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Legal Policy of Disparity in Sentencing as a Ground for Judicial Review in Indonesia Corruption Cases

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Abstract

Article 263 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code limits the grounds on which a Judicial Review of a court decision may be filed. This limitation stems from the extraordinary nature of the Judicial Review, as it provides a mechanism to reopen a case that has obtained permanent legal force (inkracht van gewijsde). Errors in assessing the grounds for a Judicial Review can undermine the principles of legal certainty and justice, which are fundamental to the rule of law. This paper analyzes the use of sentencing disparity in corruption cases as a basis for Judicial Review, as recognized by the Supreme Court of Indonesia. The study employs a normative-descriptive research method. The findings indicate that sentencing disparity in corruption cases is multi-causal, suggesting that it does not always constitute a factual matter but may also involve legal considerations. The study concludes that determining sentencing disparity as an instance of judicial error in a Judicial Review must be conducted with due regard to the principle of judicial independence. Furthermore, with the issuance of Supreme Court Regulation No. 1 of 2020 concerning Sentencing Guidelines under Articles 2 and 3 of the Corruption Eradication Law, issues of sentencing disparity should ideally be resolved through ordinary legal remedies such as appeals or cassation.

Keywords: *Judicial review; sentencing disparity; judicial error; corruption.*

INTRODUCTION

In the evolution of the duties and functions of modern judiciary systems, the issue of legal certainty in court decisions has become a critical matter, serving as an indicator of how judicial rulings can contribute to a nation's economic development,[1] particularly in fostering a conducive

[1] Oksana Shcherbanyuk, Vitalii Gordieiev, And Laura Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (March 31, 2023): 21-31, https://doi.org/10.24818/TBJ/2023/13/1.02.

business and investment climate.[2] At the outcome level, based on research conducted by Luciana L. Yeung and Danai Angeli, in Brazil an Yunani, the issues of disparity and inconsistency, which result in court decisions on similar legal matters being unpredictable to the public, significantly affect the level of trust and stability in the judicial system.[3] The issue of disparity in court decisions has been a long-standing problem in the judicial system in Indonesia, in 2009, the Supreme Court issued a Circular Letter of the Supreme Court of the Republic of Indonesia, Number 14 of 2009 concerning the Development of Judges' Personnel which ordered the Head of the Court of Appeal to guard against disparity in decisions. In the blueprint for judicial reform of the Supreme Court 2010-2035, the issue of disparity in irresponsible court decisions became one of the issues that became the basis for reforming the court system in the Supreme Court and the judicial bodies under it.

Muladi and Barda Nawawi Arief assert that, particularly on the issue of sentencing disparity in criminal cases in court, the consequences can be fatal if linked to correction administration. This refers to a situation where a convicted individual, after comparing the sentence imposed on them with others, feels victimized by judicial caprice. Such a perception may lead to the convict becoming someone who disregards the law, whereas respect for the law is one of the primary objectives of sentencing.[4] Furthermore, the impact of sentencing disparity becomes more pronounced when it occurs in criminal judgments that have obtained legal finality *(inkracht van gewijsde)* in corruption cases. [5] Corruption, as a grave offense with wide-ranging consequences for society and the state, exacerbates the issue of disparity. The resulting effects of sentencing disparity in corruption cases extend beyond undermining public trust in the judiciary. They also have broader implications, ranging from moral and cultural degradation in society to adverse effects on the nation's economy.[6] Furthermore, the impact of sentencing disparity becomes more pronounced when it occurs in criminal judgments that have obtained legal finality *(inkracht van gewijsde)* in corruption cases. Corruption, as a grave offense with wide-ranging consequences for society and the state, exacerbates the issue of disparity. The resulting effects of sentencing disparity in corruption cases extend beyond undermining public trust in the judiciary. They also have broader implications, ranging from moral and cultural degradation in society to adverse effects on the nation's economy.

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[2] Dimitri Lorenzani and Federico Lucidi, "The Economic Impact of Civil Justice Reform," 2014, https://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp530_en.pdf; Hanna Ostapenko, "Role of Legal Certainty in Providing Economic Security: Ukraine's Experience," *Theoretical and Practical Research in Economic Fields* 14, no. 2 (December 20, 2023): 215-222, https://doi.org/10.14505/tpref.v14.2(28).02.

[3] Luciana L. Yeung, "Bias, Insecurity and the Level of Trust in the Judiciary: The Case of Brazil," *Journal of Institutional Economics* 15, no. 1 (February 2019): 163–188, https://doi.org/10.1017/S1744137417000625; Danai Angeli and Dia Anagnostou, "A Shortfall of Rights and Justice: Judicial Review of Immigration Detention in Greece," *European Journal of Legal Studies* 2022, no. SpecialIssue (2022): 97–131, https://doi.org/10.2924/EJLS.2022.004.what are the consequences? We propose a conceptual model that estimates the effects of judicial bias and insecurity on the trustworthiness of courts. Additionally, we empirically assess evidence of bias among justices at the Superior Court (STJ

[4] Dar'ya Gogitidze, "Respect in Law: The Evolution of Normative Consolidation and Doctrinal Understanding," *Legal Science and Practice: Journal of Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia* 1, no. 1 (March 28, 2024): 158–167, https://doi.org/10.36511/2078-5356-2024-1-158-167; Jan Christoph Nemitz, "The Law of Sentencing in International Criminal Law: The Purposes of Sentencing and the Applicable Method for the Determination of the Sentence," *Yearbook of International Humanitarian Law* 4 (December 17, 2001): 87–127, https://doi.org/10.1017/S1389135900000830.

[5] Shawn D. Bushway and Anne Morrison Piehl, "Judging Judicial Discretion: Legal Factors and Racial Discrimination in Sentencing," *Law & Society Review* 35, no. 4 (April 2, 2001): 733–764, https://doi.org/10.2307/3185415.

[6] Muladi and Barda Nawawi Arif, *Criminal Theories and Policies,* (Bandung: Alumni, 1992).

