


# Criminal Sentence Disparity of Village Funds Abuse In Maluku

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| Article Info   | Abstract  |  |
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| <p><b>Keywords:</b><br/>Disparity; Corruption; Village Fund.</p> | <p><b>Introduction:</b> Difference or disparity in sentencing is one of the important topics in criminal law. The disparity in sentencing means that there are differences in the amount of punishment handed down by the court in cases that have the same characteristics.</p> <p><b>Purposes of the Research:</b> The purpose of this study is to find out why there is a disparity in criminal penalties in court verdicts in cases of corruption in the misuse of village funds in Maluku.</p> <p><b>Methods of the Research:</b> This study uses a normative juridical method.</p> <p><b>Results of the Research:</b> Based on the results of the study, essentially the disparity in imposing criminal penalties in court verdicts on corruption cases of misuse of village funds is due to strafmaat (criminal threats) for different perpetrators.</p> |  |

## 1. INTRODUCTION

The number of officials who are convicted of corruption is a setback in the life of the nation and state. This is a sign that positions are no longer used for the welfare of society but to enrich themselves. Many traces of bad history were created starting from leaders in the center even to leaders in the village. This fact is undeniable considering that more and more village heads are found guilty of using village funds.

Village financial management is a consequence of village autonomy. Village financial management requires the presence and completeness of village officials.<sup>1</sup> The year 2014 was the start of a new government program to develop from the village, this program is predicted to be able to improve the welfare and quality of life of the village community. Through this government program, the funds used are not small. This fund is intended for the development of villages' infrastructure, village empowerment, and villages' public services. In 2020 the total budget disbursed reached 72 Trillion, so that each village received an average of Rp. 930 Million.<sup>2</sup> The provision of Village Fund Allocations is a manifestation of the fulfillment of the village's right to carry out its autonomy so that it grows and develops following the growth of the village itself based on diversity, participation, original autonomy, democratization, community empowerment and increasing the role of the

<sup>1</sup> Muhammad Zainul Abidin, "Tinjauan Atas Pelaksanaan Keuangan Desa Dalam Mendukung Kebijakan Dana Desa," *Jurnal Ekonomi & Kebijakan Publik* 6, no. 1 (2015): P. 67.

<sup>2</sup> Selfie Miftahul Jannah, "Dana Desa Meningkatkan, Tiap Desa Rata-Rata Dapat Rp960 Juta Tahun Ini," *tirto.id*, 2020, <https://tirto.id/dana-desa-meningkat-tiap-desa-rata-rata-dapat-rp960-juta-tahun-ini-esQu>.

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Village Government in providing services and improving community welfare and spur acceleration development and growth of strategic areas.<sup>3</sup> The implementation of village funds is certainly expected to accelerate the realization of these expectations, especially in the field of development.<sup>4</sup> With such large funds, things that are not justified can certainly arise, such as criminal acts of corruption. Corruption crimes that occur in villages involve many village officials so that the impact of village development is not directed and the community is certainly not prosperous. It was recorded that from 2015-2019 cases of corruption in village funds increased from 25 cases per 2015 to 96 cases in 2018. The data that has been collected proves that the perpetrators of criminal acts of corruption in village funds totaled 214 people, the majority of whom were village heads.

Law enforcement against criminal acts of corruption is absolutely necessary in order to suppress the misuse of the fantastic amount of village funds. The implementation of criminal acts against perpetrators of corruption also varies, starting from the number of demands given and even the number of criminal sentences handed down is increasingly different. These differences could be due to the use of different articles in Act No. 31 of 1999 concerning the Eradication of Corruption Crimes.

Difference or disparity in sentencing is one of the important topics in criminal law. Disparity in sentencing means that there is a difference in the amount of punishment handed down by the court in cases that have the same characteristics.<sup>5</sup> Disparity is essentially a negation of the concept of parity which means the equality of quantities or values. In the context of sentencing, parity means equality of punishment between similar crimes under similar conditions.<sup>6</sup> Thus disparity is the unequal punishment between similar crimes (same offense) in similar conditions or situations (comparable circumstances).<sup>7</sup> Harkristuti Harkrisnowo said that criminal disparities can occur in several categories, including:<sup>8</sup>

- 1) Disparity between the same crime
- 2) Disparities between crimes that have the same level of seriousness
- 3) Criminal disparity imposed by a panel of judges.
- 4) The disparity between the sentences imposed by different judges for the same crime

