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## Analysis of Considerations of Mitigating and Aggravating Circumstances in Corruption Crime Cases (Case Study Decision Number 942 K/Pid.Sus/2022)

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**Abstract:** This article is entitled Analysis of Considerations of Mitigating and Aggravating Circumstances in Corruption Crime Cases (Case Study of Decision Number 942 K/Pid.Sus/2022). This article aims to analyze the application of mitigating and aggravating circumstances in corruption cases as well as finding the influence of these on Decision Number 942K/Pid.Sus/2022. Using normative juridical methods with a statutory approach, conceptual approach and case approach. The results of this study show that there are problems regarding the application of mitigating and aggravating circumstances due to differences in the interpretations and views of each judge. Apart from that, the influence shown by the incompatibility of the application of mitigating and aggravating circumstances can have an impact on not achieving the objectives of the sentence, including retaliation and a deterrent effect on the defendant as found in the corruption case Decision Number 942K/Pid.Sus/2022.

**Keyword:** Mitigating and Aggravating Circumstances, Justice, Punishment.

### INTRODUCTION

In the UN meeting at the Conference of the State Parties (CoSP) for the UN Convention Against Corruption from 2 to 4 June 2021, it was known that corruption is a critical issue because the impacts that arise can endanger stability, security of society and the values of democracy, ethics, justice, and endanger the rule of law (Conference of the State Parties (CoSP), 2024). Currently, Indonesia can be classified as a country that has a fairly bad score based on the Corruption Perception Index conducted in 2023 by Transparency International. In this research, Indonesia was only ranked 110th out of 180 countries with a corruption cleanliness level of only 34 points on a scale of 0 to 100, even though the global average score was 43 points (Transparency International, 2024).

The public's high level of attention to the enforcement of criminal acts of corruption is specifically regarding the consideration of mitigating and aggravating circumstances

which are basically part of the final decision. In this case, circumstances can be understood as events, situations or other information that are facts that are outside the formulation of a criminal act that can reduce or aggravate the level of danger of the perpetrator or the level of seriousness of the criminal act itself (Peonasu, 2015). Meanwhile, the final decision is a consideration or assessment of the case examination process which is based on the facts revealed at the trial to decide what sentence to impose, whether the defendant will be acquitted or released from legal charges. In fact, the final decision can be interpreted as the culmination of the values of justice, absolute truth, factual mastery of the law, human rights and the ethics and morals of the judge himself (Mulyadi, 2010). There is encouragement from the community as the party seeking justice, so it is appropriate for the judge as the party representing the court itself to be able to position himself not to take sides with anyone (impartial judge). On that basis, the final decision should contain sufficient considerations so that the conclusions made by the judge are not wrong or do not reflect justice for society.

In Article 197 letter f of the Criminal Procedure Code itself, it is stated formally regarding mitigating and aggravating circumstances as a consideration that forms the basis for punishment along with related statutory articles. The article refers to Law no. 48 of 2009 concerning Judicial Power. This legislation gives the judge the responsibility to examine the good and bad characteristics of the defendant in accordance with Article 8 Paragraph (2) in this legislation. In relation to criminal acts of corruption, mitigating and aggravating circumstances are basically substantive requirements in the final decision in accordance with Article letter d and Article 13 of Perma No. 1 of 2020 concerning Sentencing Guidelines Article 2 and Article 3 of the Corruption Law. Regarding criminal impositions, mitigating and aggravating circumstances are factors that determine how severe the punishment is given in cases of criminal acts of corruption. However, there is no benchmark for how big the influence of mitigating and aggravating circumstances is on how serious or light the sentence imposed is.

The absolute nature of a decision that has legal force cannot be separated from mitigating and aggravating circumstances as a consideration for the panel of judges in imposing a crime. In this regard, judges should have integrity and professionalism when deciding a case. However, it cannot be denied that there is widespread controversy that occurs as a result of the confusion in regulations and implementation which tend to vary, whereas this problem should lead law enforcers to remain guided by the objectives of the law, in order to maintain the dignity of the court in efforts to enforce the law in criminal cases. corruption crime. For this reason, a study is needed regarding the value of justice and legal certainty regarding mitigating and aggravating circumstances through implementation practices in Indonesia and their influence on criminal penalties related to the purpose of punishment.

