

Disparity in Judicial Decisions Related to Fraud and Embezzlement Committed by Notaries and/or Land Deed Officials

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Abstract: *Observing various criminal acts, the law is crucial in addressing criminal issues. Recently, several cases of fraud and embezzlement committed by some Notaries or Land Deed Officials have been frequently encountered. Each of these actions has resulted in different (disparate) criminal sentences due to the judges' legal reasons (Ratio Decidendi). This research uses a normative juridical methodology to align the judges' decisions with the Criminal Code. This study aims to determine the ratio determined by judges and the factors causing the disparity in the imposition of criminal sentences for fraud and embezzlement committed by notaries and/or land deed officials. Additionally, seeking justice in these decisions can create a deterrent effect for Notaries and/or Land Deed Officials who commit fraud and embezzlement.*

Keywords: *Ratio Decidendi; Disparity; Criminal; Notary; Land Deed Official*

INTRODUCTION

The level of crime and criminality is increasingly widespread in Indonesia and even throughout the world accompanied by various variations in modus operandi and various crime motives. Crime itself is a problem that occurs not only in a certain society or in a certain country, but is a problem faced in all world

communities.¹ As a constitutional state, Indonesia guarantees the principle of administering judicial power that is independent and free from the influence of other powers (Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia). One of the actors of judicial power is a judge (Article 19 of Law Number 48 of 2009 concerning Judicial Power). Judges are state judicial officials who are authorized by law to adjudicate (Article 1 point 8 of the Criminal Procedure Code). The Judicial Power Law states that judges in examining, adjudicating, and making decisions have great freedom and power. Regarding "judge's decision" or "court decision" is an important thing which is needed to resolve a criminal case. An inkracht judge's decision is useful for the Defendant in obtaining legal certainty (*rechtszekerheids*) regarding his "status," as well as to prepare the next steps that will be taken by the Defendant regarding the decision. This means whether the defendant accepts the decision or will take legal action, appeal, or cassation, and so on.

When imposing a sentence, apart from paying attention to statutory provisions, the judge also considers human values, the principle of benefit, as well as the defendant's effectiveness in carrying out the sentence and changes in the defendant's behavior that will have a deterrent effect after leaving the correctional institution. Because, without considering this aspect, it will give rise to legal uncertainty and injustice in administering punishment. Even though the judge in handing down the sentence has paid attention to the matters mentioned above, disparities in judge's decisions are still often found in practice in Indonesia. The existence of an independent judiciary in a country that is based on the constitution as a country that adheres to a democratic system is a condition *sine quanon* "(there must be no non-judgment)", so there is a legal maxim that states "*res judicate pro veritatee hebetur*", what the judge decides is a truth, even though it is something wrong, is binding until it is not annulled by a higher court decision.²

Criminal disparity itself is the application of unequal criminal sanctions to the same or similar criminal acts or to criminal acts whose dangerous nature can

¹ Wahyu Sari Asih, "Pertimbangan Hakim Dalam Menjatuhkan Putusan Pidana Kekerasan Terhadap Anak (Studi Putusan Nomor 166/Pid.Sus/2016/PN.Pwt), *Verstek Journal*, Vol. 6. No.2, 2021, p. 251

² Aminanto, K, *Politik Hukum Pidana*, (Jember, Katamedia Jember, 2017), p. 9



be compared without a clear justification.³ Criminal disparities bring their own problems to law enforcement in Indonesia. Different sentences or criminal disparities are a form of judge's discretion in handing down decisions. On the other hand, different sentences or criminal disparities also bring dissatisfaction for the convicts and even society.⁴

The disparity in judges' decisions can be seen in the four decisions that are the main subject of this writing, which were in district courts with two similar decisions, namely fraud and two similar decisions, namely embezzlement. The first decision is the Decision of the Sleman District Court Number 63/Pid.B/2020/PN.Smn and the Lumajang District Court Number 187/Pid.B/2020/PN.Lmj with each defendant applying Article 378 of the Criminal Code regarding fraud by judges and the second decision is the Decision of the Bukittinggi District Court Number 53/Pid.B/2017/PN/Bkt and the Surabaya District Court Number 210/Pid.B/2022/PN.Sby with each defendant applying Article 374 of the Book Criminal Law Act regarding embezzlement.

The four district court decisions raise questions regarding the existence of disparity in judges for the same crime, namely fraud and embezzlement, with the application of the same articles, namely Articles 378 and 374 of the Criminal Code, and the elements related to the crime are all fulfilled, but the judge's decision is different. deciding each of their cases is very different.

THEORETICAL BASIS

The first theory used in this research is the Ratio Decidendi theory. According to Peter Mahmud Marzuki, in general, finding the ratio decidendi in a decision can be found in a certain section. To order to get a decision, a judge must write down, express, convey his reasons, which is called the ratio decidendi. Ratio decidendi in Indonesian law which adheres to the civil law legal system, can be found in the consideration of "considering" the "point of the case". The ratio decidendi is found by paying attention to material facts and decisions based on facts, so from a material fact there can be two possible decisions that are contradictory in nature.

³ Muladi dan Barda Nawawi, *Teori-Teori dan Kebijakan Pidana*, (Bandung, PT.Alumni, 2005), p.53

⁴ Rizki Atswari Bhakti, Nyoman Serikat PJ, Pujiyono, "Putusan Hakim di Pengadilan Negeri Semarang Terhadap Tindak Pidana Pembunuhan, *Diponegoro Law Journal*, Vol. 6, No. 4, 2017, p. 1



According to MacKenzie, there are several theories that discuss the factors considered by judges in making a decision in a criminal case, one of which is the ratio decidendi theory, which besides there are also other theories such as balance theory, intuition or art theory, scientific approach theory and experience approach theory. Ratio decidendi or better known as the judge's considerations, which are the reasons or arguments used by the judge as the judge's legal considerations which form the basis before deciding.

