

# Disparity Studies on Acquittal Judgments and Lenient Conviction Towards Corrupters in Aceh

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## Abstract:

**Background:** Acquittal judgments and lenient punishment have a meaning that there is a difference in length of sentence in the case having similar characteristics. This is not a new phenomenon in the enforcement of corruption and it may harm its enforcement as it causes injustices in the society in seeking justice. The fact of its disparity in corruption cases is one of the factors causing the enactment of the Law on Corruption Suppression Number 31, 1999 in its criminal rules.

**Materials and Methods:** This research is library research by looking at previous articles discussing the issue of corruption enforcement in Indonesia. This research applies the qualitative research method by relying upon its discussion from the relevant researches and existing statutes. Primary data are obtained from laws governing corruption and secondary data are obtained from works of literature that are relevant to this research.

**Results:** The findings are the disparities that occurred in the enforcement of corruption in Aceh are caused by several factors that are laws it selves, judges, and the perpetrators themselves.

**Conclusion:** The societies are worried as the disparities have caused a lack of justice or injustices, it has not provided deterrent effects towards the perpetrators and it undermines the justice process itself.

**Key Word:** Disparity; Acquittal; Conviction; Corruption; Aceh.

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## I. Introduction

The criminal disparity in law enforcement in Indonesia is a problem in itself. On the one hand, different punishments or criminal disparities are a form of judge's discretion in making decisions, but on the other hand, these different punishments (disparities) also bring dissatisfaction to the convicts and even society in general.<sup>1</sup> The public's trust is increasingly decreasing in the judiciary, resulting in something better and more fulfilling a sense of justice than taking their case to court. Circumstances like this can lead to inconsistencies in judicial decisions and also contradict the concept of the rule of law adopted by the Republic of Indonesia, where the government is organized based on law and is supported by the existence of a judicial institution, namely the judiciary institution to enforce the law.<sup>2</sup>

Corruption comes from the Latin word "Corruptus" which later appeared in English and French "Corruption", in Dutch "Korruptie" and then in Indonesian "Corruption". Corruption means evil or rotten, therefore the crime of corruption means an offense due to bad, rotten, evil, corrupt, or bribery actions. Criminal acts of corruption can be seen in the formulation of Article 2 paragraph (1) of Law Number 31 of 1999 which must meet the elements of every person (individual, corporation), against the law, enriching oneself, other people, or a corporation that can harm state finances or the state economy. Corruption crime, directly or indirectly, is intended to minimize the occurrence of leakages and irregularities in the state's finances and economy.

By anticipating these deviations as early and as minimally as possible, it is hoped that the wheels of the economy and development can be carried out properly so that gradually it will bring about an increase in development and the welfare of society in general. In various parts of the world, corruption always gets more attention than other criminal acts.

This phenomenon is understandable considering the negative impact caused by this crime. The impact can touch various areas of life. Corruption is a serious problem, this crime can endanger the stability and security of society, endanger socio-economic development, as well as politics, and can damage democratic values and morality because gradually this act seems to become a culture. Corruption is a threat to the ideals of a just and prosperous society.

So far, corruption is more understood by various parties than eradicating it, even though corruption is a type of crime that can touch various interests related to human rights, state ideology, economy, state finances,

nation's morals, and so on, which are evil behaviors that tend to be difficult to deal with. The difficulty of overcoming corruption can be seen from the number of acquittals of defendants in corruption cases or the minimum amount of punishment borne by the accused which is not commensurate with what he did. This is very detrimental to the country and hinders the development of the nation. If this happens continuously for a long time, it can negate a sense of justice and a sense of trust in laws and regulations by citizens.

This feeling has indeed been seen increasingly thinning and can be proven from the number of people who want to take vigilante action against criminals in public life in the name of justice that cannot be achieved from law, legislation, and also law enforcers. In Indonesia, criticisms and suggestions for lack of trust in the court essentially contain accusations of injustice, which is a claim that the court cannot correct what is wrong (to right wrongs) but is even more severe. Each of these legal professions (Judges, Public Prosecutors, Advocates) has a strong influence in the creation of state goals to uphold law and justice.

Sentencing by judges needs to be a concern because criminal penalties must meet three important elements, namely legal certainty, expediency, and justice. These three elements must be applied proportionally by judges so that the disparity in punishment is an important point that must be studied in criminal law.

Sentencing disparity means that there is a difference in the amount of punishment handed down by the court in cases that have the same characteristics. The disparity is the unequal punishment between similar crimes (same offense) in similar conditions or situations (comfortable circumstances).

In Indonesia, the disparity in sentencing related to corruption is not a new thing. The existence of disparity in sentencing in corruption cases is one of the factors that prompted the birth of the Law on the Eradication of Corruption Crimes, where one of the changes that occurred in Law Number 31 of 1999 was the formulation of the threat of punishment. In the law, special criminal threats began to be re-arranged, similar to the regulatory model in the Napoleonic Penal Code.

