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Limitations of Criminal Punishment for Corruption Criminal Act Article 2 and Article 3 of the Corruption Criminal Act are Linked to the Supreme Court Regulation Number 1 of 2020 (Case Study of the high Court Decision Semarang Number 22/PID. TPK/2020/PT. SMG

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Abstract: The issuance of Supreme Court Regulation Number 1 of 2020 concerning the Guidelines for Sentencing Article 2 and Article 3 of the Corruption Law, has given rise to pros and cons. The opposing opinion states that Article 2 and Article 3 of the Corruption Law, are sufficient to provide guidelines for sentencing so that there is no disparity in decisions, because both articles already regulate minimum and maximum sentences. The issuance of Perma No. 1 of 2020 is a form of intervention by the Supreme Court regarding the independence of judges in deciding a case. This is certainly contrary to Article 24 paragraph (1) of the 1945 Constitution. In addition, the issuance of Perma No. 1 of 2020 is also considered to have violated the principles in the formation of laws and regulations as regulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. The decision of the Corruption Court which is the object of this research whose decision is guided by Perma No. 1 of 2020, such as the Decision of the Semarang District Court No. 41/Pid.Sus-Tpk/2020/PN.Smg, dated September 21, 2020, which has been canceled by the Semarang High Court Decision No. 22/Pid.Tpk/2020/PT.Smg, dated December 7, 2020, because the state losses have been recovered, so that the Bandung High Court decision has fulfilled substantive justice. In addition, the Formation of Perma No. 1 of 2020 is legally flawed because there is no higher statutory regulation order and it was not made based on the authority of the Supreme Court.

Keyword: Disparity, Corruption Court Decision, Perma.

INTRODUCTION

The Republic of Indonesia is a State of Law. This is Affirmed in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Hereinafter referred to as the 1945 Constitution). In the concept of the state of law, both formal and material, the state ensures that there is no violation of peace and public interest, as well as maintains security in the widest

sense (welfare state), namely social security and organizing public welfare based on correct and just legal principles.

Related to law enforcement, it is part of a series of legal processes that include law making, law enforcement, justice and justice administration. Thus, law enforcement involves many processes in it, starting from the formation of laws and regulations, the implementation of these regulations, the enforcement of violations of these regulations and administrative arrangements in the judicial process.

Satjipto Rahardjo stated that law does start from the text (law), but we should not stop there. The general legal text requires creative accuracy or sharpening when applied to real events in society. In the end, whether the state of law can provide benefits for humanity does not depend on the sound of the articles of the law, but on the behavior of law enforcement. To borrow the words of Ronald Dworkin, we need to take our rights seriously and do a moral reading of the law. Ruling with a new text is the beginning of a long journey to realize the goal of the law can realize justice and benefits for humanity. Law enforcement is essentially the enforcement of ideas or concepts about justice, truth, social benefits, and so on. So law enforcement is an effort to realize these ideas and concepts into reality.

Law enforcement in all aspects of the law, including the legal aspect of corruption, must be carried out consistently. Consistency is obedience with full awareness to the law and all aspects. Consistency is a condition for the realization of the goals of the state of law, namely justice, order and legal protection. In this case, consistency in the legal aspects of corruption must be realized from the law enforcement obtained from the results of the judicial process that results in criminal decisions, against the perpetrators of corruption crimes.

Generally, criminal decisions in corruption cases produced by existing Corruption Courts and spread across Provinces in Indonesia, are decisions related to criminal acts or acts of Article 2 and Article 3 of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes (hereinafter referred to as the Corruption Law).

Article 2 paragraph (1) of the Corruption Law states that "Every person who unlawfully commits an act of enriching himself or another person or a corporation that can harm the state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

Meanwhile, Article 3 of the Corruption Law states "Every person who, with the aim of benefiting himself or others or a corporation, abuses his authority, opportunity or means because of his position or position that can harm the state finances or the state economy, shall be sentenced to life imprisonment or imprisonment for a minimum of 1 (one) year and a maximum of 20 (twenty) years and/or a fine of at least Rp. 50,000,000.00 (fifty million) rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

Articles 2 and 3 of the Corruption Law as mentioned above, have regulated the punishment for the perpetrators of corruption and as long as the decision of the Corruption court refers to the criminalization in these articles, it can be said that law enforcement in corruption has been carried out consistently. However, in July 2020, the Supreme Court issued Supreme Court Regulation No. 1 of 2020 concerning Criminal Guidelines Article 2 and Article 3 of the Corruption Law (hereinafter referred to as Perma No. 1 of 2020). The basis for the issuance of Perma No. 1 of 2020 as mentioned in the consideration consideration, namely:

a. That every criminal imposition must be carried out by paying attention to the certainty and proportionality of the punishment to realize justice based on Pancasila and the 1945 Constitution;
b. That to avoid disparities in cases that have a similar character, criminal guidelines are needed.