For a convicted individual, a Judicial Review in the Supreme Court serves as a legal remedy to restore justice and the rights of the convicted that are perceived to have been unlawfully deprived by the State.[7] This is particularly relevant in situations where the convicted feels victimized by "judicial caprice," such as cases involving sentencing disparities among co-defendants who were charged jointly but tried before different judges and whose verdicts have become final and binding. However, Indonesia's Criminal Procedure Code imposes strict limitations on the grounds for submitting a Judicial Review against a final and binding verdict. These grounds are outlined as follows: First, when new evidence emerges that creates a strong presumption that the outcome of the trial would have been different if such evidence had been known during the proceedings. Second, when there are conflicting statements in various rulings regarding facts or circumstances that were used as the basis and reasoning for the decision, which have been proven to contradict one another. Third, when the judgment clearly demonstrates judicial error or a manifest mistake.[8] These three grounds, as stipulated in Article 263(2) of Law No. 8 of 1981 concerning the Criminal Procedure Code, restrict the submission of Judicial Reviews, emphasizing their nature as an "extraordinary" legal remedy that cannot be pursued freely. [9]

In practice, due to the limited grounds for judicial review as stipulated in Article 263 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code, several applications for judicial review submitted to the Supreme Court have been declared inadmissible or rejected. For instance, in the Supreme Court Decision of the Republic of Indonesia No. 84 PK/PID/2006 dated July 18, 2007, the panel of judges ruled to reject the judicial review application, citing, among other considerations, that "The provision clearly and strictly regulates...". Furthermore, in the Supreme Court Decision of the Republic of Indonesia No. 133 PK/Pid/2011 dated October 2, 2013, the panel of judges similarly restricted the grounds for filing a judicial review, reasoning as follows:

> "A judicial review application can currently be accepted on the grounds of a judicial error or oversight by the panel of judges in the previous judicial review decision, which ruled higher than the judgment rendered by the Judex Juris or Judex Facti in the earlier decision, in accordance with Article 266 paragraph (3) of the Criminal Procedure Code. Any other grounds presented by the applicant for judicial review, such as a novum, cannot be justified as it does not constitute determinative evidence."

Subsequently, regarding petitions for Judicial Review based on the grounds of sentencing disparity imposed on several defendants who were jointly charged and whose convictions have attained final and binding legal force, the Supreme Court of the Republic of Indonesia clarified in 2012 through Circular Letter No. 7 of 2012 concerning Legal Formulations resulting from the Plenary Meeting of the Supreme Court Chambers as Guidelines for Judicial Tasks. One of the formulations stipulates that:

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7 Adami Chazawi, *Lembaga Peninjauan Kembali (PK) Perkara Pidana: Penegakan Hukum Dalam Penyimpangan Praktik Dan Peradilan Sesat,* (Jakarta: Sinar Grafika, 2010).

8 Andi Hamzah, *KUHP Dan KUHAP Edisi Revisi*, *Rineka Cipta, Jakarta* (Jakarta: Rineka Cipta, 2011).

9 Tim Pengkaji Pusat Litbang, "Problematika Penerimaan Peninjauan Kembali Dan Grasi Dalam Penegakan Hukum," *Puslitbang Kejagung RI* (Jakarta, 2006), https://www.hukumonline.com/klinik/detail/ulasan/lt51bd7ea277ac8/dapatkah-mengajukan-remisi-saat-peninjauan-kembali-masih-diproses/; Upaya Hukum Luar Biasa Peninjauan Kembali Terhadap Putusan Bebas Dalam Perkara Pidana, "Ristu Darmawan" (Universitas Indonesia, 2012); Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil Mahkamah Agung RI, *Peninjauan Kembali Putusan Pidana Oleh Jaksa Penuntut Umum (Penelitian Asas, Teori, Norma Dan Praktik Penerapannya Dalam Putusan Pengadilan)*, ed. Badan Litbang Diklat Kumdil Mahkamah Agung Republik Indonesia, Badan Litb (Bogor: Badan Litbang Diklat Kumdil Mahkamah Agung Republik Indonesia, 2012), https://puslitbangkumdil.jetschool.id/buku/2012/peninjauan kembali putusan pidana oleh jaksa penuntut hukum/mobile/index.html.

> "In cases where there is a sentencing disparity imposed on several defendants who were jointly charged, tried by different judges, and whose convictions have attained final and binding legal force, the question of whether such disparity can serve as grounds for Judicial Review shall be determined based on the reasons for Judicial Review as stipulated in Article 263(1) of the Indonesian Criminal Procedure Code."[10]

In its practical application, a different situation has emerged, where a Judicial Review decision of the Supreme Court of the Republic of Indonesia granted the petition on the grounds of sentencing disparity. This is reflected in the Judicial Review decision of the Supreme Court of the Republic of Indonesia No. 163 PK/Pid.Sus/2019 dated July 15, 2019, which is recognized on the Supreme Court's decision directory website as a landmark ruling. The legal principle articulated in this decision states: "The existence of sentencing disparity among convicted individuals in the same case can serve as a basis for filing a Judicial Review petition, as it indicates a judicial error".[11] In this context, the panel of judges adopted an expansive interpretation of judicial error as stipulated in Article 263(2) of the Criminal Procedure Code, incorporating sentencing disparity as one of its elements.

The differing interpretations regarding sentencing disparity as a basis for filing a Judicial Review petition have given rise to an intriguing legal phenomenon. This phenomenon concerns the consistency of procedural legal principles adhered to by the Supreme Court of the Republic of Indonesia, particularly in relation to the legal spirit underlying the Judicial Review mechanism. Based on the author's observations, this mechanism often appears case-specific, depending on the adjudicating panel of judges and the nature of the case at hand. In the author's view, such an approach poses significant risks, especially in the handling of corruption cases, as the issue of sentencing disparity in corruption case resolutions touches upon two fundamental principles: the principle of justice and human rights. These principles serve as the basis for the convicted individuals' right to file a Judicial Review petition while upholding the principle of judicial independence in deciding corruption cases.[12]

Based on the foregoing, the author is compelled to conduct a study to address the issue of whether the grounds of sentencing disparity within the framework of Indonesia's criminal procedural law can be used as a basis for filing an extraordinary legal remedy, namely a judicial review, in corruption cases as the state's efforts to provide legal protection and create balance in the aspects of legal certainty, justice and benefits. This issue is particularly relevant given the developments in the procedural law governing corruption crimes, as evidenced by the Supreme Court's issuance of Supreme Court Regulation No. 1 of 2020 on Sentencing Guidelines for Articles 2 and 3 of the Corruption Eradication Act. In this context, the problem of sentencing disparity should ideally be resolved through ordinary legal remedies, such as appeals or cassation. This research aims to establish an ideal concept for using sentencing disparity as a valid ground for judicial review in resolving corruption cases at the Supreme Court. The author aspires for this concept to serve

[10] "Sema Nomor 7 Tahun 2012 Tentang Rumusan Hukum Hasil Rapat Pleno Mahkamah Kamar Agung Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan." (n.d.).