The disparity in sentencing in the imposition of a crime occurs when the range of differences in sentences handed down between similar cases is so large that it creates injustice and can lead to suspicion and loss of trust in the community. The disparity is not to be eliminated, but to minimize the difference in sentencing. In addition to the imposition of the main punishment, disparities occur in the imposition of additional penalties for payment of substitute money with varying amounts of replacement money as well as the amount of substitute imprisonment imposed which is also quite varied.

The criminal disparity is related to the issue of punishment (sentencing) which is an important part of criminal law because all regulations regarding criminal law ultimately culminate in sentencing. The shift in the philosophy of punishment from retaliation to rehabilitation efforts by considering several individual factors of criminals often creates problems of criminal disparity where the standard or size of criminal imposition has not been determined in terms of the severity of the crime.

The disparity is the application of a crime (disparity of sentencing) in this case is the application of a crime that is not the same (same offense) or against criminal acts whose dangerous nature can be compared without a clear basis for forgiving.

Eradication of criminal acts of corruption is one part of efforts to administer a clean state (clean governance) by establishing existing laws and regulations. Corruption is an extraordinary crime because the consequences of this crime have a large and wide impact on the life of the state and the welfare of the people.

The administration of a corrupt state or government is a neglect of the principles of state administration in question. The opinion that the criminal act of corruption is very despicable, condemned, and very hated by most people, not only by the people and the Indonesian people but also by the people of the nations of the world. By recognizing the forms of corruption, it is also hoped that corruption will become a common enemy that must be suppressed and eliminated from every surface of the Indonesian earth.

The crime of corruption in Aceh from year to year is increasingly systematically permeating all aspects of social life. The development of corruption during the last period (2015-2017) has not decreased; in fact, it is increasing both quantitatively and qualitatively. In 2015 there were 62 cases, in 2016 there were 51 cases and in 2017 at the end of October, it had reached 67 cases. The Banda Aceh's Corruption Court handles all of this. This shows that corruption cases in Aceh are still very high. Based on data obtained from the Court of Corruption at the Banda Aceh District Court, it shows that the sentences handed down against perpetrators of corruption are still low, and judges often decide even acquittals.

## **II. Material And Methods**

Library research is conducted to obtain theoretical data or materials, which are primary data, namely data obtained by studying books, literature, magazines, laws, and regulations, and other secondary materials. The data collected both from the results of field research and from library research were analyzed using qualitative methods with a descriptive approach. The main indicator used in this research is the Disparity of Sentencing in Corruption Crimes.

### III. Result

The crime of corruption in Aceh from year to year is increasingly systematically permeating all aspects of social life. The development of corruption during the last period (2016-October 2018) has not diminished; in fact, it has been increasing both quantitatively and qualitatively. At the end of 2018, the number of corruption cases in Aceh that were tried by the Banda Aceh Corruption Court amounted to an average of 54 cases. Based on the table above, shows that acquittals still occur every year, and the low sentences of less than 2 years amount to a very high number (57 cases) of corruption.

**Table no 1:**Shows disparities of conviction in corruption cases in Aceh.

Decision	2016	2017	2018	Total
Acquittal	4	5	5	14
<2 Years	15	19	23	57
2-5 Years	18	28	12	58
>5 Years	14	15	8	37
Total	51	67	48	166

### IV. Discussion

The causes of the disparities of conviction in Aceh in the case of corruption can be seen as follows. The Continental European system (civil law system) greatly influences parts of the Indonesian legal system, so that decision disparity will inevitably occur because the civil law system focuses more on the rules of the law. This condition is certainly different from the Anglo-Saxon legal system, which focuses on the law in its jurisprudence. The factors causing the disparity of sentencing decisions in the form of acquittals and low penalties in corruption cases in Aceh are as follows.<sup>3</sup>

Firstly, laws and regulations govern corruption. The problem of criminal disparity occurs in cases of corruption with an acquittal and low sentences caused by legal factors because on the one hand it is ideologically justified, but on the other hand, it contains weaknesses due to the existence of "judicial discretion" which is too broad due to the absence of "sentencing standards".<sup>3</sup>

This legal factor occurs because the rules relating to the pattern of punishment have not been regulated in the Criminal Code, but the Draft Criminal Code has entered the pattern of punishment to prevent criminal disparities.<sup>4</sup> This legal factor occurs, it can be seen that the legal rules associated with criminal acts of corruption are currently in force, namely Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. The corruption law contains the types of acts that are categorized as criminal acts of corruption. These are regulated in Articles 2 to 13 already contain the minimum threat of imprisonment, than other criminal acts related to corruption as regulated in Articles 21 to 25 of the Anti-Corruption Law. The judge already has a basis/benchmark to impose a sentence based on an article that is proven to have been violated by the defendant.<sup>5</sup> There shouldn't be too many similar cases but different verdicts.