The next theory used is the Theory of Justice. One of the theories of justice in question includes Plato's theory of justice which emphasizes harmony or harmony. Plato defines justice as "the supreme virtue of the good state", while a just person is "the self-disciplined man whose passions are controlled by reason". For Plato, justice is not directly related to law. For him, justice and legal order are the general substance of a society that creates and maintains its unity. In Plato's concept of justice, it is known that there is individual justice and justice in the state. To find the correct understanding of individual justice, we must first discover the basic characteristics of justice in the state, for this reason Plato said: "let us inquire first what it is the cities, then we will examine it in the single man, looking for the likeness of the larger in the shape of the smaller".⁵ Rawls understands justice as fairness. According to Swift, what Rawls means by fairness is the original position and the veil of ignorance. Regarding these two aspects of justice, Rawls argues that, in a state of origin and ignorance, a person does not know the place, position or social status of society, people do not know his wealth, understanding, strength, that no one is benefited or harmed. Everyone has an equal chance in such a situation. With this original position, everyone's relationships become balanced and thus this initial position is balanced between individuals as moral beings, namely as rational individuals with goals and the ability to recognize a sense of justice.

Justice as fairness begins with one of the most general choices that people can make together, namely the choice of the first principles of the concept of justice that govern further criticism and institutional reform. Rawls' theory is based on two principles, namely the study of Equal Rights and Economic Equality. In Equal Rights he says "It must be regulated at a lexical level; namely different principles work if the first principle works or in other words the difference principle will work if no basic rights are revoked (there are no human rights violations) and increases the hopes of those who are less

⁵ The Liang Gie, *Teori-Teori Keadilan*, (Yogyakarta: Sources of Success, 1982), p. 22
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fortunate. In Rawls' principle, it is emphasized that basic rights must be fulfilled so that the principle of inequality can be implemented, in other words, economic inequality will apply if it does not eliminate basic human rights."

RESEARCH METHODS

The type of research used in this research is normative juridical using materials from written regulations or other normative legal materials such as studying and examining legal issues through judge decisions and applicable laws and regulations. This research discusses the application of rules or norms in Indonesian positive law.⁶ Then base the legal material by examining theories, concepts, legal principles, and statutory regulations that are in accordance with the research issue.⁷ The problem approach used in this legal research is the statutory approach and the case approach. The legal approach is to examine the laws and regulations relating to the enforcement of criminal law against Notaries and/or Land Deed Officials who commit criminal acts of fraud and embezzlement and the Criminal Code (KUHP). In the case approach, the author aims to find out the development of judges' decisions and the reasons used by judges in deciding cases of fraud and embezzlement committed by Notaries and/or Land Deed Officials.

RESULT AND DISCUSSION

Factors Causing Disparity in Criminal Decisions Decision Number 63/Pid.B/2020/PN.Smn and Decision Number 187/Pid.B/2020/PN.Lmj Concerning Fraud and Decision Number 53/Pid.B/2017/PN.Bkt and Decision Number 210/Pid.B/2022/PN.Sby

Criminal disparity is the application of unequal penalties to the same crime or to criminal acts whose dangerous nature can be compared without a clear justification. This means that criminal disparities arise because there are different sentences imposed for similar criminal acts. The imposition of this sentence certainly means the sentence imposed by the judge on the perpetrator of the crime. The examination of a dispute or case before the court ends with a

⁶ Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: Citra Aditya Bakti, 2004), p. 21

⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: PT Rajawali Pers, 2010), p. 13



decision or verdict. This court decision or verdict will determine the real relationship between the parties involved in the case.

The following is data on disparities in judges' decisions in cases of fraud committed by Notaries and/or Land Deed Officials:

- (1) The first decision number 63/Pid.B/2020/PN.Smn with the alleged article is Article 378 of the Criminal Code regarding fraud. What made things easier for the defendant was that the victim could not present evidence at trial that showed that the defendant was guilty. So the defendant was sentenced to be free from punishment.
- (2) Second decision number 187/Pid.B/2020/PN.Lmj with the alleged article Article 378 of the Criminal Code concerning fraud. What is aggravating the defendant is that the defendant is a person who works as a public Notary and/or Land Deed Official. So the defendant was sentenced to a criminal sentence of 7 (seven) years in prison.

The following is data on disparities in judges' decisions in embezzlement cases committed by Notaries and/or Land Deed Officials.

- (1) The third decision number 53/Pid.B/2017/PN.Bkt with the alleged article is Article 374 of the Criminal Code concerning embezzlement. What made things easier for the defendant was that the panel of judges considered that with the sale and purchase taking place in the form of a PJB Deed, the Defendant as Notary/PPAT had the responsibility to guarantee the implementation of the Sale and Purchase Agreement (PJB) until the Sale and Purchase Deed (AJB) could be executed, therefore the Defendant as Notary/PPAT in the Sale and Purchase Agreement (PJB), it is proper and appropriate to hold, keep the deeds related to the Sale and Purchase Agreement (PJB) carried out between the Liquidator Team of PT. RTM (in liquidation) with EY as Director of PT. The SPI will later be used by the Defendant as Notary/PPAT to process the Sale and Purchase Deed (AJB) after the Sale and Purchase Agreement (PJB) is implemented.
- (2) Second decision number 210/Pid.B/2022/PN.Sby with the alleged article Article 374 of the Criminal Code concerning embezzlement. What is aggravating the defendant is that the defendant is a person who works as a



public Notary and/or Land Deed Official. So the defendant was sentenced to a criminal sentence of 2 (two) years in prison. When imposing a criminal decision, do not be influenced by the motive for committing the criminal act or the motive related to the criminal act committed by the defendant, the law itself, the judge's discretion, internal and external factors and the facts at trial or revealed during the trial. Apart from that, there are also other factors, namely the legal factor itself, for example in Article 378 of the Criminal Code which contains a maximum penalty of imprisonment of four years and in Article 374 of the Criminal Code which contains a maximum penalty of imprisonment of five years. This results in judges being free to choose when handing down criminal decisions. The existence of discretion by judges also to some extent influences the occurrence of criminal disparities.

