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# Sentencing Disparities in Corruption Cases and Judicial Discretion in Indonesian Courts

Ahmad Fadli Daulay

Law Faculty, Universitas Al-Azhar  
Indonesia, Jakarta, Indonesia

## Correspondence

Ahmad Fadli Daulay, Law Faculty,  
Universitas Al-Azhar Indonesia,  
Jakarta, Indonesia, Jl.  
Sisingamangaraja, RT.2/RW.1,  
Selong, Kec. Kby. Baru, Kota  
Jakarta Selatan, Daerah Khusus  
Ibukota Jakarta 12110, e-mail:  
ahmad.fad0505@gmail.com

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## Abstract

Judicial discretion in case adjudication often leads to sentencing disparities, including in cases of corruption. This phenomenon is evident in Decision Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Decision Number 92/Pid.Sus-Tpk/2023/PN Mks. This study explores the factors contributing to sentencing disparities and the judicial considerations in these decisions. The research employs a normative juridical approach. The findings indicate that sentencing disparities are influenced by the Continental European legal system adopted by Indonesia, which does not emphasize the use of precedent; the broad discretion granted to judges; the lack of standardized sentencing guidelines; and personal factors inherent to judges. In both cases, disparities arose due to differing judicial perspectives on the purposes of sentencing, as well as the defendants' confessions and personal circumstances, which were taken into account. These findings highlight the complexities involved in achieving justice in corruption cases.

**Keywords:** *Sentencing Disparities, Corruption, Judicial Discretion, Courts*

## Abstrak

Kebebasan hakim dalam memutus perkara sering menimbulkan disparitas pemidanaan, termasuk pada tindak pidana korupsi. Hal ini terlihat pada Putusan Nomor 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst dan Putusan Nomor 92/Pid.Sus-Tpk/2023/PN Mks. Penelitian ini mengkaji faktor penyebab disparitas putusan dan pertimbangan hakim dalam kedua putusan tersebut. Metode yang digunakan adalah yuridis normatif. Hasil penelitian menunjukkan bahwa disparitas putusan disebabkan oleh sistem hukum Eropa Kontinental yang dianut Indonesia, kebebasan hakim, ketiadaan panduan bersama, dan faktor pribadi hakim. Pada kedua putusan, disparitas terjadi karena perbedaan pandangan terkait tujuan pemidanaan serta pengakuan dan keadaan terdakwa yang menjadi pertimbangan hakim. Faktor-faktor ini menunjukkan kompleksitas dalam memastikan keadilan pada tindak pidana korupsi.

**Kata kunci:** *Disparitas Putusa, Korupsi, Kebebasan Hakim, Pengadilan*

## 1. INTRODUCTION

Law must embody three core values: justice, certainty, and utility. A law can be considered effective and well-founded when it promotes a sense of justice within society, provides the certainty of enforceability, and integrates seamlessly into the fabric of community life.<sup>1</sup> Justice is a cornerstone of law enforcement, achievable through the assurance of legal certainty. When justice and certainty are upheld, the law serves its purpose by benefiting society.

As a nation governed by the rule of law, Indonesia's criminal justice system occupies a crucial position in societal life. This significance arises because criminalization affects not only individuals who commit offenses but also the broader community. In criminal law enforcement, two essential aspects are considered: the substance or outcomes of law enforcement (substantive justice) and the procedures involved (procedural justice).<sup>2</sup>

In Indonesia, judges are granted the autonomy to render decisions in criminal cases, free from external interference or influence.<sup>3</sup> Article 5, Paragraph (1) of Law Number 48 of 2009 on Judicial Power mandates that "judges are obligated to explore, adhere to, and comprehend the legal values and sense of justice prevailing in society." Furthermore, Article 8, Paragraph (2) specifies that "judges must also consider the defendant's good and bad character during the trial." These provisions underscore that judicial decisions are guided by the judge's wisdom and personal convictions.

This principle aligns with Article 183 of the Criminal Procedure Code (KUHAP), which stipulates:

"A judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, the judge is convinced that a crime has occurred and the defendant is guilty of committing it."