[11] Supreme Court, "Putusan Mahkamah Agung Nomor 163 PK/Pid.Sus/2019" (n.d.).

[12] Hady Poerwanto, Joko Setiyono, and Sunardi, "Corruption as a Violation of Human Rights, Economic, Social and Cultural Human Rights Perspective," *International Journal of Law and Politics Studies* 5, no. 1 (February 9, 2023): 119–129, https://doi.org/10.32996/ijlps.2023.5.1.14; Rizki Karina Azilia, "Juridical Review Of The Granting Of Remissions To Prisoners Of Criminal Acts Of Corruption," *Journal of Law Science* 3, no. 4 (October 30, 2021): 140–152, https://doi.org/10.35335/jls.v3i4.1683.

as a foundation for consistency in the application of procedural law by the Supreme Court and subordinate judicial bodies, particularly in the adjudication of corruption cases.

RESEARCH METHODS

The research adopts a normative legal research method, focusing on legal principles and legal systematicity. This approach is widely used in legal scholarship to critique existing laws and propose reforms based on moral values and legal ideals.[13] Normative legal research seeks to uncover the philosophical underpinnings, official standards, and structures that govern specific issues.[14] The main characteristics of normative legal research in conducting legal studies lie in the data source, namely secondary data sources. It consisted of primary legal materials, secondary legal materials, and tertiary legal materials.[15] Primary legal materials are various international provisions or regulations, and statutory regulations. Normative legal research focuses on legal norms within international and national laws, employing a statutory approach.[16] Secondary legal materials include literature in the form of books, articles, journals, papers, and related data, while tertiary legal materials involve online resources pertinent to the research.[17] Secondary data is utilized, which is obtained through an analysis of legislative regulations on criminal procedural law, sentencing guidelines, and Supreme Court decisions. To conclude, qualitative analysis is employed to discern the interrelationships among the data.[18] In analyzing the legal materials and the legal issues surrounding the possibility of using disparity in sentencing as a basis for filing a judicial review (PK) in corruption cases, this study utilizes several models of legal interpretation.

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[13] Achmad Irwan Hamzani et al., "Implementation Approach in Legal Research," *International Journal of Advances in Applied Sciences* 13, no. 2 (June 1, 2024): 380-388, https://doi.org/10.11591/ijaas.v13.i2.pp380-388.

[14] Ridwan Ridwan, Belardo Prasetya Mega Jaya, and Sarah Haderizqi Imani, "The Implementation of General Principles of Convention on The Rights of The Child During Covid-19 Pandemic in The City of Serang," *LAW REFORM* 18, no. 1 (March 2022): 16–27, https://doi.org/10.14710/lr.v18i1.44643. ; Danial et al. (2024) "Standardisation of Work Agreement between Indonesian Fisheries Crew and Foreign Companies", Transactions on Maritime Science. Split, Croatia, 13(2). doi: 10.7225/toms.v13.n02.w09.

[15] Belardo Prasetya Mega Jaya et al., "Republic of Indonesia Sovereign Right in North Natuna Sea According to United Nations Convention on the Law of the Sea 1982," *Australian Journal of Maritime and Ocean Affairs* 16, no. 1 (2024): 1–14, https://doi.org/10.1080/18366503.2023.2206261. ; F. X. Wartoyo et al., "Strengthening Indonesia's Maritime Sovereignty: Implementing A Single Agency Multi-Tasks Model To Combat IUU Fishing," Diponegoro Law Review, vol. 10, no. 1, pp. 1-15, Apr. 2025. https://doi.org/10.14710/dilrev.10.1.2025.1-15

[16] Belardo Prasetya Mega Jaya et al., "Criticising the Implementation of the ACTIP in Southeast Asia," *Sriwijaya Law Review* 7, no. 2 (2023): 350–367, https://doi.org/10.28946/slrev.Vol7.Iss2.2542.pp350-367.particularly women and children, led to the establishment of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP

[17] Benny Irawan et al., "State Responsibility and Strategy in Preventing and Protecting Indonesian Fisheries Crews Working on Foreign Fishing Vessels from Modern Slavery," *Australian Journal of Maritime and Ocean Affairs*, no. March (2024): 1-21, https://doi.org/10.1080/18366503.2024.2333107; Rahman, Y. M., Lalu Saipudin, H. Asari Taufiqurrohman, A Anik Kunantiyorini, Taufiq, "Legal Protection for Investors against Fraud by Market Manipulation in the Indonesian Capital Market," *Jurnal IUS Kajian Hukum Dan Keadilan,* 12, no. 3 (2024): 517-529, https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/1416.

