

JURIDICAL ANALYSIS OF PUNISHMENT FOR WOMEN IN CORRUPTION CRIMINAL CASES: Case Study Decision of The DKI Jakarta High Court Number 10/Pid.Sus- TPK/2021/PT.DKI

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Abstract: Judges in making decisions have freedom or have an independent nature. Even though they have freedom, in making decisions, they must be based on sufficient considerations to support the decisions they make. In Decision Number 10/Pid.Sus-TPK/2021 the defendant is a woman and in that case the Judge handed down a sentence of imprisonment for 4 (four) years and a fine of Rp. 600,000,000 (six hundred million rupiah), with if the fine is not paid, it will be replaced with imprisonment for 6 (six) months. The length of the sentence imposed on the defendant was reduced by 6 (six) years compared to the decision at the Corruption Court at the Central Jakarta District Court which sentenced the Defendant to 10 (ten) years in prison and a fine of Rp. 600,000,000.- (six hundred million rupiah), provided that if the fine is not paid, it is replaced with imprisonment for 6 (six) months. The reduction in the length of the sentence imposed by the panel of judges at the DKI Jakarta High Court against female defendants deserves a juridical review.

Key Words: Judge decision, sentencing, women in facing the law, corruption crime.

1. INTRODUCTION:

The role of fair law enforcement is needed to overcome the problems of crime in Indonesia. One type of crime that exists is corruption. Corruption comes from the Latin "*corruption*" or "*corruptus*", which later appeared in many European languages, English, French "*corruption*" Dutch "*corruptive*" which later appeared in Indonesian "*corruption*".

When deciding the case of a women's case against the law, the judge must have considerations based on the facts at trial, besides that the judge is also obliged to explore the values that live in society and the conventions and international agreements that have been ratified. The judge's consideration is an important thing that becomes the reason for the imposition of a decision.

2. THEORITICAL FRAMEWORK:

a. Criminal Theory

According to Van Bemmelen, punishment is imposed by the judge if the judge has obtained the belief that the defendant has committed the act charged with him and he considers that the act and the defendant can be convicted.[1]

b. Judicial Power

Montesquieu quoted by Poentang Moerad stated that the judicial power meant was an independent judiciary, independent of the powers of other state institutions.[2]

c. Freedom of Judges

There are various interpretations of the freedom of judges, some interpreting the freedom of judges as freedom that is not absolute, because the task of judges is to uphold law and justice which must be based on the Pancasila basis.[3]

3. LITERATURE REVIEW:

According to Lubis and Scott, corruption is behavior that benefits self-interest at the expense of others, by government officials who directly violate the legal boundaries of such behavior.[4]

The Supreme Court as the executor of judicial power in Indonesia, in 2017 issued Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women Facing the Law. as witnesses or women as parties.

According to Leden Marpaung, the decision is the result or conclusion of something that has been carefully considered and assessed which can be in written or oral form.[5]

5. METHOD:

The method used in this research is a normative juridical approach, namely an approach based on legal materials (*library based*) which focuses on reading and studying primary and secondary legal materials.[6]

6. DISCUSSION:

One of the corruption cases that occurred in Indonesia was that which ensnared a woman named Dr. Pinangki Sirna Malasari, SH, MH as the defendant. In this case, Dr. Pinangki Sirna Malasari, SH, MH has been sentenced by the Jakarta Corruption Court at the Central Jakarta District Court to 10 years in prison and a fine of Rp. 600,000,000.00 (six hundred million rupiah) subsidiary 6 (six) months in prison.

The issue of the status of the accused who is a woman is one of the things highlighted in the decision. With regard to women as perpetrators of criminal acts, the Supreme Court as the executor of judicial power has issued Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 3 of 2017 concerning Guidelines for Prosecuting Women's Cases Dealing With the Law.

The purpose of the issuance of PERMA Number 3 of 2017 is so that judges have a reference in understanding and applying gender equality and the principles of non-discrimination in adjudicating a case, then the Supreme Court also hopes that through this regulation, gradually discriminatory practices based on gender and stereotypes gender in courts can be reduced, as well as ensuring that the conduct of the courts (including mediation in courts) is carried out with integrity and is gender sensitive.

7. ANALYSIS:

a. Considerations of the Panel of Judges in Sentencing Criminal Acts of Corruption in the Decision of the DKI Jakarta High Court Number 10/Pid.Sus-Tpk/2021/Pt DKI

In a criminal decision, the judge's considerations as described previously consist of juridical and non-juridical considerations. Juridical considerations are considerations of the public prosecutor's indictment, witness statements, defendant's testimony, documentary evidence, evidence, articles in criminal law provisions and so on. Meanwhile, non-juridical considerations relate to the background of the crime, the consequences of the defendant's actions, the defendant's condition, the socio-economic and environmental conditions of the defendant.

The Panel of Judges at the appeal level was of the opinion that the decision of the Corruption Court at the Central Jakarta District Court dated February 8, 2021 Number 38/Pid.Sus/TPK/2020/PN Jkt.Pst for which an appeal was requested should be changed only regarding the length of imprisonment imposed on the Defendant. which in the verdict stated that the defendant was sentenced to imprisonment for 4 (four) years and a fine of Rp. 600,000,000 (six hundred million rupiah), with the provision that if the fine was not paid, it was replaced with imprisonment for 6 (six) months.

b. Sentencing of Crime in the Decision of the High Court of the DKI Jakarta Number 10/Pid.Sus-Tpk/2021/Pt Dki Judging from the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Prosecuting Women in Facing the Law

The sentencing of the Defendant in Decision Number 10/PID.SUS-TPK/2021/PT DKI which took into account the status of the woman Defendant was associated with the aim of eliminating discrimination contained in the Convention Regarding the Elimination of All Forms of Discrimination Against Women, which was not in accordance with the objective of number 3, namely enforcing legal protection of women's rights on an equal basis with men's and to ensure through competent national courts and other governmental bodies the effective protection of women against any act of discrimination. This is because the consideration that the Defendant as a woman must receive attention, protection and be treated fairly can be interpreted as a distinction between women and men, even though the Convention Regarding the Elimination of All Forms of Discrimination Against Women requires equal legal protection between women and men.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- 1) The consideration of the Panel of Judges in imposing a sentence on the Decision of the DKI Jakarta High Court Number 10/PID.SUS-TPK/2021/PT DKI consists of juridical and non-juridical considerations. The juridical considerations used are stating agreement with the panel of judges at the first level court regarding the proven article elements in the defendant so that the panel of judges takes over the considerations of the first level panel of judges regarding the proven article elements. Furthermore, the non-juridical considerations used are to reduce the length of the sentence imposed on the defendant.
- 2) The criminal conviction in the DKI High Court Decision Number 10/PID.SUS-TPK/2021/PT DKI is not in line with the principles in the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Women in Facing the Law, namely the principles of non-discrimination, gender equality, equality before the law and justice.

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