Muladi and Barda Nawawi Arief, in their book, emphasize that Indonesia's criminal law grants judges considerable discretion regarding the use of alternative sentencing systems within the legal framework.<sup>4</sup> This underscores the significant role of judges in both the procedures and outcomes of criminal law enforcement. However, the latitude afforded to judges can result in sentencing disparities. According to Muladi, disparity refers to the unequal application of punishment (sentencing disparity) for identical crimes or comparable offenses without a clear rationale.

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<sup>1</sup> Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher," *Journal of Law and Policy* 2 (2000): 489–515, [https://openscholarship.wustl.edu/law\\_journal\\_law\\_policy/vol2/iss1/16](https://openscholarship.wustl.edu/law_journal_law_policy/vol2/iss1/16).

<sup>2</sup> Nimerodi Gulo, "Disparitas Dalam Penjatuhan Pidana," *Masalah-Masalah Hukum* 47, no. 3 (2018): 215–27, <https://doi.org/10.14710/mmh.47.3.2018.215-227>.

<sup>3</sup> Adi Kusyandi and Saefullah Yamin, "Disparitas Putusan Hakim Pidana Berkualitas Yang Mencerminkan Rasa Keadilan Dalam Sistem Hukum Indonesia," *Yustitia* 9, no. 1 (2023): 122–132, <https://doi.org/10.31943/yustitia.v9i1.173>.

<sup>4</sup> Muladi Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010).

Sentencing disparity can have adverse consequences, particularly in the context of “correction administration.” A convicted individual may perceive their sentence as unjust compared to others and feel victimized by what Muladi describes as “The Judicial Caprice.” Such perceptions can erode respect for the law—a respect that is fundamental to the objectives of punishment.<sup>5</sup>

Disparities in judicial decisions can arise from various factors, one of which is the wide range between the minimum and maximum criminal sanctions stipulated in the law. This lack of standardized guidelines for sentencing often leaves judges with significant discretion in adjudicating cases. The current provisions of Indonesian criminal law primarily outline the minimum and maximum penalties for offenses, creating room for judges to impose sentences they deem appropriate and proportionate to the circumstances of each case.<sup>6</sup> categorizes criminal disparities into several types: disparities for identical criminal acts, disparities for offenses of equivalent severity, disparities in sentences handed down by the same panel of judges, and disparities in sentences handed down by different panels of judges for the same criminal act.

Such sentencing disparities are common in judicial practice, including in cases of corruption. The following examples illustrate these disparities:

- 1) Case Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst
  - a) Defendant I: Harno Trimadi and Defendant II: Fadliansyah were found guilty of violating Article 12(b) in conjunction with Article 18 of Law No. 31 of 1999 on the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001, in conjunction with Article 55(1)1 and Article 64(1) of the Criminal Code.
  - b) Sentences:
    - Harno Trimadi: 5 years and 7 months imprisonment, a fine of Rp. 200,000,000 (two hundred million rupiah), and compensation totaling Rp. 900,000,000, SGD 30,000, and USD 20,000.
    - Fadliansyah: 4 years and 11 months imprisonment, a fine of Rp. 200,000,000 (two hundred million rupiah), and compensation of Rp. 1,725,000,000, with Rp. 1,099,000,000 already confiscated, leaving a balance of Rp. 626,000,000 to be paid.
- 2) Case Number 92/Pid.Sus-Tpk/2023/PN Mks

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<sup>5</sup> Hajairin Hajairin et al., “Kebijakan Pidana Pengawasan Dalam Pembaharuan Hukum Pidana Indonesia,” *IBLAM Law Review* 2, no. 2 (2022): 165–74, <https://doi.org/10.52249/ilr.v2i2.81>.

<sup>6</sup> Harkristuti Harkrisnowo, “Domestic Violence (Kekerasan Dalam Rumah Tangga) Dalam Prospektif Kriminologis Yuridis,” *Indonesian Journal of International Law* 1, no. 4 (2021): 709–34, <https://doi.org/10.17304/ijil.vol1.4.563>.

- a) Defendant: Achmad Affandi was found guilty of the same charges under Article 12(b) in conjunction with Article 18 of Law No. 31 of 1999, as amended by Law No. 20 of 2001, in conjunction with Article 55(1)1 and Article 64(1) of the Criminal Code.
- b) Sentence: 8 years imprisonment, a fine of Rp. 300,000,000 (three hundred million rupiah), and additional compensation of Rp. 5,170,250,000, minus confiscated evidence.