[18] Mucharom, R. S., Suriaamadja, T. T., Januarita, R., Jaya, B. P. M., Maharani, D. G., & Asari Taufiqurrohman. (2024). WTO Subsidies Agreement on Fisheries (2022-2024): Agreed Terms and Implications for Indonesia. Jurnal IUS Kajian Hukum Dan Keadilan, 12(2), 285–299. https://doi.org/10.29303/ius.v12i2.1394 ; Jaya, B.P.M., et al. The Role And Strategy Of The Association Of Southeast Asian Nations (Asean) In Protecting Migrant Fishers In Southeast Asia Against Modern Slavery. (2025). *Malaysian Journal of Syariah and Law*, *13*(1), 291-313. https://doi.org/10.33102/mjsl.vol13no1.776

First, a systematic interpretation, interpreting Article 263 of the Criminal Procedure Code (KUHAP) not in isolation but in conjunction with Supreme Court Regulation (Perma) No. 1 of 2020 concerning Sentencing Guidelines. With this approach, the initially limited grounds for a judicial review can be systematically interpreted to include situations where judges ignore sentencing guidelines, resulting in significant disparities. Second, a teleological or sociological interpretation focuses on the purpose of the Perma, namely to create consistency, proportionality, and justice in sentencing corruption cases. Thus, if a clear disparity occurs, it can be interpreted as contradictory to the law's objectives and constitutes a valid basis for a judicial review. Third, an evolutionary interpretation, interpreting the provisions of the KUHAP dynamically in line with contemporary legal developments. Given that corruption is an extraordinary crime, criminal procedure law must also be interpreted progressively to address the need for substantive justice. Through the combination of these three interpretation models, this study confirms that the submission of a judicial review based on disparity in sentencing has theoretical and practical justification in order to strengthen the consistency and integrity of the judiciary for corruption crimes.

ANALYSIS AND DISCUSSION

Substantive Requirements for Judicial Review in the Supreme Court of the Republic of Indonesia

Historically, the enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code marked a fundamental reform of the criminal justice system. This reform has been regarded not merely as a set of procedural rules for enforcing substantive law but also as a legal framework for the protection of human rights. Additionally, it serves as a technical benchmark for assessing the professionalism of law enforcement officials in its implementation. This significance is evident in the complexity of efforts to amend the Criminal Procedure Code to date. Amendments to the provisions of the Criminal Procedure Code inevitably have a systemic impact on the criminal law enforcement system in Indonesia.

One of the critical provisions in the Indonesian Criminal Procedure Code is the regulation concerning Judicial Review, which is stipulated in Chapter XVIII, Part One, specifically Articles 263 to 269 of Criminal Procedure Code. Prior to its codification in Criminal Procedure Code, the concept of Judicial Review had long been recognized in Indonesian legislation. Initially, it was regulated under Articles 356 to 360 of the Reglement op de Strafvordering (Rs), Stbl 1848 No. 40 Jo 57, which constituted the criminal procedure law applicable to European, Foreign Eastern, and Chinese residents, as well as those assimilated into these categories. In contrast, for indigenous residents, the procedural laws applicable, namely HIR *(Herziene Indische Reglement)* and RBg *(Rechtsreglement voor de Buitengewesten)*, did not recognize the concept of Judicial Review. Subsequent to Indonesia's independence, several statutes began to comprehensively regulate Judicial Review. This regulation was initially introduced in Law No. 19 of 1964 on the Basic Provisions of Judicial Power, followed by laws governing the Supreme Court and General Judiciary. The framework was further consolidated in Law No. 14 of 1970, which was subsequently reinforced by Law No. 8 of 1981 concerning Criminal Procedure Code and Law No. 14 of 1985.[19]

[19] A. Hamzah dan Irdan Dahlan, *Upaya Hukum Dalam Perkara Pidana*, *Bina Aksara* (Jakarta: Bina Aksara, 1984).

Provisions specifically governing the procedural law for Judicial Review are explicitly regulated in several regulations issued by the Supreme Court.[20] From these regulations, including those enacted prior to Law Number 8 of 1981, the development of substantive requirements for submitting a Judicial Review in criminal cases to the Supreme Court can be observed. As stipulated in Supreme Court Regulation No. 1 of 1969, the grounds for filing a Judicial Review include the following:

1. The decision clearly demonstrates an error or a glaring mistake made by the judge.
2. The decision contains evidence that is proven to be contradictory.
3. New circumstances have emerged. For instance, in a decision, an act is proven; however, the declaration of such proof is not accompanied by a sentencing provision.

The provisions regarding the grounds for submitting a Judicial Review or the material requirements for a Judicial Review are regulated under the Supreme Court Regulation No. 1 of 1980 concerning Judicial Review of Decisions with Permanent Legal Force. The grounds for submitting a Judicial Review are as follows:

1. If there is a conflicting determination of facts in differing decisions, resulting in inconsistencies between those decisions *(Conflict van Rechtspraak)*.
2. If a particular circumstance emerges, leading to a strong presumption that, had this circumstance been known during the trial, the resulting decision would have included an acquittal, a release of the convicted individual, a declaration that the prosecutor's charges were inadmissible, or a lighter sentence *(Novum)*.

In 1981, Law Number 8 of 1981 was enacted, providing specific regulations regarding the submission of Judicial Review applications, both procedurally and substantively, as follows:

1. It may be submitted against court decisions that have obtained permanent legal force *(res judicata)*.
2. It may be submitted only under specific circumstances and cannot be applied to all court decisions that have obtained permanent legal force. Certain conditions must exist and be met as prerequisites.
3. It may be submitted to the Supreme Court, where it will be examined and decided upon by the Supreme Court as the first and final instance.

The material requirements for submitting a Judicial Review are regulated under Article 263 paragraph (2) of the Indonesian Criminal Procedure Code. A Judicial Review may be filed on the following grounds:

1. If new evidence *(novum)* emerges that strongly indicates that, had this evidence been known during the trial, the outcome would have resulted in an acquittal, a release from all legal charges, the inadmissibility of the prosecutor's demands, or the application of a lighter criminal penalty.

[20] Maruarar Siahaan, "Integrasi Konstitusional Kewenangan Judicial Review Mahkamah Konstitusi Dan Mahkamah Agung," *Jurnal Konstitusi* 17, no. 4 (January 25, 2021): 729–752, https://doi.org/10.31078/jk1742.

2. If there are inconsistencies among the statements of fact declared as proven in various decisions, whereby the foundational facts or circumstances upon which those decisions are based contradict one another.
3. If the decision clearly demonstrates a judicial error or a manifest mistake by the judge.