There are many factors that cause disparity in verdicts, but in the end, it is the judge who determines the disparity.<sup>9</sup> One of them is that there are differences in interpretation, especially for law enforcers (in this case judges) when applying the same criminal sanctions for the same crime.<sup>10</sup> The disparity of judges' decisions, which on the one hand give heavy sentences and on the other hand, give light sentences, makes corruption cases difficult to

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<sup>3</sup> Lina Nasihatun Nafidah and Mawar Suryaningtyas, "Akuntabilitas Pengelolaan Alokasi Dana Desa Dalam Upaya Meningkatkan Pembangunan Dan Pemberdayaan Masyarakat," *BISNIS : Jurnal Bisnis Dan Manajemen Islam* 3, no. 1 (2015): P. 215, <https://doi.org/10.21043/bisnis.v3i1.1480>.

<sup>4</sup> Ajeng Kartika Anjani, "Pertanggungjawaban Pengelolaan Dana Desa," *Jurist-Diction* 2, no. 3 (2019): P. 748, <https://doi.org/10.20473/jd.v2i3.14288>.

<sup>5</sup> "Studi Atas Disparitas Putusan Pidanaan Perkara Tindak Pidana Korupsi," n.d., P. 9.

<sup>6</sup> Allan Manson, *The Law of Sentencing* (Irwin Law, 2001), P. 92-93.

<sup>7</sup> Litbang Mahkamah Agung, "Kedudukan Dan Yurisprudensi Untuk Mengurangi Disparitas Putusan Pengadilan," (Puslitbang Hukum dan Peradilan Mahkamah Agung RI, 2010), P. 6.

<sup>8</sup> Irfan Ardiansyah, "Pengaruh Disparitas Pidanaan Terhadap Penanggulangan Tindak Pidana Korupsi Di Indonesia," *Jurnal Hukum Respublica* 7, no. 1 (2017): P. 95.

<sup>9</sup> Imron Safii, "Urgensi Pengadilan Tindak Pidana Korupsi Dalam Mewujudkan Peradilan Yang Bersih Dan Berwibawa," *Jurnal Pandecta* 9, no. 1 (2014): P. 83.

<sup>10</sup> Kristoforus Laga Kleden, "Pendekatan Viktimologi Meminimalisir Disparitas Pidana Related Papers," *Jurnal Hukum Magnum Opus* 2, no. 2 (2019): P. 216.

eradicate.<sup>11</sup> The disparity of court verdicts in adjudicating criminal acts of corruption shows not only different considerations in aggravating matters and mitigating matters for the accused, but also often this disparity occurs without being supported by weak juridical arguments (*ratio decidendi*) and the lack of sensitivity (sense of crisis) of judges in viewing that corruption is an "extraordinary crime".<sup>12</sup> Some of the judges' considerations in the occurrence of criminal disparities against corruption are: Legal considerations or legal substance, considerations of the *modus operandi*, and considerations of legal benefits.<sup>13</sup>

The emergence of differences in the imposition of crimes or disparities in sentencing is mainly something that is common and natural because there are almost no cases whose values are almost exactly the same. Disparity becomes a problem when the range of differences in sentences handed down between similar cases is so large, that it creates injustice and creates suspicion and polemic in society. Therefore, the disparity in sentencing concerning corruption cases is not new. Specifically for the eradication of corruption, the phenomenon of disparity in punishment is not only limited to the main crime but also includes substitute money. As we all know that the crime of substitute money is a specialty of corruption. In its implementation, it is not uncommon to find the phenomenon of disparity in the imposition of prison sentences and also replacement money in the sentences of corruption cases.

## 2. METHOD

The type of legal research carried out in a normative juridical manner is a normative juridical where the law is conceptualized as what is written in laws and regulations (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.<sup>14</sup> This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in the legislation.<sup>15</sup>

## 3. RESULTS AND DISCUSSION

### 3.1 Disparity in Criminal Sentencing Imposition in Indonesia

Disparities or gaps in criminal cases are the most important part of criminal law because all criminal law regulations ultimately culminate in sentencing.<sup>16</sup> The change in the philosophy of punishment, which was previously only oriented to revenge, has now turned to rehabilitation efforts by considering several factors inherent in the perpetrators which evidently often cause the problem of criminal disparity for violations whose standard or scope of punishment has not been determined regarding the seriousness of the crime.