In the cassation decision number 942 K/Pid.Sus/2022, the defendant, namely Edhy Prabowo, was found guilty of accepting a bribe in the form of distributing lobster seed export quotas in an amount related to his position as Minister of Maritime Affairs and Fisheries in the form of Rp. 24,625,587,250.00 and USD 77. ,000 in accordance with Article 12 letter a of the Corruption Law Jis. Article 55 paragraph (1) 1st, Article 65 paragraph (1) of the Criminal Code. In this case, the defendant gave permission to cultivate and export lobster seeds and received a certain amount of money. This case is interesting to discuss because of the defendant's mitigating circumstances, namely that the defendant had worked well when he served as Minister of Maritime Affairs and Fisheries. The defendant has given hope to fishermen by revoking the Republic of Indonesia Minister of Maritime Affairs and Fisheries Regulation No. 56 of 2016 which was replaced by Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia No. 12 of 2020. These mitigating circumstances were taken into consideration by the Supreme Court to reduce the sentence to 5 years from the original sentence of 9 years in prison.

In the research conducted by Dwi Hananta, he discussed the characteristics of considering mitigating and aggravating circumstances into three things (Hananta, 2018). First, matters related to criminal acts such as the atmosphere, nature or situation that applies. Second, the formulation is found outside of the criminal act, but is related to the crime itself. Third, the seriousness of the criminal act or the dangerousness of the perpetrator. In addition, this study also compared the mitigating and aggravating circumstances used in other countries such as Russia and Romania.

The next research conducted by Matthew Eliezer Hotasi who analyzed the cassation decision number 942 K/Pid.Sus/2022 in the name of Edhy Prabowo is the same case in this article (Hotasi, 2023). This research outlines each element of what Edhy Prabowo was accused of and explains the principle of a judge's freedom in handing down a decision.

Based on the explanation above, there are several points of contact with this article, but there are specific differences regarding the object of this research. In this article, we discuss the regulatory concepts and limitations used by judges in determining the consideration of mitigating and aggravating circumstances in corruption cases and discuss the influence of mitigating and aggravating circumstances on criminal sentences in the case of Edhy Prabowo bribery of lobster seeds in Decision Number 942 K/Pid.Sus/2022. The importance of discussing these two matters is due to the absolute nature of mitigating and aggravating circumstances in a decision, while on the other hand, there is often a lack of clarity regarding the regulations and the implementation tends to vary. For this reason, a study is needed that discusses this matter in order to achieve the value of justice and legal certainty through law enforcement in order to eradicate corruption.

## **METHOD**

This research utilizes a normative juridical method, gathering qualitative data from both primary and secondary legal sources. In normative juridical legal research, secondary legal materials explain the facts derived from primary, secondary, and tertiary legal sources. The data collection process was conducted through library research. The problem approach used in conducting this study was carried out using three approaches, namely the statutory, conceptual and case approaches. The data obtained through this research will be analyzed descriptively, so as to obtain results regarding the application and influence of mitigating and aggravating circumstances which is the aim of this study.

## **RESULTS AND DISCUSSION**

### **Application of Mitigating and Aggravating Circumstances as Judges' Considerations in Corruption Crime Cases**

The position of mitigating and aggravating circumstances itself as one of the things regulated in Article 197 of the Criminal Procedure Code shows its existence in the imposition of a crime which is also emphasized through Article 8 paragraph (2) of the Judicial Power Law as a condition related to the good and bad characteristics of the defendant. This makes mitigating and aggravating circumstances themselves a determining factor in the severity of the crime (Harahap, 2005). Handling criminal acts of corruption, the Supreme Court itself has provided Perma Guidelines for Sentencing Article 2 and Article 3 of the Corruption Law which serve as a reference for judges regarding procedures for determining punishment for perpetrators of criminal acts of corruption in the event of a legal vacuum.

The mitigating and aggravating circumstances by examining the good and evil characteristics of the defendant can be found in Article 13 of the Sentencing Guidelines, Article 2 and Article 3 of the Corruption Law. However, the article also states that the judge can consider mitigating and aggravating circumstances based on the facts of the casuistry trial.

It should be noted that the Criminal Code still does not regulate sentencing guidelines. However, in Law no. 1 of 2023 concerning the Criminal Code, this matter has been regulated. In accordance with Article 54 of the 2023 Criminal Code, you are actually obliged to take into account the punishment.