The two cases share similarities in their chronology and elements, as both involve defendants who were civil servants or state officials receiving monetary gifts from contractors to influence the outcome of project tenders within the Directorate General of Railways, Ministry of Transportation. Both were prosecuted under Article 12(b) of the Corruption Law. Despite these parallels, the sentences imposed differ significantly, highlighting the issue of sentencing disparities.

Based on the two decisions discussed above, it is evident that sentencing disparities can occur in judicial decisions for similar cases. This issue warrants special attention in the field of criminal law, as it directly impacts the legal certainty anticipated by both convicts and the broader community, ultimately affecting the public's sense of justice. Given this background, the research focuses on the following key questions: 1) What factors contribute to sentencing disparities in corruption cases? 2) How do judicial considerations contribute to sentencing disparities in Case Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Case Number 92/Pid.Sus-Tpk/2023/PN Mks?

## 2. RESEARCH METHODOLOGY

The research approach employed in this study is the normative legal method, also referred to as library research. This method focuses exclusively on library materials or secondary data, including laws and regulations, legal theories, and the opinions of legal scholars.<sup>7</sup> The data in this study are presented using analytical descriptive specifications, which involve systematically describing and explaining aspects related to the research object.<sup>8</sup> The study utilizes secondary data obtained through library research, encompassing primary, secondary, and tertiary legal materials. The data analysis is conducted using a qualitative approach, which aims to comprehensively understand the phenomena experienced by the research subjects and generate findings presented in descriptive form, primarily through words and language.

## 3. RESEARCH RESULT AND DISCUSSION

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<sup>7</sup> Soekanto Soerjono and Sri Mamudji, "Penelitian Hukum Normatif: Suatu Tinjauan Singkat" (Jakarta: PT Raja Grafindo Persada, 1995).

<sup>8</sup> Rony Hanitijo Soemitro, *Metode Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 1990).

### 3.1. Factors Contributing to Sentencing Disparities in Corruption Cases

In the Online KBBI, disparity is defined as a “difference or distance.” Similarly, Black’s Law Dictionary defines disparity as “inequality or a difference in quantity or quality between two or more things.” In this context, disparity refers to an injustice or a difference in quantity or quality between two or more comparable elements. The imposition of unequal punishment for the same crime or for a crime whose severity can be compared (offenses of comparable seriousness) without a clear basis for justification or consideration”.<sup>9</sup>

Additionally, Jackson, as quoted by Muladi, states that “criminal disparity can occur when someone commits a crime under similar circumstances.” In the context of law enforcement in Indonesia, disparity arises from the freedom granted by the legal system and regulations, allowing judges to adjudicate and decide criminal cases based on applicable laws. This judicial discretion can result in differences between a decision and prior rulings. Judges, in adjudicating and deciding cases, are not strictly bound by prosecutorial demands. This means that determining the severity of a sentence (strafmacht) is ultimately the prerogative of the judge.<sup>10</sup>

Under Indonesian law, the Criminal Code specifies only the minimum and maximum penalties for offenses. This legal framework allows for variations in interpretation, reasoning, and analysis in individual cases, leading to different legal outcomes. However, as long as a judge’s decision adheres to existing legal rules, such differences are permissible.<sup>11</sup> Several factors contribute to sentencing disparities, but the primary determinant is judicial discretion. Indonesia’s legal system, which adheres to the Continental European (civil law) model, emphasizes the enforcement of statutory laws and regulations. This system influences the occurrence of sentencing disparities. While jurisprudence in Indonesia serves as a persuasive precedent, there is no formal obligation for judges to follow it.

The system contrasts with the Anglo-Saxon (common law) system<sup>12</sup>, where jurisprudence serves as a “binding precedent,” requiring lower courts to follow the rulings of higher courts. In the common law system, this binding force of precedent reduces the likelihood of sentencing disparities.<sup>13</sup> Despite these differences, sentencing disparities are not unusual because no two cases are entirely identical. Indonesian law permits sentencing disparities under Article 12(a) of the Criminal Code, which stipulates

<sup>9</sup> Gulo, “Disparitas Dalam Penjatuhan Pidana.”