c. The issuance of Perma No. 1 of 2020 raises pros and cons. The opinion that is against the issuance of Perma No. 1 of 2020 is that Article 2 and Article 3 of Law No. 31 of 1999 Jo Law No. 20 of 2001, are enough to provide penal guidelines so that there is no disparity in verdicts. This is because the two articles have regulated the minimum and maximum penalties. This means that the space for disparity has been reduced. That if there is room for disparity again based on Perma, this is the same as shackling the independence of judges in providing justice in certain cases. If there is a limitation on the category of punishment regarding the severity and lightness of the judge's verdict, then the judge will not have his own consideration. If so, there is no need to examine the case in court, because just looking at the matrix or table is enough to decide, and also what is the purpose of the case examination in court, if the punishment has also been listed in the matrix or table from the beginning.

The issuance of Perma No. 1 of 2020 is a form of intervention by the Supreme Court against the independence of judges in deciding a case. This is certainly contrary to Article 24 paragraph (1) of the 1945 Constitution. The importance of guaranteeing the independence of the judiciary in the constitution has actually long been encouraged to be stronger, especially referring to the experience so far that the power often intervenes in judges. An independent judiciary, according to Bagir Manan, is needed to ensure impartiality and fairness in deciding cases, including matters that directly or indirectly involve the interests of other branches of power. The court or judge must be independent not only of the other branches of power, but also of the parties to the case.

In addition, the issuance of Perma No. 1 of 2020 is also considered to have violated the principles in the formation of laws and regulations as stipulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Although in the consideration considering that Perma No. 1 of 2020 mentions the Corruption Law, but in the Corruption Law itself it does not mention that Article 2 or Article 3 is necessary to be regulated in a Supreme Court Regulation.

Based on this explanation, although one of the principles of the issuance of Perma No. 1 of 2020 is the principle of judges' independence, the substance directs judges to decide based on these criteria in Perma No. 1 of 2020. In fact, if you look at the development of investigations and investigations of corruption crimes that are still imperfect and still full of indications outside the law, including the prosecution of corruption on the basis of likes or dislikes, there is no common perception between Judges, Prosecutors, KPKs, and Legal Advisors regarding violations of procurement procedures that indicate administrative or criminal and its limitations and state losses are always indicative of corruption, and others, so the application of the penal guidelines of Article 2 and Article 3 of Law No. 31 of 1999 Jo Law No. 20 of 2001, is a form of intervention against the independence of judges.

In practice, there are several Corruption Crimes Court Decisions whose legal considerations are based on Perma No. 1 of 2020, such as the Corruption Crimes Court Decision at the Semarang District Court Class I A Special, namely Decision No. 41/Pid.Sus-Tpk/2020/PN.Smg, dated September 21, 2020, on behalf of the Defendant Rahardyan Wahyu Utomo;

Based on the verdict, the Defendant was declared conclusively proven guilty of committing a corruption crime as the primary indictment and sentenced to 6 (six) years in prison each and a fine of Rp 400,000,000 (four hundred million rupiah).

In its legal considerations, the Panel of Judges in the case stated that:

"Considering that in accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2020, concerning Criminal Guidelines Article 2 and Article 3 of the Law on the Eradication of Corruption, then the Panel of Judges will consider it in passing a decision on the case a quo"

Against the criminal verdict, the Defendant filed an appeal to the Semarang High Court. In its decision, the Semarang High Court No. 22/Pid.Tpk/2020/PT.Smg, dated December 7, 2020, annulled the Decision of the Corruption Court at the Semarang District Court Class I A Special No. 41/Pid.Sus-Tpk/2020/PN.Smg, dated September 21, 2020, and tried itself and decided the following:

1. Declaring that the Defendant is not legally and convincingly proven guilty of committing a criminal act as charged in the Primair indictment;
2. Acquitting the Defendant therefore from the primary indictment;
3. Declaring that the Defendant has been legally and convincingly proven guilty of committing a criminal act of participating in the criminal act of corruption;
4. Imposing a penalty therefore on the Defendant with imprisonment for 1 (one) year and 6 (six) months and a fine of Rp. 50,000,000,- (fifty million rupiah), with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month.