1. form of guilt of the perpetrator of a criminal act;
2. motive or purpose of committing a criminal act;
3. the perpetrator's inner attitude;
4. criminal acts carried out with planning or without planning (planned or unplanned);
5. how to carry out criminal acts;
6. the attitude and actions of the perpetrator after committing the crime;
7. life history, social and economic conditions of the perpetrator;
8. the impact of the crime on the future of the perpetrator;
9. the impact of criminal acts on the victim or the victim's family;
10. forgiveness from the victim and/or the victim's family; and/or
11. the value of law and justice that lives in society.

In connection with the above, the sentencing guidelines can be understood as guidelines of sentencing for judges, which means that justice which is not only bound by the applicable law can be felt by the community through the punishment given to the perpetrator (Wibowo, 2021).

The difference between qualifying circumstances is that with the presence of elements in the form of additional circumstances that aggravate a crime, a criminal act has its own qualifications such as "theft under aggravating circumstances" and "assault under aggravating circumstances", while aggravating circumstances in the sense of aggravating circumstances do not result in the criminal act falling under separate qualifications (Larisa, dkk, 2015).

In mitigating and aggravating circumstances, which is one of the factors that determines the imposition of a crime, it is also tied to the objectives of the law itself, namely justice and legal certainty. For this reason, justice and legal certainty must be reflected in even criminal sentences (Maftukhan, 2014). In line with this, the principle that mandates courts not to discriminate between people and to comply with the law can be found in Article 4 of the Judicial Power Law. Therefore, in essence, justice in legal settlements is the right of everyone who seeks justice, this means that everyone in the eyes of the law is equal.

The number of decisions that are considered problematic when the sentence imposed is considered too light cannot be separated from mitigating and aggravating circumstances. The differences that can be found in the application of mitigating and aggravating circumstances in each case are the main problem which can be broken down into three things.

First, there are differences in legal understanding and views between judges which give rise to non-uniformity in the application of mitigating and aggravating circumstances. This is stated in Decision no. 1857 K/Pid.Sus/2021 with the defendant, namely I Wahyu Setiawan and Decision No. 943 K/Pid.Sus/2022 with the defendant, namely Edhy Prabowo. In the decision on behalf of I Wahyu Setiawan, the defendant was deemed to have betrayed his oath of office as a member of the Indonesian KPU when committing a criminal act, which the judge considered to be an aggravating circumstance. Meanwhile, in the decision on behalf of Edhy Prabowo, the judge assessed that the defendant had made a service while holding his position and given hope to the community, so this was a mitigating circumstance. There are two perspectives that can be seen from the above, namely that position is a mitigating circumstance for Edhy Prabowo, while on the other hand, position is an aggravating circumstance for I Wahyu Setiawan. This shows that with similar circumstances, differences can still be found in determining whether it is a mitigating or aggravating circumstance. This problem arises due to several factors such as the absence of regulations that specifically limit judges, differences in views in interpreting mitigating and aggravating circumstances,

differences in views regarding the purpose of punishment, as well as differences in the morals and conscience of judges between each judge.

Second, there is consideration of circumstances that are outside the face of the trial and outside the criminal act itself. It is understandable that these mitigating or aggravating circumstances are not related to the criminal act committed by the defendant and were not discovered during the trial process. In connection with the above, this problem can be found in Decision No. 29/Pid.Sus-TPK/2021/PN Jkt Pst. with the defendant, namely Juliari Peter Batubara and Decision No. 10/Pid.TPK/2021/PT DKI. with the defendant, namely Pinangki Malasari. In the decision given to Pinangki Malasari there were mitigating circumstances, namely that the judge considered that Pinangki Malasari was a mother who had to take care of her child and a woman who had to be protected, receive attention and receive justice. Then, in a decision on behalf of Juliari Peter Batubara, the judge considered that the insults or slurs given to Juliari Peter Batubara by the public were mitigating circumstances. Slurs or insults should be a reaction that arises because society is greatly disadvantaged, so that the panel of judges can consider aggravating things for the defendant (Safitri, 2023). The consideration of mitigating circumstances is basically conditions that are not connected to the formulation of the criminal act and are outside the criminal act itself.

Based on Article 13 paragraph (2) of the Perma Sentencing Guidelines Article 2 and Article 3 of the Corruption Law, judges can explore the facts of the trial to determine mitigating and aggravating circumstances, so that through the facts at the trial they can assess the characteristics of the defendant. Philosophically and juridically, judges have the right and obligation to make legal discoveries or interpretations with the aim of ensuring that the decisions given reflect a sense of justice in society (Khalid, 2014).