<sup>10</sup> Maria Ulfa Arifia, Binsar M. Gultom, and Markoni Markoni, “Upaya Meminimalisir Disparitas Putusan Hakim,” *Jurnal Syntax Transformatin* 4, no. 1 (2023): 15–31, <https://doi.org/10.46799/jst.v4i1.677>.

<sup>11</sup> Mita Nurashiah, Beniharmon Harefa, and Riki Perdana Raya Waruwu, “Disparitas Pidana Terhadap Justice Collaborator Dalam Tindak Pidana Korupsi,” *Jurnal Esensi Hukum* 4, no. 1 (2022): 88–98, <https://doi.org/10.35586/esh.v4i1.155>.

<sup>12</sup> Satjipto Rahardjo, *Hukum Dan Masyarakat* (Bandung: Sinar Baru, 2018).

<sup>13</sup> Tama S. Langkun et al., *Studi Atas Disparitas Putusan Pemidanaan Perkara Tindak Pidana Korupsi* (Jakarta: Indonesia Corruption Watch, 2014).

that imprisonment ranges from a minimum of one day to a maximum of life. This broad range allows judges the discretion to interpret the law and impose sentences they deem appropriate, taking into account both legal and non-legal considerations.

From a theoretical perspective, sentencing disparities stem from judicial discretion and independence, as guaranteed by the judicial power law. This principle ensures judicial autonomy in rendering decisions.<sup>14</sup> Other contributing factors include:<sup>15</sup>

- 1) Ratio Decidendi: The reasoning behind a judicial decision.
- 2) Dissenting Opinions: Divergent views and interpretations among judges in specific cases.
- 3) Doctrine of Res Judicata: The principle that a matter already adjudicated cannot be relitigated.

These factors underscore the complex interplay of legal, procedural, and interpretive considerations in judicial decision-making, which can ultimately lead to sentencing disparities in corruption cases.

The issue of sentencing disparities is partly attributable to the lack of unified guidelines that judges can use to determine case outcomes. According to a study by Indonesian Corruption Watch, only the Supreme Court has implemented regulations aimed at mitigating sentencing disparities. In contrast, other legal institutions, such as the Prosecutor's Office and the Corruption Eradication Committee, have yet to establish internal regulations to address this issue.<sup>16</sup>

To address sentencing disparities, the Supreme Court issued Circular Letter Number 14 of 2009 on the Development of Judge Personnel, which includes a recommendation for appellate court chairpersons to "guard against disparity in decisions." However, there are still no detailed regulations providing technical guidelines for sentencing.

Regarding judicial discretion, Sudarto argues that the freedom granted to judges in imposing sentences should not be excessive, as it could lead to stark disparities that foster a sense of discomfort (*onbehagelijk*) within the community. He emphasizes the need for sentencing guidelines within the Criminal Code to reduce, though not entirely eliminate, disparities.<sup>17</sup>

Additionally, disparities in sentencing can also stem from the judges themselves. Hood and Sparks, as cited by Muladi and Barda Nawawi, assert that judges possess both external and internal traits that are difficult to disentangle and collectively referred to as

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<sup>14</sup> Arifia, Gultom, and Markoni, "Upaya Meminimalisir Disparitas Putusan Hakim."

<sup>15</sup> Nur Fadilah Al Idrus, "Disparitas Putusan Pemidanaan Perkara Penipuan Online," *Jurnal Yudisial* 16, no. 3 (2023): 325–341, <https://doi.org/10.29123/jy.v16i3.598>.

<sup>16</sup> Langkun et al., *Studi Atas Disparitas Putusan Pemidanaan Perkara Tindak Pidana Korupsi*.

<sup>17</sup> Sudarto Sudarto, *Hukum Dan Hukum Pidana* (Bandung: Alumni, 1977).

the “Human Equation” or “Personality of the Judge.” These traits, influenced by social background, can shape a judge’s perspective and decisions.<sup>18</sup>

These influences often determine which school of criminal law a judge subscribes to, thereby contributing to sentencing disparities. Judges with a legal positivist perspective focus strictly on the qualifications or elements defined by statutory regulations. However, other judges may also consider non-legal aspects, such as the defendant’s personality, socio-economic conditions, and public attitudes.<sup>19</sup>

### **3.2. Judicial Considerations in Decision Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Decision Number 92/Pid.Sus-Tpk/2023/PN Mks**

Before deliberating on the legal aspects of a case, judges must first evaluate the facts established during the trial.<sup>20</sup> These facts are derived from witness testimonies, the defendant’s statements, and the evidence presented and examined in court. These elements are then carefully considered to determine whether the defendant’s actions satisfy the elements of the charges against them.