Philosophically, the material limitations imposed on the submission of Judicial Review petitions render the Judicial Review process an extraordinary legal remedy. This is evident in that the Judicial Review grants a unique privilege to the petitioner to re-examine a final and binding court decision,[21] which is grounded in the principle of legal certainty—a principle that is highly safeguarded in a state governed by the rule of law.[22]

The Supreme Court, in addition to the provisions stipulated in Article 263 paragraph (2) of the Indonesian Criminal Procedure Code, has developed guidelines regarding the grounds for filing a Judicial Review. These include circumstances where conflicting decisions exist, as regulated in the Supreme Court Circular Letter Number 10 of 2009 on the Submission of Judicial Review Petitions. This circular restricts Judicial Review petitions to a maximum of two submissions in both civil and criminal cases. The circular further elaborates: "If a case involves two or more conflicting Judicial Review decisions, whether in civil or criminal matters, and one of them is subject to a Judicial Review petition, such a petition must be accepted, and the case file shall still be forwarded to the Supreme Court."

In subsequent developments, as a result of the formulation by the Civil Chamber with Supreme Court Circular Letter No. 4 of 2016, which amended Supreme Court Circular Letter No. 10 of 2009, it was stated: "The provision regarding point 2 of Supreme Court Circular Letter No. 10 of 2009, dated June 12, 2009, is supplemented as follows: For the sake of justice, a second petition for judicial review of two legally binding decisions that are contradictory to each other, one of which is a decision on a judicial review, may be formally accepted even though the two decisions are from different levels of court, including criminal, religious, and administrative court decisions." Indeed, in the context of judicial decisions, which may not be free from errors or mistakes, there must be an institution authorized to review a judicial decision, either to correct it or resolve issues regarding factual matters (questions of fact) or legal matters (questions of law). However, in criminal cases, which have been brought to the Judicial Review forum, the legal proceedings have, in practice, undergone a series of legal steps that are systematically regulated, including the appeal process at the High Court, followed by a cassation at the Supreme Court, which then issues a ruling declaring the case resolved and legally binding.

The gradual legal remedies available for reviewing judicial decisions fundamentally aim to minimize judicial decisions containing errors or manifest mistakes regarding matters of fact or law.[23] Higher court panels are authorized to evaluate and rectify such errors or manifest mistakes in decisions rendered by lower courts. The determination of judicial errors or manifest mistakes as grounds for a judicial review should inherently differ from the concept of judicial review as an

[21] David Yuratich, "10. An Introduction to Judicial Review," in *Public Law: Principles to Practice* (Oxford University Press, 2024), 331–368, https://doi.org/10.1093/he/9780191881985.003.0010.

[22] Simon Chesterman, "An International Rule of Law?," *American Journal of Comparative Law* 56, no. 2 (April 1, 2008): 331–362, https://doi.org/10.5131/ajcl.2007.0009.

[23] Stuart Sime, "49. Judicial Review," in *A Practical Approach to Civil Procedure* (Oxford University Press, 2024), 564–574, https://doi.org/10.1093/he/9780198873426.003.0049.

extraordinary legal remedy. Therefore, judicial errors or manifest mistakes serving as grounds for judicial review must also constitute extraordinary errors or mistakes.[24]

For instance, a case of extraordinary judicial error serving as grounds for judicial review occurred in the 1977 Sengkon and Karta case within the jurisdiction of the Bekasi District Court. In this case, the court was deemed to have committed a miscarriage of justice by convicting innocent individuals. Based on Decision No. 2/KTS/BKS/1977 dated October 20, 1977, the court sentenced the defendants to 12 years and 7 years of imprisonment, respectively, for murder. After several years of serving their sentences, the actual perpetrator, Gunel bin Kuru, was identified. Following his confession, the investigation was reopened, leading to Gunel's conviction and a 10-year prison sentence. Sengkon and Karta subsequently filed a judicial review with the Supreme Court. By its decision dated January 31, 1981, the Supreme Court acquitted Sengkon bin Yakin and Karta bin Salam of all charges.[25] As an extraordinary legal remedy, the violation of human rights principles and justice serves as the primary basis for submitting a judicial review.[26] Without such a foundation, a case review would merely function as a third-tier forum above the cassation mechanism. This is contrary to the nature of cassation decisions in criminal procedural law, which are final, legally binding, and protected by the principle of legal certainty.[27] Tightening the requirements for case reviews also provides technical benefits, such as reducing the high volume of cases submitted to the Supreme Court, alleviating the backlog of cases at the Supreme Court, improving the productivity of Supreme Court Justices in rendering decisions, and maintaining the consistency of Supreme Court rulings.[28]

Furtheremore, to make the study more comprehensive, the author want to describe the conceptual ideas and policy adoption from a global perspective, particularly regarding the criteria for reviewing reconciliation. First, South Africa's Truth and Reconciliation Commission (TRC) required perpetrators to make a full disclosure of truth, show a political motive, and ensure victim participation and public accountability before reconciliation (or amnesty) could be granted. Second, Tunisia's Arbitration and Reconciliation Committee (IVD) established that reconciliation in corruption cases must involve acknowledgment of wrongdoing, asset restitution or compensation, and institutional reforms to prevent recurrence. From those models, at least five global criteria emerge that could enrich the Indonesian discourse: Full disclosure of truth by perpetrators; Acknowledgment of responsibility; Reparations or restitution (e.g., returning stolen assets); Victim and/or public participation in the process; and Guarantees of non-recurrence through institutional reforms. By adopting these global benchmarks into the Indonesian legal debate—especially in relation to judicial review (Peninjauan Kembali/PK) in corruption cases—the study can show how

[24] Jason Haynes, "The Death of Judicial Review of Sporting Bodies in the Commonwealth Caribbean," *The International Sports Law Journal* 22, no. 1 (March 2022): 33–50, https://doi.org/10.1007/s40318-021-00196-w.

[25] Arfan Faiz Muhlizi, "Memperebutkan Tafsir Peninjauan Kembali," *RechtsVinding Online*, no. 3 (2015): 23–25; B L Garrett, "Accuracy in Sentencing," *Southern California Law Review* 87, no. 3 (2014): 499–544, https://www.scopus.com/inward/record.uri?eid=2-s2.0-84905039733&partnerID=40&md5=f9f3e9662ed1ca964429a482bc522e5c.

[26] Sebastian Răduleţu, "National Prosecutions as the Main Remedy in Cases of Massive Human Rights Violations: An Assessment of the Approach of the European Court of Human Rights," *International Journal of Transitional Justice* 9, no. 3 (November 19, 2015): 449–468, https://doi.org/10.1093/ijtj/ijv024.