The factors that are taken into consideration by judges in imposing sentences resulting in criminal disparities in criminal acts of fraud and embezzlement committed by Notaries and/or Land Deed Officials are.⁸

(1) Factors within the defendant in the form of:

- (a) Consideration of the criminal act committed by the defendant, whether the defendant is a person who works as a public official, in this case the defendant is a Notary and/or Land Deed Official.
- (b) The efforts made by the defendant for criminal acts were carried out as a form of reducing the seriousness of the law in these four decisions, the defendants did not compensate the victim's losses and deliberately committed fraud in decision number 187/Pid.B/2020/PN.Lmj where in this decision the defendant with deliberately changed the buyer's name in the sale and purchase agreement deed and did not make repayment so that the victim suffered a loss of Rp. 400,000,000,- (four hundred million rupiah) and deliberately embezzled in decision number 210/Pid.B/2022/PN.Sby where in this decision the defendant

⁸ Nur Fadilah Alidrus, Disparitas Putusan Hukuman dalam Kasus Penipuan Online, Putusan Nomor 118/Pid.Sus/2021/PN.Wkb and Nomor 210/Pid.Sus/2021/PN.Sdr, Jurnal Yudisial, Vol. 16, Muhammadiyah University of Yogyakarta, Yogyakarta, 2023, p. 7



deliberately embezzled funds from Land and Building Rights Acquisition Fees which were entrusted to The aim is to make payments by the victim to the defendant with losses borne by the victim amounting to Rp. 5,800,000,000,- (five billion eight hundred million rupiah). Meanwhile, the act of fraud in decision number 63/Pid.B/2020/PN.Smn states that the victim was unable to provide evidence to strengthen the accusation against the defendant at trial and the act of embezzlement in decision number 53/Pid.B/2017/PN/Bkt that the defendant's actions in refusing to hand over 4 (four) HGB certificates belonging to PT. RTM to MG or to the new Liquidator and keeping and controlling the HGB certificate is an effort and responsibility of the Defendant to ensure that the sale and purchase can be carried out as agreed in the Sale and Purchase Agreement (PJB) to be upgraded to a Sale and Purchase Deed (AJB). So that from these two decisions each defendant was acquitted of all charges.

- (2) The consequences of the criminal act and the level of seriousness or quality of the crime committed by the defendant:
- (a) Social consequences: the defendant's actions are very disturbing to the community, giving rise to a negative stigma from the community towards the Notary profession and/or Land Deed Officials
 - (b) Harmful to the victim: the money taken by the defendant was used personally and the victim did not get the money back.

The factor that causes criminal disparity to occur from a theoretical perspective is the freedom and independence of judges in deciding cases as in the guidelines for judge behavior published in book form by the Supreme Court and also in active regulations that fully guarantee this.⁹ The theory of ratio decidendi or the reasons for the decision, the theory of dissenting opinion, where there are differences in legal decisions in certain cases, is considered to be normal in the

⁹ Fathurrahman, Disparitas Pidana Putusan Hakim Terkait Tindak Pidana Penipuan (Studi Perbandingan Putusan Pengadilan Negeri Kota Magelang), Thesis, Muhammadiyah University of Magelang, Magelang, 2020, p. 15



concept of a pluralistic and multicultural society, res judicate or something that has already been decided.

Other factors include the absence of sentencing guidelines for judges in imposing sentences. The guidelines for administering sentences contain objective matters regarding matters relating to the perpetrator of the crime so that by taking these matters into account the imposition of the sentence is more proportional and it is better to understand why the sentence is the result of the decision handed down by the judge. However, this does not mean that criminal disparities will disappear absolutely, but it will make existing disparities rational. So that it does not raise questions for other people who see the decision.

Furthermore, other factors related to the empirical aspect of criminal disparity can occur through personality, social, economic conditions, community attitudes, and proof of facts at trial which are assessed through consideration of the defendant's condition,¹⁰ namely the circumstances that constitute the proportionality of punishment. Judges in criminal proceedings against defendants have the discretion to determine the sentence imposed on the defendant. This can be seen from the minimum and maximum limits of imprisonment, fines or substitute sentences which create criminal disparities.

The data above has been explained regarding the disparity in judges' decisions in cases of fraud and embezzlement committed by Notaries and/or Land Deed Officials, where the data is described in relation to the decision number, the article accused, mitigating and aggravating factors, and verdict. The following are findings that are factors in the disparity in judges' decisions regarding cases of fraud and embezzlement committed by Notaries and/or Land Deed Officials:

(a) Factors Originating from the Legal System

Firstly, if we refer to the Indonesian legal system which adheres to the Continental European system (civil law system), disparities in judges' decisions will still occur, because this civil law system focuses on statutory rules.

¹⁰ Santoyo, Penegakan Hukum di Indonesia, Journal of Legal Dynamics, 8(3), 2008, p. 64
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(b) Factors Sourced from Law.