In rendering a verdict, judges must base their decisions on a variety of considerations, which may include both legal and non-legal factors. Legal considerations refer to elements and facts obtained during the trial that are mandated by law to be included in a judicial decision. These typically consist of the prosecutor’s charges, witness statements, defendant statements, and applicable legal provisions relevant to the case. Non-legal considerations, on the other hand, involve broader factors such as the societal impact of the defendant’s actions and the defendant’s personal circumstances. Judges are also required to weigh aggravating and mitigating factors when determining the sentence.<sup>21</sup>

In Decision Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Decision Number 92/Pid.Sus-Tpk/2023/PN Mks, the panels of judges based their legal considerations on the facts established during the trials, including witness statements, defendant statements, written evidence, and other exhibits. Additionally, the judges examined the elements of the charges brought by the prosecution, specifically Article 12(b) in conjunction with Article 18 of the Corruption Law, Article 55 paragraph (1) 1 of the

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<sup>18</sup> Maryo Jaxel Mabilehi, Rudepel Petrus Leo, and Heryanto Amalo, “Faktor Penyebab Dan Upaya Penanggulangan Disparitas Putusan Bagi Pelaku Tindak Pidana Kekerasan Seksual Di Wilayah Hukum Pengadilan Negeri Kelas I A Kupang,” *Terang: Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 4 (2024): 98–107, <https://doi.org/10.62383/terang.v1i4.616>.

<sup>19</sup> Zuhrah Zuhrah et al., “Independensi Hakim Dalam Berbagai Disparitas Putusan Perkara Korupsi Di Mahkamah Agung,” *Fundamental: Jurnal Ilmiah Hukum* 13, no. 1 (2024): 47–70, <https://doi.org/10.34304/jf.v13i1.236>.

<sup>20</sup> Muladi and Arief, *Teori-Teori Dan Kebijakan Pidana*.

<sup>21</sup> Nurhafifah Nurhafifah and Rahmiati Rahmiati, “Pertimbangan Hakim Dalam Penjatuhan Pidana Terkait Hal Yang Memberatkan Dan Meringankan Putusan,” *Kanun: Jurnal Ilmu Hukum* 17, no. 2 (2015): 341–62, <https://jurnal.usk.ac.id/kanun/article/view/6067>.

Criminal Code, and Article 64 paragraph (1) of the Criminal Code, in determining the appropriate penalties for the defendants.

The first element analyzed by the judges in both cases was whether the defendants fulfilled the qualifications of being a “Civil Servant or State Administrator.”

- 1) In Decision Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst, it was determined that Defendant I Harno Trimadi, as Director of Infrastructure at the Directorate General of Railways within the Ministry of Transportation and a Budget User Authority (KPA), qualified as a Civil Servant. Similarly, Defendant II Fadliansyah, who served as a Commitment Making Officer (PPK) or Project Leader, met the qualifications of a State Administrator.
- 2) In Decision Number 92/Pid.Sus-Tpk/2023/PN Mks, the panel concluded that Defendant Achmad Affandy, as a Commitment Making Officer (PPK), was legally and convincingly proven to fulfill the qualifications of a Civil Servant or State Administrator.

The judges in both cases agreed that the defendants met the element of “Civil Servant or State Administrator” as charged. Regarding the element of “receiving gifts,” the panels of judges reached the following conclusions:

- 1) In Decision Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst, the judges found that Defendant I Harno Trimadi and Defendant II Fadliansyah had received bribes amounting to Rp 2,625,000,000 (two billion six hundred twenty-five million rupiah), SGD 30,000 (thirty thousand Singapore dollars), and USD 20,000 (twenty thousand US dollars), thereby fulfilling the element of “receiving gifts.”
- 2) In Decision Number 92/Pid.Sus-Tpk/2023/PN Mks, the judges found that Defendant Achmad Affandy had received Rp 5,170,250,000 (five billion one hundred seventy million two hundred fifty thousand rupiah) from an initial indictment of Rp 7,439,935,000 (seven billion four hundred thirty-nine million nine hundred thirty-five thousand rupiah), thereby fulfilling the element of “receiving gifts.”