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<sup>11</sup> I Putu Bayu Pinarta and I Ketut Mertha, "Pengaturan Tindak Pidana Korupsi: Analisis Disparitas Penanggulangan Penjatuhan Pidana Di Indonesia," *Jurnal Kertja Semaya* 8, no. 10 (2020): P. 1608.

<sup>12</sup> M Robby Perdana Putra and Dey Ravena, "Kebijakan Hukum Pidana Dalam Menanggulangi Disparitas Pidana Oleh Hakim Dalam Kasus Korupsi Dihubungkan Dengan Kebebasan Hakim," in *Prosiding Ilmu Hukum*, 2016, P. 764.

<sup>13</sup> Ida Bagus Agung Dwi Adwitya, Ida Bagus Surya Sarmajaya, and I Gusti Ngurah Parwata, "Disparitas Putusan Sanksi Pidana Tindak Pidana (Studi Kasus Putusan Pengadilan Negeri Gianyar Dan Denpasar)," *Kertha Wicara: Journal Ilmu Hukum*, 2015, P. 5.

<sup>14</sup> Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2012), P. 118.

<sup>15</sup> Soeryono Soekarto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1984), P. 20.

<sup>16</sup> H Eddy Djunaidi Karnasudirja, "Beberapa Pedoman Pemidanaan Dan Pengamatan Narapidana, Pengadilan Kudus" (Jakarta, 1983), P. 1.

Disparity (disparity: *dis-parity*) is essentially a negation of the concept of parity which means the equality of quantities or values. In the context of sentencing, parity means the equality of punishment between similar crimes under similar conditions. Thus disparity is the unequal punishment between similar crimes (same offense) in similar circumstances (comparable circumstances). The concept of parity itself cannot be separated from the principle of proportionality, the principle of punishment promoted by Beccaria where it is hoped that the punishment imposed on the perpetrator of a crime is proportional to the crime he has committed. If the concepts of parity and proportionality are seen as a single unit, the disparity in sentencing can also occur in the event that the same sentence is imposed on perpetrators who commit crimes with different levels of crime. The existence of differences in sentencing or disparity in sentencing is mainly a natural thing because it can be said that almost no cases are really the same. The disparity in punishment becomes a problem when the range of differences in sentences handed down between similar cases is so large, that it creates injustice and can raise suspicions in the community. Therefore, the discourse on the disparity of sentencing in criminal law and criminology was never intended to eliminate differences in the amount of punishment for the perpetrators of crimes but to reduce the range of differences in sentencing.

In the Netherlands, this disparity in sentencing is also a serious problem. Not only in the Netherlands, but in many other countries this is also a big concern. The problem of disparity in sentencing in Indonesia is very likely to occur. This potential is huge considering that the system of regulating criminal sanctions adopted by Indonesia originated in the Netherlands through the application of the Criminal Code, wherein the system of regulating criminal sanctions the formulation of criminal sanctions/threats is formulated in the form of maximum threats. With such a formulation model, judges are given considerable freedom to determine the amount of punishment in each case as long as it does not exceed the maximum threat. This regulatory model was indeed one of the fundamental changes made by the Netherlands when it began to abandon the criminal paradigm adopted by the Napoleonic Penal Code which was more towards the classical flow. In addition to the paradigm shift from classical to neo-classical flow, this change gives judges considerable discretion to determine the sentence to be handed down. This is also due to the Dutch legal tradition itself which does have high trust in its judges. In Indonesia, the disparity in sentencing related to corruption cases is not new. Perhaps, the disparity in sentencing in corruption cases is one of the factors that prompted Act No. 3 of 1971 concerning the Eradication of Corruption Crimes to be replaced by Act No. 31 of 1999. One of the changes that occurred in Act No. 31 of 1999 was the formulation of the threat of punishment. In Act No. 31 of 1999, the special minimum criminal penalties began to be reorganized, similar to the regulatory model in the Napoleonic Penal Code.