The decision of the Semarang High Court then has permanent legal force, because there is no cassation legal remedy either submitted by the Public Prosecutor at the Sragen District Attorney's Office, or by the Defendant.

So the objectives of this study are:

a. To find out how the legal considerations of the High Court Panel at the Semarang High Court No. 22/Pid.Sus-Tpk/2020/PT. Smg which has canceled the Corruption Court Decision at the Semarang District Court No. 41/Pid.Sus-Tpk/2020;
b. To find out the legal consequences of the issuance of Perma No. 1 of 2020 against the Corruption Court Decision at the Semarang District Court No. 41/Pid.Sus-Tpk/2020 and the Semarang High Court Decision No. 22/Pid.Sus-Tpk/2020/PT. Smg

METHOD

The specification of this research is descriptive analytical, which describes facts in the form of data and primary legal materials (legislation), and secondary legal materials (doctrines or opinions of leading legal experts), as well as tertiary (legal dictionaries, encyclopedias, or public opinion revealed in various publications).

This type of research is normative research, which is a way of writing based on the analysis of several legal principles and legal theories as well as laws and regulations that are appropriate and related to the problems in this research. The problem approach used in this study consists of a statute approach, a conceptual approach and data collection techniques carried out in 2 (two) stages, namely literature research and field research. The data analysis method used in this study is juridical-qualitative, namely the presentation and description of laws and regulations qualitatively.

RESULTS AND DISCUSSION

Legal Considerations of the Semarang High Court Decision No. 22/Pid.Tpk/2020/PT.Smg, dated December 7, 2020, which has annulled the Corruption Court Decision at the Semarang District Court No. 41/Pid.Sus-Tpk/2020/PN.Smg, dated September 21, 2020.

The Decision of the Corruption Court at the Semarang District Court No. 41/Pid.Sus-Tpk/PN.Smg, dated September 21, 2020 has sentenced the Defendant Rahardyan Wahyu Utomo S.H., with:

1. Declaring that the defendant Rahardyan Wahyu Utomo S.H., mentioned above, is legally and convincingly proven guilty of committing the crime of corruption as in the primary indictment;
2. Imposing a penalty on the Defendant, therefore with imprisonment for 6 (six) years and a fine of Rp. 400,000,000,- (four hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months;

3. Stipulating that the detention that the Defendant has undergone is deducted entirely from the sentence imposed;
4. Stipulate that the Defendant remains in custody;
5. Stipulate that evidence No. 1 to No. 54 remains attached in the file and evidence No. 55, through the Public Prosecutor, is returned to the State Treasury Cq. Regional Treasury of Sragen Regency;
6. Charging the Defendant to pay a case fee of Rp. 5,000 (five thousand rupiah).

The verdict of the Defendant in the Decision of the Panel of Corruption Judges at the Semarang District Court No. 41/Pid.Sus-Tpk/2020/PN.Smg, dated September 21, 2020, is far different from the demands of the verdict of the Public Prosecutor at the Sragen District Prosecutor's Office, which is based on his Letter of Demand No. Reg. Case No.: PDS-05/SRAGEN/FT.01/05/2020, dated August 3, 2020, which demands that the Panel of Judges of the Corruption Court at the Special Class 1A Semarang District Court examine and prosecute This matter decides:

1. Declaring that the Defendant Rahardyan Wahyu Utomo, S.H. Bin Suratno was not legally and convincingly proven guilty of committing the crime of corruption as in the primary indictment of the public prosecutor Article 2 paragraph (1) Jo Article 18 of Law No. 31 of 1999 concerning the Eradication of Corruption Jo Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Jo Article 55 paragraph (1) to 1 of the Criminal Code;
2. Acquitting the Defendant Rahardyan Wahyu Utomo, S.H. Bin Suratno therefore from the Primair indictment;
3. Declaring that the Defendant Rahardyan Wahyu Utomo, S.H. Bin Suratno is legally and convincingly proven guilty of committing the Crime of Corruption "having committed or participated in committing with the purpose of benefiting himself or others or a corporation, abusing the authority, opportunity or means available to him because of his position or position that can harm the state finances or the state economy", as stated in the indictment of the public prosecutor's subside Article 3 Jo Article 18 Law No. 31 of 1999 concerning the Eradication of Corruption Jo Law No. 20 of 2001 concerning amendments to Law No. 31 of 1999 concerning the Eradication of Corruption Jo Article 55 paragraph (1) to 1 of the Criminal Code;
4. Imposing a criminal sentence on the Defendant Rahardyan Wahyu Utomo, S.H. Bin Suratno therefore with a prison sentence of 1 (one) year and 6 (six) months reduced while the Defendant is in temporary custody with an order that the Defendant remain in custody and a fine of Rp. 50,000,000 (fifty million rupiah) subsided by 3 (three) months of confinement;
5. Declaring that evidence numbers 1 to 54 are attached in the case file and evidence No. 55 in the form of money amounting to Rp. 2,016,766,740.00 (two billion sixteen million seven hundred and sixty-six thousand seven hundred and forty rupiah) stored in the shelter account of the Sragen District Attorney's Office in the RPL Account of the Sragen District Prosecutor's Office (BNI Sragen Branch). Returned to the State Treasury cq. Sragen Regency Regional Treasury;
6. Stipulating that the Defendant be burdened with paying the case fee of Rp. 5,000 (five thousand rupiah). Based on the decision and demands of the Public Prosecutor, it can be concluded that the Panel of Corruption Judges at the Semarang District Court sentenced Rahardyan Wahyu Utomo S.H. to a criminal offense, in accordance with the primary charge, namely violating Article 2 paragraph (1) of the Corruption Law, because it was legally and convincingly proven that he committed an act unlawfullyenriching oneself or another person or a corporation that may harm the State's finances or the State's economy, and punishing the Defendant Rahardyan Wahyu Utomo S.H., with a prison sentence of 6 (six) years and a fine of Rp. 400,000,000,- (four hundred million rupiah) subsidy of 3 (three) months if the Defendant is unable to pay the fine.

The decision of the Corruption Court at the Semarang District Court mentioned above, is 4 (four) years and 6 (six) months longer than the Public Prosecutor's demand, which only demands 1 (one) year and 6 (six) months. Likewise, the fine is also greater than Rp. 350,000,000,- (three hundred and fifty million rupiah) compared to the Public Prosecutor's Demand which only punishes the Defendant's fine with a fine of Rp. 50,000,000,- (fifty million rupiah).

The basis for the legal consideration of the Panel of Corruption Judges at the Semarang District Court which sentenced the Defendant Rahardyan Wahyu Utomo S.H., with a higher sentence than the Public Prosecutor's demands, is because it is based on juridical considerations and legal facts revealed in the examination of the corruption case and also based on Perma No. 1 of 2020. This is stated in the ruling of the Corruption Judges Panel at the Semarang District Court stated:

"In accordance with the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2020, concerning Criminal Guidelines Article 2 and Article 3 of the Law on the Eradication of Corruption, then the Panel of Judges will consider it in passing a verdict on the case a quo"

The legal considerations of the Panel of Corruption Judges at the District Court, it turns out that in its decision there are no detailed considerations regarding Perma No. 1 of 2020. Considering that Article 5 paragraph (1) of Perma No. 1 of 2020 regulates the necessity of judges to consider the following stages in order:

1. Category of state financial losses or state economy;
2. Error rates, impacts and profits;
3. The range of criminal imposition;
4. Aggravating and extenuating conditions;
5. Criminal imposition;
6. Other provisions related to criminal imposition.

The legal considerations of the Panel of Corruption Judges at the Semarang District Court, do not base their legal considerations on the stages mentioned above. In fact, in accordance with the provisions of Article 5 paragraph (3) of Perma No.1 of 2020, it requires the Judge to describe the facts revealed in the trial regarding the stages mentioned above in the form of a narrative in his legal considerations.

The absence of legal considerations regarding these stages should cause the decision to lack legal consideration. So that the verdict does not describe the criminalization as stipulated in Perma No. 1 of 2020. Thus, the punishment of 6 (six) years in prison and a fine of Rp. 400,000,000 (four hundred million rupiah), has no legal basis.

The explanation mentioned above, when linked to the legal considerations of the Panel of Corruption Judges at the Semarang District Court which sentenced the Defendant Rahardyan Wahyu Utomo S.H. to 6 (six) years in prison and a fine of Rp. 400,000,000,- (four hundred million rupiah), does not detail the basis of the conviction which points to the article and explains the article in Perma No. 1 of 2020. Legal considerations only mention in general Perma No. 1 of 2020.

The Corruption Court Decision at the Semarang District Court No. 41/Pid.Sus-Tpk/2020/PN.Smg dated September 21, 2020, was canceled by the Semarang High Court Decision No. 22/Pid.Sus-Tpk/2020/PT.Smg dated December 11, 2020. The decision of the Semarang High Court, in its entirety, reads as follows:

Adjudicate:

1. Receiving an appeal request from the Defendant and the Public Prosecutor;
2. Canceling the Decision of the Semarang District Court dated September 21, 2020 No. 41/Pid.Sus-Tpk/2020/PN.Smg which was requested by the appeal.