There are factors from the law which are the basis for judges in deciding cases of criminal acts of fraud and embezzlement committed by Notaries and/or Land Deed Officials, giving rise to disparities in judges' decisions. Various regulations regarding criminal acts of fraud and embezzlement committed by Notaries and/or Land Deed Officials as in the Criminal Code are not without shortcomings. Duplication of regulation of criminal acts of fraud and embezzlement and the formulation of criminal threats are two problems that support the emergence of disparities in judge's decisions and inconsistent decisions in criminal acts of fraud and embezzlement committed by Notaries and/or Land Deed Officials.

(c) Factors originating from the judge himself.

Furthermore, another factor that can give rise to disparities in criminal decisions is the judge's confidence factor. This belief is influenced by personality factors in the judge, such as religion, education, the values held and the judge's morality and mentality. Apart from that, judges' beliefs are also influenced by the social environment.¹¹ This social environment includes political, economic, legal and other factors. It is very difficult for a judge to completely cover himself against these factors.

(d) Factors Sourced from Evidence in Trial.

As is well known, the basis of evidence in Indonesia is contained in article 183 of the Criminal Procedure Code which states that a judge may not impose a crime on a person unless, with at least two valid pieces of evidence, he is convinced that a criminal act has actually occurred and that the defendant is who is guilty of doing it. In other words, the Indonesian evidence system adheres to the theory of evidence based on negative law (Negative Wettelijk).

(e) Factors Sourced from Decision Making Considerations

The mitigating and aggravating factors mentioned above are always taken into consideration by the judge in choosing the severity of the crime to be

¹¹ Muhammad Syamsudin, *Konstruksi Baru Budaya Hukum Hakim Berbasis Hukum Progressif*, (Bandung: Kencana, 2011), p. 11



imposed on the defendant. In relation to mitigating and aggravating matters, it is also necessary to look at the rules in Article 28 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which reads: "In considering the severity of the crime, the judge is obliged to also pay attention the good and evil characteristics of the defendant.

(f) Factors Originating from the Absence of Sentencing Guidelines

The criminal laws and regulations that have been made so far do not provide strict guidelines for awarding sentences which are the basis for judges in imposing sentences on defendants. Existing laws are only used as guidelines for maximum and minimum sentences. Therefore, guidelines for awarding sentences should be explicitly stated in the law, to avoid arbitrariness by judges in handing down their decisions.¹² This is what often gives rise to disparities in criminal sentences carried out by judges.

Judge's Considerations in Imposing Decisions

The application of positive law by judges must pay attention to the values and sense of justice that exist in society as well as possible, so that the decisions produced by judges can be accepted sincerely by the parties. justice and legal certainty for a person.¹³ The basis of legal considerations is a basis for the Judge's consideration which is based on legal regulations which are different from considerations regarding reality.¹⁴ Bambang Sutiyoso and Sri Hastuti Puspitasari emphasized that there are two main factors that influence the judge's decision, namely¹⁵ :

- (1) Internal factors are everything that influences the independence of judges in carrying out their duties and authority which comes from within the judge himself, namely those related to Human Resources (HR), starting

¹² Wijayanto, Disparitas Pidana Dalam Perkara Tindak Pidana Pencurian Biasa Di Pengadilan Negeri Kota Semarang, *Pandecta Research Law Journal* 7. 2012. p.2

¹³ Bambang Waluyo, *Pidana dan Pemidanaan*, (Jakarta: Sinar grafika, 2004), p. 70

¹⁴ Andi Hamzah, *Kamus Hukum*, (Jakarta: Ghalia Indonesia, 1986), p.43

¹⁵ Antonius Sudirman, *Hati Nurani Hakim dan Putusannya: Suatu pendekatan dari Perspektif Ilmu Hukum Perilaku Kasus Hakim Bismar Siregar*, (Bandung: PT. Citra Aditya Bakti, 2007), p. 23



from recruitment/selection for appointment as judge, judge education and judge welfare .

- (2) External factors, namely everything that influences the judge's decision that comes from outside the judge, including: a. Legislation. b. There is interference with the judicial process. c. The judge's relationship with other law enforcers. d. There are various pressures. e. Legal awareness factor, and f. Government system factors.

The main requirement for a judge's decision is that the decision must be reasonable so that it can be held accountable, not only to those directly interested, namely the public prosecutor and the defendant, but also to the general public. With his decision, the judge must show that he does not make decisions arbitrarily, that the judiciary assigned to him as a member of the judicial authority, is always upheld and maintained as well as possible, so that public confidence in the proper administration of justice will not be in vain. , if the judge does not find written law, the judge is obliged to explore unwritten law to decide based on the law¹⁶, whereas according to Kusumadi Pudjosewojo the basis for legal considerations are the legal bases used by the judge to determine the law between the parties involved. concerned in certain cases.¹⁷

Judges who believe that the classical legal approach fulfills a sense of justice better than the modern legal approach in handing down decisions. This is because they believe that the severity of the punishment should be in line with the crime. The focus is on the crime, but the modern school will impose a sentence that focuses on the convict himself by considering the defendant first rather than his actions so that the decision is relatively lighter than in the classical school of law. Discoveries in the natural and social sciences to examine human actions can emerge with the modern school, so they can be used to support efforts to develop prisoners based on the individualistic philosophy of judges which causes many causes of criminal disparities that continue to grow. The fact that certain physical,

¹⁶ Yesmil Anwar and Adang, Sistem Peradilan Pidana (Konsep, Komponen, dan Implementasi Penegakan Hukum di Indonesia), (Bandung: Widya Padjadjaran, 2009), p. 31

¹⁷ Kusumadi Pudjosewojo Pedoman Pelajaran Tata Hukum Indonesia, (Jakarta: Sinar Grafika, 1993), p. 54



mental and environmental conditions are considered factors that mitigate punishment.¹⁸

Ratio Decidendi of Decision Number 63/Pid.B/2020/PN.Smn and 187/Pid.B/2020/PN.Lmj Concerning Fraud Committed by Notaries and/or Land Deed Officials

