

Minimizing Disparities in Judges' Decisions in Realizing a Sense of Justice in Society

Ilham Urane Azis, Kif Aminanto

^{1,2} Program Pascasarjana, Sekolah Tinggi Ilmu Kepolisian, Indonesia

Email: uraneilham@gmail.com; kif.92pw@gmail.com

Abstract

Disparity in judges' decisions in cases of criminal acts of corruption (tipikor) is a serious problem because it harms society's sense of justice. This research aims to analyze the factors that cause disparities in corruption decisions and formulate strategic recommendations to minimize them. The research method used is normative juridical with a statutory approach, case approach, and conceptual approach through qualitative secondary data analysis. The research results show that the disparity in decisions is caused by the characteristics of the Indonesian civil law system which lacks common sentencing guidelines, the principle of freedom of judges which triggers inconsistencies without the executorial authority of the Judicial Commission (KY), as well as overlapping regulations in Law no. 31 of 1999 and Law no. 20 of 2001 which was exacerbated by the weak synergy between institutions. To minimize this disparity, this research recommends that the Supreme Court (MA) issue regulations requiring judges to guide jurisprudence, as well as develop specific standard sentencing guidelines together with related institutions. Apart from that, there is a need for a judicial review by civil society of the KY Law to the Constitutional Court to strengthen the ethical oversight function of judges, which is balanced with the Supreme Court's steps in intensifying monitoring and strengthening sanctions for violations in corruption cases.

Keywords: Disparity in Decisions, Corruption, Judges' Freedom, Sentencing Guidelines, Judicial Commission.

INTRODUCTION

Law holds a high position in the life of the nation and state in Indonesia. This is in accordance with Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: "Indonesia is a state of law." Thus, it is hoped that the binding force of law will be stronger for the Indonesian nation and ground all life activities in legal provisions (Simamora, 2014). However, in its implementation, the law cannot fully guarantee a sense of justice for the community. For example, in criminal cases, there is a disparity in decisions, but without a clear basis for the decision (Laia, 2025). Although considered evidence of an absence of justice, this condition cannot be considered a violation of the law (Nursobah, 2021).

This is because the power of judges, according to the 1945 Constitution of the Republic of Indonesia, is the independent power to administer justice to guarantee the freedom of the judiciary as an independent institution, including the freedom of judges in carrying out their duties (Busthami, 2017). Nevertheless, it has become a common concern that the element of "justice" must fundamentally be inherent in the decisions rendered by judges (Dewanto, 2020). This disparity not only creates injustice, but also creates dissatisfaction and a crisis of trust among the public, who perceive disparate decisions by judges in adjudicating corruption crimes without strong legal arguments (*ratio decidendi*), as well as a sense of crisis among judges who view corruption as an extraordinary crime (Jamil & Nur, 2022).

The intensified arrests of corruption perpetrators demonstrate the seriousness of law enforcement against corruptors, but on the other hand, corruption eradication efforts become more effective when perpetrators receive commensurate punishments that also serve as a deterrent (Atmoko

& Syauket, 2022). Judges have received public praise for their fair decisions on several occasions, such as the life sentence given to defendant Akil Mochtar, who was found guilty of accepting bribes in a regional election dispute while serving as Chief Justice of the Constitutional Court. It is not uncommon to find judges' decisions that appear to lighten sentences, drawing criticism, and ICW assesses that judges' verdicts tend to be inconsistent (Yudhistira, 2025). Several corruption cases involving nearly equal amounts of state losses, yet the sentences handed down vary significantly. Moreover, 79 percent of corruption cases carry light sentences, ranging from 1 to 4 years in prison. While the average sentence for defendants in corruption cases in 2018 was 2 years and 5 months, this tends to be light compared to the actual state losses.

The phenomenon of disparity in judges' decisions in corruption cases can be found, among others: 1) The bribery case in the election of the Senior Governor of Bank Indonesia, with defendant Endin Akhmad Jalaluddin Soef Ihara (Member of Commission IX of the Indonesian House of Representatives from 1999 to 2004), who was sentenced to one year and three months in prison (Theresia, 2024); 2) The Corruption Court's decision in the same case, with defendant Hamka Yamdu Y.R. who was sentenced to two years and six months in prison; and 3) The decision of the Kupang District Court regarding corruption of additional supporting budgets (Other) of the Kupang Regency DPRD with the defendants being six former DPRD members who were acquitted (Rohayu, 2025).