Judging Yourself :

1. Declaring that the Defendant is not legally and convincingly proven guilty of committing a criminal act as charged in the Primair indictment;
2. Acquitting the defendant therefore from the primary indictment;
3. Stating that the defendant has been legally and convincingly proven guilty of committing a criminal act "participated in committing a criminal act of corruption;
4. Imposing a penalty therefore on the defendant with imprisonment for 1 (one) year and 6 (six) months and a fine of Rp 50,000,000,- with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) month;
5. Stipulate that the period of detention that the Defendant has served is deducted from the sentence imposed;
6. Stipulate that the Defendant remains in custody;
7. Stipulating evidence numbers 1 to 54 attached in the case file and evidence No. 55 in the form of money amounting to Rp. 2,016,766,740.00 (two billion sixteen million seven hundred and sixty-six thousand seven hundred and forty rupiah) stored in the shelter account of the Sragen District Attorney's Office in the RPL Account of the Sragen District Prosecutor's Office (BNI Sragen Branch). Returned to the State Treasury cq. Sragen Regency Regional Treasury;
8. Charge the defendant to pay the cost of the case in both levels of justice, which for the appeal level is Rp.5000,- (five thousand rupiah).

The decision of the Semarang High Court mentioned above, has canceled the Decision of the Corruption Court at the Semarang District Court, then tried and punished the Defendant Rahardyan Wahyu Utomo S.H., was proven guilty of committing a criminal act in the subsidiary indictment and sentenced the Defendant to imprisonment for 1 (one) year and 6 (six) months and a fine of Rp 50,000,000,- with the provision that if the fine is not paid, it will be replaced with imprisonment for 1 (one) months, based on legal considerations which basically state that:

1. Regarding the legal considerations of the Panel of Corruption Judges at the Semarang District Court in the case of a quo, especially related to the proof of the Defendant's actions based on Article 2 paragraph (1) of Law number 31/1999 jo. Law number 20/2001 jo. Article 55 paragraph (1) 1 of the Criminal Code, the Panel of Corruption Judges at the Semarang High Court, disagreed, because in accordance with the facts revealed at the trial, actually the actions of the Defendant RAHARDYAN WAHYU UTOMO, S.H were related to / dragged with the criminal act committed by the Defendant NANANG YULIANTO EKO BUDI RAHARJO, S.Fam., Apt., MM, in his position as the Head of the Supporting Services Subbid at Sragen Hospital and in his position as a Commitment Making Officer (PPK) in the procurement of goods in the form of the Central OK/Room Operation System at dr. Soehadi Prijonegoro Sragen Hospital;
2. The Defendant's actions are categorized as a criminal act of participating in the criminal act of corruption as a subsidiary indictment, and because all of the state losses mentioned above have been returned by the Defendant Rahardyan Wahyu Utomo, according to the Panel of High Judges at the Semarang High Court, the state losses are nil. Therefore, in order to fulfill the sense of justice, the crime is imposed on the Defendant paying attention to and referring to Perma Number 1 of 2020 on the sentencing table of Article 3 of the Law on the Eradication of Corruption with the category of loss value of up to Rp. 200,000,000 (two hundred million rupiah).

The legal considerations of the Semarang High Court in the corruption case, which became the basis for a criminal verdict of 1 (one) year and 6 (six) months and a fine of Rp. 50,000,000.00 (fifty million rupiah) were also based on Perma No. 1 of 2020. However, in the legal considerations, it does not explore the stages in determining the severity or severity of the

crime as stipulated in Article 5 paragraph (1) of Perma No. 1 of 2020. The legal considerations of the High Court only discussed the criteria for state losses, without considering the level of error, impact and profit, although it still gave consideration in the stage of the range of criminal imposition and the circumstances that aggravated and mitigated the Defendant.

Regarding the consideration of the category of state financial losses, the Panel of Corruption High Judges in this case, has considered it, that because the Defendant has returned all state losses, according to the Panel of High Judges at the Semarang High Court, the state losses are nil. Therefore, in order to fulfill the sense of justice, the crime is imposed on the Defendant paying attention to and referring to Perma Number 1 of 2020 on the sentencing table of Article 3 of the Law on the Eradication of Corruption with the category of loss value of up to Rp. 200,000,000 (two hundred million rupiah).

The legal considerations of the Panel of Corruption High Judges in the case that is the object of this research, if it is associated with the Legal Theory of Justice, it can be stated that the purpose of the law is to maintain public order. In maintaining this order, the law must balance the interests of the community. In achieving legal order, it must be fair, in the sense that the law must protect and balance between personal interests and public interests.