The chronology of the case in Decision Number 63/Pid.B/2020/PN.Smn began with Suhartinah (the reporting witness), who was bound by a credit agreement with PT. Bank BRI Cik Di Tiro Branch has a guarantee of 14 certificates, has experienced payment defaults since 2010, and has issued warning letters from Bank BRI Cik Di Tiro up to three times. However, the reporting witness could not fulfil her obligations, so the Bank sent a Notice of Auction Registration dated November 4, 2010, to the reporting witness. Through her colleague, the reporting witness was introduced to a prospective buyer who, according to the indictment, would provide a loan, thus avoiding the auction. On August 19, 2011, the reporting witness went to the Defendant's office to sign the deed. However, according to the indictment, the Notary disguised a loan agreement as a sale and purchase agreement due to the Defendant's collusion with the buyer. The 2% interest was also disguised as a rental agreement using 11 certificates.

This impression was reinforced because two land certificates were still classified as rice fields while a rice milling plant stood on the land. Therefore, to facilitate the sale and purchase process, the Notary suggested obtaining Land Utilization Permits (IPT), which were processed by the Notary's employee, Azis Zamkarim (who has been convicted) by falsifying the reporting witness's signature to expedite the IPT process. In the IPT application, the Notary included a false IPT registration number in the deed. According to the indictment, the Defendant's actions benefitted the Defendant by IDR 40,000,000 (forty million rupiah) from the money transferred for IPT processing, which was

¹⁸Anggraeny. K.D., Disparitas Pidana Dalam Putusan Hakim Terhadap Tindak Pidana Psikotropika Di Pengadilan Negeri Sleman, Novelty Law Journal, Volume 7, 2016, p. 4



free. The reporting witness claimed never to have applied for a land utilization permit (IPT) at the Sleman Regency Government Licensing Service Office.

Subsequently, the Notary defendant was accused of benefiting another person by IDR 17,000,000,000 (seventeen billion rupiahs); the Defendant's actions with Nora Laksono caused the reporting witness to suffer losses from losing ownership rights to 11 (eleven) land parcels, leading the reporting witness to report the case to the DIY Regional Police for further processing. Based on the facts through evidence in the trial, the Notary defendant was found not guilty and acquitted of all charges by the public prosecutor. The prosecutor could not prove the alleged elements, and it was proven in court that the sale and purchase were legitimate.

In the chronology of the criminal case, decision number 187/Pid.B/2020/PN.Lmj, the Defendant, in the legal considerations of the Judges' Panel, was firmly stated to have been convincingly proven guilty of committing fraud, as referred to in Article 378 of the Criminal Code. The Defendant's meeting with Mr. Tukidjo (the victim) and conducting a land sale transaction with Abdul Rahman S.H. at Mustofa, alias Taufan's house, was discussed among the three. A question arose from Mr Tukidjo (the victim) regarding who would be the buyer, to which Abdul Rahman replied that it did not matter whether it was Abdul Rahman or the Defendant who would be the buyer. To convince Mr Tukidjo, the Defendant then offered the land for sale for IDR 550,000,000 (five hundred and fifty million rupiahs) with an advance payment of IDR 150,000,000 (one hundred and fifty million rupiahs) and the remainder to be paid within three months. However, Mr. Tukidjo preferred an advance payment of IDR 200,000,000 (two hundred million rupiah) and the remainder to be paid within two months. The agreement was reached on Defendant's offer because Defendant managed to convince Mr Tukidjo by immediately asking for Mr Tukidjo's bank account number to transfer the advance payment to Mr Tukidjo's Bank Mandiri account.

A day before Mr Tukidjo sold the land to the Defendant, the Defendant had contacted someone named Joko Nugroho to borrow IDR 150,000,000 (one hundred and fifty million rupiahs) using the excuse that the money was for the treatment of the Defendant's friend, Mr Tukidjo. However, until that point, Mr



Tukidjo and Mr Joko Nugroho did not know each other, and Mr Tukidjo had not asked the Defendant to borrow money from Mr Joko Nugroho. The loan taken by the Defendant was conducted simultaneously with the provision of 4 (four) certificates in the name of Mr Tukidjo as collateral by the Defendant to Mr Joko Nugroho without Mr Tukidjo's knowledge. Because Mr. Joko Nugroho was well-acquainted with the Defendant, he willingly agreed to assist him. After communication between the Defendant and Mr. Joko Nugroho, the Defendant visited Mr. Joko Nugroho to collect the loan amounting to Rp. 150,000,000 (one hundred fifty million rupiah) and informed Mr. Joko Nugroho that the 4 (four) certificates used as collateral would be provided the following day.

The next day, Mr Tukidjo, Mustofa alias Taufan, Abdul Rahman, and the Defendant travelled together in the same car to Bank Mandiri. However, without any apparent reason, the Defendant exited the vehicle right in front of the Notary and PPAT office owned by the Defendant, leaving three individuals in the car: Mr Tukidjo, Mustofa alias Taufan, and Abdul Rahman, who continued their journey to Bank Mandiri. Upon arriving at Bank Mandiri, they opened an account in the name of Mr Tukidjo using funds provided by Abdul Rahman amounting to Rp – 500,000 (five hundred thousand rupiah). After opening the account, the three individuals immediately proceeded to the Notary and PPAT office owned by the Defendant. The Defendant then requested Mr Tukidjo to deposit 4 (four) Freehold Certificates (SHM) in Mr Tukidjo's name to facilitate the sale and purchase process. Trusting the Defendant, Mr Tukidjo handed the four certificates to the Defendant and received a receipt for the deposit. After the certificate deposit was completed, Mr Tukidjo, along with the Defendant, Mustofa alias Taufan, and Abdul Rahman, travelled to Bank Mandiri Syariah to make a down payment via transfer of Rp – 149,500,000 (one hundred forty-nine million five hundred thousand rupiahs).