In both cases, the panels of judges concurred that the defendants’ actions satisfied the element of “receiving gifts” as charged in the indictments. Regarding the element, “even though it is known or reasonably suspected that the gift was given as a result of, or due to, having done or refrained from doing something in his position that is contrary to his obligations,” the panel of judges in Decision Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst stated that “Defendant I Harno Trimadi and Defendant II Fadliansyah were aware that the money they received from PT. KAPM and Dion Renato Sugiarto was a fee commitment because the defendants had awarded PT.



KAPM and Dion Renato Sugiarto the contract for the project auction under the Directorate of Railway Infrastructure. Furthermore, the receipt of the money was in violation of their obligations as stipulated in Article 7, paragraph (1), letters b, g, and h of Presidential Regulation (Perpres) Number 16 of 2018 concerning Government Procurement of Goods/Services. Therefore, the actions of the defendants have been legally and convincingly proven to fulfill this element.”

Similarly, in Decision Number 92/Pid.Sus-Tpk/2023/PN Mks, the panel of judges stated that “Defendant Achmad Affandy knew, or at the very least should have suspected, that the receipt of money from Dion Renato Sugiarto was contrary to his obligations as a state administrator. As the Commitment Making Officer (PPK) for land CT 409, construction work packages CT 410 to CT 416, and construction work package CT 501, his actions were in violation of the applicable laws and regulations. Thus, the element, ‘even though it is known or should be suspected that the gift was given as a result of, or caused by, having done or refrained from doing something in his position that is contrary to his obligations,’ has been legally and convincingly proven according to law.”

Based on these considerations, it is evident that both panels of judges concluded that the defendants in their respective cases had fulfilled the element of “even though it is known or should be suspected that the gift was given as a result of, or caused by, having done or refrained from doing something in their position that is contrary to their obligations” as charged.

**Table 1.**

*Judicial Considerations Regarding the Elements of the Indictment Article in Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Decision No. 92/Pid.Sus-Tpk/2023/PN*

<b>Elements of the Article of Indictment</b>	<b>Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst</b>	<b>Decision No. 92/Pid.Sus-Tpk/2023/PN Mks</b>
“Civil Servant or State Administrator”	Defendant I, Harno Trimadi, who held the position of Director of Infrastructure at the Directorate General of Railways, Ministry of Transportation, and served as the Budget User Authority (KPA), was found to meet the legal qualifications as a “Civil Servant.” Similarly, Defendant II, Fadliansyah, who held the position of Commitment Making Officer (PPK) or Project Leader, was determined to meet the legal qualifications as a “State Administrator.”	Defendant Achmad Affandy, serving as the Commitment Making Officer (PPK), was legally and convincingly proven to meet the criteria for a “Civil Servant or State Administrator.”
“Receiving Gifts”	Defendants I and II, Harno Trimadi and Fadliansyah, were legally and convincingly proven to have received funds totaling	Defendant Achmad Affandy was proven, both legally and convincingly, to have received Rp5,170,250,000 (five billion one

Elements of the Article of Indictment	Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst	Decision No. 92/Pid.Sus-Tpk/2023/PN Mks
“Whereas it is known or reasonably suspected that the gift was given as a result of or due to having done or refrained from doing something in his position that was contrary to his obligations”	Rp2,625,000,000 (two billion six hundred twenty-five million rupiah), SGD30,000 (thirty thousand Singapore dollars), and USD20,000 (twenty thousand US dollars).  Defendants I and II, Harno Trimadi and Fadliansyah, were aware that the funds they received from PT. KAPM and Dion Renato Sugiarto constituted a fee commitment as a result of their decision to award the project auction within the Directorate of Railway Infrastructure to PT. KAPM and Dion Renato Sugiarto. The receipt of these funds was also in violation of their obligations as outlined in Article 7, paragraph (1), letters b, g, and h of Presidential Regulation (Perpres) No. 16 of 2018 concerning Government Procurement of Goods/Services.	hundred seventy million two hundred fifty thousand rupiah) from an initial indictment amounting to Rp7,439,935,000 (seven billion four hundred thirty-nine million nine hundred thirty-five thousand rupiah).  Defendant Achmad Affandy was aware, or at least should have reasonably suspected, that the funds he received from Dion Renato Sugiarto were in violation of his obligations as a state administrator. This included his role as PPK for land CT 409 and the construction of work packages CT 410 to CT 416 and CT 501, as regulated by applicable laws and regulations.