Being fair means being able to create legal order, while law can provide protection and create a balance between rights and obligations and between interests in society that are all intended to achieve the good for all. Thus, justice is a common virtue and serves to achieve the good for all people (bonum commune).

Based on the Theory of Justice, the purpose of law is for justice and order, including the purpose of criminal justice is for public order and in maintaining this order, the law through a judge's decision must, be able to protect the interests of the community. In the corruption verdict, the interests of the people who are protected are the interests so that the state does not become a loss, due to the acts of corruption.

This is also in accordance with the theory of criminality. In the theory of punishment, there is a purpose of punishment, which is to fulfill the sense of justice. In essence, crime is a protection of society and unlawful acts, namely that crime is expected to be something that will bring harmony and crime is an educational process to make people acceptable again in society.

In the Criminal Decision that is the object of this journal's research, the Criminal Conviction of Corruption at the Semarang District Court has sentenced the Defendant Rahardyan Wahyu Utomo S.H., with a prison sentence of 6 (six) years and a fine of Rp. 400,000,000,- (four hundred million rupiah).

The conviction was born, even though the Defendant had returned all the losses of the state. The existence of the return of state losses, let alone the return of the entire state, must be well appreciated, because if this is not the case, the legal goal of justice will not be achieved, because for other perpetrators of corruption, they will think, that what is the purpose of restoring state losses, while the punishment remains high. If this happens, then the goal of criminalizing corruption to minimize state losses will not be achieved.

Considering that one of the purposes of the promulgation of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Law Number 20 of 2001 is to restore state losses. Therefore, the enforcement of the criminal law prioritizes the return of state financial compensation from the perpetrators of corruption crimes.

Therefore, the Decision of the Corruption Court at the Semarang District Court No. 41/Pid.Sus-Tpk/2020/PN. Smg, according to the author, has not fulfilled the sense of justice. In addition, the criminalization in the Corruption Law uses a minimum special criminal threat, with the consideration that corruption is categorized as an extra ordinary crime, which can endanger the community and the integrity of the Republic of Indonesia.

This is in accordance with the opinion of Barda Nawawi Arief who stated that in principle the special minimum penalty is an exception, namely for certain offenses that are very

detrimental, dangerous or unsettling to the community and offenses that are qualified or aggravated by the consequences (erfolgsqualifizierte delikte).

The decision of the Corruption Court at the Semarang District Court No. 41/Pid.Sus-Tpk/2020/PN.Smg has been canceled by the Decision of the Semarang High Court No. 22/Pid.Sus-Tpk/2020/PT.Smg, with legal considerations that Perma Number 1 of 2020 does not clearly regulate if it turns out that the state financial losses have been fully refunded, then the fact that the state financial losses have been recovered with the return, therefore, it is appropriate and fairer if the crime imposed on the Defendant pays attention to and refers to Perma Number 1 of 2020 on the sentencing table of Article 3 of the Law on the Eradication of Corruption with the category of loss value of up to Rp. 200,000,000 (two hundred million rupiah).

If referring to the matrix of the range of criminal imposition as Attachment to Perma No, 1 of 2020, the category of state losses is the lowest, with the aspects of error, impact and the lightest benefit, then the penalty is 1-2 years and a fine of Rp. 50,000,000.- (fifty million rupiah) to Rp. 100,000,000,- (one hundred million rupiah). The decision of the Semarang High Court sentenced the Defendant to 1 (one) year and 6 (six) months in prison and a fine of Rp. 50,000,000.- (fifty million rupiah). Thus, according to the author, the legal considerations of the High Court Panel at the Semarang High Court have fulfilled the sense of justice and will create order.

As a result of the law of the Supreme Court of the Republic of Indonesia Regulation No. 1 of 2020 against the Decision of the Semarang Corruption Court Number 41/Pid.Sus-Tpk/2020/PN.Smg, dated September 21, 2020 and the Decision of the Semarang High Court No. 22/Pid.Tpk/2020/PT.Smg, dated December 7, 2020.

As described in the sub-chapter above, the legal basis for the criminal law in the Corruption Court Decision at the Semarang District Court No. 41/ Pid.Sus-Tpk/2020/PN.Smg, dated September 21, 2020 and the Semarang High Court Decision No. 22/Pid.Tpk/2020/PT.Smg, dated December 7, 2020, is Perma No. 1 of 2020 concerning Criminal Guidelines Article 2 and Article 3 of the Corruption Law.