In this context, it is crucial to improve the judicial climate in Indonesia by minimizing disparities in judicial decisions to bring positive impacts and benefits, including restoring the legitimacy of law enforcement, restoring public trust, protecting the public from harm caused by criminals, and most importantly, fostering a sense of justice in society (Yusnani, 2023). As the highest judicial authority, the Supreme Court (MA) must improve and proactively act to uphold the authority of law and the judiciary in Indonesia. This is to prevent decisions that undermine legal principles and technical regulations, logical reasoning, and a sense of justice. Law Number 14 of 1985 concerning the Supreme Court mandates that the MA actively oversee the course of justice (Ariefiani, 2024).

When disparities occur, they weaken the supremacy of law enforcement. As stated by Edward M. Kennedy (2005), disparities in sentencing can cause chaos in society, harm the public's sense of justice, and encourage people to commit crimes. The public considers this disparity to be evidence of judges' lack of seriousness in sentencing, negating the deterrent effect for both corruptors and potential corruptors, and inconsistent with the philosophical aims of criminal justice. This situation creates a failure in criminal law enforcement, and as a result, law enforcement is viewed as unimportant by the public.

METHOD

This study employs a normative juridical approach, focusing on examining norms, principles, and written legal regulations related to the authority of judges to minimize disparities in decisions. The approaches employed include a statute approach to examine judicial power regulations, a case approach to analyze samples of unequal decisions, and a conceptual approach to refer to theories of justice. The research data is entirely sourced from secondary data, consisting of primary legal materials in the form of laws and court decisions, secondary legal materials in the form of books and scientific journals, and tertiary legal materials in the form of legal dictionaries. All of these legal materials were collected through library research techniques by inventorying and documenting relevant legal documents. The collected legal materials were then analyzed using a qualitative descriptive-analytical method with deductive conclusions drawn, namely applying general legal theory to the phenomenon of disparities in decisions in a concrete manner. The results of the analysis are presented narratively and systematically to formulate a law enforcement strategy that can align judicial freedom with fulfilling society's sense of justice.

RESULT AND DISCUSSION

Factors Causing Disparity in Judges' Decisions in Corruption Cases

The discussion of disparity in judges' decisions in corruption cases is generally viewed from the perspective of public perception of judges' behavior and decisions. Heavy decisions are consistently appreciated, welcomed by the public, and foster optimism for efforts and commitment to eradicating corruption in Indonesia. Conversely, when disparity in judges' decisions emerges, it is perceived as a bad precedent and considered an obstacle to corruption eradication. According to the Indonesian Corruption Watch (ICW), disparity is a serious problem because it has the potential to harm the public's sense of justice. There are even suspicions that disparity arises from the buying and selling of decisions. Therefore, judges are urged to maintain independence and self-determination to ensure consistency in sentencing corruption defendants.

This phenomenon can be compared with the World Justice Project's 2019 Rule of Law Index, which ranked Indonesia 62nd out of 126 countries. This assessment is based on eight indicators, with Indonesia having the three lowest scores in civil justice, absence of corruption, and criminal justice.

Ranking Indonesia dalam Rule of Law Index 2019
Berdasarkan data Global Justice Project

Faktor/Parameter	Skor Faktor	Ranking Regional	Ranking Global
Constraints on Government Powers	0,66	6/15	29/126
Absence of Corruption	0,38	14/15	97/126
Open Government	0,54	7/15	47/126
Fundamental Rights	0,52	8/15	82/126
Order and Security	0,70	12/15	70/126
Regulatory enforcement	0,55	7/15	43/126
Civil Justice	0,44	13/15	102/126
Criminal Justice	0,37	12/15	86/126

Figure 1. Indonesia's ranking in the Rule of Law Index 2019

The low civil justice, corruption, and criminal case scores indicate a serious setback for Indonesia in its efforts to eradicate corruption. When efforts to minimize disparities in judicial decisions remain suboptimal, this negatively impacts the judicial climate in Indonesia, creating a crisis of public distrust in the integrity of judges and judicial institutions, hindering the realization of a sense of justice. Justice is a feeling born of noble societal values, morality, and the guiding principles of national life, as derived from Pancasila.

In relation to the disparity in judicial decisions in corruption cases, a comprehensive understanding of the concept and principles of the Judicial Power is necessary. Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that the judicial power is an independent power to administer justice to uphold law and justice. This judicial power is further detailed in Law Number 48 of 2009 concerning Judicial Power. As a state based on the rule of law, the judicial power in Indonesia must uphold the principle of the rule of law.