The following day, Mr Tukidjo and Mustofa alias Taufan were picked up by Abdul Rahman to go to Bank Mandiri to withdraw Rp. 13,750,000 (thirteen million seven hundred fifty thousand rupiah) to be given to Mustofa alias Taufan as a commission for brokering the sale. Subsequently, Mr Tukidjo proceeded to the Notary and PPAT office owned by the Defendant. Upon arrival at the Defendant's office, Mr Tukidjo waited to complete the Sale and Purchase



Agreement while Abdul Rahman and the Defendant escorted Mustofa alias Taufan to his residence. After some time, Defendant and Abdul Rahman returned to Defendant's office, and Defendant provided the Sale and Purchase Agreement to Mr Tukidjo without explaining its contents. Mr Tukidjo needed to read the agreement's contents thoroughly at that time. Upon returning home, Mr Tukidjo reviewed and studied the Sale and Purchase Agreement and discovered that the second party (buyer) listed in the agreement was Abdul Rahman, while it had been agreed between Mr Tukidjo and the Defendant that the Defendant would be the buyer. A week later, Mr. Tukidjo returned to the Defendant's office intending to amend the agreement. However, the Defendant refused to make any changes, claiming the agreement was sufficient as it was.

By the specified deadline, Mr Tukidjo never received the full payment from the Defendant, resulting in a loss of Rp 400,000,000 (four hundred million rupiahs). Due to the Defendant's actions, as per the verdict of case number 187/Pid.B/2020/PN.Lmj, the Defendant, Notary and/or PPAT Luthfi Irbawanto, was found guilty of fraud according to Article 378 of the Criminal Code and was sentenced to 7 months imprisonment.

Based on the verdict, the judge confirmed that the Defendant, identified as Luthfi Irbawanto, was guilty of fraud as stipulated in Article 378 of the Criminal Code. The judicial consideration in the verdict number 63/Pid.B/2020/PN.Smn indicated that the Defendant committed fraud to benefit himself by Rp. 40,000,000 (forty million rupiah) and others by Rp. 17,000,000,000 (seventeen billion rupiah). During the trial, it was revealed that the Defendant was known to hold the profession of Notary and/or Land Deed Official. The charges brought in the trial alleged that the Defendant had malicious intent to create false agreements by preparing administrative data and making false statements, deceiving the victim, and altering a loan agreement into a sale and purchase agreement, thus harming the victim.

The judge's consideration of the public prosecutor's charges outlined the Defendant's involvement in the case, as testified by the victim, who received a call from a witness named Nora Laksono tasked with finding a Notary to draft the loan agreement. However, as revealed during the trial, the presence of other witnesses before the signing of the agreement contradicted the public



prosecutor's allegations. The public prosecutor claimed the Defendant used deceit and false statements to persuade the victim to change the loan agreement into a sale, purchase, and lease agreement. In the charges and considerations of the public prosecutor, it was detailed that the witnesses' testimonies were based on the victim's statements that there had been an agreement for a sale and purchase between the victim and witness Nora Laksono regarding 11 (eleven) certificates. In contrast, the victim stated there was never any intention to sell the land but to obtain a loan from witness Nora Laksono of Rp. 6,000,000,000 (six billion rupiah) to repay a loan from BRI with 2% interest.

Given these circumstances, after examining the evidence presented at the trial, based on the facts revealed during the trial, including the testimonies of the victim and other witnesses, and the documentary evidence such as the IPT letter and other documents submitted in court, and as asserted by the Defendant's legal counsel, the public prosecutor failed to prove the existence of the loan agreement comprehensively and did not sufficiently consider the interconnectedness of the witnesses and evidence presented therefore, whether a witness statement could nullify a legal event. In contrast, the victim and other witnesses could not provide additional supporting evidence.

Based on the abovementioned judicial consideration, the evidence presented could not substantiate the public prosecutor's charges. Therefore, the judge's consideration of the elements of unlawful enrichment, using false names or positions, deceit, or a series of lies to compel others to surrender property, grant loans, or cancel debts, were not proven against the Defendant's actions. Thus, the judge's consideration in verdict number 63/Pid.B/2020/PN.Smn, as examined by the author, according to the judge's view to uphold justice between the Defendant and the victim, resulted in a verdict of acquittal from all charges against the Defendant due to the victim's inability to present evidence in court. In contrast, the judicial consideration in the verdict number 187/Pid.B/2020/PN.Lmj determined that the Defendant had committed fraud as per Article 378 of the Criminal Code, whereby the Defendant intentionally listed another person's name as the buyer in the Sale and Purchase Agreement drafted at the Defendant's Notary and/or PPAT office, despite the initial agreement that the Defendant would be the buyer and the victim the seller. By the specified



deadline, the victim had not received the full payment for the land purchase from the Defendant, resulting in a loss of Rp –400,000,000 (four hundred million rupiah). The judge sentenced the Defendant to 7 (seven) months imprisonment under Article 378 of the Criminal Code for this fraudulent act.

The judge's considerations in this verdict are based on the public prosecutor's demands, which stated that the Defendant, identified in the court proceedings as a Notary and/or Land Deed Official (PPAT), was legally and convincingly proven to have committed a criminal act. The Defendant was accused of unlawfully possessing goods belonging to someone in their control, not due to a crime. In the judge's consideration in verdict number 187/Pid.B/2020/PN.Lmj, it was determined that the Defendant had committed fraud as stipulated in Article 378 of the Criminal Code (KUHP). The Defendant was found guilty of using or exploiting their position as a notary and/or PPAT to commit fraud and was sentenced to 7 months of imprisonment. This punishment was deemed fair as a form of responsibility on the Defendant's part and as justice for the victim.

