can only be returned 50% to the state. So the aim of punishment, namely returning state losses, was not achieved in this decision.

If these five decisions are added together, the total loss to the state is IDR 518,925,268.82, while the additional criminal compensation imposed in total is IDR 268,462,634.41. This means that in this decision only 51% of state losses can be returned to the state.

The court's decisions regarding replacement money handed down by judges were quite varied, but of the five decisions there was only 1 decision handed down by the judge regarding replacement money which was the maximum amount, namely in accordance with state losses, while the other 4 decisions were not the maximum.

The formulation relating to replacement money is regulated in Supreme Court Regulation no. 5 of 2014 concerning Additional Criminal Replacement Money for Corruption Crimes. Article 1 formulates the determination of the amount of replacement money payment, which is at most equal to the assets obtained from corruption and not just looking at the amount of state financial losses.

PERMA Replacement Money has determined that the perpetrator of corruption will be awarded a maximum amount of replacement money equal to the property he obtained from corruption. Distinguishing between assets obtained from corruption and state losses

is difficult. The calculation is because it requires special expertise, the data is concrete, the information is complete and the accuracy is high and is supported by diplomatic bureaucracy if the assets or proceeds from corruption are abroad, because corruption cases are quite complicated matters, this can be seen from the many perpetrators involved and from from intellectual circles or those who have positions as officials so that their assets can easily be transferred or hidden from the proceeds of corruption through various financial and/or banking transaction services, (Nur Syarifah, 2017).

The difficulty of calculating state financial losses has encouraged investigators and prosecutors to generally determine the value of replacement money based on things that are easier to measure or calculate, namely based on the amount of state losses caused, (Tama S Langkung et al, 2014). In fact, the desired goal in imposing replacement money is as an effort to restore state financial losses.

Based on the description of the purpose of punishment after the existence of PERMA Number 1 of 2020, it turns out that the purpose of punishment, namely the return of state losses, has not been achieved, because the PERMA does not yet regulate guidelines for imposing additional criminal compensation in compensation. Based on this, the judge in handing down the decision was more dominant in applying imprisonment even though the prison sentence imposed was still considered light and had not focused on the aim of the sentence, namely returning state losses. This can be seen from the decisions handed down by the Jambi Corruption Court Judge, namely: 1 (one) decision using the objective of punishment as desired by the Corruption Law, namely returning state losses, 1 (one) decision using the theory of absolute criminal objectives or retaliation. that: The absolute theory of criminal punishment is retribution for the mistakes he has committed so that the orientation is directed at his actions and the consequences of the crime. (Andirisman, 2009). This theory prioritizes retaliation, which means that criminal law is imposed on people who have committed crimes and is a response to what they have done so that the sanctions have the aim of satisfying the demands of justice. and 3 (three) out of 5 (five) decisions using integrative or combined theories. The three (3) decisions that use integrative or combined theory are decisions following the existence of PERMA Number 1 of 2020 concerning Sentencing Guidelines

5. CONCLUSION

Based on the description that has been carried out, it can be concluded that: In handing down decisions against perpetrators of criminal acts of corruption, the Jambi Corruption Court Judge has not followed PERMA Number 1 of 2020. This can be seen from the length of the prison sentence imposed which does not correspond to the category of state losses as determined, so that the decision handed down after PERMA Number 1 of 2020 has not achieved the aim of punishment in corruption cases, namely the return of state losses.

Therefore, the Panel of Judges at the Jambi Corruption Court in deciding corruption cases should be able to guide PERMA Number 1 of 2020, to avoid disparities in criminal decisions in deciding corruption cases under Articles 2 and 3 of the Law in order to provide legal

certainty and proportionality in the amount of compensation money in order to achieve justice.

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