Based on this concept, judges are vested with judicial authority to hear and decide a case, thus playing a crucial and crucial role. The principle of judicial discretion (judicial independence) is the spirit of the exercise of judicial power, defined as freedom from external influence, but most importantly, freedom from internal influence. Therefore, it must be accompanied by responsibility and integrity.

The Indonesian Judicial Monitoring Society (MaPPI) of the Faculty of Law, University of Indonesia (UI) found 166 disparities in Corruption Court decisions. These findings were obtained from a study of 587 Corruption Court decisions and legal correspondence with 689 corruption convicts between 2011 and 2015. According to MaPPI, the disparities are caused by three factors: 1) the lack of an official benchmark for criminal decisions; 2) the educational background of decision-makers; and 3) the absence of centralized data to serve as a reference in criminal decisions, particularly in corruption cases.

1. Legal System

The Indonesian legal system adheres to the Continental European System (civil law system), which inevitably leads to disparities in decisions. This emphasis is placed on statutory regulations,

resulting in "persuasive precedent" jurisprudence that is not mandatory or formally binding on judges. The opposite of this system is the Anglo-Saxon (Common Law System), where law is focused on jurisprudence, which is the decision of the Supreme Court (MA) that has been or is consistently followed by other judges below the MA. Jurisprudence in the Common Law System is characterized by "binding force precedent." This means that the potential for disparity can be prevented because court decisions follow previous judges' decisions.

2. Law

The use of criminal law as a premium remedium in the Corruption Eradication Law is actually considered a trigger for disparity in sentencing in corruption cases, particularly Articles 2 and 3, which are accused of causing disparity in decisions. The problem lies in the difference in minimum penalties. Article 2 stipulates a minimum sentence of four years, while Article 3 stipulates a minimum sentence of one year. Problems arise when Article 2 can be applied to anyone, including parties other than state officials. Article 3, however, specifically targets state officials. The minimum sentence in Article 3 of the Corruption Law should be the same as Article 2.

Furthermore, Articles 5 and 12 are considered to be the cause of the disparity in sentences. The minimum and maximum sentences stipulated in Article 5 are much lighter than those stipulated in Article 12. Similar to studies on Articles 2 and 3, some believe Article 5 can be used as a way to avoid a harsher sentence.

3. Internal Factors of Judges

The problem of disparity can also originate within judges, due to varying ideological understandings of the philosophy of punishment (basic values or philosophies of punishment), at least in terms of following criminal law schools (classical or modern). Furthermore, under Indonesian positive criminal law, judges have extensive freedom to choose the type of punishment they desire.

Factors originating within the judge are divided into three: 1) Personal factors of the judge, including mentality, consisting of religion, ethnicity, informal education, and other factors; 2) Social factors, including political, economic, socio-cultural, and other factors. It is very difficult for a judge to completely isolate themselves from the influence of these factors. Often, these factors have a very dominant influence on sentencing; 3) It must be recognized that many elements within the judicial mechanism can influence a judge's decision, including the strong influence of superiors.

4. Lack of Joint Guidelines

The cause of disparities in sentencing stems from the law itself, which, while ideologically justified, contains weaknesses due to overly broad judicial discretion due to the lack of a sentencing standard. Only the Supreme Court (MA) has a policy to prevent disparities in sentencing, while other law enforcement agencies do not.

The MA has issued Circular Letter No. 14 of 2009 concerning the Development of Judicial Personnel, which substantively contains three points: 1) In an effort to develop high-level judges, discussions on legal issues must be held periodically; 2) Development for first-level judges must be provided; and 3) The steps referred to in the first and second points must not limit judges' innovations in providing guidance. Interestingly, the second point mandates that the Chief Justices of Appellate Courts should prevent disparities in sentencing. This circular should serve as a gateway to prevent disparities in sentencing.

Evaluation and Oversight of Judicial Performance Are Suboptimal

Judges' performance is monitored by the Supreme Court (internal oversight) and the Judicial Commission (external oversight). The Judicial Commission only has authority to investigate alleged violations of the Code of Ethics and Guidelines for Judicial Conduct, while the Supreme Court has authority to investigate such violations, as well as judicial, administrative, financial, and other court matters, as stipulated in Article 39 of the Judicial Powers Law. The Judicial Commission can analyze court decisions that have obtained permanent legal force as the basis for recommendations for judge transfers in accordance with Article 42.

