



Research Paper

Juridical analysis of the ultrapetita decision Corruption criminal cases (Study Decision Number: 38/Pid.Sus-Tpk/2020/Pn.Jkt.Pst)

Taufiqurrahman¹⁾Setiyono²⁾NahdiyaSabrina³⁾
Master of Laws at Merdeka University Malang, Indonesia

ABSTRACT;

The basis for the judge's consideration in issuing the ultrapetita decision is based on philosophical reasons in order to uphold substantive justice and constitutional justice as contained in the 1945 Constitution of the Republic of Indonesia. The theoretical reason is related to the judge's authority to explore, discover and follow the legal values that live in society, if the law does not exist or the law is no longer adequate (outdated), and the juridical reasons are related to the provisions of Law Number 48 of 2009. In this research, the author raises two problem formulations, namely how the judge considers when handing down an ultra petita decision regarding decision number 38/pid.sus-tpk/2020/pn.jkt.pst? And is the decision of the Panel of Judges in decision number 38/pid.sus-tpk/2020/pn.jkt.pst in accordance with the values of justice? This research is normative research with a case approach, a statutory approach, and a conceptual approach. The materials obtained consist of primary legal materials and secondary legal materials which are analyzed systematically, factually and accurately and then presented descriptively, namely explaining, describing and illustrating problems closely related to this research. The judge may decide to grant a decision that is broader or more severe than the claim filed if that is necessary to achieve substantial justice for all parties involved.

Keywords: Ultra Petita Decision, Judge, Prosecutor, Corruption.

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I. INTRODUCTION

Crime is something that cannot be avoided in everyday life. The definition of crime can be seen from 2 (two) points of view, namely a juridical point of view and a sociological point of view, the meaning of a juridical point of view is an act of behavior that is contrary to the law, while the definition of a crime from a sociological point of view is an actor or behavior which apart from being detrimental to the state, is also very detrimental to society, in the form of economic and social development becoming increasingly difficult to carry out, this also affects the quality of public services which is not optimal.

The 1945 Constitution of the Republic of Indonesia upholds human rights, one of which is Article 28 D paragraph (1) "everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law apart from that in The 1945 Constitution of the Republic of Indonesia contains divisions and limitations on constitutional duties as stated in Article 24 paragraph (1) "judicial power is an independent power to administer justice to uphold law and justice in the State of Indonesia". has judicial bodies regulated in the 1945 Constitution of the Republic of Indonesia which have different duties and authorities. One of them is that the District Court has duties and authority in accordance with Article 50 of Law of the Republic of Indonesia Number 2 of 1986 concerning General Courts "The District Court has the duty and authority to examine, decide and resolve criminal and civil cases at the first instance.

The Judge's Decision is the Final Decision from the trial examination in court in a case. The final decision in a dispute decided by the judge examining the trial generally

contains sanctions in the form of punishment. The judge makes a decision based on the case prosecuted or requested by the Public Prosecutor. This is in accordance with the authority of a public prosecutor based on article 13 of Law number 8 of 1981 concerning the Criminal Procedure Law "A public prosecutor is a prosecutor who is authorized by this Law to carry out prosecutions and carry out the judge's decisions". However, based on the principle of ultra petita where the judge makes a decision on a case that was not prosecuted or passes more than what was requested, in other words ultra petita is a decision by a judge on a case that was not prosecuted or decides more than what was requested (Yagie Sagita Putra, 2019).

With the large number of criminal acts of corruption in Indonesia, it is important for judges to pay attention to their considerations in handing down a decision that exceeds the demands of the Public Prosecutor, especially in cases of criminal acts of corruption because, in deciding a case, a judge needs to remember 3 (three) important things related to the objectives of the law. delivered by Gustav Radbruch justice, expediency and legal certainty.

II. LITERATURE REVIEW

According to Mackenzie, there are several theories or approaches that can be used by judges when considering a decision in a case, including the following (Ahmad Rifai, 2014):

1). Balance Theory, what is meant by balance here is that there is a balance between the interests of the parties involved or related to the case and the conditions determined by law.

So that there is no bias between the interests of the community, the interests of the Defendant, and the interests of the victim, 2) Scientific approach theory, the starting point of this theory in order to ensure the consistency of the judge's decisions is the idea that the criminal sentencing process, especially in relation to previous decisions, must be carried out in an orderly manner. systematic and full of caution, 3) Experience approach theory, a judge can know what is related to the perpetrator, victim and society and the impact of the decision handed down in a criminal case, this is obtained from the experience of a judge who can help him because of experience which he has in dealing with the cases he faces every day,

4) The ratio decidendi theory, considering the subject matter and all aspects related to the disputes so that this theory is based on a fundamental philosophical foundation. Then look for relevant laws and regulations as a legal basis for passing a decision. In his considerations the judge must also be based on clear motivation to uphold the law and provide justice for the litigants.