Based on the description above, it is evident that each defendant in Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Decision No. 92/Pid.Sus-Tpk/2023/PN Mks fulfilled the elements of the charged articles, resulting in guilty verdicts for all defendants. However, despite committing similar offenses, the length of imprisonment imposed on the defendants varied significantly. Defendant I, Harno Trimadi, received a sentence of 5 years and 7 months; Defendant II, Fadliansyah, received 4 years and 11 months; and Defendant Achmad Affandy was sentenced to 8 years in prison.

The disparity in sentencing appears disproportionate. Drawing from von Hirsch’s principle of proportionality, the severity of punishment should align with the seriousness of the crime. Accordingly, a more severe crime should warrant a harsher punishment. In comparing the two decisions, although the actions of the defendants were equally serious and the amounts of money involved were nearly identical, the sentences differed strikingly. This disparity is inconsistent with von Hirsch’s principle of proportionality.

In Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst, the panel of judges stated in their considerations:

“The defendants’ request to the panel of judges for the lightest possible sentence led the panel to issue a verdict deemed fair, providing legal certainty and reflecting sufficient wisdom

according to the panel of judges, based on the level of wrongdoing committed by the defendants.”

In contrast, the panel of judges in Decision No. 92/Pid.Sus-Tpk/2023/PN Mks stated:

“The appropriate punishment imposed on the defendant is not only intended as reparation for the crime committed but also to educate the defendant to prevent recidivism (educational purpose) and to deter society from committing similar offenses (preventive purpose), while ensuring justice for both the defendant and society.”

These differing judicial perspectives on the purpose of sentencing contributed to the disparity in outcomes for cases prosecuted under the same legal provisions. Further analysis reveals that in Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst, the judges considered both aggravating and mitigating circumstances. Aggravating factors included:

“The defendants’ actions did not support the government’s anti-corruption program, and Defendant I, Harno Trimadi, and Defendant II, Fadliansyah, failed to return the proceeds of their crimes.”

Mitigating factors included:

“The defendants were cooperative, admitted their guilt, expressed remorse, were willing to take responsibility, and had family obligations.”

Similarly, in Decision No. 92/Pid.Sus-Tpk/2023/PN Mks, the judges also considered aggravating and mitigating factors. Aggravating factors included:

“The defendant did not support the government’s efforts to achieve a corruption-free administration, and Defendant Achmad Affandy’s actions undermined public trust in the government’s railway sector.”

Mitigating factors included:

“The defendant, Achmad Affandy, had no prior criminal record and had family responsibilities.”

The above analysis also demonstrates that the judges in Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst considered the defendants’ circumstances and confessions in their deliberations, which influenced their sentencing decisions. This consideration is a significant factor contributing to the disparity between Decision No. 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Decision No. 92/Pid.Sus-Tpk/2023/PN Mks.

## CONCLUSION

Based on the findings and discussion presented above, the author concludes that disparities in judicial decisions can be attributed to various factors. These include the Continental European legal system adopted by Indonesia, which does not prioritize the use of precedent (jurisprudence) in resolving similar cases; the provision of freedom and independence to judges in rendering decisions, as stipulated by laws and regulations; the absence of unified guidelines for judges in adjudicating cases; and factors inherent to the judges themselves.

In Decision Number 77/Pid.Sus-Tpk/2023/PN.Jkt. Pst and Decision Number 92/Pid.Sus-Tpk/2023/PN Mks, while the defendants fulfilled the elements of the charged articles, differences in the manner in which the defendants committed the offenses were considered by the judges in their verdicts. These considerations contributed to the observed disparities in sentencing. Moreover, differences in the judges' perspectives on the objectives of sentencing, along with the defendants' confessions and personal circumstances, were also influential in shaping the outcomes of the decisions.

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