The enforcement of criminal law at the peak of proving the material truth is in the hands of the chief judge at the time of the investigation until a decision is finally made. If the guilt of committing a crime is proven conclusively as claimed by the public prosecutor, then the judge with his conviction will issue a sanction order. For example, several verdicts in cases of treason violations have resulted in unequal penalties and without clear reasons. Meanwhile, it is needed to keep in mind that the independence of judges can also be influenced by external factors. Therefore, a judge should still be guided by the development of the judicial process which is regulated through the provisions of Article 5 paragraph (1) of Act Number 48 of 2009 concerning Judiciary, which explains that judges are obliged to



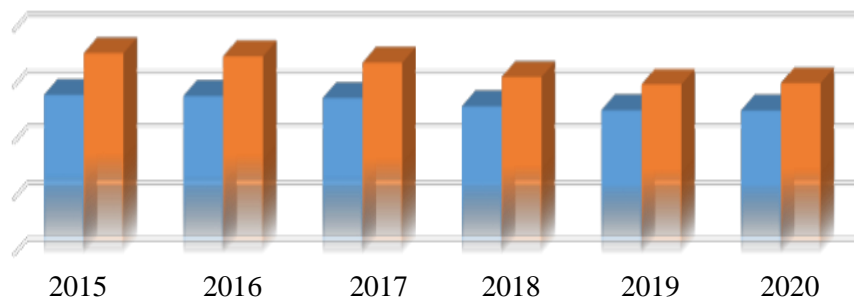
explore, follow and understand judicial values, legal values and a sense of justice in society.<sup>17</sup>

### 3.2 Disparity in Criminal Sentencing on Corruption Crimes

During the last 1 (one) decade, the corruption eradication movement has almost dominated the news in Indonesia. This is a natural thing because the work of law enforcement officers shows quite impressive achievements. Especially related to corruption cases that were tried at the Corruption Court in Jakarta, which was submitted by the Corruption Eradication Commission (KPK), almost all of them were found guilty. However, in the face of extraordinary crimes such as corruption, the achievements of the KPK and the Corruption Court are not without criticism. The public still considers the verdict against the perpetrators of corruption has not yet fulfilled the sense of justice of the community. Still considered not proportional. One of the reasons is that the verdicts given by the panel of judges are still relatively low, and there are often disparities between the verdict of more or less similar cases. As a result, punishments for corruptors are inconsistent.

Villages are the forerunner to the formation of society and government before the existence of the Unitary State of the Republic of Indonesia. In Indonesia alone, there are 75,436 villages, spread across the archipelago. These villages contribute to the economy, human resources, as well as the fulfillment of basic national needs. However, despite contributing to the national economy and a large population, the poverty rate in villages is still relatively high. The report from the Indonesian Central Statistics Agency (BPS) noted that the poverty rate in villages has reached 12.82% or 15,26 million people as of March 2020.<sup>18</sup>

**Poverty Rate In Villages Since 2015-2020 (BPS RI)**



|  |              |              |              |              |              |              |
|--|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>Poverty Percentage (%)</b>          | <b>14,21</b> | <b>14,11</b> | <b>13,93</b> | <b>13,2</b>  | <b>12,85</b> | <b>12,82</b> |
| <b>Number of Poor People (Million)</b> | <b>17,94</b> | <b>17,67</b> | <b>17,1</b>  | <b>15,81</b> | <b>15,15</b> | <b>15,26</b> |

Source: BPS RI

*Image 1. Poverty Rate in Villages Since 2015*

Whereas, every year the Government allocates the State Revenue and Expenditure Budget (APBN) for villages, through village funds, as mandated by Article 72 paragraph (1) of the Village Law. Furthermore, the allocation of village funds is also a manifestation of the President's Nawacita to "Build from the Outskirts of the Village" in order to improve the

<sup>17</sup> Angraini Putri et al., "Disparitas Putusan Hakim Pada Kasus Tindak Pidana Korupsi Putusan Mahkamah Agung Nomor 10/Pid.Sus- TPK/2021/PT DKI," *Jurnal IKAMAKUM* 1, no. 2 (2021): P. 244.

<sup>18</sup> "Data Badan Pusat Statistik Tahun 2020," n.d.

welfare and quality of life of rural communities.<sup>19</sup> From the year 2015 to 2020, Rp. 329.8 trillion village funds have been distributed from the Central Government. In particular, in 2020 the total village funds allocated by the APBN reached Rp. 72 trillion and each village gets an average of Rp. 930 million from village funds (Jannah, 2020). Through these funds, the Village Government is given the responsibility to manage village funds for priority purposes in their respective villages, in accordance with the Village Government Work Plan (RKP Desa) and the Village Revenue and Expenditure Budget (APB Desa) that have been prepared previously.<sup>20</sup> The following are some verdicts on criminal acts of misuse of village funds in Maluku that occurred from 2019-2021.