The mitigating circumstances in both cases basically cannot reflect the good nature or facts revealed at trial. Furthermore, regarding the mitigating circumstances of Pinangki Malasari which relate to the defendant being a woman who must be protected, receive attention and obtain justice, this makes the judge's considerations tend to be unclear. Basically, justice is the right of every person who is fighting for himself before the law regardless of gender as mandated in Article 4 of the Judicial Power Law.

Third, there are facts that do not reflect the dangerousness of the defendant or the seriousness of the criminal act. This problem exists because of the authority given to judges to assess mitigating and aggravating circumstances. This problem can be found in the decision on behalf of Pinangki Malasari and the decision on behalf of Juliari Peter Batubara. In fact, mitigating and aggravating circumstances describe the perpetrator of the crime and the seriousness of the crime. While the situation in question can be the mode of action of the perpetrator or the impact that arises as a result of the criminal act, it can be seen that the dangerousness of the perpetrator of the criminal act is subjective, while the seriousness of the criminal act is objective. The mitigating circumstances in the decision on behalf of Pinangki Malasari can be categorized as subjective circumstances in which the defendant is a mother and a woman. When examined, this situation can be seen that gender does not indicate the level of dangerousness of the perpetrator himself. The same thing is also found in the decision in the name of Juliari Peter Batubara, where slurs or insults from the public cannot describe or determine the level of danger of the perpetrator of a criminal act.

As stated in Article 8 paragraph (2) of the Judicial Power Law, it is an obligation to consider mitigating and aggravating circumstances. For this reason, it is appropriate for judges to consider the proportionality of the sentence imposed with the criminal act committed, this is solely done so that the punishment given to the perpetrator is in line with the objective of the sentence (Huda, 2015). In fact, judges must be able to uphold procedural justice originating from statutory regulations as well as substantial justice obtained through exploring the values that exist and develop in society (Indah, 2019). Furthermore, Bambang Waluyo also stated that law enforcement that is not strict specifically on criminal acts of



corruption can have an impact on the purpose of the punishment itself, namely that the deterrent effect will not be implemented (Waluyo, 2022).

Based on the above, problems are still found in the application of mitigating and aggravating circumstances as a judge's consideration because there are no detailed guidelines, so there are still differences in interpretation and differences in views regarding the mitigating and aggravating circumstances themselves. However, the existence of sentencing guidelines regulated in Article 54 of the 2023 Criminal Code can bring new hope regarding fair law enforcement, especially in the prosecution of corruption crimes.

### **The Influence of Mitigating and Aggravating Circumstances as Considerations for Judges in Deciding Corruption Crime Cases in Decision Number 942 K/Pid.Sus/2022**

The verdict given by the Panel of Cassation Judges to Edhy Prabowo was 5 (five) years in prison and a fine of Rp. 400,000,000.00, subsidiary to 6 months in prison, obligation to pay compensation amounting to Rp. 9,687,457,219.00 and USD 77,000, as well as additional punishment in the form of revocation of the right to vote for 2 years after the main sentence is served. This sentence is lighter than the sentence given by the Panel of Appeals Judges, namely 9 (nine) years in prison plus a fine of IDR 400,000,000.00 subsidiary 6 months in prison, obligation to pay compensation amounting to IDR 9,687,457,219.00 and USD 77,000., and additional punishment in the form of revocation of the right to vote for 3 years after serving the main sentence.

In this decision, the Panel of Cassation Judges only considered mitigating circumstances, namely that while he was Minister of Maritime Affairs and Fisheries the defendant had worked well and given hope, especially to fishermen, the defendant had also revoked the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia No. 56 of 2016 and replaced with Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia No. 12 of 2020, this regulation is considered an effort and enthusiasm to utilize and cultivate lobster seeds and empower fishermen for the welfare of the community. This was also emphasized in the consideration of the Panel of Cassation Judges, explaining that through this regulation exporters must obtain CLS (Clear Lobster Seeds) from small fishermen who catch BBL, so the Panel of Cassation Judges was of the view that the defendant always tried to improve the welfare of the community.

The characteristics of mitigating circumstances are theoretically related to their manifestation in the form of nature, atmosphere, situation whose formulation is found outside the criminal act which can describe the level of seriousness of the criminal act or the danger of the perpetrator of the criminal act. Returning to Edhy Prabowo's mitigating circumstances, that is, because Edhy Prabowo has worked well and rendered merit, he still does not meet the characteristics of the mitigating circumstances themselves.