Ratio Decidendi in Verdicts No. 53/Pid.B/2017/PN.Bkt and 210/Pid.B/2022/PN.Sby Regarding Embezzlement Committed by a Notary and Land Deed Official

In the district court's verdict number 53/Pid.B/2017/PN/Bkt, it was revealed that on January 30, 2014, Mr. MG, as the President Director of PT. RTM entrusted four HGB certificates to the Notary (Defendant) with a receipt signed by both Mr. MG and the Notary. The receipt stated explicitly that if the sale and purchase did not occur by February 28, 2014, the certificates must be returned to Mr. MG. During the entrustment of the certificates, it was explained to the Notary/PPAT and the Liquidator Team that the company's asset sale and purchase should be executed with a Sale and Purchase Deed (AJB) with cash payment and not in instalments.

Despite this explanation, on January 24, 2014, the Notary/PPAT executed the sale of PT. RTM's assets are sold and purchased through a sale and purchase agreement (PJB). The PJB was made between the Liquidator Team appointed by PT. RTM and the Director of PT. SPI, with the down payment made during the signing of the PJB and the remainder to be paid in three instalments by April 24,



2014. All payments were transferred to the liquidator's account. However, the second and third payments were not made because the four HGB certificates were blocked by the National Land Agency (BPN) Bukittinggi after PT. RTM discovered the transaction was made as a PJB, contrary to the initial agreement with the Notary/PPAT. The appointed Liquidator Team was considered ineffective as they should have reported back to PT. RTM and were uncooperative. When contacted, they have yet to respond, and their office could not be located – consequently, the shareholders of PT. RTM agreed to replace the liquidator. The Supreme Court of the Republic of Indonesia, in Decision Number 2660K/Pdt/2014, dated April 8, 2015, replaced the old liquidator with a new one.

The new liquidator verbally and through written summons requested the return of the certificates from the Notary/PPAT, but the Notary/PPAT refused. Investigators also requested the certificates from the Notary, who still declined them. This refusal prevented Mr MG and the shareholders from benefiting from the land, as it could not be sold to others. Based on witness testimony and the facts at trial, the public prosecutor charged the Defendant with cumulative subsidiary charges. The primary charge, violating Article 374 of the Criminal Code, was proven, making further consideration of the subsidiary charge unnecessary. The court considered whether the Defendant's actions could be criminally condemned with the consequent imposition of a penalty.

The witness testimony established that the receipt for the transfer of the four HGB certificates from MG to the Notary/PPAT, dated January 30, 2014, was signed by both MG and the Notary/PPAT. The receipt stipulated that the sale and purchase should occur by February 28, 2014, and if not, the certificates should be returned to MG. According to expert Busyra Azheri, the Sale and Purchase Agreement (PJB) indicated a transaction between PT. RTM's Liquidator and EY, Director of PT. SPI. The difference between PJB and AJB is that PJB involves unfinished transactions, such as payment or delivery of the sale object, whereas AJB is made after full payment. The judge considered that since PJB Number 06, dated February 24, 2014, a sale had occurred between PT. RTM's Liquidator and EY.

The court reasoned that by executing the sale through a PJB, the Notary/PPAT was responsible for ensuring the completion of the transaction



through an AJB. The Notary/PPAT was justified in holding the related documents until the AJB was executed to protect the interests of both the seller and buyer. In verdict number 210/Pid.B/2022/PN. Sby, the court concluded that the Defendant was guilty of embezzlement under Article 374 of the Criminal Code. The Defendant embezzled Rp. 5,800,000,000 in tax funds from Perkebunan Nusantara (PTPN) IX, intended for the BPHTB payment for the sale of a sugarcane plantation from PT Baluran Indah to Perkebunan Nusantara (PTPN) IX. The Defendant, a notary appointed by PTPN IX, was responsible for the sale deed and the BPHTB payment for this transaction.

According to the presentation by Perkebunan Nusantara (PTPN) IX, a transaction occurred in 2017 in which Perkebunan Nusantara (PTPN) IX purchased a piece of land measuring 367 (three hundred sixty-seven) hectares located in Wonorejo Village, According to Situbondo According to, According to East According to Java According. The land was purchased by Perkebunan Nusantara (PTPN) IX for IDR 250,000,000,000 (two hundred fifty billion rupiahs) from PT Baluran Indah to be used as a sugarcane warehouse. In this transaction, the buyer, Perkebunan Nusantara (PTPN) IX, entrusted Notary Yuli Andriyani with IDR 5,800,000,000 (five billion eight hundred million rupiahs). Perkebunan Nusantara (PTPN) IX entrusted this fund to Notary Yuli Andriyani to assist with the payment of the land transaction for the sugarcane warehouse and the payment of the Land and Building Acquisition Duty (BPHTB).

However, the objective of Perkebunan Nusantara (PTPN) IX still needs to be achieved. Instead of using the funds to pay the land transaction and the BPHTB, Notary Yuli Andriyani used them for personal purposes. As a result, Perkebunan Nusantara (PTPN) IX incurred a loss of IDR 5,800,000,000 (five billion eight hundred million rupiahs), and Notary Yuli Andriyani was found guilty of embezzling the BPHTB funds, leading the panel of judges to sentence her to two years in prison. Based on the judgment above, it was confirmed by the judge that the Defendant, Yuli Andriyani, who is a Notary and/or PPAT, was proven to have committed the crime of embezzlement in office as stipulated in Article 374 of the Indonesian Criminal Code (KUHP). According to the author, the judge's legal considerations in decision number 53/Pid.B/2017/PN.Bkt, based on witness statements and the facts presented in court, concluded that the



Public Prosecutor charged the Defendant with a cumulative-subsidary form of indictment, namely the Primary Charge violating Article 374 of the KUHP. The panel of judges believed that all elements of the criminal offence contained in the Primary Charge under Article 374 of the KUHP had been proven and fulfilled. Consequently, the Primary Charge was proven, and the subsidiary charge would not be further considered. Thus, the judges would consider whether the Defendant's actions could be criminally reproachable due to imposing a sentence. Therefore, based on the case explanation in the judgment, the Defendant was acquitted of all charges.