Based on Article 11A of Law Number 3 of 2009 concerning the Supreme Court and Articles 22F and 22G of Law Number 11 of 2011 concerning the Judicial Commission, as well as Joint Regulation of the Supreme Court and the Judicial Commission Number 04/PB/MA/IX/2012, the two institutions establish a Judicial Ethics Council consisting of three Supreme Court Justices and four members of the Judicial Commission to examine and rule on alleged violations of the Code of Ethics and Code of Conduct for Judges, with sanctions ranging from light sentences to dismissal.

The principles of the Code of Ethics and Code of Conduct for Judges are implemented in 10 rules of conduct: behaving fairly, honestly, wisely, independently, with high integrity, responsibly, upholding self-respect, being highly disciplined, humble, and professional, as per Joint Decree of the Chief Justice of the Supreme Court and the Chief Justice of the Judicial Commission Number 047/KMA/SKB/IV/2009. The Supreme Court is key to enforcing ethical standards for judges, having issued Supreme Court Regulations Numbers 7, 8, and 9 of 2016 concerning disciplinary enforcement, supervision and guidance of direct superiors, and a violation reporting system. This was also supported by Chief Justice Decree Number 213/KMA/SK/XII/2014 concerning the chamber system to create unity and legal certainty. Oversight is coordinated by the Supervisory Body, which receives complaints through various channels, records them, reviews them, and forwards them to investigators for clarification, research, examination, and follow-up.

However, public criticism of the Supreme Court's oversight remains unabated, as it is perceived to be insufficiently firm in enforcing ethical standards and to ignore recommendations from the Judicial Commission and the Corruption Eradication Commission. This was particularly evident when the practice of case trading and a judicial mafia was uncovered, implicating Nurhadi, the former Secretary of the Supreme Court from 2011 to 2016, as a suspect in a bribery case amounting to Rp 46 billion.

To enforce external oversight, the Judicial Commission in 2019 imposed sanctions on 130 judges for violating ethical standards, including violations of procedural law against 79 judges, violations of conduct against 33 judges, and administrative violations against 18 judges. However, implementation has been hampered because the Supreme Court only acted on 10 of the 130 proposed sanctions, citing technical judicial reasons, while the remaining 62 proposals were not acted upon. This problem arises because the Judicial Commission only provides recommendations, while the decision to impose sanctions rests entirely with the Supreme Court.

According to Haris Azhar, the Judicial Commission's performance must be maximized and its authority strengthened, particularly in addressing the Supreme Court's internal oversight bias, given that judicial mafia is a serious problem for the judiciary's dignity. The Judicial Commission faces several challenges in optimizing its evaluation and oversight of judicial performance and decisions. First, there is resistance from judges and the Supreme Court to the Judicial Commission's supervisory authority, even though the Judicial Commission is expected to promote judicial reform through its external oversight function. Overcoming this requires strong support from the government, academics, and the public.

Second, the KY's decision is only a recommendation so it is not enough to enforce supervision, so the KY needs to be given the authority to directly summon and sanction judges according to LeIP's criticism, because if it only has the authority to supervise while the decision to sanction remains under the MA, the supervisory function becomes useless, especially since the MA is considered to tend to defend its own corps; the KY also needs the authority to request periodic court reports and open trial records which must be explicitly stated in the law.

Third, the less than harmonious and conflicting relationship between the Supreme Court (MA) and the Judicial Commission (KY). The MA views the KY as a new institution seeking public recognition and entering the judicial and administrative spheres. This feud extends beyond correspondence to the media, with accusations exchanged. Several Supreme Court Justices even challenged the KY Law at the Constitutional Court. Constitutional Court Decision No. 005/PUU-IV/2006 stipulated that the KY's supervisory function in reviewing decisions must be conducted through a legal process in accordance with procedural law that does not conflict with the principle of judicial independence. Therefore, any errors in decisions can be addressed through legal remedies.

Although the conflict subsided somewhat after the ruling, conflicting statements between the two institutions are still frequently found in the media.

Legislation and Regulations Related to Disparities in Judicial Decisions Are Not Yet Effective.