**Table 1.**  
**Recap of Ambon District Court's decision regarding DD and ADD**

| No | Verdict Number             | Charged                               | Location/State Loss              | Lawsuit  | Verdict   |
|----|----------------------------|---------------------------------------|----------------------------------|--|---|
| 1  | 27/Pid.sus-TPK/2019/PN Amb | LI (Village Head)                     | Desa Air Besar/ Rp 336.150.714   | 4 Years Prison<br>Rp. 200 million fine<br>Paying replacement money Rp. 116.688.000           | 2 Years 6 Months Prison<br>Rp. 50 million fine<br>Paying replacement money Rp 224.800.714 |
| 2  | 38/Pid.sus-TPK/2019/PN Amb | SR (PNS/Head of Administrative State) | Negeri Airmanang/ Rp 771.749.000 | 6 years 6 months Sentence<br>Rp. 200 million fine<br>Paying replacement money Rp 623.639.000 | 4 Years Prison<br>Rp. 50 million fine<br>Paying replacement money Rp 623.639.000          |
| 3  | 63/Pid.sus-TPK/2021/PN Amb | FS (Village Head)                     | Desa Karanggui / Rp 313.901.200  | 1 year 6 months Sentence<br>Rp. 50 million fine  | 1 year 6 months Sentence<br>Rp. 50 million fine   |
| 4  | 26/Pid.sus-TPK/2019/PN Amb | T                                     | Desa Tihwana / Rp 335.051.885    | 6 Years Prison<br>Rp. 200 million fine<br>Paying replacement money Rp. 335.051.885           | 4 Years Prison<br>Rp. 200 million fine<br>Paying replacement money Rp. 335.051.885        |

<sup>19</sup> Yusrianto Kadir and Roy Marthen Moonti, "Pencegahan Korupsi Dalam Pengelolaan Dana Desa," *Jurnal IUS Kajian Hukum Dan Keadilan* 6, no. 3 (2018): P. 430, <https://doi.org/https://doi.org/10.29303/ius.v6i3.583>

<sup>20</sup> Rizki Zakariya, "Partisipasi Masyarakat Dalam Pencegahan Korupsi Dana Desa : Mengenali Modus Operandi," *Jurnal INTEGRITAS: Jurnal Anti Korupsi* 6, no. 2 (2021), <https://doi.org/10.32697/integritas.v6i2.670>.

From the data that has been compiled above, it can be seen that the disparity in criminal penalties in cases of corruption in village funds also occurs in Maluku Province, especially in districts or municipalities in Maluku province. The articles used in making indictments against corruption cases DD and ADD are usually the same because prosecutors always adhere to the Attorney General's Guidelines Number 1 of 2022 concerning Criminal Prosecutions of Corruption Crimes and Attorney General's Regulation Number 39 of 2010 concerning Administrative Governance and Technical Handling Special Crime Cases. When referring to the guidelines, the making of DD and ADD corruption charges is the same as using Article 2 and Article 3 as primary and subsidiary indictments. Some of the things that greatly influence the occurrence of disparity in criminal sentences are the facts of the trial at the time of proof and also the good faith of the suspect to admit his guilt and attempt to restore state losses so that it can influence the suggestion of prosecution and have an impact on the amount of the sentence decided. The greater the refund of state losses by the suspects, it can also be seen that the verdict given will be lighter.

There is also an aggravating factor in the preparation of indictments and demands by the prosecutor is the status of the suspect who is a state civil servant (ASN). In several cases of corruption DD and ADD, the Village/State secretary whose status is an ASN acts as the person who regulates the markup process for the village funds. In several cases of corruption DD and ADD, the problem of proving Article 3 of the Anti-Corruption Law has become a subsidiary indictment due to the position and authority attached to the perpetrator or suspect who is the head of a village/state government. The following are some examples of corruption cases of DD and ADD in Maluku province.

#### 4. CONCLUSION

Based on the description that has been carried out above, it can be concluded that essentially the disparity in imposing criminal penalties in court verdicts on corruption cases of misuse of village funds is also found in the courts of corruption in Maluku Province, this is because the strafmaat (criminal threats) for the perpetrators are not the same. Some of the things that are very influential in the prosecution are the qualifications of every perpetrator who commits a criminal act of corruption, misuse of village funds comes from ordinary people, as well as from unscrupulous state civil servants, while in disparity a criminal verdict is based on the evidentiary process at trial and also the presence of good faith from a suspect who is willing to admit his actions and seeks to restore the estimated state losses.

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