In contrast, in the judge's legal considerations in decision number 210/Pid.B/2022/PN. Sby, it was determined that in the land transaction, the buyer, Perkebunan Nusantara (PTPN) IX, entrusted Notary Yuli Andriyani with a sum of IDR 5,800,000,000 (five billion eight hundred million rupiahs). Perkebunan Nusantara (PTPN) IX entrusted this fund to Notary Yuli Andriyani to assist with the payment of the land transaction for the sugarcane warehouse and the payment of the Land and Building Acquisition Duty (BPHTB). However, the objective of Perkebunan Nusantara (PTPN) IX still needs to be achieved. Instead of using the funds to pay the land transaction and the BPHTB, Notary Yuli Andriyani used them for personal purposes.

Due to the actions of the Notary and/or PPAT, and based on the judge's firm considerations, it was convincingly proven that the Defendant was guilty of embezzlement as stipulated in Article 374 of the Indonesian Criminal Code (KUHP). There are three groups of theories regarding the purpose of punishment, namely absolute or retributive theory, relative or utilitarian theory, and combined or modern theory. According to the absolute or retributive theory, punishment is imposed because a person has committed a crime, and punishment as an absolute consequence must exist as retribution for the person who committed the crime. On the other hand, the relative or utilitarian theory states that punishment is imposed not because a person has committed a crime but to prevent the person from committing a crime in the future. The combined or modern theory combines both absolute and relative theories, emphasizing the protection of public order while ensuring that the suffering imposed by the punishment is not greater than the crime committed by the convict.



According to the author, the imposition of punishment in the judge's considerations should refer to the combined or modern theory of punishment. The imposition of sanctions on the Defendant should not merely be based on the absolute or retributive elements but also have a specific purpose that benefits society. This is consistent with the utilitarian theory that the imposition of punishment lies in its purpose, which is not merely to retaliate but to prevent future crimes. Therefore, the judge's consideration in agreeing with or granting the request for a review is based on the applicable legal provisions. It is based on the fact that the Defendant's actions did not constitute a criminal offence and should have been the responsibility of the civil judiciary in examining and adjudicating the case.

Impact of Disparity in Judge's Decisions Regarding Crimes of Fraud and Embezzlement Committed by Notaries and/or Land Deed Officials

The involvement of a perpetrator of criminal acts of fraud and embezzlement who holds a position as a Notary and/or Land Deed Officials as happened in the case in the decisions above is a phenomenon that should be truly embarrassing for those holding the position. The criminal acts of fraud and embezzlement committed by Notaries and/or Land Deed Officials not only harm victims materially but this has had the impact of losing public trust in Notary and/or Land Deed Officials. In fact, trust is something that must be built and upheld by a Notary and/or Land Deed Officials.¹⁹

The impact on the role of judges is that disparities are increasingly likely to occur when judges are free to determine the severity of the punishment to be imposed. This is because the law only regulates maximum penalties, not definite penalties. So that criminal disparities have an impact, because they contain the individual freedom of judges in deciding a case and the state's right to sentence, which creates legal uncertainty. The impact on society is that as a result of implementing different decisions, the public will have difficulty understanding the criminal act that occurred. The occurrence of criminal disparities certainly

¹⁹ Apriani, Luh Rina, Penerapan Filsafat Pidana dalam Tindak Pidana Korupsi Kajian Putusan Nomor 19/Pid.B.Tpk/2008/PN.Jkt.Pst, Universitas Pancasila, South Jakarta, 2010, p. 7



cannot be separated from the provisions of the criminal law itself which gives full freedom to judges to choose the type of punishment they want. Our Criminal Code adheres to an alternative system of punishment, for example, prison sentences, imprisonment and fines. Here, the judge could emphasize imprisonment rather than fines, or vice versa. Moreover, ordinary people who do not understand the law will be confused by the existence of different judge decisions (disparities) between one judge and another.

The negative impact on the public position as a Notary/ Land Deed Officials is that due to the actions of the defendant due to this case of fraud and embezzlement, the public loses trust in public officials of the Notary/ Land Deed Officials and provides opportunities for individual Notaries/ Land Deed Officials to commit similar criminal acts, which ultimately gives rise to a bad view. from society towards this profession

CONCLUSION

The ratio decidendi employed by judges in rendering their decisions is crucial for understanding the reasons behind judicial discrepancies in sentencing. This analysis applies to case numbers 63/Pid.B/2020/PN.Smn and 187/Pid.B/2020/PN.Lmj concerning criminal fraud committed by the Defendant Notary and/or Land Deed Official, as well as case numbers 53/Pid.B/2017/PN.Bkt and 210/Pid.B/2020/PN.Sby concerning embezzlement committed by the same category of defendants. The factors contributing to sentencing disparity include the judicial authority, the philosophy of punishment adhered to by the judges, differing perceptions of justice among judges, and aggravating and mitigating circumstances. Judges utilize these factors to administer justice through varying criminal penalties in cases involving fraud and embezzlement, mainly where the defendants are officials in Notary and/or Land Deed Officials.

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