Identification of regulatory instruments is necessary to identify rules that have the potential to lead to disparities in judicial decisions. Law Number 48 of 2009 concerning Judicial Power emphasizes that judges are required to explore the legal values and sense of justice inherent in society and to possess integrity and professionalism. However, it does not define "values of justice" and "societal sense of justice." Law Number 18 of 2011 concerning the Judicial Commission indicates that the Judicial Commission (KY) and the Supreme Court (MA) are two key actors in minimizing disparities in decisions, but the KY has limited authority and cannot directly prosecute violations. Law Number 19 of 2019 concerning the Corruption Eradication Commission (KPK) requires increased synergy between law enforcement agencies, but Corruption Court judges' awareness of the dangers of corruption as an extraordinary crime remains minimal.

A series of 2016 Supreme Court Regulations concerning judicial oversight represent a positive step, but they do not involve the Judicial Commission and neglect the oversight role of the public and academics. To prevent disparities, holistic and integrated legislation with a firm approach is needed. The Supreme Court has issued Chief Justice Decree No. 189/KMA/SK/IX/2018 concerning the Establishment of a Working Group for the Preparation of Criminalization Guidelines for Corruption Crimes with the support of researchers from the Indonesian Judicial Monitoring Society, Faculty of Law, University of Indonesia, and funding from USAID-CEGAH, but the guidelines are still in the drafting process. In addition, the law on the Judicial Commission does not yet provide strong authority to prevent disparities, and the lack of synergy between the institutions of the Republic of Indonesia National Police, the Corruption Eradication Commission, the Judicial Commission, the Supreme Court, and legal observer community groups must work together to raise awareness of the supervision of the performance of judges to uphold the dignity of the judiciary.

Judicial Integrity and Professionalism in the Dispensation of Justice Remain Low.

The Code of Ethics and Guidelines for Judicial Conduct (KEPPH) are written regulations that appear to be merely cosmetic in protecting the dignity of justice. This is because unethical judges are still found in the performance of their duties. Judges who lack integrity and professionalism clearly harm the dignity of the judiciary and the values of public justice. Cases of court clerks and judges' involvement in corruption cases, for example, continue to plague justice seekers. The courts, which should be the last bastion in upholding the dignity of the Indonesian judicial system, are often disrupted by the behavior of judges and clerks themselves.

ICW (Indonesian Corruption Watch) has shown that many judges and clerks have been proven to violate the KEPPH by not hesitating to commit corruption. These violations demonstrate a lack of professionalism and moral integrity among judges, further eroding public trust in the judiciary. Not only general courts, but also the Corruption Courts are still plagued by KEPPH violations. The following infographic shows several cases of bribery by judges in the Corruption Courts.

In principle, judges are required to possess integrity, professionalism, and independence in carrying out their functions in the courts. Integrity is defined as a complete, dignified, honest, and unwavering personality, adhering firmly to prevailing values and norms, daring to resist all temptations to intervene, and subduing the demands of conscience to uphold truth and justice. With this foundation, disparities in judicial decisions can be minimized.

Indonesia adheres to a civil law system, which differs from common law in the United States. Consequently, court decisions are not binding on other judges, and disparities in decisions often occur. The main obstacle is that Corruption Court judges are less responsive to the public's sense of justice, with sentences given to corruptors often light without strong legal arguments, and judges are less aware of the seriousness of corruption. To address this, the Supreme Court needs to strictly supervise judges

who commute sentences for corruptors and investigate their backgrounds to ensure the judiciary is trusted and credible in the eyes of the public.

CONCLUSION

The disparity in judicial decisions in corruption cases has clearly created a sense of injustice in society. One of the main causes of this phenomenon is the characteristics of the Indonesian civil law system, which binds judges to written laws but is not yet supported by comprehensive, cross-institutional guidelines for sentencing. As a result, the primary burden and responsibility for preventing disparities institutionally currently rests solely with the Supreme Court. On the other hand, the principle of judicial independence, strictly protected by law, often leads to inconsistent decisions in cases with similar characteristics. This situation is exacerbated by the position of the Judicial Commission (KY), whose authority is still only recommendatory and not binding, thus lacking a strong enough deterrent to correct judicial behavior. Regulatory factors also contribute to this disparity, particularly because the sentencing provisions in Law Number 31 of 1999 and Law Number 20 of 2001 still contain overlapping and ambiguous articles. This regulatory ambiguity is further complicated by the lack of synergy in law enforcement between judicial institutions. Therefore, to resolve this tangled mess, progressive steps are needed to re-establish the integrity and professionalism of judges comprehensively. Upholding moral and professional qualities cannot occur in isolation but must be accelerated through strict institutional oversight and the active involvement of civil society elements as social control over the judiciary.

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