Perma No. 1 of 2020 regulates the range of criminal imposition for Article 2 and Article 3 of the Corruption Law, based on the severity or severity of state losses or state economic losses associated with the high or low level of errors, impacts and profits of the Defendants. In practice, Perma No. 1 of 2020 is a reference or guideline for corruption judges to decide Article 2 and Article 3 corruption cases.

Based on research by researchers, Perma No. 1 of 2020 since it was promulgated on July 24, 2020 has been used as the legal basis for criminal prosecution by the corruption judges.

This is proven by the court decisions that are the object of this research. In addition, there are other decisions that also use Perma No. 1 of 2020 as the basis for criminalization, namely 2 decisions in 2 different cases but still in a series of acts committed together with the Defendant Rahardyan Wahyu Utomo.

The decision is Decision No. 40/Pid.Sus-Tpk/2020/PN. Smg, dated September 21, 2020 jo Decision of the Semarang High Court No. 19/Pid.Sus-Tpk/2020/PT. Smg, dated December 1, 2020 on behalf of the Defendant Nanang Yulianto Eko Budi Rahadjo and the Corruption Court Decision at the Semarang District Court No. 39/Pid.Sus-Tpk/2020/PN. Smg, dated September 21, 2020 jo Semarang High Court Decision No. 20/Pid.Sus-Tpk/2020/PT.Smg dated December 4, 2020 on behalf of dr. Djoko Sugeng Pudjianto.

Although in fact in the legal considerations of the Panel of Judges in the decisions that are the object of research, it does not elaborate in its legal considerations the stages or criteria in deciding the corruption of Article 2 and Article 3 as required according to Article 5 of Perma No. 1 of 2020. This can make the decision less of legal consideration. However, as a decision, as long as it is not annulled by a higher court decision, it must be considered a binding decision.

Based on the results of the study, it shows that Perma No. 1 of 2020 has been used as the legal basis for criminal prosecution for Article 2 and Article 3 corruption cases. This means that juridically, Perma No. 1 of 2020 binds judges to apply it in the legal consideration of decisions. That in principle, the implementation of a Perma should not reduce the freedom of judges in examining and deciding a case. This is in accordance with the principle of judges in making decisions that must be independent and free from the influence of any party, including executive influence. In decision-making , judges are only bound by the relevant facts and legal principles that become or are used as the legal basis for their decisions.

Based on the results of the research, Perma No.1 of 2020, was not formed based on higher laws and regulations. In this case, if you look at the considerations considering Perma No. 1 of 2020, it is stated that the legal basis for the issuance of Perma No. 1 of 2020 is the Corruption Law.

The inclusion of the Corruption Law as one of the legal bases of Perma No. 1 of 2020, because Perma regulates the criminalization of Article 2 and Article 3 of the Corruption Law. However, if you pay attention to the reading of Article 2 and Article 3 of the Corruption Law, there is not a single phrase in these articles that mentions that further arrangements regarding the criminalization of Article 2 or Article 3 are regulated in the Supreme Court Regulation. Thus, the issuance of Perma No. 1 of 2020 is not based on further orders in higher regulations, in this case the Corruption Law.

The Supreme Court, based on the provisions of Article 24 A of the 1945 Constitution (hereinafter referred to as the 1945 Constitution), states that the Supreme Court has the authority to adjudicate at the cassation level, examine laws and regulations under the law against the law, and has other powers granted by law.

Regarding authority as the basis for the formation of laws and regulations, because basically a law and regulation can only be formed by institutions that obtain legislative authority (wetgevingsbevoegheid), that is, the power to form laws or rechtsvorming. Without authority, the laws and regulations that are formed are not binding.

Based on this explanation, Perma No. 1 of 2020 was formed not based on the orders of higher laws and regulations, namely the Corruption Law, and was also formed not based on authority, because the nature of the Supreme Court's authority to form regulations is regulations regarding procedural law, while the nature of Perma No. 1 of 2020 is material law, because it can be seen as a further regulation of the Corruption Law.

Thus, Perma No. 1 of 2020 should not have binding legal force because it was formed not based on the orders of higher laws and regulations and also not based on the authority of the Supreme Court.

However, in practice, in the opinion of the researcher based on several existing decisions, Perma No. 1 of 2020 is used as a guideline for judges to decide cases of typing Article 2 and Article 3. The enactment of Perma No. 1 of 2020 as a guideline, in accordance with the provisions of Article 32 paragraph (4) of the Supreme Court Law, which states that the Supreme Court has the authority to give instructions, reprimands, or warnings deemed necessary to the Court in all Judicial Environments.