[27] Imam Asmarudin et al., "Initiating the Reform of Principle Norms in the Formation of Laws in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (August 19, 2024): 208–26, https://doi.org/10.29303/IUS.V12I2.1390.

[28] Arsil, Hasril Hertanto, and Liza Farihah, *Kertas Kebijakan, Pengurangan Arus Perkara Ke Mahkamah Agung*, ed. LeIP, LeIP (Jakarta: LeIP, 2017).

reconciliation criteria elsewhere could inspire more consistent, transparent, and fair mechanisms for addressing sentencing disparity in Indonesia. Third, Singapore (CPIB – Corrupt Practices Investigation Bureau), implements a zero tolerance policy where corruption verdicts are very consistent and there is no big room for disparity because the law is strict, the punishment is heavy, and there is rarely political intervention. It is suitable as a role model because it has succeeded in maintaining public trust.

Characteristics of Sentencing Disparities in Corruption Cases

Since the 1998 Reform Era, Indonesia's legal-political framework for combating corruption has been concretely realized not only by materially overhauling the anti-corruption regulatory system that has been in place since 1971, but also by implementing fundamental changes to the structure of law enforcement agencies vested with specific authority to eradicate corruption. These efforts include the establishment of the Corruption Eradication Commission and the Special Court for Corruption Crimes. This legal-political framework was further strengthened by the ratification of the United Nations Convention against Corruption on April 18, 2006, which expanded the spectrum of corruption eradication in Indonesia. Corruption is no longer viewed merely as the enforcement of laws against common crimes with a regional character, but rather as the enforcement of laws against "extraordinary crimes," governed by legal instruments and principles of a universal nature.

In the development of the implementation of legal policies to eradicate corruption, despite its shortcomings, the performance of law enforcement agencies has shown commendable achievements, particularly in the upstream sector, namely during the investigation and prosecution processes. This is especially evident in corruption cases adjudicated in the Jakarta Corruption Court, submitted by the Corruption Eradication Commission, where nearly all cases have resulted in guilty verdicts. Nevertheless, criticism remains in the downstream sector of corruption law enforcement, particularly concerning the Corruption Court's judgments. The public still perceives that the sentencing of corrupt offenders has not fulfilled the community's sense of justice and is considered disproportionate. One of the reasons for this perception is that the sentences handed down by the judiciary are relatively lenient, and there is often disparity among judgments in cases of a similar nature. Consequently, penalties for corrupt offenders appear inconsistent.[29]

In corruption cases, the tendency for disparity is remarkably high. While the concept of sentencing disparity is often denotatively understood as differences in imposing criminal sanctions, in reality, it encompasses broader aspects, including the diverse perspectives of judges in interpreting legal sources and evaluating the facts of the cases they handle. From the perspective of legal sources alone, the classification of corruption offenses is quite diverse. The Law on the Eradication of Corruption identifies seven classifications: state financial losses,[30] bribery,[31] gratuities,[32]

[29] Indonesia Corruption Watch, "Studi Atas Disparitas Putusan Pemidanaan Perkara TIndak Pidana Korupsi," Indonesia Corruption Watch, 2014.

[30] Article 2 and Article 3 of Law Number 31 of 1999 on the Eradication of Corruption as Amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption" (n.d.).

[31] Article 5 Paragraph (1) Letters a and b, Article 5 Paragraph (2), Article 12 Letters a, b, c and d, Article 6 Paragraph 1 Letters a and b, Article 6 Paragraph 2, Article 11, Article 13 of Law Number 31 of 1999 Concerning the Eradication of the Crime of Co," n.d.

[32] Article 12 B Jo. Article 12 C of Law Number 31 of 1999 on the Eradication of Corruption as Amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of Corruption." (n.d.).

embezzlement in office,[33] extortion,[34] fraudulent acts,[35] and conflicts of interest in procurement.[36] Each classification carries its own minimum and maximum penalty provisions.[37]

From the perspective of judges rendering decisions, both internally and externally, differences in the interpretation of facts and legal principles constitute one of the key sources of disparity in the handling of corruption cases.[38] These differences are influenced by several procedural factors, such as variations in the composition of judicial panels examining corruption cases with identical subject matters, significant time gaps in the examination of defendants within the same case, and divergent judicial interpretations of specific factual elements in corruption cases. These elements include considerations such as the degree of culpability, the impact and benefits gained by the defendant, the classification of state financial losses, and other factors relevant to the adjudication of corruption cases.

To address these disparities, the Supreme Court of the Republic of Indonesia has introduced a specific sentencing guideline for resolving corruption offenses, as outlined in Supreme Court Regulation No. 1 of 2020 concerning Sentencing Guidelines for Articles 2 and 3 of the Law on the Eradication of Corruption Crimes.[39] A key aspect of this regulation is that judges, when determining the severity of penalties in corruption cases, are required to systematically consider specific stages, including:

1. The category of state financial or economic losses.
2. The degree of culpability, impact, and benefits obtained.
3. The sentencing range.
4. Aggravating and mitigating circumstances.
5. The imposition of penalties.
6. Other provisions related to sentencing.

Although it has only recently been established as a guideline for the classification of corruption crimes as regulated in Articles 2 and 3 of the Law on the Eradication of Corruption Crimes, the sentencing guidelines in addressing corruption cases can be considered a form of progress. This advancement is evident not only in the effort to reform the legal enforcement system of corruption crimes in terms of its downstream aspects but also in the criminal justice system as a whole.[40] This

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33 Article 8, Article 9, Article 10 Letters a, b and c of Law Number 31 of 1999 on the Eradication of the Crime of Corruption as Amended by Law Number 20 of 2001 on the Amendment to Law Number 31 of 1999 on the Eradication of the Crime of Corruption." (n.d.).

34 Article 12 Letters e, g and f of Law Number 31 Year 1999 on the Eradication of Corruption as Amended by Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 on the Eradication of Corruption." (n.d.).

35 Article 7 Paragraph 1 Letters a, b, c and d, Article 7 Paragraph 2, Article 12 Letter h of Law Number 31 of 1999 Concerning Eradication of the Criminal Acts of Corruption as Amended by Law Number 20 of 2001 Concerning Amendments to Law Number 31 of 1999 C" (n.d.).