Various concepts of justice proposed by the American philosopher at the end of the 20th century, John Rawls, for example A Theory of justice, Political Liberalism, and The Law of Peoples, which had a major influence on the discourse on the values of justice (Pan Mohamad Faiz, 2009). John Rawls is seen as a "liberal-egalitarian perspective of social justice". Opinions that justice is the main virtue of the existence of social institutions. However, benevolence for the entire community cannot override or challenge the sense of justice of all people who already have a sense of justice.

Especially weak people are seekers of justice. Rawls's view places equal and equal conditions between every individual in society. Not distinguishing status, position or having a higher position than each other, so that one party can build a balanced agreement with another, namely Rawls's view as the "original position" which relies on an understanding of reflective balance based on the characteristics of rationality, freedom and equality for set up the basic structure.

III. RESEARCH METHODS

This legal research is normative legal research, because in this research you can find legal rules, legal principles and legal doctrines to answer the legal issues in this problem. Normative legal research is research that refers to legal norms contained in statutory regulations. Studies of legal science and its principles that apply in society then describe the existing phenomena and analyze them systematically by focusing the main points of the study on the appropriateness of the judge's decision and the teachings about the nature of unlawfulness that applies in criminal acts of corruption based on decision number 38/pid.sus-tpk/2020/pn jkt.pst.

IV. RESULTS AND DISCUSSION

The Judge's Considerations in Handing Down the Ultra Petita Decision on Decision Number 38/Pid.Sus-Tpk/2020/Pn Jkt.Pst

Based on the information contained in the Decision of the Panel of Judges Number 38/Pid.Sus-TKP/2020/PNJkt.Pst, that the CRIMINAL COMPLAINT which was read and submitted at the trial by the Public Prosecutor on January 11 2021 essentially demands that the Panel of Judges examine and adjudicating this case decided:

1. Declare that the defendant Pinangki Sirna Malasari has not been proven guilty of committing a criminal act of corruption as regulated and punishable in the First Indictment, namely violating Article 5 paragraph (2) jo.

Article 5 paragraph (1) letter a of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 and the third primary charge, namely violating

Article 15 jo. Article 5 paragraph 1 letter a Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999;

2. Acquitt the defendant Pinangki Sirna Malasari from the charges as mentioned above;

3. Declare that the defendant Pinangki Sirna Malasari has been proven guilty of committing a Corruption Crime as regulated and punishable by crime in the First Indictment of Subsidiary, namely violating Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes and the second indictment, namely violating Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes and the third indictment of Subsidiary, namely violating Article 15 jo. Article 13 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes;

4. Sentence the defendant Pinangki Sirna Malasari to 4 (four) years in prison, reduced by the time the defendant was in detention, with an order that the defendant remain detained in state detention;

5. Imposing a fine on the defendant in the amount of Rp. 500,000,000.00 (five hundred million Rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 6 (six) months;

Likewise, the judge decided to use charges that were in line with what was demanded by the public prosecutor, but the public prosecutor only asked the panel of judges to sentence the defendant Pinangki Sirna Malasari, with a prison sentence of 4 (four) years reduced to prison for the defendant in detention period with an order that the defendant remain detained in state detention and impose a fine on the defendant of Rp. 500,000,000.00 (five hundred million Rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 6 (six) months. According to the author, the demands of the Public Prosecutor are completely inappropriate. This can be seen from the articles imposed on the defendant. The first article is Article 11 of Law Number 31 of 1999 with a minimum prison sentence of 1 (one) year and a maximum of 5 (five) years, the second article is Article 3 of Law Number 8 of 2010 with a maximum prison sentence of 20 (twenty) years, and finally Article 15 jo. Article 13 of Law Number 31 of 1999 with a maximum prison sentence of 3 (three) years.

From this it can be said that the demands of the public prosecutor are very inappropriate and very inappropriate, which if viewed from the actions that have been carried out by the defendant taking into account the work and position of the defendant who is a civil servant, specifically a Law Enforcer (Prosecutor) such as the author explains in the case above, the Public Prosecutor should be able to charge the defendant with a prison sentence that is heavier than the charges requested.

So in the decision of the panel of judges, where the judge decides and states The defendant, Pinangki Sirna Malasari, was legally and convincingly proven guilty of committing the crime of "corruption" as charged in the FIRST subsidiary indictment and "money laundering" as charged in the SECOND indictment and "Evil contraction to commit criminal act of corruption" as alleged in the third subsidiary indictment. So it is appropriate for the judge to sentence the defendant to 10 years in prison and a fine of Rp. 600,000,000.00 (six hundred million Rupiah), provided that if the fine is not paid it will be replaced by imprisonment for 6 (six) months.

The judge's consideration in handing down the decision in decision number 38/Pid.sus-TPK/Pn.Jkt.Pst was correct because by paying attention to the aggravating and mitigating circumstances of the defendant, based on the principle of *ultra petita*, the judge was able to impose a sentence for a case that was not charged and imposed a sentence exceeding that requested.