The existence of the phrase 'all judicial environments' is associated with the Supreme Court's supervisory function of the general judiciary, religious courts, state administrative courts, and military courts.

Although Perma is binding, the measure used by the law is not to let the legal product of Perma No. 1 of 2020 reduce the freedom of judges to examine and decide cases. This has indeed been affirmed in Article 2 letter a of Perma No. 1 of 2020 which contains the principle of judges' independence, but the substance of Perma directs judges to decide based on these criteria in Perma No. 1 of 2020.

In fact, if you look at the development of investigations and investigations of corruption crimes that are not perfect and are still full of various obstacles that can be in the form of

structural obstacles, namely obstacles that originate from the practice of state and government administration that make the handling of corruption crimes not run properly; cultural barriers, which are obstacles that stem from negative habits that develop in society; management obstacles, namely obstacles that stem from the neglect or non-application of good management principles related to fair, transparent and accountable investigation management, the application of the penal guidelines Article 2 and Article 3 of Law No. 31 of 1999 Jo Law No. 20 of 2001, is a form of intervention against the independence of judges.

In addition to Perma No. 1 of 2020 intervening in the independence of judges, it can also make judges not animate a case and a sense of justice in society. In this case, the judge is like a calculator, because in deciding only have to look at the sentencing table in Perma No. 1 of 2020. This is contrary to the Judicial Power Law. That basically everyone who commits corruption is motivated by many factors and the judge is free to consider and make a decision, based on the factors that affect him. If the judge is guided by Perma No. 1 of 2020, then the judge loses his footing to adjudicate the case fairly and humanely. In this case, the judge decides only on the basis of formal justice and ignores substantive justice.

Article 2 and Article 3 of Law No. 31 of 1999 Jo Law No. 20 of 2001 do not regulate the amount of state/regional financial losses, and in the articles of Law No. 31 of 1999, also do not designate further regulations regarding the amount of state/regional financial losses related to the high and low penalties for perpetrators of corruption in a law and regulations, especially in a Supreme Court regulation.

The penal system in the Corruption Law is a special minimum, which means that the punishment must not be lower than the minimum penalty that has been regulated, as for example in Article 2 paragraph (1) of the Corruption Law, the punishment with a prison sentence is a minimum of 4 years and a maximum of 20 (twenty) years. In this case, the judge may not decide on a criminal sentence of less than 4 (four) years. The regulation of special minimum criminal sanctions in the Anti-Corruption Law is intended as a means to make the effect of General Prevention more effective for certain offenses that are considered dangerous and unsettling to the public, namely to deter people from committing crimes, including corruption. In addition, the inclusion of a special minimum criminal penalty in the Corruption Law is intended to prevent a very striking disparity of sentencing, both for the same case in the context of participation (deelneming), as well as for different cases but the type of offense violated by the perpetrators is the same or essentially not of different quality. Based on the special minimum penal system in the Corruption Law, it is actually intended to prevent criminal disparities in corruption cases, and as the main means in combating corruption in Indonesia. So that Perma No. 1 of 2020 does not need to be issued, because the Corruption Law has regulated the special minimum for the criminalization of Article 2 and Article 3.

Thus, it can be said that the establishment of Perma No. 1 of 2020 is legally defective and contrary to Law No. 12 of 2011, both in authority and in terms of its content. Therefore, in accordance with the provisions of Article 8 paragraph (2) of Law No. 12 of 2011, Perma No. 1 of 2020 is not considered a law and regulation, so it does not have binding legal force.

CONCLUSION

a. Legal considerations of the Panel of High Judges at the Semarang High Court No. 22/Pid.Sus-Tpk/2020/PT. Smg which has canceled the Corruption Court Decision at the Semarang District Court No. 41/Pid.Sus-Tpk/2020 and has imposed a prison sentence of 1 (one) year and 6 (six) months and a fine of Rp. 50,000,000 (fifty million rupiah) has fulfilled substantive justice, because it takes into account the fact that the state's financial losses have been recovered with the return;

As a result of the legal issuance of Perma No. 1 of 2020 against the Corruption Court Decision at the Semarang District Court No. 41/Pid.Sus-Tpk/2020 and the Semarang High Court Decision No. 22/Pid.Sus-Tpk/2020/PT. Smg and it is binding, because it is used as a

guideline in deciding. Although there is a disparity in the magnitude of the punishment in the 2 (two) decisions, the decision of the Semarang High Court is more fulfilling with substantive justice. The establishment of Perma No. 1 of 2020 is a legal defect because there is no higher law and regulation order and was made not based on the authority of the Supreme Court.

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