36 Article 12 Letter I of Law Number 31 Year 1999 on the Eradication of Corruption as Amended by Law Number 20 Year 2001 on the Amendment to Law Number 31 Year 1999 on the Eradication of Corruption." (n.d.).

37 Litbang Mahkamah Agung, "Kedudukan Dan Relevansi Yurisprudensi Untuk Megurangi Dispartas Putusan Pengadilan.," *Puslitbang Hukum Dan Peradilan Mahakamah Agung RI* (Jakarta, 2010).

38 Siahaan, "Integrasi Konstitusional Kewenangan Judicial Review Mahkamah Konstitusi Dan Mahkamah Agung."

39 In the Point of Consideration Letter b of Perma 1 of 2020, It Is Stated That in Order to Avoid Disparity in Cases That Have Similar Characteristics, It Is Necessary to Impose Punishment," n.d.

40 Daud Rismana et al., "The Legal Effectiveness of Juvenile Diversion: A Study of the Indonesian Juvenile Justice System," *Khazanah Hukum* 7, no. 2 (June 21, 2025): 190–205, https://doi.org/10.15575/KH.V7I2.44162.

is due to the fact that both the Indonesian Criminal Code and the Criminal Procedure Code have, until now, failed to provide clear sentencing guidelines that could serve as a basis for judges to impose proportional sentences on defendants, ensuring fairness for all parties involved.[41]

Analysis of the Concept of Disparity in Sentencing as a Ground for Judicial Review

In 2019, the Supreme Court of the Republic of Indonesia issued a ruling on a Judicial Review in case No. 163 PK/Pid.Sus/2019, dated July 15, 2019, with the petitioner Drs. Muhammad Herison Bin Komri Abas. This case was a request for Judicial Review against a decision made by the Supreme Court, which had overturned the ruling of the Corruption Court at the Palembang District Court. In that case, the Palembang District Court had acquitted the defendant, stating that the actions did not meet the elements of Article 2 paragraph (1) of the Anti-Corruption Law. At the cassation level, the Supreme Court annulled the judgment of the court of first instance and stated that the defendant was proven to have committed corruption jointly with others. The convicted person disagreed with the Supreme Court's decision and filed a Judicial Review, arguing that there was a judicial error in the decision of the lower court, specifically a disparity in the judgments between the two defendants in the same case. The Judicial Review panel accepted the convicted person's reasoning. According to the Supreme Court, the court of second instance did not provide sufficient consideration, resulting in a disparity in the sentencing between the co-defendants in the same case.[42]

In the decision, the disparity in sentencing for corruption cases is categorized as a form of judicial error in ruling, so the grounds for the Petition for Judicial Review submitted by the Applicant were accepted by the Judicial Review Panel and considered as a reason that fulfills the material requirements for submitting a Judicial Review as stipulated in Article 263 paragraph (2) of the Criminal Procedure Code. Thus, it is implied that the disparity in rulings constitutes part of the grounds for judicial error, which is further supported by the emergence of a legal principle stating that:

> "The existence of disparity in sentencing among convicted individuals in the same case may serve as a basis for filing a Judicial Review, as it indicates a judicial error."

The element of judicial error in this decision, when examined, can actually be categorized as a reason related to factual issues (question of fact), as opposed to a reason related to legal issues (question of law) The emphasis on factual issues in the decision can be observed in the reasoning, which concludes that the Cassation Panel's ruling lacked proper consideration, as it failed to take into account another ruling in a case with the same subject matter but a lighter sentence than the one imposed on the Defendant or the petitioner for the Judicial Review. Therefore, it can be concluded that the Judicial Review Panel established a principle that the fact of a lighter sentence imposed on another Defendant in the same case is a crucial fact. When this fact is not considered, it constitutes a judicial error, which can then serve as grounds for filing a Judicial Review.

Regarding the concept of judicial error, both the Criminal Procedure Code and the relevant laws do not provide a detailed explanation of what is meant by judicial error as a ground for a

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41 Syarifuddin, *Prinsip Keadilan Dalam Mengadili Perkara Tindak Pidana Korupsi*, ed. Kencana, Kencana (Jakarta: Kencana, 2020).

42 Supreme Court, Putusan Mahkamah Agung Nomor 163 PK/Pid.Sus/2019.

judicial review. However, there are several principles in the jurisprudence of the Supreme Court of the Republic of Indonesia that attempt to clarify this issue. For instance, in Decision No. 107 PK/PID/2006 dated November 21, 2007, it was emphasized that judicial error or a manifest mistake includes, among other things:

1. A manifest mistake in the facts of the case;
2. A judicial error in the application of the law, such as when a party is declared alive in a case, but by the time the case reaches the cassation stage, that party has already passed away.

Furthermore, conceptually, the ground of judicial error as outlined in Article 263, paragraph (2) of the Criminal Procedure Code can be equated with the "clearly erroneous" standard, which is one of the standards for reviewing sentencing at the appellate level concerning factual issues (Questions of Fact) in the United States.[43] As explained by Martha S. Davis:[44]

> "Questions of fact are reviewed under the clearly erroneous standard. This standard is based on the proposition that the trial judge has presided over the trial, heard the testimony, and has the best understanding of the evidence. Thus, lower courts receive substantial, but not total, deference".

The concept of judicial error, as described, presents a distinct spectrum when associated with disparities in sentencing. This distinction arises because disparities in sentencing, particularly in corruption cases as previously mentioned, are not always caused by issues of fact (questions of fact). Other contributing factors to such disparities include the differing characteristics of each case, as encapsulated in Beccaria's adage, "Let the punishment fit the crime," which recognizes that every criminal case has its own unique characteristics, influenced by the conditions of the offender, the victim, or the circumstances at the time the crime was committed. Therefore, a judge, in examining a case, cannot disregard these factors when making considerations. In addition, other factors that lead to sentencing disparities include differences in race, gender, social status, political views, and so on. This aligns with the causes of disparities as explained by Muladi and Barda Nawawi Arief, who assert that due to the complexity of sentencing activities and the recognition that sentencing issues are only one subsystem within the criminal justice system, the causes of sentencing disparities are multi-causal and multidimensional.[45]

In the author's view, disparities in sentencing in corruption cases should not merely be regarded as judicial errors in the interpretation of facts but also as legal issues. These fall under the category of a mix question of law and fact[46] When accepted as grounds for a judicial review, such claims must clearly and specifically articulate the judicial errors, particularly in relation to the sentencing standards for corruption cases as stipulated in Supreme Court Regulation No. 1 of 2020 concerning Sentencing Guidelines for Articles 2 and 3 of the Law on the Eradication of Corruption Crimes.