And reviewing the principle of *idealist concursus*, namely that an act that falls under more than one criminal law is also called a combination in the form of one act (*eendaadsche samenloop*), that is, an act includes more than one article of the criminal law provisions. This means that *Concursus idealis* is an act that falls under more than one criminal law.

The punishment system used in the *idealist concursus* is an absorption system, that is, only the heaviest principal punishment is imposed. So it is appropriate and appropriate for judges to use Article 3 of Law Number 8 of 2010 which reads: Every person who places, transfers, diverts, spends, pays, gives, entrusts, takes abroad, changes form, exchanges for currency or letters valuables or other actions on assets which he knows or reasonably suspects are the result of a criminal act as intended in Article 2 paragraph (1) with the aim of concealing or

disguising the origin of the assets shall be punished for the crime of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

Ultra Petita is the handing down of a decision by a panel of judges on a case that exceeds the demands or charges submitted by the public prosecutor or handing down a decision on a case that was not requested by the public prosecutor. very reasonable. Apart from that, the judge also took into account the aggravating and mitigating circumstances of the defendant, the legal facts revealed in the trial, the elements of what the defendant had committed, so that the judge handed down a sentence of 10 (ten) years and a fine of Rp.600,000,000.00 (six hundred million rupiah), provided that if the fine is not paid it will be replaced by imprisonment for 6 (six) months, in contrast to the Public Prosecutor's demand for 4 (four) years and a fine of Rp. 500,000,000.00 (five hundred million rupiah). With this, it is clear that there is a conflict between the demands and the decision. The judge has a strong enough reason to impose a crime exceeding the demands of the Public Prosecutor, while the Prosecutor does not have a strong legal reason why he did not prosecute the defendant in accordance with the article indicted.

The suitability of the judge's decision in decision number 38/Pid.Sus-Tpk/2020/PnJkt.Pst with the value of justice

In deciding to review, the judge uses several articles as follows: 1). Article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, 2). Article 3 Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Laundering, 3). Article 15 jo. Article 13 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. In accordance with the indictment of the public prosecutor.

By reviewing the principle of *idealist concursus*, namely that an act that falls under more than one criminal law is also referred to as a combination in the form of one act (*eendaadsche samenloop*), that is, an act includes more than one article of the provisions of the criminal law. This means that *Concursus idealis* is an act that falls under more than one criminal law. The punishment system used in the *idealist concursus* is an absorption system, that is, only the heaviest principal punishment is imposed.

If we look at the three bases for judges in making decisions, Article 3 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Laundering will be the judge's reference in making decisions, while the article reads: "Every person who places, transfers, transfers, spending, paying, donating, entrusting, taking abroad, changing the form, exchanging for currency or securities or other actions on assets which he knows or reasonably suspects are the proceeds of criminal acts as intended in Article 2 paragraph (1) with the aim of concealing or disguise the origin of assets, be punished for the crime of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah)." Which is appropriate for the judge to use as a basis for making a decision.

So, based on the facts and evidence revealed in the trial, the judge decided the case with Number: 38/PID.SUS-

TPK/2020/PN.JKT.PST by declaring that the defendant Pinangki Sirna Malasari was legally and convincingly proven guilty. committed the crime of "corruption" as charged in the one subsidiary indictment and "money laundering" as charged in the second indictment and "clicious contraction to commit a criminal act of corruption" as charged in the third subsidiary indictment; Sentence the Defendant to imprisonment for 10 (ten) years and a fine of Rp. 600,000,000.00 (six hundred million Rupiah), provided that if the fine is not paid it will be replaced by imprisonment for 6 (six) months; Determining that the period of detention that has been served by the Defendant shall be deducted entirely from the sentence imposed; Instruct

The defendant remains in detention. Therefore, the author is of the view that the Ultra Petita decision in the Corruption Crime Case Decision Number: 38/Pid.Sus-Tpk/2020/Pn.Jkt.Pst is based on the theory of justice, the judge's balance, evidence or The evidence and things that aggravate or mitigate the defendant that the author has described above are appropriate and fulfill the sense of justice.

2. CONCLUSION

In the legal context, "the judge's consideration in handing down an ultrapetita decision regarding decision number 38/pid.sus-tpk/2020/pn jkt.pst" refers to a situation where the judge's decision exceeds the requests or demands submitted by the public prosecutor in the legal process This, can occur when the judge makes a decision that is broader or more severe than required and that is supported by the evidence presented during the trial.

Judges can decide to impose heavier or broader sanctions if it is deemed important to uphold the law and protect the interests of society from the negative impacts of corruption. In implementing decision number 38/pid.sus-tpk/ 2020/pn jkt.pst the judge used the Ultra Petita principle, the idealist concursus principle as

the basis for handing down a decision against the defendant. the heaviest principal punishment. And this proves that the judge's decision is very appropriate and fulfills a sense of justice.

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