Furthermore, Edhy Prabowo's actions in enforcing the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 12 of 2020 are considered to provide hope. Basically, this is the duty and responsibility of the Minister of Maritime Affairs and Fisheries. It can be seen that the revocation of Minister of Maritime Affairs and Fisheries Regulation no. 56 of 2016 is not a fact that was revealed at trial and is not something related to a criminal act. The lack of substance in these considerations makes reducing Edhy Prabowo's sentence inappropriate. In fact, the sentence given to Edhy Prabowo as a state official could be increased by a third because it fulfills the elements of Article 52 of the Criminal Code. Apart from that, the act of bribery committed by Edhy Prabowo is basically something that is contrary to religious, social, moral and public interest norms which can result in losses to society and endanger the state (Golonggom, 2021). However, the Cassation Panel of Judges actually considered that the situation tended to be unclear because it did not describe the characteristics of the defendant himself. This is very contrary to the purpose of punishment itself, namely as a justification for imposing criminal

penalties that can eradicate and prevent the occurrence of criminal acts, in this case corruption. The sentence handed down to Edhy Prabowo became lighter, in fact it gave rise to a lot of speculation about achieving a deterrent effect for the perpetrator and achieving commensurate retribution for the perpetrator's actions.

Furthermore, by comparing the mitigating circumstances with the provisions contained in Article 54 of the 2023 Criminal Code, it can be seen that in fact the considerations made should be related to the severity of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed which were not found to be mitigating circumstances in the decision. the name Edhy Prabowo. Edhy Prabowo's mitigating circumstances should have been eliminated when using the provisions contained in Article 52 of the Criminal Code and Article 58 of the 2023 Criminal Code, namely that Edhy Prabowo's status actually became a reason for criminal aggravation for violating his position by abusing the authority, opportunities and facilities he obtained because of his status as an official (Oetari, 2021).

Regarding the effect of mitigating circumstances in the decision on behalf of Edhy Prabowo, it appears that there is a mismatch in the application of mitigating and aggravating circumstances, this could result in the aim of the sentence not being achieved. In essence, punishment must reflect teaching and guidance so that the defendant consciously reflects on and regrets his actions, so that the sentence can prevent other people from acting similarly. The consideration given does not reflect retaliation for the actions of the defendant Edhy Prabowo who also does not give fear to the public and other officials, so that there is no essence of preventive efforts against acts of corruption. Thus, mitigating and aggravating circumstances which are one of the bases for the severity of the sentence imposed, are not always in accordance with the purpose of the sentence.

## CONCLUSION

Mitigating and aggravating circumstances are one of the conditions for imposing a crime on a defendant as regulated in Article 197 of the Criminal Procedure Code and Article 8 paragraph (2) of the Judicial Power Law. Mitigating and aggravating circumstances are also a component of the lightness or severity of the punishment given. With regard to criminal acts of corruption, the Supreme Court has issued a Sentencing Guidelines Regulation for Article 2 and Article 3 of the Corruption Law, which regulates the procedures for determining the punishment for perpetrators of criminal acts of corruption. In its implementation, problems are still found, including 1) there is a lack of uniformity in implementation due to differences in understanding and views of the law by each judge; 2) there is consideration of circumstances that are outside the face of the trial and outside the criminal act itself; and 3) the existence of facts that do not reflect the dangerousness of the defendant or the seriousness of the criminal act itself. In Article 54 of the 2023 Criminal Code, the criminal guidelines are regulated in more detail, covering various factors such as the perpetrator's fault, motive, inner attitude, planning, method of committing the crime, and the impact of the crime on the victim and society.

The decision of the Panel of Cassation Judges who tried the defendant Edhy Prabowo was lighter than the verdict of the Panel of Appeal Judges. The panel of judges at the cassation level considered mitigating circumstances through an assessment of the defendant Edhy Prabowo, including that during his tenure the defendant Edhy Prabowo had worked well and made a contribution by giving hope to fishermen. It can be said that this situation still does not meet the characteristics of mitigating and aggravating circumstances, which are the obligations and responsibilities of the defendant as an official. Meanwhile, the panel of judges at the cassation level did not view the defendant's actions as an official who committed acts of corruption as an aggravating circumstance. The influence that can be demonstrated from the mitigating circumstances of defendant Edhy Prabowo can be seen

from the inappropriateness of applying mitigating circumstances to make defendant Edhy Prabowo's sentence lighter, so that the sentence does not reflect a sense of justice).

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