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[43] v. Kevin Joseph Fields Appellee, "United States Of America,No. 16-1451" (2017); Syllabus, "Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal., 508 U.S. 602 (1993).," 1993.

[44] and Mary Calkins & Matt Hicks Daniel Solomon, "Identifying and Understanding Standards of Review," vol. 28 (Center, 2019), https://www.law.georgetown.edu/wp-content/uploads/2019/09/Identifying-and-Understanding-Standards-of-Review.pdf.

[45] Lilik Mulyadi (et.al), *Urgensi Pedoman Pemidanaan Dalam Rangka Mewujudkan Keadilan Dan Kepastian Hukum* (Jakarta: Kencana-PrenadaMedia Group, 2019).

[46] Department of Justice Archives, "He 'Who, What, When, Where, Why, and How' of Appeals in Bankruptcy Proceedings -- Standard of Review, Mootness, Etc.," n.d., https://www.justice.gov/jm/civil-resource-manual-97-standard-review-mootness-etc.

Moreover, a judicial review constitutes an extraordinary legal remedy against court decisions that have acquired permanent legal force *(inkracht van gewisjde)*.[47] Grounds for sentencing disparities based on these sentencing standards can also be used to evaluate conflicting decisions in identical cases as the basis for submitting a second judicial review. This is in accordance with Supreme Court Circular Letter No. 4 of 2016, which refines Supreme Court Circular Letter No. 10 of 2009. Supreme Court Circular Letter No. 4 of 2016 states: "Provisions regarding point 2 of Supreme Court Circular Letter No. 10 of 2009 dated June 12, 2009, are supplemented as follows: For the sake of justice, a second judicial review request may be formally accepted for two final and binding decisions that conflict with one another, provided one of them is a judicial review decision. This applies even if the decisions originate from different judicial levels, including criminal, religious, and administrative court rulings."

The limitation on the concept of sentencing in corruption cases, according to the author, must be elaborated in detail to emphasize that sentencing disparities occur due to judicial errors in applying sentencing guidelines established by the Supreme Court of the Republic of Indonesia. This clarification is crucial to avoid inconsistencies in the application of sentencing disparity as a general element of judicial error, which serves as a material prerequisite for filing a Judicial Review. Such inconsistencies could potentially reopen the floodgates of cases in the Supreme Court of the Republic of Indonesia. This is particularly concerning as the Supreme Court has been actively striving to minimize case backlogs, which could otherwise hinder the productivity of Supreme Court Justices in rendering decisions.

In the previous research conducted by the Advocacy Institution for Judicial Independence, the inconsistency of rulings or the lack of clarity in the Supreme Court's stance on legal issues often opens a wide door for parties to file cassation appeals. The inconsistency occurs due to the Supreme Court's case review system, which operates with a panel system, where each panel is authorized to directly decide the cases it handles. However, differences in legal views may arise between panels, leading to conflicting legal stances in two separate rulings within a short period of time.[48] In light of this, the researcher argues that there is a need for clarification regarding the application of the disparity of criminal rulings as a material requirement in the review petition, specifically whether it constitutes part of the material requirements. If it does, the question arises whether the disparity in rulings is an independent ground for review or part of the judicial error, as seen in Decision No. 163 PK/Pid.Sus/2019 dated July 15, 2019. This clarification is crucial to maintain the consistency of the legal procedures applied by the Supreme Court, as a lack of consistency could not only lead to a high volume of cases in the Supreme Court but also undermine public trust in the judicial institution.

In a teleological or sociological interpretation, consistency is important and focuses on the purpose of the formation of Perma, which is to create consistency, proportionality, and justice in the criminalization of corruption cases. Therefore, if a significant disparity arises, it may be interpreted as contrary to the intended legal objectives and can serve as a legitimate ground for judicial review (*peninjauan kembali* or PK). In a systematic interpretation, non-compliance with the *Perma* guidelines may be regarded as a judicial error or a manifest mistake.

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[47] M. Lutfi Chakim, "Mewujudkan Keadilan Melalui Upaya Hukum Peninjauan Kembali Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 12, no. 2 (2016): 328-352, https://doi.org/10.31078/jk1227.so the provisions of Article 268 paragraph (3

[48] Arsil, Hasril Hertanto, and Liza Farihah, "Kerta Kebijakan Penguranan Arus Perkara Ke Mahkamah Agung," (Jakarta, 2017).

CONCLUSION

Based on the explanation provided above, it can be understood that Sentencing disparities in corruption cases arise from complex factual and legal factors; thus, using them as grounds for a Judicial Review requires caution, especially under Article 263 (2) of the Criminal Procedure Code, since judges have discretion in interpreting each case. Such disparities should generally be resolved through Appeal or Cassation. With Supreme Court Regulation No. 1 of 2020 on Sentencing Guidelines and Circular Letter No. 4 of 2016, judges now have clear standards to assess whether disparities stem from violations of sentencing parameters or legitimate judicial discretion, promoting greater consistency and fairness in corruption case reviews. Nevertheless, based on this research, the author suggests that There should be clear clarification, either through Supreme Court internal regulations or amendments to criminal procedural law, on whether sentencing disparity in corruption cases can serve as a valid ground for a Judicial Review. This is crucial to ensure consistency in applying criminal procedural law, prevent case overload at the Supreme Court, and maintain public trust in the judiciary. Comparative experiences from Africa, Tunisia, and Singapore in handling Judicial Reviews of corruption cases can offer valuable models for Indonesia to develop more consistent, transparent, and fair mechanisms in addressing sentencing disparities.

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