This means that for the legal factor there are no significant problems that cause judges in imposing their crimes to be very different, because the formulation of actions is clear and sanctions or criminal threats are also very clear, it's just a matter of how judges apply them appropriately according to the existing legal rules in criminal cases. corruption. The Anti-Corruption Law is precisely what can cause disparity, because of the use of criminal law as a premium. Differences in minimum criminal penalties, for example in Article 2 and Article 3 of the Anti-Corruption Law, can lead to disparities in sentencing decisions.

Article 2 regulates a minimum sentence of 4 years, while Article 3 regulates a minimum sentence of 1 year. The problem arises when Article 2 can be applied to anyone, including other parties outside the state administrators, while Article 3 is specifically addressed to state administrators. This happened in case No. Case. 29/PID.sus/TPK/2017/PN.BNA the judge sentenced him to 4 years because he was the power user of the budget (KPA), at the Aceh Revenue and Wealth Service while in the same case in Case of Number: 31/Pidsus/TPK/2017 that the defendant as an associate was sentenced to 7 years.

Secondly, it is the judges' factor that has caused the disparities in the case. The disparity in the sentencing of crimes can be sourced from the judges themselves, among others, due to various ideological understandings of basic values or the philosophy of punishment in following the flow of criminal law, whether classical or modern.<sup>6</sup> Furthermore, in positive Indonesian criminal law, judges have very broad freedom to choose the type of criminal they want, in connection with the use of an alternative system of criminal threats in the law. Other factors can occur because of the judge's personality problem, including the mentality of the judge and social environmental factors that can affect the sentencing.<sup>7</sup> At least in following the schools of criminal law (classical or modern) judges have very broad freedom to choose the type of criminal they want. The judge's factors are internal or external which broadly involve social background, education, religion, experience, and social behavior. This judge factor is also associated with the use of an alternative system of criminal threats in

the law, the absence of a criminal pattern for judges in imposing a sentence is also one of the factors causing criminal disparities.

The sentencing guidelines contain objective matters regarding matters relating to the perpetrators of criminal acts so that by taking into account these matters, the punishment is more proportional and it is better understood why the punishment is the result of the decision handed down by the judge. Judges must be objective in examining a case that is being handled according to existing legal rules, not subjective or placing themselves in the case being handled so that the judge does not side with one party (the Public Prosecutor or the Defendant).<sup>8</sup>

If the panel of judges does not adhere to the applicable law, including the professional ethics of judges, the result can be seen by the fact that there are still many free and low decisions that are not following the proven actions and also the disparity of criminal judges with one another even though the cases are the same, including in Corruption Court at the Banda Aceh District Court.<sup>9</sup>

Thirdly, the effects of the disparities of judgment and lack of punishment in the corruption cases in Aceh can be seen in the discussion below. The authority possessed by the judge in imposing following the applicable legal rules, with various considerations based on the panel of judges handling the case, finally gave a decision to the defendant whose actions were legally proven.<sup>10</sup> The problem arises if the resulting decision turns out to be controversial or not under existing laws and causes unrest in the community and makes people lose confidence in the judiciary.

Several cases occurred in the corruption courts which still gave acquittals and low sentences with various judges' considerations. The imposition of the decision is legally not violated if the judge has the right legal basis that has been considered, but as a result, the public sees from the point of view of justice, what has been done by corrupt actors who have harmed the country's finances and the economy is not commensurate with the criminal sanctions imposed. they accept.<sup>11</sup>

This issue is not meant to influence or intimidate the judiciary in dealing with corruption cases, criminal decisions handed down by the judiciary are always in the spotlight and judgment for people who are concerned with law enforcement in Indonesia in general and in Aceh in particular.

Corruption-crime cases whose verdicts are still free and low make people think it will not cause a deterrent effect for perpetrators to do it again and the birth of other perpetrators. This can be seen from the number of corruption in Aceh which is still relatively high every year. The results of the study still found low judge decisions and the occurrence of disparities in criminal penalties for the same case or the nature of the quality of actions and losses to the state and subject to the same article, but at the time of sentencing, the crime was very different.

## **V. Conclusion**

The disparity in sentencing in the imposition of a crime occurs when the range of differences in sentences handed down between similar cases is so large that it creates injustice and can lead to suspicion and loss of trust in the community. The disparity is not to be eliminated, but to minimize the difference in sentencing. In addition to the imposition of the main punishment, disparities occur in the imposition of additional penalties for payment of substitute money with varying amounts of replacement money as well as the amount of substitute imprisonment imposed which is also quite varied.

The factor causing the disparity in the verdicts on criminal acts of corruption is the Anti-Corruption Law, which can cause disparities, for example in Article 2 and Article 3 of the Anti-Corruption Law, which can lead to disparities in sentencing decisions. The disparity in the sentencing of crimes can be sourced from the judges themselves, among others, due to the various ideological understandings, the personality of the judges, including the mentality of judges, and social environmental factors that can affect the sentencing.

It is necessary to reformulate the minimum and maximum criminal sanctions in the Anti-Corruption Law, and the existence of a standard for payment of fines and compensation with the amount of prison in lieu.

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